

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 141

June 27, 1958

CAPITAL GAIN: TERMINATION OF THE HOLDING PERIOD UNDER SECTION 17711

Syllabus:

When the cutting of timber is "considered as a sale or exchange of such timber cut during the year" under Section 17711 of the Personal Income Tax Law, the holding period terminates on the date of cutting.

Advice is requested as to whether the holding period terminates at the time of the cutting or on the first day of the taxable year when the cutting of timber is considered as a sale or exchange of such timber cut during the year under Section 17711. It is assumed that the timber was held by taxpayer for a period of more than six months before the beginning of the taxable year as is required for the application of Section 17711.

The purpose of Section 17711 of the Personal Income Tax Law was to permit owners of timber to report appreciation in value of timber as a capital gain. Under the provisions of Section 17711 of the Personal Income Tax Law if a taxpayer has owned timber for more than six months before the beginning of the taxable year, or if he has had for such period a contract right to cut timber, he may elect to treat the cutting of such timber as a sale or exchange. Gain or loss upon the cutting is recognized, equal to the difference between the adjustment basis of the timber and its fair market value as of the first day of the taxable year in which it is cut.

If the beginning date of the taxable year in which the timber was cut is adopted as the termination date of the holding period, it would defeat the purpose of the statute in those instances where the owner held the timber for more than six months but less than one year prior to the beginning date of the taxable year. The effect would be to preclude capital gain or loss treatment on the cutting of timber during the taxable year, in those instances, regardless of when the cutting occurred. Therefore, by adopting the date on which the timber was cut as the termination date of the holding period, it lends significance to the six-month requirement and provides the maximum capital gain relief under the statute.