

FILED FOR RECORD
SKAMANIA CO. WASH
BY *Skamania Co.*

DEC 8 12 35 PM '93
P. Lawry
AUDITOR
GARY H. OLSON

SKAMANIA COUNTY
ORIGINAL FILED

DEC - 7 1993

Lorena E. Hollis, Clerk

118153

SUPERIOR COURT OF WASHINGTON
FOR SKAMANIA COUNTY

IN RE:

LONGVIEW FIBRE COMPANY, a
Washington corporation

Plaintiff

v.

SKAMANIA COUNTY, a municipal
corporation

Defendant

No. 93-2-00141-1

SUMMONS (20 days)

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by LONGVIEW FIBRE COMPANY, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for

SUMMONS - Page 1

Registered
Indexed, Div
Indirect
Filed
Mailed

RECORDER'S NOTE:
NOT AN ORIGINAL DOCUMENT

LONGVIEW FIBRE COMPANY
P.O. BOX 639
LONGVIEW, WA 98632
(206) 425-1550
Fax: (206) 425-3116

1 because you have not responded. If you serve a notice of
2 appearance on the undersigned person, you are entitled to notice
3 before a default judgment may be entered.

4 You may demand that the plaintiff file this lawsuit with the
5 court. If you do so, the demand must be in writing and must be
6 served upon the person signing this summons. Within 14 days after
7 you serve the demand, the plaintiff must file this lawsuit with the
8 court, or the service on you of this summons and complaint will be
9 void.

10 If you wish to seek the advice of an attorney in this matter,
11 you should do so promptly so that your written response, if any,
12 may be served on time.

13 This summons is issued pursuant to rule 4 of the Superior
14 Court Civil Rules of the State of Washington.

15
16 DATED this 3rd day of DECEMBER, 1993.

17
18 LONGVIEW FIBRE COMPANY

19 W. Jeff Davis

20 W. Jeff Davis
21 Assistant General Counsel
22 LONGVIEW FIBRE COMPANY
23 P. O. Box 639
24 Longview, WA 98632
25 WSBA #12246

26 () Plaintiff (X) Plaintiff's Attorney

SKAMANIA COUNTY
ORIGINAL FILED

DEC - 7 1993

Lorena E. Hollis, Clerk

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAMANIA

IN RE:

LONGVIEW FIBRE COMPANY,
a Washington corporation
Plaintiff

vs.

SKAMANIA COUNTY, a municipal
corporation
Defendant

No. 93-2-00141-1

COMPLAINT FOR REFUND
OF TAXES

1. This is an action pursuant to RCW 84.68.020 for the
refund of compensating property taxes paid during 1993.

2. The Plaintiff is a Washington corporation and has paid
all fees as required by law.

3. The Defendant is Skamania County, a municipal corporation
of the State of Washington.

4. On November 9, 1993 Plaintiff paid \$21,753.80 of
compensating real property taxes to the Defendant under written
protest. A true and correct copy of Defendant's receipt

COMPLAINT FOR REFUND OF TAXES - 1

LONGVIEW FIBRE COMPANY
P.O. BOX 636
LONGVIEW, WA 98632
(206) 425-1550
FAX: (206) 425-3116

1 acknowledging Plaintiff's payment of the compensating tax is
2 attached as exhibit "A" and by this reference incorporated herein.
3 A true and correct copy of the written protest received by the
4 Defendant at the same time Plaintiff paid the compensating tax is
5 attached as exhibit "B" and by this reference incorporated herein.

6 5. On November 17, 1986, Congress passed the Columbia River
7 Gorge National Scenic Area Act, Pub. L. No. 99-663, 100 Stat. 4274
8 (1986) (the "Act"). One purpose of the Act is "to establish a
9 national scenic area to protect and provide for the enhancement of
10 the scenic, cultural, recreational, and natural resources of the
11 Columbia River Gorge." Pursuant to Section 9 of the Act, the
12 Secretary of Agriculture is authorized to acquire private lands
13 within special management areas that are in the scenic area. The
14 Act grants the Secretary power of eminent domain to accomplish any
15 desired acquisition.

16 6. In setting the boundaries for special management areas,
17 Congress included lands owned by Plaintiff.

18 7. In January, 1987 the Secretary started negotiations to
19 acquire two thousand three hundred ninety (2390) acres of
20 Plaintiff's property located in Skamania and Klickitat Counties.
21 In 1992 it appeared that the exchange would not be consummated and
22 Plaintiff attempted to harvest timber from the land sought by the
23 Secretary. In responding to Plaintiff's harvesting plans, the
24 Secretary threatened to condemn the property if the exchange was
25 not completed.

