



Memorandum

: Mr. Carl Vandrie

Date : 7-29-86

From : Ken McManigal

Subject : Volume Reporting of U.S. Forest Service Timber Sales by Diamond International Corporation - YT 100531

This is in response to your June 16, 1986, memorandum wherein you advised that soon after the adoption of Property Tax Rule No. 1027, U.S. Forest Service Timber Volumes*, in 1980, the Corporation requested that its reporting be changed from TSSA to actual scale reports as prepared by a computer program it had developed; Supervising Auditor Lehn approved the request; in the course of audit, it was ascertained that timber obtained by the Corporation from USFS sales was being scaled twice, once by the Northern California Scaling Bureau as the USFS's agent and once by the Corporation's scalers; and the scaling results of the latter appear to be consistently lower than those of the former. In view thereof, you ask if there is any remedy available to rescind the approval either retroactively or prospectively.

Initially, absent additional information, it appears that approval was premature, as you have noted. While Rule 1027(d) states that alternative reporting is to be permitted only if a written description of the reporting basis to be used is submitted to and authorized by the Division, the request stated only that the Corporation had completed a computer program for all of its log scaling, without any explanation other than it was a summary of actual log scale tickets, and no further explanation was forthcoming or requested. Although premature, however, approval was given and remains in effect. Under the circumstances, it would seem that you would want to rescind approval until such time that (1) the Corporation has provided you a detailed explanation pertaining to its alternative method of reporting, (2) you have inquired into the Corporation's scaling procedures, methods, etc., and (3) you have satisfied yourselves of the sufficiency, accuracy, etc., of the alternative method, and that the results of the alternative method satisfactorily reflect the volumes of timber harvested.

*Rule 1027(d), Other Methods of Reporting, states that timber harvested pursuant to U.S. Forest Service timber sale contracts may be reported on a basis other than (b) or (c), above, only if a written description of the reporting basis to be used is submitted to and is authorized by the Timber Tax Division prior to the due date of the return and prior to reporting.

As to the period in which the approval was in effect (4Q81 through the present), the approval was only for the use of an alternative method of reporting, not for the acceptance of the results of the alternative method without question. Thus, if you have sufficient evidence to establish that volumes of timber harvested were significantly greater than those actually reported, upon audit or other inquiry, amounts attributable to such volumes could be calculated and established as the amounts of taxable measures in an audit report or in a field billing order, as the case may be. In this instance, relevant would be the Corporation's scaling procedures, methods, etc., how they were similar to those contemplated by Rule 1022 and instructions in the Harvest Value Schedules and how they were different from them, and the reason or reasons for the differences in volumes between the results of the Corporation's scalings and those of the Northern California Scaling Bureau's scalings.**

As to "a recent ruling concerning a situation where the taxpayer relied upon incorrect written documentation furnished by a Board employee," cursory inquiry has not disclosed the specific ruling, but the California Appellate Court cases of Market Street Railway Co. v. State Board of Equalization, 137 Cal.App.2d 87, and Fischback & Moore, Inc. v. State Board of Equalization, 117 Cal.App.3d 627, hold that the state is not estopped from collecting a tax which is due and owing, even if the state's representatives may have advised the public that no taxes would become due on a particular transaction or transactions, and these cases have been referred to in several Timber Yield Tax Decisions and Recommendations.

**Although Section 38108 defines "scaling date" as the date when the quantity of timber harvested is first definitely determined, the second sentence of the second paragraph of Section 38108 provides that for national forest timber, TSSA's or an alternative approved by the Board shall be the basis for tax payment and provides the authority for Rule 1027. In instances in which an alternative is approved by the Board, it is highly likely that TSSA's will be prepared prior to the application of the alternative. Thus, a conclusion that the definition of "scaling date" in Section 38108 is controlling would, in effect, negate the second sentence of the second paragraph of Section 38108, since the Board would then only look to TSSA's. Thus, I believe the result intended by the 1979 amendment to Section 38108, which added the alternative provision, was to consider an alternative approved by the Board as the "scaling date"/the date when the quantity of timber harvested is first definitely determined for purposes of the first paragraph of the section.

JKM/rz

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