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State of California

Board of Equalization
Legal Division

Memorandum

To: Mr. Carl Vandrie, MIC:60

Date: February 4, 1994

From: Ken McManigal

Subject: **Timber Yield Tax - Wheeler Logging - YT 107034**
U.S. Forest Service Timber Volumes

This is in response to your December 2, 1993, memorandum concerning the reporting of the U.S. Forest Service Dow Butte Timber Sale.

According to your memorandum, taxpayer, purchased the sale of miscellaneous convertible products (MCP) on September 1, 1992. In this instance, that consisted of 3,777 tons of white fir. The prospectus/contract specifically stated that the white fir logs were to be weighed, not scaled, since the price the taxpayer was paying the Forest Service was on a per ton basis. The taxpayer contracted with Pit River Wood Products of Canby to purchase the white fir logs being harvested from the sale. Unfortunately, Pit River Wood Products' facility did not have the capability to weigh the logs which were, therefore, scaled as they arrived. The Forest Service agreed to modify the contract to allow for this, but this modification did not occur until taxpayer had already harvested a considerable volume of timber.

While the logs had been scaled to this point in time (2Q93), the Forest Service took the volume harvested in MBF up to the date of the contract modification and converted it to tons using a factor of 3.9871 tons per MBF. This figure then appeared on the Timber Sale Statement of Account for this sale as WF-TONS:

	1Q93	2Q93	1Q/2Q93
WF-TONS	246.24	1001.24	1247.48

Subsequent to the modification, the Forest Service showed the volume harvested in MBF and it appeared on the Timber Sale Statement of Account as WF-MBF:

	2Q93	3Q93	2Q/3Q93
WF-MBF	570.49	105.39	675.88

You ask how the timber harvested in 1Q93 and 2Q93 and shown on the Timber Sale Statement of Account as WF-TONS should be reported by taxpayer and viewed by staff under the circumstances, as tons or as mbf. If the former, the taxpayer would use the Table 1 value for pulp chipwood of $5/ton, which would result in a tax liability of $180.87. If reported as mbf, the taxpayer would use the Table 6 (Salvage Young Growth-TVA 6) value of $170/MBF, which would result in a tax liability of $1,543.09.

In this regard, you refer to Property Tax Rule No. 1027, U.S. Forest Service Timber Volumes, Subdivision (b), Scaled Volume Billings, which states, in part, that "timber volumes shall be reported for the quarters reflected by the Timber Sale Statement of Account (e.g., April, May, and June, 1980 TSSA volumes shall be reported for the second quarter of 1980)."

As hereinafter explained, the timber harvested in 1Q93 and 2Q93 and shown on the TSSA as WF-TONS should be reported by taxpayer and viewed by staff as MBF, the same as the timber harvested in 2Q93 and 3Q93 and shown on the TSSA as WF-MBF.

Section 38115 imposes the timber yield tax on timber owners at a rate, currently 2.9 percent, of the total immediate harvest value of timber harvested/acquired. The immediate harvest value shall be determined as of the scaling date. Section 38109 defines immediate harvest value, and it provides that immediate harvest values shall be expressed in terms of amount to the nearest dollar per thousand board feet, net Scribner Decimal C log rule, or other unit of measure chosen by the board, and shall be determined in a manner which makes reasonable and adequate allowances for age, size, quality, etc. Section 38108 defines scaling date, and it states that for national forest timber, the definitely determined timber volume included in forest service, United States Department of Agriculture, billing statements to timber sale contract holders, or an alternative approved by the board, shall be the basis for tax payment.

Property Tax Rule 1022, Standard Unit of Measure, implements Section 38109 and states that in determining quantities of

timber for purposes of the timber yield tax, the Scribner Decimal C Log Rule based on a maximum scaling length of 20 feet (Scribner Decimal C (Short Log) Scale) shall be used as the standard board foot log rule for timber that is measurable by the net board foot method. The standard board foot log rule for such timber is to be used in most all instances. An exception is that timber that is not normally scaled by the net board foot method shall be measured using the unit commonly employed by those dealing with the wood products to which the timber is to be converted, e.g.

Intended Wood Product	Measurement Unit
Fuel Wood	Cord
Chip Wood	Gross scale of useable wood

As evidenced by Section 38109 and Rule 1022, in determining quantities of timber for purposes of the timber yield tax, the specified Scribner Decimal C Log Rule is the standard board foot log rule for timber that is measurable by the net board foot method. As white fir timber is typically timber measurable by the net board foot method, it is reportable by taxpayer and others as MBF. Taxpayer apparently recognized this to be the case in that it reported the timber harvested in 1Q93 and 2Q93 (shown on the TSSAs as WF-TONS) as well as the timber harvested in 2Q93 and 3Q93 (shown on the TSSAs as WF-MBF) as MBF. The fact that a taxpayer may contract for the sale or purchase of timber typically measurable by the net board foot method and specify some other method in the contract, such as weight in tons, as the method of measurement/payment is a matter of contract between the taxpayer and the other party. It in no way impacts upon the manner in which quantities of timber for purposes of the timber yield tax are to be determined under Section 38109 and Rule 1022.

Against this background, Rule 1027 implements that portion of Section 38108 pertaining to U.S. Forest Service billing statements and provides:

(a) General. U.S. Forest Service timber sale contract holders shall report timber volumes harvested as hereinafter provided.

(b) Scaled Volume Billings. The Timber Sale Statement of Account (TSSA) is the basis for most U.S. Forest Service Billing statements. Timber volumes shall be reported for the quarters reflected by the Timber

Sale Statements of Account (e.g., April, May, and June, 1980 TSSA volumes shall be reported for the second quarter of 1980).

(c) Lump-Sum Billings. Timber volumes actually harvested, regardless of the volume purchased from, and billed for by the U.S. Forest Service, shall be reported for the quarters in which scaled. Timber sale contract holders must get and retain scaling data for such volumes.

(d) Other Methods Of Reporting.....

According to documents in the file prepared in the course of its promulgation, Rule 1027 was proposed and adopted to provide an alternative reporting method for U.S. Forest Service timber sale contract holders, as authorized by Stats, 1979, Ch. 563, in effect September 10, 1979, which amended Section 38108:

> 38108. "Scaling date" means the date when the quantity of timber harvested, by species, is first definitely determined.
>
> Except for national forest timber, the scaling date shall be no later than the date of delivery of the felled trees to the storage or wood-processing area, whichever is first, or an alternative approved by the board. For national forest timber, the definitely determined timber volume included in forest service, USDA, billing statements to timber sale contract holders, or an alternative approved by the board after a public hearing, shall be the basis for tax payment. (Amendment underlined)

Section 38108 is a timing statute, specifying the date when the quantity of timber harvested is first definitely determined, as is Rule 1027, which provides several alternative such dates in the case of national forest timber. Note that as enacted and as amended, Section 38108 provided that the definitely determined timber volume shall be the basis for tax payment. Thus, a reasonable construction of this language in conjunction with other timber yield tax statutes and rules is that once the quantity of national forest timber is determined according to one of the alternatives available under Rule 1027, the quantities of timber harvested and reportable are reportable in the manner contemplated by Section 38109 and Rule 1022.

As we discussed, it may be that more and more Forest Service sales will be made on the basis of weighing rather than

scaling. If you foresee a need for specifically addressing the situation in a rule or in the Immediate Harvest Value Schedule Instructions, you should discuss the situation with Bill Jackson.

JKM:jd
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