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**DECISION**



*Andiea Kelle*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-191123

**DATE:** June 13, 1978

**MATTER OF:** Payments in Lieu of Taxes on Coos Bay Wagon  
Road Lands in Oregon

**DIGEST:** Bureau of Land Management, Department of Interior, is authorized to certify payments in lieu of taxes to Douglas and Coos Counties, Oregon, pursuant to the Act of May 24, 1939, notwithstanding a recent change in State law which taxes timber lands on a severance, instead of ad valorem, tax basis. Change in method of computing tax does not relieve United States of tax equivalent payment obligations as long as purpose and payment principles of 1939 Act are not changed by new State law.

The Deputy Solicitor, Department of the Interior, has asked for our decision on the availability of funds for payments in lieu of taxes on the so-called Coos Bay Wagon Road lands in Oregon in view of a new Oregon law which changes the method of taxing timber.

The Act of May 24, 1939, 53 Stat. 753, 43 U.S.C. §§ 1181f-1 through f-4 (Supp. V 1975), requires the Secretary of the Treasury, upon certification by the Secretary of the Interior, to make annual payments in lieu of taxes to Douglas and Coos Counties, Oregon. Payments are to be made from a fund made up of a specified percentage of revenues from the Coos Bay Wagon Road lands in these counties. The payments are to be computed "by applying the same rates of taxation as are applied to privately owned property of similar character" in Douglas and Coos counties. 43 U.S.C. § 1181 f-1.

Until this year, timber lands in western Oregon, such as the Wagon Road lands, were subject to an ad valorem tax on the value of the land and the timber. On July 28, 1977, Oregon enacted a statute, effective January 1, 1978, which continued the ad valorem taxation of western timber lands, but substituted a severance or "stumpage" tax on the timber. The severance tax is based, not on the value of the stands of timber, but on the value of the timber harvested. The issue is whether the 1939 Act authorizes the Bureau of Land Management (BLM), which carries out the responsibilities of the Secretary of the Interior under the Act, to certify payments to Douglas and Coos Counties on the basis of the severance tax.

Public lands were granted by the United States to the Oregon and California Railroad Co. and the Coos Bay Wagon Road Co. in the years

1866 and 1869, respectively, in aid of the construction of those roads. Title to the lands was revested in the United States in 1916 and 1919 (by the Act of June 9, 1916, 39 Stat. 218 and the Act of February 26, 1919, 40 Stat. 1179) because the grantees violated covenants contained in the granting acts. H. R. Rep. No. 1119, 75th Cong., 1st Sess. 1 (1937). Section 10 of the 1916 Act established the "Oregon and California land-grant fund" (Fund), to consist of all moneys received from or on account of the revested land, including timber sale receipts.

The Act of July 13, 1926, 44 Stat. 915, allowed the counties in which the revested lands were located to submit claims for the equivalent of the taxes which would have accrued from the lands had they remained in private ownership. Claims by the counties for these payments were to be charged against the Fund.

The counties' claims exceeded the amount in the Fund. The Fund was supplemented, pursuant to the 1916 and 1926 Acts, with appropriated funds that were required to be repaid. H. R. Rep. No. 1119, supra, 3. The Act of August 28, 1937, 50 Stat. 874, was passed to insure that beginning in 1938, the counties would receive, instead of tax-equivalent payments, a fixed percentage of the revenue from the land, and to permit reimbursement of the general fund of the Treasury.

However, Title II of the 1937 Act refers only to lands revested under the 1916 Act, which was concerned only with the Oregon and California Railroad lands. As no provision was made for the distribution of funds derived from the Coos Bay Wagon Road lands, the Act of May 24, 1939, 53 Stat. 753, was passed. This is explained by the Secretary of the Interior, quoted in S. Rep. No. 371, 76th Cong., 1st Sess. 3 (1939):

"Provision was made in this legislation in 1937 for distribution to the counties in which the lands are located of a percentage of the receipts derived from the lands, above the amount retained for administrative costs, insofar as the Oregon and California railroad lands are concerned. Obviously through oversight, no like provision was made for the Coos Bay Wagon Road grant lands.

"The purpose of H. R. 2317 is to correct this oversight and place all these lands upon substantially the same basis, both as to administration and distribution of proceeds."

Despite this statement of intent to place the Coos Bay Wagon Road lands on the same basis as the Oregon and California Railroad lands as to distribution of proceeds, the 1939 Act provides for a means of distribution for the Coos Bay lands which differs from the method which applies, by virtue of the 1937 Act, to the Oregon and California railroad lands. The principal difference is that under the 1939 statute, the procedures prescribed for appraising, assessing, and taxing these lands are the same as those applicable to comparable private lands. (See Report No. B-105156, March 23, 1970).

The 1939 Act provides for appraisal of the Coos Bay Wagon Road lands, and provides that payments to Coos and Douglas counties are to be distributed between the counties according to the ratio that the total assessed value of the portion of the Wagon Road lands in each county bears to the total assessed value of the lands in both counties. Moreover, the statute contemplates that, upon completion of appraisal, the land and timber "shall be assessed as are other similar properties within the respective counties \* \* \*."

The Deputy Solicitor says that the 1939 Act "sets forth the procedure to be used in assessing the property and seems to contemplate only an ad valorem property tax". Assessment is of course associated with the imposition of an ad valorem tax and would presumably not be necessary for purposes of a tax based on severance.

The same sentence in the statute quoted in the preceding paragraph goes on to say: "and payments hereunder in lieu of taxes shall be computed by applying the same rates of taxation as are applied to privately owned property of similar character in such counties". Arguably this latter phrase, read together with the preceding phrase which deals with determination of the assessed value of the land, means that the payments in lieu of taxes are to be computed by applying an ad valorem tax rate to the assessed value. If so, and if that reading is deemed to represent the exclusive method of computing payments in lieu of taxes, then payment based on severance would not be authorized.

However, in light of the congressional purpose, we do not believe that the statute must be so read. Oregon's decision to place a severance tax on timber in no way interferes with the basic purpose of the 1939 Act--to require payments in lieu of taxes to Douglas and Coos counties on a tax equivalency basis, but limited to a percentage of revenues from the lands. There is no evidence in the legislative history of the 1939 Act that payments on the public lands in Oregon were to be based on an ad valorem tax. At most, we may assume that the statute was couched in terms of an ad valorem tax because that was the basis for State taxation at the time of the enactment of the provision for payment in lieu of taxes.

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The fundamental requirement in the 1939 Act, regarding the amount paid to the counties, is that payments be computed at the same rates applicable to comparable private property in the State. That requirement is met if payments are made based on the severance tax. Since the statute places a maximum of 75 percent on the revenues which can be paid to the counties in lieu of taxes, a change by Oregon in the rate or the method of computing local taxes can not defeat the intent of the Congress by increasing the tax beyond what the Congress contemplated.

On the other hand, if we were to hold that because the method of computing State tax has been altered, the payments in lieu of taxes may not be made, the result would be that the counties would receive revenues under the 1937 Act based on the value of land and timber, but would receive revenues under the 1939 Act based only on the value of the land. The Congress intended that the counties receive revenues from the re-vested lands on substantially the same basis. S. Rep. No. 371, supra.

Accordingly, under 43 U.S.C. §§ 1181f-1 through f-4, BLM is authorized to certify payments to Douglas and Coos Counties on the basis of Oregon's severance tax on timber.

Acting Comptroller General  
of the United States