



Mr. L. H. Lehn

June 9, 1981

Ken McManigal

Timber Sale Agreement
Dorothy Comer

YT 105036

This is in response to your June 2, 1981, memorandum wherein you attached a copy of a September 17, 1980, Timber Sale Agreement and you ask which party thereto is the timber owner for timber yield tax purposes.

Per the Agreement, Dorothy Comer sold all mutually agreed upon timber designated by her or her agent to Leeper Logging, a copartnership consisting of David Leeper and Henry Leeper:

"Seller agrees to sell and Buyer agrees to buy all mutually agreed upon timber designated by Seller or Seller's agent.

"The consideration to be paid by Second Parties shall be the sum of One Hundred-Seventy Five Dollars (\$175.00) per thousand feet of timber to be paid directly to First Party by the Mill.

"The parties agree that the timber sold shall be cut and removed before June 30, 1981.

"Second Parties agree to comply with all rules and regulations of the Federal, State and Local governments, particularly including the California Forest Practice Act. All logging shall be conducted in accordance with an approved cutting plan. All logging shall be done in a good, efficient and logger-like manner by Second Parties.

"LEEPER LOGGING expressly assumes all responsibility for damage or injury that may result to person or property as a consequence of logging, loading or other operations upon the described property. Second Parties declare that they have public liability and property damage insurance which they agree to keep fully paid and in force during the term of this Agreement and any extension hereof.

"Second Parties agree to ascertain the boundaries of the herein described land and to cut and log only within the same.

* * *

As noted in our April 22, 1980, memorandum to Lee Lahn concerning the Bahrenberg Agreement for the Sale of Timber and in our December 30, 1980, memorandum to Carl Vandrie concerning the Henness Ridge Associates and Yosemite Highlands, Inc. Timber Sale Contract, California Commercial Code Section 2107(2) provides in pertinent part:

"A contract for the sale apart from the land...of timber to be cut is a contract for the sale of goods within this division whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance."

Section 2106 defines "contract for sale" as including a present sale of goods, "sale" as consisting of the passing of title from a seller to the buyer for a price, and "present sale" as meaning a sale which is accomplished by the making of the contract.

In this instance, Dorothy Comer sold designated and, presumably, standing timber to Leeper Logging, and Leeper Logging acquired the right to cut and remove such timber before June 30, 1981, in return for agreed-upon amounts. Consistent with Section 2107(2), we would regard the Agreement as a present sale before severance, with title to any timber remaining after June 29, 1981, reverting to Dorothy Comer. Accordingly, as the "timber owner", Leeper Logging is subject to timber yield taxes incurred to the extent that it harvested such timber on or before June 29, 1981.

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It follows that Leeper Logging should have been shown as the timber owner on the Timber Harvesting Plan. As also noted in previous correspondence, that timberland owners/timber owners who sell their timber for harvesting have been shown as timber owners on Timber Harvesting Plans does not alter their status as sellers of timber pursuant to Timber Purchase Agreements or Timber Sale Contracts.

We are returning your materials herewith.

JKM:fr

Attachments