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E. L. SORENSEN, JR.
Executive Director

December 29, 1998

Dear Mr. :

Your letter of May 20, 1997 to Mr. Dick Johnson, then Director of the Policy, Planning & Standards Division of the State Board of Equalization, concerning the property taxation of United States National Forest land under use permit, has been routed to our legal office for response. We have also been provided a copy of your August 20, 1998 letter to Mr. of the County Counsel's Office relative to the same subject as it pertains to Ski Corporation. We apologize for the delay in our response.

In both of your letters, you note the existence of the federal "Act of May 23, 1908," providing for the payment by the federal government of twenty-five percent of all moneys received during any fiscal year from each national forest, to the States for the benefit of the public schools and public roads of the county or counties in which such national forest is situated. Based thereon, you advance the assertion that taxing the possessory interests of permitees located on National Forest land, including California ski resort operators, results in the double taxation of the National Forest land under permit. In your letter to Mr. Johnson, you ask the Board of Equalization's position on this issue. After a careful review of the law applicable to this issue, it is our opinion, for the reasons set forth below, that taxing the possessory interests of private permitees located on National Forest land does not constitute impermissible double taxation of the National Forest land under permit.

The opening premise on the subject of property taxation is that "Unless otherwise provided by this [California] Constitution or the laws of the United States . . . All property is taxable . . ." Calif. Const., Art. XIII, § 1. Possessory interests, as defined in Revenue and Taxation Code section 107, are not exempted from property taxes and are taxable. See *El Tejon Cattle Co. v. County of San Diego* (1966) 64 Cal.2d 428, 50 Cal. Rptr. 546.

Property of the United States is, of course, not taxable by virtue of the Supremacy Clause of the U. S. Constitution. However, the United States Supreme Court has held that private persons within the National Forests are not exempt from taxation on their interests by reason of the fact that the United States owns the underlying fee interest. *Wilson v. Cook* (1946) 327 U.S. 474, 66 S.Ct. 663, 90 L.Ed. 793; *Georgia Pacific Corporation v. County of Mendocino* (1972) 340 F.Supp. 1061, 1069.

You contend, however, that because of the Act of May 23, 1908, described above, which enacted what is now 16 U. S. Code § 500 (hereinafter "section 500"), assessing a tax on the possessory interests of federal permitees of National Forest land constitutes the double taxation of such property. This precise issue has been addressed by appellate courts in California (*Board of Supervisors v. Archer* (1971) 18 Cal.App.3d 717, 727, 96 Cal.Rptr. 378; *United States of America v. County of Fresno* (1975) 50 Cal.App.3d 633, 641, 123 Cal.Rptr 548; *Anderson Union High Sch. Dist. v. Schreder* (1976) 56 Cal.App.3d 453, 458, 128 Cal.Rptr. 529), in the federal Ninth Circuit Court of Appeal (*International Paper Co. v. County of Siskiyou* (1974) 515 F.2d 285, 289), and in numerous courts in other states (*Tree Farmers, Inc. v. Goeckner* 86 Idaho 290 [385 P.2d 649, 651]; *Bartlett v. Collector of Revenue* (La. App.) 285 So.2d 346, 348; *Trinity Independent School Dist. v. Walker County* (Tex. Civ. App.) 287 S.W.2d 717, 722). Each of these courts reached the same conclusion: section 500 does not prohibit the imposition of tax on the interests of private persons in National Forest land, and such imposition does not constitute "double taxation." In fact, the Federal District Court in the *International Paper* case conducted a thorough review of the legislative history of section 500's enactment, and concluded "On this record, the Court cannot find that the intent of Congress was to establish a payment in lieu of taxes, much less to preclude local governments from taxing owners of possessory interests in National Forests." *Georgia Pacific Corporation v. County of Mendocino* (1972) 357 F.Supp. 380, 388.

You observe in your letter to Mr. that in 1976, section 500 was amended by Congress to add the following provisions:

> "Beginning October 1, 1976, the term 'moneys received' shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes."

You contend that this amendment makes clear that section 500 was intended by Congress to provide "payments in lieu of taxes," thus precluding the imposition of other taxes on the interests held by private persons in National Forest land for which such "payments in lieu of taxes" has been made. You further contend that this amendment post dates all but one of the authorities cited above, and demonstrates that those cases were in error.

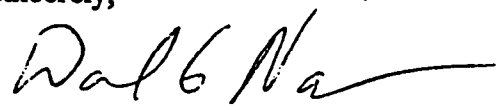
We note, however, that no case of which we are aware has reached the conclusion you urge in the 22 years since the adoption of the amendment to which you refer. We further note that the amendment you reference does not alter the substantive provisions of section 500, which the courts have analyzed and found to support the conclusion that Congress could not have intended thereby to preclude local taxation of private interests in National Forest lands. For example, there is still no requirement that the shared revenue be apportioned between schools and road services in proportion to revenue loss or services provided by virtue of the presence of the National Forest; nor are provisions made for the myriad of local governmental services other than schools and roads which ordinarily would be funded by a property tax. In short, in our view, nothing in the amendment alters the analysis of the many courts which have held that section 500 does not preclude the taxation of private interests in National Forest lands.

In your letter to Mr. , you also address 31 U. S. Code § 6901 *et seq.*, an act providing for federal payments to local governments in which entitlement lands are located. Since 1994, this act may be cited as the "Payments In Lieu of Taxes Act." Pub.L. 103-397, §1, 108 Stat. 4156. As you note, the National Forest System are entitlement lands under the Act, and section 500 is listed as a "payment law" in section 6903 thereof. As such, payments pursuant to section 500 are, essentially, treated as credits to or deductions from the amounts payable pursuant to the Payments In Lieu of Taxes Act. You argue that, therefore, section 500 payments must have been intended to also be "payments in lieu of taxes," and a prohibition of further "taxation" of National Forest lands in the possession of permitees.

In our view, this conclusion does not follow from the facts presented. A careful reading of 31 U. S. Code § 6901 *et seq.* reveals absolutely no mention of any restrictions on state or local government taxation of private interests in National Forest or other government lands resulting from either that Act or section 500, and we find no other authority for such restrictions. Conversely, of compelling relevance to both the interpretation of section 500 and the interpretation of the Payments In Lieu of Taxes Act in this regard, is the fact that Congress is presumed to have been aware of the many cases cited above, and certainly of the fact that California and many other states have long levied property taxes on the possessory interests of private permitees in National Forest land, during a time when amendments were made to both Acts. Yet, Congress has never interjected a prohibition on such taxation into either Act. That fact, together with the analysis of the cases cited above, demonstrate conclusively, in our view, that no such prohibition was intended or is in place. The payments of the federal government under these Acts are in the nature of voluntary revenue sharing, and not taxes. As such, it is our opinion that assessing property taxes on the possessory interests of private permitees on National Forest land is neither prohibited nor "double taxation."

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Daniel G. Nauman
Tax Counsel

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cc: Mr.
Office of the County Counsel

Mr. Richard Johnson, MIC:64
Mr. David Gau, MIC:64
Ms. Jennifer Willis, MIC:70