Top Timber Tax Issues

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Individual Timber Owners, REITs and the Paper Industry

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Sustainable Forestry Roundtable: Tax Impact

The Sustainable Forestry Roundtable, a multi-agency / organizational national open dialogue hosted by the Meridian Institute, calls for analyzing tax impact to sustainable forest management. State and Private Forestry Program and other units of the USDA Forest Service serves in this dialogue. For more info please visit www.sustainableforests.net.

Capital Gains Tax Rate of 15% Expires by the End of 2010

Absent congressional action, the current maximum capital gain tax rate of 15% is scheduled to increase to 20% in 2011 (for taxpayers in the bottom two tax brackets, the rate will increase from 0% in 2010 to 10% in 2011). Most timber sales are subject to the capital gains tax rates.

No Federal Estate Tax This Year (2010) *So Far*

- Unless changed, there is NO federal estate tax in 2010. Gift tax still exists.
- In 2011, the estate tax will return: one can transfer up to a $1 million estate tax free. Excess over $1 million is taxed at the marginal rate of 55%, with a 5% surcharge to estates of over $10 million.
- Inherited property still receives *step-up basis* (higher basis reduces gains and thus taxes at sale), but the maximum increase is limited to $1.3 million.

Timber Tax Bill in the Current Congress: Family Farm Estate Tax Relief Act of 2010 (H.R. 5475) proposes to exclude qualified timberland from estate tax and allows owner to harvest without triggering tax recapture.

Paper Industry and "Black Liquor" Tax Credit

♦ **$0.50 per Gallon Alternative Fuel Mixture Credit Expired at 2009 Year End**

Billions of dollars of federal tax credits given to the paper industry which had taken advantage of a $.50 per gallon fuel tax credit for its use of black liquor — a byproduct of the kraft process, blended with small amounts of diesel fuel — sparked debate and attention. This credit expired at the end of 2009.

♦ **Latest Healthcare Act Excluded Black Liquor from the $1.01 per Gallon Cellulosic Biofuel Producer Credit**

Effective January 1, 2010, black liquor is excluded from the $1.01 per gallon cellulosic biofuel producer tax credit (enacted by the 2008 Farm Bill, effective until 2013).

Wall Street Journal: http://online.wsj.com/article/SB124623488607866601.html

RISI: http://www.risiinfo.com/technology/papermaking/Black-liquor-showdown-in-Senate-centers-on-keeping-jobs-holding-off-from-killing-the-alternative-fuels-funding-effort.html

REIT Tax and Weyerhaeuser Conversion to REIT

♦ **Basics of REIT Tax**

Corporate income is taxed twice (both at the *corporate* and s*hareholder* level), while **most REIT income is taxed only once (**at the *shareholder* level). This is because a REIT may take a dividend deduction when it distributes nearly all of its income to shareholders (sec. 857(a)) and thus is taxed only once. **A REIT is a tax efficient structure for holding real estate assets.**

♦ **The federal tax law imposes numerous requirements on REIT qualification,** including income and asset composition, measured by multiple percentages. For example:

- The 75% **income test** restricts a REIT to derive 75% of its gross income from ***real estate*** sources.
- The 75% **asset test** requires 75% of the REIT's assets to be in real estate, cash and government securities.
- A REIT's subsidiary cannot be more than 25% of its asset value.

♦ **The 2008 Farm Bill established "timber REITs" and eased timber REIT rules.**

House passed the *American Jobs and Closing Tax Loopholes Act of 2010* (HR 4213) which extended the timber REIT tax provision (to December 31, 2010 from May 22, 2009). The Senate planned to take up this bill in the week of June 7, 2010.

Conservation Easement Donation: *Enhanced* Tax Incentives Expired at the End of 2009

Enhanced incentives was first enacted for 2006 and 2007 and extended by the 2008 Farm Bill for 2008 and 2009.

Deduction limit is up to 50% of contribution base ("adjusted gross income"); 100% if donated by qualified farmer or forest owners.

Without renewal, donation in 2010 is limited to 30% (vs. 50% or 100%) deduction.

Family Farm Estate Tax Relief Act of 2010 (H.R. 5475) proposes to increase estate tax exclusion limit for land subject to qualified conservation easement to $5 million (from $500,000) and to 50% exclusion from the current 40%.