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**830.0101 Tax Recoupment Fee.**

Timberland zoned as timberland production that transferred to the federal government or to a state agency would not subject the transferor to a tax recoupment fee. After the transfer, the transferor, who has not requested rezoning, would no longer own the property; the property owned by government would be exempt from property tax and would, by statute, be immediately rezoned. C 12/7/95; C 2/20/87. (M99-1)



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December 7, 1995

*Redacted Text*

Re: Timberland Production Zone – Tax Recoupment Fee

Dear *[Redacted]*:

This is in response to your letter of October 3, 1995 to Mr. Bill Jackson, Chief of our Timber Tax Division, in which you ask whether a property owner of land zoned as timberland production, in a proposed land exchange with the *[Redacted]*, is obligated to pay a tax recoupment fee under the following factual scenario. The land exchange is to facilitate the *[Redacted]* goals to consolidate its holdings into a few large aggregates of accessible and useful public land; however, the *[Redacted]* is not exercising condemnation. One of the properties proposed for exchange is the *[Redacted]* property presently under a timberland preserve contract, consisting of *[Redacted]* acres (APN: *[Redacted]*). *[Redacted]* has sought the exchange in order to acquire property at another location. Since your letter does not state that *[Redacted]* has requested immediate rezoning for his timberland, we assume that he has not sought to have the acreage rezoned.

Section 51142, subdivision (a) of the Government Code provides that upon immediate rezoning of a parcel in a timberland preserve zone (TPZ), as provided for in Government Code Sections 51130-51134, a tax recoupment fee shall be imposed on the owner of the timberland. The tax recoupment fee applies only in cases of immediate rezoning, which can occur only pursuant to a request by the landowner.

In view of the facts presented in your letter, that *[Redacted]* has not requested immediate rezoning for the timberland which he proposes to transfer to the *[Redacted]*, and at the conclusion of the transfer he will no longer be the owner, *[Redacted]* would not be liable for payment of any tax recoupment fees as the result of the transfer. Unfortunately, this means that the county, which

has not received the property tax revenues it would have had the [Redacted] timberland not been zoned as timberland production, will not be able to collect a tax recoupment fee as a result of the transfer. As you are aware, the [Redacted], as a federal agency, is exempt from property tax.<sup>1</sup>

We received a similar inquiry in [Redacted], in which a property owner transferred land zoned as timberland production to a state agency without requesting immediate rezoning. Please see enclosed copy of the Ken McManigal memo, dated February 20, 1987. Under the statutes, the results are the same.

Our opinion is, of course, advisory only and is not binding on your office or upon the county board of supervisors. Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this objective are appreciated.

Sincerely,  
/s/ Mary Ann Alonzo  
Mary Ann Alonzo  
Staff Counsel

MAA:jd

Precednt/timbtx/95026.maa

Enclosure

cc: Mr. John Hagerty, MIC:63

Mr. William Jackson, MIC 60

Ms. Jennifer Willis, MIC:70

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<sup>1</sup> All federal property is immune from taxation by the states unless congress has consented to taxation. The source of this immunity is the supremacy doctrine as interpreted by M'Culloch v. Maryland, 4 Wheat (17 US) 316, 4 L Ed 579 (1819).

## Memorandum

To: Mr. [Redacted]

Date: February 20, 1987

From: Ken McManigal

Subject: Timberland Production Zone - Tax Recoupment Fee

This is in response to your December 22, 1986, memorandum wherein you advised that [Redacted] would be transferring Timberland Production Zone acreage along the [Redacted] to the Department of Parks and Recreation, and that it would be transferring other Timberland Production Zone acreage along the [Redacted] to [Redacted] for eventual inclusion in a state park. In that regard, you referred to Government Code sections 51155 and 51142, and you asked whether [Redacted] might be liable for payments of tax recoupment fees as a result of such transfers.

Sections 51140 through 51146 of the code pertain to removal of acreage from timberland production zones, and section 51142 provides for the payment of a tax recoupment fee upon immediate rezoning. Sections 51130 through 51134 of the code pertain to immediate rezoning. Section 51130 states that the purpose of these sections is to provide relief from zoning as timberland production when the continued use of land in the timberland production zone is neither necessary nor desirable to accomplish article XIII, section 3 (j) timberland purposes. Section 51131 states that a timberland production zone may not be immediately rezoned except pursuant to a request by a landowner, and as provided in sections 51130 et. seq.; and sections 51133 and 51134 pertain to immediate rezoning procedures. These sections were enacted in 1976.

In 1977, sections 51150 through 51155 of the code pertaining to eminent domain or other acquisition were added. Section 51155 provides, in part, that when land is acquired in lieu of eminent domain for a public agency, the parcel shall be deemed immediately rezoned (pursuant to section 51130) as to the land actually being so acquired. It provides further that upon the

termination of such a proceeding, the parcel shall be immediately rezoned for all land actually acquired, and that the land actually taken shall be removed from the timberland production zone.

With respect to the [Redacted] acreage, presumably, the Department of Parks and Recreation would be acquiring it pursuant to section 51155, in lieu of eminent domain and at the conclusion of which acquisition the acreage would, by statute, be immediately rezoned. In view of the facts that [Redacted] would not have requested the rezoning (Sec. 51131) and that at the conclusion of the acquisition, [Redacted] would not be the owner of the acreage, we are of the opinion that [Redacted] would not be liable for the payment of any tax recoupment fees as the result of the transfer.

Neither would the Department of Parks and Recreation be liable for payment of tax recoupment fees since the property in the hands of the Department is exempt from property tax pursuant to article XIII, section 3(a) of the constitution. Such exemption, in addition to precluding special assessments (Regents of University of California v. City of Los Angeles, 100 Cal.App.3d 547) and increased service charges disguised as special assessments (Regents of University of California v. City of Los Angeles, 148 Cal.App.3d 451), would likewise preclude fees imposed to make up for past property taxes: "The Regents (Regents of University of California v. City of Los Angeles, 100 cal.App.3d 547) test is the purpose of the disputed charge." (Regents of University of California v. City of Los Angeles, 148 cal.App.3d 451). As stated in 51 Cal.Jur.3d, Property Taxes, section 15, Public Property:

"The constitution exempts from taxation property owned by the state....

"Thus, wherever the constitution and laws refer to the subject of taxing property they are to be understood as referring to private property and persons, and not including public property of the state.... Although provisions exempting private property from taxation are to be strictly construed, the rule is otherwise as to public property, which is to be taxed only if there is express authority therefor...."

With respect to the [Redacted] acreage apparently neither [Redacted] nor [Redacted] is seeking to have the acreage rezoned at all, let alone immediately rezoned. Thus, upon the conclusion of the acquisition [Redacted] would hold the acreage in timberland production zone, as [Redacted] did before, and no tax recoupment fees would be owing.

As you have noted, however, when acquired by [Redacted], the acreage would no longer be held and used for the growing and harvesting of timber, as Government Code sections 51100 et seq. contemplate. Thus, it would appear that the board or council would at that time proceed pursuant to section 51120 (c) of the code and remove the acreage from timberland production zone and specify a new zone for the acreage.

/s/ JKM

JKM rz

cc: Mr. Richard H. Ochsner

Mr. Gordon P. Adelman

Mr. Robert Gustafson

Mr. Earle Gutman

Legal

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