26 8. In 1993 the parties agreed to the exchange. For its

1 property, Plaintiff received from the United States Forest Service
2 approximately 85 acres of forest land located in Skamania County,
3 Washington and approximately 2000 acres in Hood River County,
4 Oregon.

5 9. On November 9, 1993 Plaintiff recorded the deed to the 85
6 acres located in Skamania County. The Defendant required Plaintiff
7 to pay the compensating tax imposed under R.C.W. 84.33.120 before
8 allowing Plaintiff to record its deed. On November 9, 1993
9 Plaintiff paid the compensating tax under written protest.

10 10. The exchange between Plaintiff and the United States
11 Forest Service is exempt from the compensating tax under R.C.W.
12 84.33.120(9), which exempts transfers of forest land located in
13 Washington to a government entity in exchange for forest land also
14 located within the State of Washington and transfers to an entity
15 having the power of eminent domain in anticipation of the exercise
16 of that power. Therefore, the Defendant unlawfully and illegally
17 required Plaintiff to pay the compensating tax, and Plaintiff is
18 entitled to a refund of the taxes paid.

19 11. The Defendant, in requiring Plaintiff to pay the
20 compensating tax, acted arbitrarily and under color of State law in
21 violation of Title 42 U.S.C. § 1983, and Plaintiff is entitled to
22 an award of damages and attorneys fees as proven at trial based
23 upon that violation.

24 WHEREFORE, Plaintiff prays for judgment against the Defendant
25 in the amount of \$21,753.80 or such portion as shall be proven at
26 trial to have been levied contrary to law, together with interest,

COMPLAINT FOR REFUND OF TAXES - 3

1 damages pursuant to 42 U.S.C. § 1983, attorneys fees and costs as
2 allowed by law, and for such other and further relief as the Court
3 deems just and equitable.

4 DATED this 31st day of December, 1993.

6 LONGVIEW FIBRE COMPANY

8 By: W. Jeff Davis

9 W. Jeff Davis
10 Assistant General Counsel
11 WSBA #12246
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EXHIBIT "A"

SAUNDRA WILLING
SKAMANIA COUNTY TREASURER

MISCELLANEOUS RECEIPT# 43032

RECEIVED 11/09/93

RECEIVED FROM: LONGVIEW FIBRE CO.
MEMO: COMP TAX RE PARCELS/EXHIBIT A
CHECK/CASH: CK

| fund | dept | bars | source | trans# | Page | amount |
|-------------------|------|--------------|----------------|--------|------|-----------|
| TREASURER'S TRUST | | | | | 1 | |
| 632.000.000 | | 395.00.09.00 | PROPERTY TAXES | | | 21,753.00 |
| Total | | | | | | 21,753.00 |

Received by: LJM

LONGVIEW FIBRE COMPANY
LONGVIEW, WASHINGTON

REMITTANCE ADVISE PLEASE DETACH BEFORE DEPOSITING

| | |
|------------------------------|------------------------|
| DATE 11.06.93 | CHECK NO. 601-1127 |
| TREASURER OF SKAMANIA COUNTY | |
| 692467-00126 | 21,753.00 21,753.00 |

EXHIBIT "B"

LONGVIEW FIBRE COMPANY

MAIN OFFICE AND MILLS LONGVIEW WASHINGTON 98632
1-206-425-1950

November 9, 1993

Skamania County Treasurer
P. O. Box 790
Stevenson, WA 98648

Re: RCW 84.33 Compensating Tax - Payment Under Protest

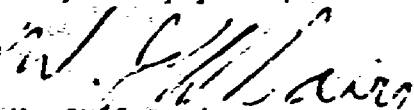
Dear Treasurer:

Enclosed please find Check No. 601-1127 in the amount of \$21,753.80 in payment of the compensating real property tax for the parcels identified in Exhibit "A" hereto.

This payment is made under protest. The grounds for protest are that the payment of the compensating tax is being unlawfully and illegally applied by the County to the exchange of these parcels between Longview Fibre Company and the United States Forest Service. The exchange of these parcel is exempt from the compensating tax of Chapter 84.33. The parcels conveyed by Longview Fibre Company were transferred to a government entity in exchange for forest land located within the State of Washington and/or were transferred to an entity having the power of eminent domain in anticipation of the exercise of that power (see attached letters). Accordingly, under RCW 84.33.120(9), no compensating tax is due. Requiring this tax payment is arbitrary action by the County under color of State law in violation of Title 42 U.S.C. § 1983 and may give rise to liability for damages and attorneys fees.

Please acknowledge receipt of this payment entered in protest on the enclosed copy.

Very truly yours,



W. Jeff Davis
Assistant General Counsel

jb

Enc.

Received this 9th day November, 1993.

