

TRANSCRIPT OF PAUL LINIGER

Paul Liniger and I first came into the property tax field in an area confined to forest taxation in 1954 when I joined the Industrial Forestry Association to work in that specific field of forest taxation in the Douglas Fir Region of Oregon and Washington. A job had been set up in that Association to co-ordinate the efforts in the Industry to work toward reformed property taxation of forest land and timber. This work would be with committees set up for this area of study to assist the committee in developing proposals which they might wish to present to the Legislature, and attempt to get forest taxation reformed, at least in reference to their thinking on the subject.

Mr. Ogle: Paul, just where did this fit into the Rothery reports?

Mr. Liniger: Well, the Rothery report was a study by a nationally known timber valuation expert that grew out of a concern of the industry at the trend toward assessing timber at its full retail value. Rothery came into the Northwest, made a study of practices, and made some recommendations in reference to discounting as a basis for establishing values for property tax assessment purposes. He published a report which recommended, or set forth, some, what he considered reasonable discount factors for timber, depending upon the length of holding, the risk involved, and interest rates on investment.

At the time his report came out, the State of Washington was developing a timber appraisal manual, and through the efforts of the industry, as I understand it, this predated my time a little, the industry was able to influence the use of these discounts in the values set forth in the manual. From the result of developments in Washington, the industry saw the same problem developing in Oregon, and at around in the 1950s started working with the Tax Commission in the area of timber valuation problems.

As an outgrowth of this work and the Rothery report, then the industry was interested in getting the same type of discount factors used in Oregon as had been incorporated in the timber manual in Washington, or at least as set forth by Rothery. Now as I understand also, the Oregon Tax Commission had very early used discount procedures in its recommended values for timber before it assumed the responsibility of timber valuation.

Mr. Liniger: As I understand it, the Oregon Commission recognized the principle discount, although I don't know if they definitely had any prescribed factors or basis for factors that they used. I don't know the background of the application, without actually analyzing all of the aspects of return on investment risk allowances, etc. I spent then seven years, from 1954 to 1961, with the Industrial Forestry Association, during that time working both with the Oregon and Washington Committees, and from 1957, the Oregon Committee was involved in trying to develop recommendations for changes in the Oregon tax structure on timber. The 1959 proposal, as I recall it, in H. B. 14, would have established a basic discount. Now is that correct? Get some rebate? I don't remember whether it was a rebate or reduction that would apply that year, or the following year. I just can't remember.

Mr. Ogle: It seemed to me -- I don't know about the rebate, but it seemed to me that if you cut, you more or less entered into a contract, and if you cut faster than that, why then you, you would have paid over that period...

Mr. Liniger: It would be higher.

Mr. Ogle: As I remember, that was what it did.

Mr. Liniger: And if you cut faster, then you would be subject to a higher rate. I just don't remember the details. Along with the complications of this bill, it would have affected a much higher tax rate on operators who were cutting out faster than what the current Commission procedure was, that was an average for the county involved. In other words, the rate at which timber was being cut out in a county was established, let's say 20 years, 15 years or 35 years, and any corresponding discount factor was used for that period and applied to all owners regardless of their individual cutting rates, so that H. B. 14, as I recall, it would have imposed a much higher level of assessment, or much higher true cash value on timber for owners who were cutting at a more than average rapid rate, and this, of course, did not meet the approval of those particular type of operators. It is kinda hard to say whether this type of factor, the individual ownership factor, would have been advantageous or disadvantageous in view of what has happened since. The Tax Commission bill, whether it is the Tax Commission's official bill or not, I do not know, but

the one that was proposed by Dean Ellis, at least it would have been infinitely complicated in administration. That was my impression of it.

Mr. Ogle: It was continually...

Mr. Liniger: Well, yes, I don't recall the exact features of it now, but that was my main impression that they had tried to raise a certain amount by ad valorem methods, and then if that didn't come up to an amount considered appropriate, based on some past contributions the timber had made, then an additional severance or harvest tax would be applied, and each year you would have to redetermine how much this would be after you had determined how much property tax you were going to get from the timber in the first place, so it looked to me like all the complications of two systems of administration without really solving anything. That's my frank evaluation of it, as I recall.

