

Memorandum

To Mr. Date April 21, 1989

From Ken McManigal

Subject: Government Code Section 51142 - Immediate Rezoning, Tax Recoupment Fee

This is in response to your April 17, 1989, memorandum concerning immediate rezoning, tax recoupment fees, and changes in ownership wherein you asked that we consider the following examples:

A - A timber company sells, in 1988, ten acres from a larger TPZ parcel which has been in TPZ since March 1, 1977. The ten acres had been assessed for \$1,240, March 1, 1988, and sold for \$50,000 during the year. The new owner requests immediate rezoning and it is granted within several months of his purchase. Assume market value is sale price of \$50,000.

We assume that the \$50,000 sales price is the assessed value (Government Code section 51142) and "full cash value" under Proposition 13/article XIII A of the California Constitution (Revenue and Taxation Code section 110.1) as well as the market value of the ten acres.

Upon immediate rezoning of a parcel in a timberland production zone, a tax recoupment fee is imposed on the owner of the land (Government Code section 51142(a)). Under the circumstances described, as it is the buyer/new landowner of the ten acres who had the land rezoned, it is the buyer/landowner who will be liable for the fee. Note in this regard that only pursuant to a request by a landowner, and as provided in Government Code sections 51130 through 51134, can land zoned as timberland production be immediately rezoned (Government Code section 51131).

The tax recoupment fee applies only in cases of immediate rezoning and is a multiple of the difference between the amount of the tax last levied against the land when zoned as timberland production and the amount equal to the assessed valuation of the rezoned land times the tax rate of the current levy for the tax rate area, that multiple to be chosen from a specified table according to section 51142(c) (Government Code section 51142(b)).

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In this regard, section 51142(a) states that within 90 days following rezoning the assessor shall reassess the rezoned land on the basis of the value of the land in its rezoned use. As the assessed value of the ten acres is \$50,000, the tax difference under the circumstances described would be the difference between \$50,000 times the tax rate of the 1988-89 levy for the tax rate area and the tax (on the \$1,240 assessed value of the ten acres) last levied against the ten acres on March 1, 1988, when zoned as timberland production.

As to the multiple, section 51142(c) states that the multiple shall correspond to the number of years or fraction thereof, but in no event greater than ten, for which the land was zoned as timberland production. Under the circumstances described, as the land was in timberland production zone for more than ten years prior to immediate rezoning, the year 10 multiple of 13.97164 would be the applicable multiple. Note in this regard that section 51142(c) looks to the year or years in which the land was zoned as timberland production without regard to ownership. Were it otherwise, the tax recoupment fee could continually be avoided by owners of lands who held their lands in timberland production for many years and then sold them and would continually be minimized by buyers who purchased such lands and who then sought immediate rezoning and use of the year 1 multiple of 1.06000 as the applicable multiple.

At the same time, upon the sale and purchase of real property, a change in ownership of the property requiring reassessment of the property for base year value purposes, occurs (Revenue and Taxation Code sections 60 et seq.). Thus, in addition to ascertaining the assessed value of the ten acres for purposes of the calculation of the fee, the assessor would also be determining full cash value for purposes of Proposition 13. Under the circumstances described, the assessed value for purposes of the fee and the full cash value for purposes of Proposition 13 are the same, \$50,000. Thereafter, the \$50,000, if not contested by the buyer/landowner, would become the base year value of the land for purposes of Proposition 13, and it would reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction (article XIII A, section 2(b)).

B - A timber company sells, in 1988, ten acres from a larger TPZ parcel which has been in TPZ since March 1, 1977. The ten acres had been assessed for \$1,240 March 1, 1988, and sold for \$50,000 during the year. In 1992, the new owner requests and is granted immediate rezoning. Assume 1988 market value is sale price of \$50,000.

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We assume that the \$50,000 sales price is the full cash value under Proposition 13/article XIII A as well as the market value of the ten acres. We assume further that the ten acres would have been assessed for \$1,500 as of March 1, 1991, that the immediate rezoning occurred on February 1, 1992, and that the assessed value of the ten acres at the time of immediate rezoning would have been \$60,000.

Again, upon the immediate rezoning of the ten acres on February 1, 1992, the tax recoupment fee would be imposed on the buyer/new landowner. The tax difference under the circumstances described would be the difference between \$60,000 times the tax rate of the 1991-92 levy for the tax rate area and the tax (on the \$1,500 assessed value of the ten acres) last levied against the ten acres on March 1, 1991, when zoned as timberland production. While the 1988 sales price/market value/full cash value under Proposition 13 was \$50,000, as indicated, for tax recoupment fee purposes, section 51142 requires the assessor to reassess the rezoned land on the basis of the value of the land in its rezoned use within 90 days following rezoning (February 1, 1992). As to the multiple, again, it is the number of years that land has been zoned as timberland production that is determinative; and under the circumstances described, the multiple would be the year 10 multiple of 13.97164 since as of February 1, 1992, the ten acres would have been zoned as timberland production for almost 15 years.

Upon the ten acres being immediately rezoned, the 1988 change in ownership thereof, requiring reassessment of the ten acres as of the date of change for base year value purposes, would then be recognized for assessment purposes. Thus, the value of the ten acres on the March 1, 1992, regular roll would be the 1988 \$50,000 base year value adjusted for the three succeeding tax years for inflation purposes.

In conclusion, while the interaction of Government Code sections 51100 et seq. might better blend with Proposition 13/change in ownership statutes, it must be remembered that sections 51100 were enacted and in effect in 1976, two years before Proposition 13.


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cc: Mr. John Hagerty
Mr. Verne Walton