Skamania County Treasurer

By: 

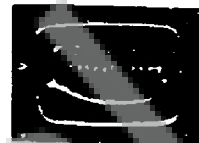
Title: deputy

EXHIBIT "A"

| <u>Parcel Number</u> | <u>Tax + Recording Fee</u> |
|--|----------------------------|
| 02 06 00 0 0 0500 00 Section 3 | \$ 238.30 |
| 02 06 00 0 0 2400 00 Section 20 | 698.30 |
| 02 06 00 0 0 2500 00 | 3,356.40 |
| 02 06 00 0 0 4100 00 | 132.40 |
| 02 06 21 0 0 0600 00 | 391.50 |
| 02 07 00 0 0 0404 00 Section 8 | 259.70 |
| 02 07 00 0 0 0500 00 Section 5 | 324.00 |
| 02 07 00 0 0 1200 00 Section 8 | 387.40 |
| 02 07 00 0 0 2400 00 Sections 7 & 8 | 4,937.60 |
| 02 07 00 0 0 2402 00 Section 17 Section 19 | 2,505.00 |
| 02 07 00 0 0 3200 00 Sections 17 & 19 | 3,794.40 |
| 02 07 17 4 0 0100 00 | 392.60 |
| 03 07 00 0 0 5200 00 Section 33 | 2,198.90 |
| 03 08 23 0 0 0200 00 | 777.80 |
| 02 07 16 0 0 0201 00 | 470.00 |
| | <u>\$20,864.30</u> |
| **02 07 09 0 0 0400 00 | 402.90 |
| **02 07 16 0 0 0201 00 | 244.70 |
| **02 07 09 0 0 0300 00 | 241.90 |
| | <u>\$ 889.50</u> |
| | <u>\$21,753.80</u> |

LONGVIEW FIBRE COMPANY

MAIN OFFICE AND MILLS LONGVIEW WASHINGTON 98032
1 206 428-1550



December 30, 1992

Mr. John E. Lowe, Reviewing Officer
Deputy Regional Forester
Pacific Northwest Region 6
U.S. Forest Service
P. O. Box 3623
Portland, OR 97208-3623

Dear Mr. Lowe:

It is now December 30, 1992 and the exchange of our lands in Special Management Areas (SMA) in the Columbia River Gorge between Longview Fibre Company and the U.S.F.S. still has not been completed.

On November 16, 1986 the Columbia River Gorge National Scenic Area Act was passed. Included in the provisions of the Act was a section that detailed the process by which private lands deemed significant to the purposes of the Act could be exchanged for other U.S.F.S. lands. Section 9(d)(3) of the Act stated that land exchanges would be completed no longer than five years after the date of enactment.

We began working with the Forest Service on this exchange in 1987, and we have waited very patiently since May 9, 1991, the date the Forest Service signed the final exchange agreement, to consummate this exchange and get on with the business of managing our Mid-Columbia Tree Farm. The agreed exchange would include 2810 acres of Longview Fibre Mid-Columbia Tree Farm lands in SMA's in Skamania and Klickitat Counties in Washington which would be exchanged for 2577 acres of Mt. Hood National Forest lands in Hood River County, Oregon and 85 acres of Gifford Pinchot National Forest lands in Skamania County, Washington.

On July 1, 1992 we sent a letter to the U.S.F.S. in effect saying that if this matter of the dispute between U.S.F.S. and U.S. Fish & Wildlife Service was not resolved and the exchange completed, Longview Fibre Company was going to apply for operating permits and proceed to harvest and manage our lands that have been tied up in this process for over five years. We also demanded reimbursement of the cruising and appraisal costs that we have incurred trying to resolve this issue. To date, the U.S.F.S. has not even had the courtesy to reply. Our option of suit against the U.S.F.S. remains.

It now appears that the Forest Service is still either unable or unwilling to complete the exchange. Failure by the Fish & Wildlife Service to complete consultation under its regulations should not be used by the Forest Service as an excuse for its failure to act.

Longview Fibre Company has offered owl survey information on the Forest Service lands involved in the exchange to the U.S.F.S. and our offer has not been accepted.

December 30, 1992

Page 2

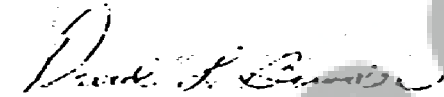
We want to know what the Columbia River Gorge Act is? Is it an Act that the U.S.F.S. can pick and choose which portion that they want to comply with, or is it an Act that means what it says in regard to land exchanges?

We have reached the end of our patience and intend to apply for operating permits on several parcels that have been tied up for six years. You have the option (and a very short time period) to prevent the logging of timber on these tracts; only the quick completion of the trade will curtail our harvest plans.