I don't know what 209 is any more; however, I think toward the end of the '61 session Eymann and Barton came out with a proposal. Had they introduced it earlier it might have gained quite a bit of favor.

Mr. Ogle: 1654, and then Eymann came out later with 1719, I think it was. It was another complicated deal.

Mr. Liniger: There was one that came out toward the latter part of the 1961 session that could very well have gained quite a bit of favor from the industry had it been brought earlier. Now it was somewhat of a severance feature incorporated in it, but I don't believe it would have been a very severe tax burden even compared with 1438. This is just my offhand recollection. I can't tie it down to details in my own mind at the present time.

Mr. Ogle: In going over that bill, it seemed to me that it had the same faults that 14 had in that the administrative headache would have been really something.

Mr. Liniger: My impression of it, being rather favorable to the industry, may not have been the intent. It was at least the way several interpretations of it were being made. It didn't look too bad.

Mr. Ogle: Any forest tax bill based on discount factors?

Mr. Liniger: Well, I think in a Committee such as I worked with, there are a great many different opinions on how tax laws should be formulated. I think this is an area where practically everyone has his own theory on what

is appropriate, but I think the Committee was generally pretty well committed to the ad valorem principle for treatment of forest property, and I think they were all committed to discounting under that system and the basis for establishing taxable values, but it came right down to the question of how this should be done, whether on an individual basis or on an average that would apply to all owners, regardless of size. Of course, how much either way, whether it were on an individual basis or an average basis, what the discount should be. I think those owners who had a more stable timber supply in their own ownerships were the ones who favored the individual ownership basis, whereas those who are perhaps by economic circumstances forced to liquidate a larger percentage of their timber each year were fearful of the individual treatment and favored the average application. Their supply was less in reference to their needs, but their intent was to spread out what they had over as long a period as possible, and they felt that they should also participate in the greater discount.

Mr. Ogle: Where did the exclusion of reproduction up to 30 years, where did that originate?

Mr. Liniger: Well this is an element that perhaps there is some misunderstanding on. As long as I worked with the Committee this question always came up. Should reproduction be exempt, and the industry, although they felt it should be exempt, was resolved, in the Oregon situation, at least, not to make an issue of this because they felt that this was too subject to political criticism that they advocate a reproduction to be exempt. During the 1959-61 interim period, the Interim Tax Study Committee's discussions on this question came up and it is my recollection that the Interim Committee was insistent that if anything were done, the young timber should be exempt up to a certain point. Well, after hearing this repeatedly from the Interim Committee, the industry then decided that this should be incorporated in the bill that they presented because it appeared to be a feature that the Tax Study Committee wanted.

Mr. Ogle: Then didn't Dean Ellis add that in his too?

Mr. Liniger: I can't recall that, Charley -- it could very well be. But that is my impression as to how it got incorporated into the industry bill. This is something that the industry always shied away from because they knew its political implications.

Mr. Ogle: Yeah, I remember discussions in Committees on that.

Mr. Liniger: Of course, the additional tax feature caused some additional administrative effort, and each year it takes quite a bit of man power to record the depletion and recompute the taxes on the timber harvested. I think that the mechanics of that are pretty well ironed out. I don't think it gives any particular problems, except it is an additional tax that has to be done and requires appropriate man power. Also, it required a new, or a modification, in the break between what the Commission considered young growth and old growth. The law specified anything that was over 90 years of age in 1961 would be classified as old growth, and anything under that would be classified as young growth. Previous to the law, the break between young growth and old growth was a little different, so that in inventory we had to do some adjustment of inventory to bring our inventory into conformance with the law with respect to those two categories.

Mr. Ogle: 25% and 30%?

