

Memorandum

To : Mr. Carl Vandrie

Timber
Owner

Date : April 10, 1985

From : Ken McManigal

Subject : --Contract Revisions
to Bulk Sales

This is in response to your March 18, 1985, memorandum wherein you enclosed a copy of a November 1, 1982, Supplement to Agreement (Supplement) between and , one of several similar supplements between and other timber purchasers, and you asked which party thereto is the timber owner for timber yield tax purposes.

Per your memorandum, the supplements were entered into to convert normal stumpage sales into bulk (lump sum) sales in order to allow the purchasers of the timber affected additional time to harvest the timber. Per the Supplement, in part:

"2. ...Seller hereby agrees to extend the term of said Agreement to December 31, 1984. Purchaser shall have until such date, the right to enter upon the property described in said Agreement for the purpose of cutting and removing the marked standing timber.

3. Title to the marked standing timber shall vest in the Purchaser upon the effective date of this supplemental agreement. Upon the vesting of title, Purchaser assumes all risk of loss in said timber....

4. In consideration of the rights granted herein, Purchaser shall pay to Seller....

5. ...Purchaser further agrees to pay all yield taxes as they become due with respect to the harvest of timber hereunder,...Upon completion of Purchaser's performance of the terms and conditions contained herein and presentation

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of satisfactory documentation indicating that such yield taxes have been paid by Purchaser, Seller agrees to reimburse Purchaser for any such yield taxes in an amount not to exceed \$23,000."

As indicated in previous memoranda, where a purchaser acquires the right to cut and remove standing timber, he becomes the timber owner for Timber Yield Tax Law purposes pursuant to provisions of the California Commercial Code. See, for example:

1. April 22, 1980, memorandum to Lee Lehn, re Bahrenberg - YT 104321.
2. November 20, 1984, memorandum to Bruce Dear, re Sierra Timber Products, Inc.

Under the Supplement, not only does the purchaser have the right to enter upon the property for the purpose of cutting and removing the marked standing timber [paragraph 2], but it is specifically provided that title to the marked standing timber shall vest in the purchaser upon the effective date of the Supplement [paragraph 3]. As of that date then, the purchaser is the owner of the standing timber, and as such is liable for applicable timber yield taxes upon the harvesting of the timber.

The fact that it is provided that the seller will reimburse the purchaser for certain timber yield taxes [paragraph 5] does not support a contrary conclusion. Such is merely a contractual provision between the parties and does not alter the statutory liability for such taxes owed by the purchaser as the timber owner. Neither is the second paragraph of Section 38104 applicable. According to the Supplement, the payment of the purchase price is not on the basis of actual timber volume scaled and, as indicated, the Supplement does contain a passage of title clause, which specifically passes title to the timber to the purchaser.

Accordingly, we agree with your conclusions that the purchasers under the supplements are the timber owners and that you can proceed to collect applicable timber yield taxes from them.

[Signature]
JKM:fr

cc: Mr. Gordon P. Adelman
Mr. Robert Gustafson
Mr. Paul Crebbin
Mr. Earle P. Gutman