

Memorandum



To: Mr. Randy Widener

Date: June 25, 1998

From: Mary Ann Alonzo *MAA*

Subject: Timber Sales Agreement

This is in response to your March 16, 1998, memorandum whereto you attached a copy of a September 29, 1993, Timber Sales Agreement between E C (Timberland owner) and J D (timber operator) and you asked who is the timber owner for timber yield tax purposes. You also provided copies of correspondence with , the attorney representing Mrs. C in this matter, including a Petition for Redetermination From Dual-Determination Timber Tax. The Petition objects to the tax, interest and penalty on several grounds, including that J D agreed to pay the timber yield tax per the timber sale agreement.

The Agreement provides, in part, as follows:

“Contract Regarding Purchase of Timber

Property location: 80 acres Section Township , Range
MDB&M

J D offers the following price categories for timber removal
from your property: Price Category All green timber (Pine) - \$450 per
1000 bd ft.

All cedar and blue stain pine - \$200
per 1000 bd ft.”

* * *

“All payments will be made on net scale and J D will furnish
certified scale receipts from the mill. My company will be responsible for
State Timber Yield Tax.”

* * *

“Estimated beginning date will be 3/15/94.
Estimated completion will be 12/15/94.”

RECEIVED

JUN 26 1998

DEPUTY DIRECTOR
PROPERTY TAXES

I understand that Mrs. C owns a total of 640 acres in County from which she has had timber harvested by J D under several Timber Harvest Plans or Exemptions From Timber Harvesting Plan Requirements, starting with the third quarter of 1994 through fourth quarter of 1995. This agreement pertains to the harvest of a portion of her property totaling 80 acres and was provided by Mr. , who has indicated that there were other agreements between Mrs. C and J D for other harvests of timber conducted on her property.

Section 38115 states that timber yield tax is imposed on every timber owner who harvests his timber or causes it to be harvested. Section 38104 defines timber owner, in part, to mean any person who owns timber immediately prior to felling. It further defines timber owner to include the seller of timber located on the seller's land if the timber sales agreement provides for payment of the purchase price on the basis of actual timber volume scaled and does not contain a passage of title clause.

Under this Agreement, Mrs. C sold standing timber, from a specified portion of her land totaling 80 acres, on the basis of actual timber volume scaled, as indicated by the terms that state she would receive \$450 for pine per 1000 board feet and \$200 for cedar and blue stain pine per 1000 board feet, with no passage of title clause. Assuming the timber was harvested from Mrs. C's land, she was the owner of the timber and remained the timber owner for timber yield tax purposes and the person liable for applicable timber yield taxes as the result of such harvesting under the second definition of timber owner in section 38104, stated above.

While the agreement states that the buyer, J D , is responsible for all timber yield tax, such is a matter of contract between Mrs. C and D , and cannot supersede the provisions of section 38115 and is not binding on the Board. Such provision does not alter Mrs. C's status as timber owner for Timber Yield Tax Law purposes. With respect to the applicable timber yield taxes levied against Mrs. C , she could pay the amount of taxes to the Board and seek reimbursement of that amount from D , and/or she could pursue her petition for redetermination. We will address the petition aspect at our upcoming June 30 meeting.

MAA:jd

h:/property/precednt/timberz/1998/98009.maa

cc: Mr. Dick Johnson, MIC:63
Mr. Don Jackson, MIC:61
Mr. Gary Platz, MIC:60
Mr. Mark Buckley, MIC:64