Mr. Liniger: No, it was in respect to what is old growth timber and what is young growth. It had to be done in respect to applying the factor for old growth to qualify for the additional discount. This required considerable man power during the immediate period of implementation. Then, of course, there was the administrative problem of segregating out the material that is exempt. These are all problems that were met in reasonable periods of time, and all of the counties are now on a uniform basis in respect to application of the law. Of course the one feature of the law that has probably given us most potential problems is the one of forest land wherein the law requires that forest lands, as long as they are used as such, shall be valued as such, irrespective of a higher use. Along with the problem that came up with respect to forest land valuation in 1963 when the Commission proposed some increases in forest land, but ultimately pulled them back and made a study of forest land valuation, we have changed our approach to forest land valuation and are now using quota classes establishing a value for each quota class as against a broad generalized application of value previously used.

Mr. Ogle: Was that a modification of site class?

Mr. Liniger: Yes, based upon site. We don't go according to the site

designations, but we have broken up the Douglas fir classifications into eight different quota classes and incorporate the same criteria site, but we don't call them specific site classes. We have proceeded to develop better criteria for classified lands as forest lands, and hope that this will overcome the problem of forest land classifications through Court tests, give us further guidelines to follow if we are on the wrong track now. Currently we are looking at the status of the cull on a given tract of what we assume is forest land, and if it appears to be used as forest land, we establish it as such by classification, and then it carries the forest land value. Now if an objective change in value takes place, then we would change it to whatever higher use value it has, and according to the 1965 law, there would be a pickup on the taxes due on the tract by virtue of the change. This provides for a pickup of tax in between forest land use and higher use for a period of five years prior to the change. This should resolve some of the problems of making an absolutely precise determination of use at the outset.

Mr. Ogle: This also gives the Assessor a little more discretion in determining whether or not he is --

Mr. Liniger: Yes. It would enable him to give the benefit of the doubt to the so-called forest land owner, and if a change is made, the tax would be picked up. This will certainly not solve all of the problems, but it should alleviate some of them.

Mr. Ogle: How about forest roads?

Mr. Liniger: Well, that argument came up out of the move on the part of some assessors to put forest roads on the assessment rolls for the first time, in some of the counties, and although some roads had been on the roll for some previous years, it was not the general practice to put them on, and in view of the fact that it looked as though there was a move on the part of the assessors to put forest roads on, the industry took issue at the propriety of putting them on as a separate improvement in view of the fact of their contention that their values were already expressed in the value of the timber. This, of course, was resolved in the 1963 legislature when all roads, except principal or access roads, were deemed to be exempt from separate taxation in view of their being considered

in the value of the timber. Now we have had one Court test as to what comprises a principal exterior access road, in which a road that went into a timbered area and was definitely a principal access road, was put on the assessment roll. It was appealed as being within the principal forest area. Our law section considered the principal forest area in different context than what some of the industry considered it to be, and held that the road was accessible to the owner of it. The Court resolved that in favor of the owner, and therefore the interpretation was -- the Court's interpretation was that it was a principal exterior access road until it actually hit the owner's property -- then it became a second. This road was mostly outside the owner's property and was assessed as such to the owner. But the Court interpreted the principal forest area to be the general forest area, and that he ruled the principal exterior access road running through the section area was exempt until it actually hit the owner's property. That isn't a very clear statement.

Mr. Ogle: Whose statement was that?

Mr. Liniger: That was Simpson's Timber Company in Linn County.

Now the Commission did not appeal that Court decision.

Mr. Ogle: Now there are two other areas that I would like to get clarified. One was the Southport Coast, as to what factors were in each case, and Moore Mill and Lumber Company, and the implications in the Court's decision.

Mr. Liniger: As to the Moore Mill and Lumber case, it was a case in which the company appealed the additional tax, contending that it was more -- it represented tax on more timber than actually came off the area. Did not dispute this fact and took the position that the tax, the additional tax, should be based on the same inventory that the Tax Commission had on the area, and that the additional tax should reflect the amount of percentage of that Tax Commission inventory that was removed for the particular year of harvest. This was the industry's rationale for the additional tax when the law was developed, and to base the tax on the actual amount removed was considered to be a severance or harvest tax application, whereas the application of the additional tax on the Tax Commission's inventory that was removed was presumed to fit right into the ad valorem context, but in conformance with the principle that in the year of harvest that no discount is applicable. The additional tax was based on the difference between the basic 30 or 25% factor, and no discount, or 100% factor,

and the rationale of that was that in the year of harvest there could be no discount and the timber should be valued in reference to 100%, not its main harvest value. Of course we can't determine how much is going to be harvested until the act is actually done, and then we can determine how much of a given inventory has been depleted, and apply the additional tax on that basis.

