TIMBER YIELD TAX

840.0220 **Welfare Exemption.** Timber harvested from land exempt from property taxation under the welfare exemption is subject to the tax. Liability for the tax, however, is upon the "first person" acquiring legal title or beneficial title to the timber after it has been felled from land owned by the exempted organization. C 3/31/80.

(916) 445-6485

March 31, 1980

Ms. Alan [illegible]

Dear

This is in response to your March 5, 1980, letter to the Board concerning the February 20, 1980, Notice of Delinquency directed to Homes Lumber Company as the result of its selective timber harvest on approximately 157 acres owned by St. Francis Preparatory near Summit Road and Highway 152 in Santa Cruz County.

Applicable Timber Yield Tax Law provisions are Revenue and Taxation Code Sections 38115, 38301, and 38104, the latter which provides, in part, that "timber owner" means any person who owns timber immediately prior to felling or the first person who acquires either the legal title or beneficial title to timber after it has been felled from land owned by any person or agency or entity exempt from property taxation under the Constitution or laws of the State of California.

As you have noted, Article XIII, Sections 3(f) and 5 of the California Constitution and Section 206 of the Code exempt buildings, land on which they are situated, and equipment used exclusively for religious worship from property taxation (Church Exemption). "Religious worship" has been narrowly construed by the courts and by others, however, with the result that it is highly unlikely that the Church Exemption would ever be allowed for large parcels such as those from which this timber was harvested. Incidently, the Church Exemption is administered by county assessors, not by the Board.

Article XIII, Section 4(b) of the Constitution, however, provides that the Legislature may exempt from property taxation property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by corporations or other entities (1) that are organized and operating for those purposes, (2) that are nonprofit, and (3) no part of whose net earnings inures to the benefit of any private shareholder or individual. This the Legislature has done by enacting Sections 214 et seq. of the Code (Welfare Exemption):

> "Our constitutional provision exempting churches from taxation limits the benefit to buildings used solely and exclusively for religious purposes while the later enacted welfare exemption law is described as in addition to such exemption and so, in evidence of a broader concept, refers to property used exclusively for religious purposes." Serra Retreat v. Los Angeles County, 35 Cal. 2d 755.

The Welfare Exemption is administered jointly by this Board and by County Assessors. Review of our files discloses that St. Francis Preparatory has claimed and been found eligible to receive the Welfare Exemption for several parcels in Santa Cruz County, among others, APN 109-211-03, APN 110-031-19, APN 110-031-20, and APN 110--31-24; and our information is to the effect that these parcels encompass the approximately 157 acres from which this timber was harvested. Accordingly, as St. Francis Preparatory's land was exempt from property taxation under the Welfare Exemption, Holmes Lumber Company, either as the person who owned the timber immediately prior to felling or as the first person to acquire title to the timber after it had been felled from St. Francis Preparatory's land, is the timber owner liable for applicable timber yield taxes.

In conclusion, parties to a timber sale agreement, etc., may contract among themselves with regard to which party will be responsible for payment of applicable timber yield taxes. Such an agreement is not binding upon the Board, however, which will proceed to assess such taxes to the party responsible therefor under the Law.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

JKM:fr

cc: Holmes Lumber Co.
St. Francis Preparatory
Timber Tax Division

bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
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Legal Section