



STATE BOARD OF EQUALIZATION

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)

Mr. John W. Hagerty (916) 445-1516
Ms. Janice Masterton (916) 445-6479

February 28, 1992

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Second District, Los Angeles

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Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W OLIVER
Executive Director

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

No. 92-13

NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION

RULE 1026
TIMBER OWNER

PUBLIC HEARING: Wednesday, April 22, 1992

NOTICE IS HEREBY GIVEN

The State Board of Equalization proposes to amend Rule 1026, in Title 18 of the California Code of Regulations, relating to property tax. A public hearing relevant to this action will be held in Room 102, Consumer Affairs Building, 1020 N Street, Sacramento, California, at 2:00 p.m., on Wednesday, April 22, 1992. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by Wednesday, April 22, 1992.

INFORMATIVE DIGEST

Under existing law, Section 38115 of the Revenue and Taxation Code, timber yield tax is imposed not only on every timber owner who harvests his or her timber or causes it to be harvested but also on every timber owner of felled or downed timber who acquires title to such felled or downed timber in the state from an exempt person or agency described in Section 38104 of the Revenue and Taxation Code. Section 38104 defines "timber

owner" to include the first person who acquires either the legal title or beneficial title to timber after it has been felled from land owned by a federal agency or person or agency or entity exempt from property taxation under the Constitution or laws of the United States or under the Constitution or laws of the State of California. This rule construes "first person who acquires either the legal title or beneficial title to timber after it has been felled" to mean the first non-exempt person who acquires such title from an exempt person or agency. Such a person is a timber owner liable for applicable timber yield tax.

Accordingly, where purchases of timber or logs from Indian lands held in trust by the United States for The Hoopa Valley Tribe were made, purchasers who were "timber owners", as defined, were held to be liable for applicable timber yield tax. In Hoopa Valley Tribe v. Nevins, et al. (1989) 881 F. 2d 657 (cert. den. ___ U.S. ___), however, the United States Court of Appeals held that federal law preempted imposition of the tax, finding that the state's general interest in revenue collection did not outweigh specific federal and tribal interests with which the tax interfered, and that the tax did not fund services directly related to harvesting of tribal timber and was otherwise unconnected with tribal timber activities. As a result of this decision, timber yield tax is not applicable to timber owned by Indian tribes, nor to any purchasers of that timber or logs derived therefrom.

This amendment to Rule 1026 conforms and makes current existing law as it applies to timber derived from Indian lands, particularly for non-Indian purchasers who may negotiate with Indian tribes for the purchase of the tribes' timber or logs derived from Indian lands without regard to the timber yield tax or its application.

The amendment does this by specifically providing that "timber owner", as used in Sections 38104 and 38115 of the Revenue and Taxation Code, does not include any person who harvests timber, causes it to be harvested, or acquires title to felled or downed timber derived from Indian lands held in trust by the United States for an Indian Tribe or Band or for any individual Indian member thereof. It does this also by specifically providing that no timber yield tax shall be imposed with respect to that timber upon any person who thereafter acquires title to the timber.

The amendment also deletes the obsolete reference to the former timber reserve fund tax, which was repealed in 1982, and it adds "or her" after "his" in the first sentence.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that the proposed change does not impose a mandate on local agencies or school districts. Further, the Board has determined that the change will result in no direct or indirect cost or savings to any state agency, any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code or other nondiscretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON SMALL BUSINESS

There will be no cost impact on private persons or businesses. This proposal will not have a significant adverse economic impact on small businesses.

AUTHORITY

Section 38701, Revenue and Taxation Code.

REFERENCE

Sections 38104, 38115, Revenue and Taxation Code, Hoopa Valley Tribe v. Nevins, et al. (1989) 881 F. 2d 657 (cert. den. ___ U.S. ___).

CONTACT

Questions regarding the content of the rule should be directed to John Hagerty, Deputy Director, Property Taxes Department, at (916) 445-1516, at P.O. Box 942879, Sacramento, CA 94279-0001.

Written comments for the Board's consideration or requests to present testimony and bring witnesses to the public hearing should be directed to Janice Masterton, Assistant to Executive Director, at (916) 445-6479, at the same address.

ALTERNATIVES CONSIDERED

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS
AND TEXT OF PROPOSED REGULATIONS

The Board has prepared a statement of reasons and a strike-out and underscore version (express terms) of the proposed changes. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection in Room 180, 1020 N Street, Sacramento, California.

ADDITIONAL COMMENTS

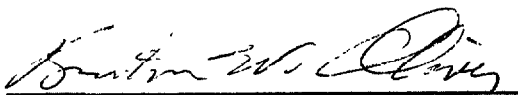
In the event there are any staff memoranda included in the rulemaking file after the close of the public hearing, these memoranda will be available to the public upon request from Mrs. Masterton for a period of 15 days after the public hearing.

In the event there are any revisions sufficiently related to the published version of the rule, these revisions will be mailed to those interested parties that commented orally or in writing or that asked to be informed of such changes and will be available to the public from Mrs. Masterton for a period of 15 days before adoption.

Following the hearing, the State Board of Equalization, upon its own motion, or at the instance of any interested persons, may in accordance with law adopt the changes proposed without further notice.

Dated: January 24, 1992

STATE BOARD OF EQUALIZATION



Burton W. Oliver
Executive Director

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Rule 1026. TIMBER OWNER

Exempt person or agency. The timber yield tax ~~and the timber yield tax/land tax/act~~ is imposed not only on every timber owner who harvests his or her timber or causes it to be harvested but also on every timber owner of felled or downed timber who acquires title to such felled or downed timber in the state from a person or agency exempt from property taxation under the Constitution or laws of the United States or under the Constitution or laws of the State of California. In some instances, such timber owners may acquire title to felled or downed timber directly from the exempt person or agency. In other instances, however, such timber owners may acquire title to felled or downed timber from an exempt person or agency which itself has previously acquired title to the timber from another exempt person or agency.

Where timber owners of felled or downed timber have acquired title to the timber in the state from an exempt person or agency, "first person who acquires either the legal title or beneficial title to timber after it has been felled" means the first non-exempt person who acquires such title from an exempt person or agency, and such a person is a timber owner liable for applicable timber yield taxes (e.g., where the person initially felling timber is exempt from property taxation and the person acquiring the felled timber is also exempt from property taxation, the first non-exempt person who thereafter acquires title to the felled timber is liable for applicable timber yield taxes).

As used in Sections 38104 and 38115 of the Revenue and Taxation Code, "timber owner" does not include, however, any person who harvests timber, causes it to be harvested, or acquires title to felled or downed timber derived from Indian lands held in trust by the United States for an Indian Tribe or Band or for any individual Indian member thereof; and no timber yield tax shall be imposed with respect to that timber upon any person who thereafter acquires title to the timber.

Reference: Sections 38104, 38115, Revenue and Taxation Code.

Hoopa Valley Tribe v. Nevins, et al (1989) 881 F. 2d 657.

Authority: Section 38701, Revenue and Taxation Code.