Mr. Ogle: The industry's position, and I believe they explored the Tax Commission in their case before the Courts, wasn't it based, as much as anything else, if this procedure was okayed by the Courts, then it would be a continual refund, and additional tax necessary each time a tract was harvested if they were going to base it on the actual cut, as you say, it would be on a severance tax prepaid up to a point. If it was overpaid, it would have to be a refund. If it was underpaid, then it would have to be --

Mr. Liniger: This would create quite a problem for the Commission because you would actually have to verify in some way the reported volume harvested by the owner. Now the owner might very well trend to underreport the amount harvested, and in order to make sure this was proper, we would have to make some kind of verification. Now this is just assuming that some under-reporting would be made. I am sure the responsible operators would report properly, but we would have to assume that there could be questions involved in reporting.

Well of course the decision was adverse to the Commission's decision, and although we did not take it further, our administration's practice is to base the tax on the best information that we have available, which is usually the cruise that we have.

Mr. Ogle: I should have said that the Commission's administration of the thing, which was concurred in by the industry, so far hasn't caused any complications.

Mr. Liniger: That is true. I don't know whether we will get any more of these or not, but if there is information to indicate that our cruise is erroneous, then we would have to go in and make a recruise to determine whether the claim and volume removed were proper. Then we would not have any doubts.

The Moore Mill and Lumber Company case is the only one that I am aware of, Charley.

Mr. Ogle: Now how about Southport case?

Mr. Liniger: South Coast, you mean? Well, that is a case that deals with the valuation of logs from personal property on a Forest Service sale. Several years ago the question of taxability of logs as personal property on Government sales came up, and I think there was a question of taxability, depending on the words of the contract on both BLM and Forest Service sales. I think it was resolved that the BLM contract precluded taxation because the time of the timber had not passed to the purchaser at the time the timber was felled, but this was not the case in terms of the Forest Service contract, and I believe according to the Edward Hines Lumber Company case, that the purchaser of Forest Service timber was deemed to have possessory interest at the time the timber was felled and bucked, and that consequently it was taxable as personal property just like the fact that it was still in the woods. No, I don't believe that enters into it. I believe that the Commission has taken the position previously that if it has been felled and bucked, the purchaser has enough interest in it to make it taxable despite the provision in the contract that title passes only upon their being scaled and paid for, but the Southport case had another element in it. Want to go off the record here for a minute. The Southport case was resolved in favor of the Commission that the timber was taxable. The felled and bucked timber on Forest Service land was taxable to the purchaser. It sustained our interpretation of the law in that respect but the Tax Court did not cover the question of discrimination, in that property under contract of sale with the State was treated differently than property under contract of sale with the Government. So we wanted this issue resolved, so we tried to get it in the Supreme Court on the basis of discrimination that either the property under contract of sale to the U. S. Government should be nontaxable, the same as provided for in the statute dealing with State property, or vice versa. They should both be in conformance. At the same time that this went up the Commission had introduced legislation to make the two statutes conform, and that was passed, so that it now makes property under contract of sale to the State and Federal Government treated the same.

They are both taxable. At about the same time, then, the Supreme Court handed down its decision in the Southport case, which, as I recall, did not resolve this discrimination issue totally either. I am not quite certain as to how that read now, but at least the law resolved the problem. The Commission brought it up in 1963, you know, and I think due to industry's misunderstanding of the Commission's motive to get this thing resolved, they were very unfavorable to it and the bill died. By this time I think we illustrated the problem better and it was passed to bring the treatment into conformance.