



July 23, 1996

John N. Scott, MAI, Assessor  
County of Alameda  
1221 Oak Street  
Oakland, CA 94612-4288

Attn: Bruce D. Fletcher

Dear Mr. Fletcher:

This is in response to your letter of March 26, 1996 in which you requested our opinion on whether 1911 and 1915 bond payments made by a lessee constitute income to the lessor when valuing property by the income approach. You also asked if these bond payments should be deducted from net income as an operating expense.

The income to be used in the income approach is the economic income that comparable income producing real property would generate if exposed for lease on the open market. Presumably, the income generated will be used in various ways by the lessor. It may be used for debt service, bonded indebtedness, and other purposes of the lessor including net income. In this sense, it makes no difference how the lease is worded and what the lease payments may be used for by the lessor. If the income received from the lessee is an economic income, it should be used to estimate value via the income approach.

The 1911 and 1915 improvement bonds are used to finance off site improvements that directly benefit specific properties. They are a debt that is secured by specific property and are as much a lien on the property as a mortgage. When valuing a property, the cash equivalent of the bond is added to the nominal sales price because it is an obligation secured by that property.

I trust this is responsive to your questions. If you have any further questions, please feel free to contact me.

Sincerely,

Gene Palmer  
Supervising Property Appraiser  
Assessment Standards Division

GP: rfs

cc: Mr. J. E. Speed  
Mr. Richard Johnson  
Mr. Bill Minor  
Legal Section

# 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/timbertv/1998/98069.maa

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