It is the U.S.F.S. that has failed to follow the intent of the Gorge Act. Is it the U.S.F.S. that will be responsible for the harvest of lands that could and should have been exchanged. Our consideration of legal action to address the recovery of appraisal cost and time delay costs to our company still stands.

We request a prompt response to this letter, especially if the Forest Service wishes to complete the exchange mandated by law before harvesting begins. Once harvest begins, land values will change and it will be impossible to complete the exchange previously agreed to.

Very truly yours,



David L. Bowden
Senior Vice President-Timber

jb

cc: Senator Slade Gorton
Senator Patty Murray
Representative Jolene Unsoeld
Representative Jay Inslee
Senator Mark Hatfield
Senator Bob Packwood
Representative Robert Smith
Jonathan Doherty, Chairman, Columbia River Gorge Commission
Senator Dean Sutherland
Representative Kim Peery
Representative Holly Myers
Senator Wes Cooley
Representative Greg Walden



United States
Department of
Agriculture

Forest
Service

Columbia River Gorge
National Scenic Area
503-386-2333

902 Wasco Avenue
Suite 200
Hood River, OR 97031

Reply To: 5430

Date: January 26, 1993

David L. Bowden
Senior Vice President-Timber
LONGVIEW FIBRE COMPANY
P. O. Box 667
Longview, WA 98632

Dear Mr. Bowden:

This letter is in regards to your letter of December 30, 1992, laying out your plans to apply for operating permits to harvest timber on several parcels of land currently owned by Longview Fibre Company in Skamania and Klickitat Counties, Washington, as described in the attached Exhibit A. The USDA Forest Service is still pursuing acquisition of these parcels through land exchange. The property is located within the Special Management Area of the Columbia River Gorge National Scenic Area established under Public Law 99-663, November 17, 1986, and has been determined by the Forest Service as being needed to achieve the purposes of PL 99-663.

Federal lands of equal value to be exchanged for lands owned by Longview Fibre Company are to be selected from candidate lands listed in Sec. 9 (d) (5) of PL 99-663.

It is the policy of the Forest Service to acquire property by negotiation and purchase, where possible, rather than through eminent domain. However, if negotiations to acquire the property through voluntary means are unsuccessful and the owners begin to implement their harvesting plans or other uses inconsistent with the Management Plan for the Columbia River Gorge National Scenic Area, we will have no choice but to pursue acquisition by eminent domain proceedings, as set out in Sec. 9, (a) & (b) (1) (A) & (2) (B) of PL 99-663.

Sincerely,

ARTHUR J. CARROLL
Area Manager

Attachment



Caring for the Land and Serving People

EXHIBIT "B" - Page 5 of 6

FS-6200-206(3/92)

8-93 03:53PM

TO 80255504309206425311 P002/002

10/19/1993 14:39 286-664-8456

DOR TAXPAYER SVS

PAGE 01



STATE OF WASHINGTON
DEPARTMENT OF REVENUE

P.O. Box 47490 • Olympia, Washington 98504-7490 • (360) 733-8300 • FAX (360) 386-3343

October 19, 1993

James R. Johnston
Boyle & Gates
Two Union Square
601 Union Street
Seattle, Washington 98101-3346

Registration No.: UBI # 084-000-074
Longview Fibre Company

Dear Jim:

In your letter dated October 18, 1993, you ask if real estate excise tax is due on the exchange of lands between the United States Forest Service and Longview Fibre Company (Registration # 084-000-074). You indicated that the county requires clarification prior to recording the deeds.

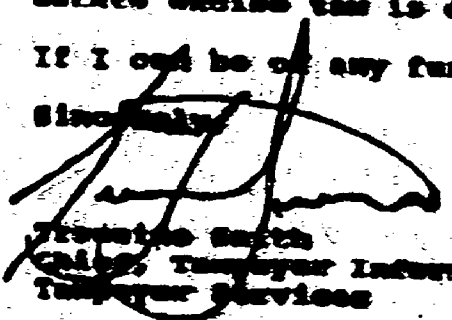
Your understanding of the issue is correct. WAC 458-61-420 provides that the real estate excise tax does not apply to:

(a) transfers [of real property] to the United States, the State of Washington, or any political subdivision thereof, or a municipal corporation, either under threat of the exercise of eminent domain or as a result of the actual exercise of eminent domain

With the information provided (i.e. United States Department of Agriculture's letter dated January 26, 1993), the transfer is clearly under the threat of condemnation. Therefore, no real estate excise tax is due under this circumstance.

If I can be of any further assistance, please call.

Sincerely,


Trudy Smith
Chief, Taxpayer Information and Education
Taxpayer Services

cc: Laurel Costen, Policy Counsel
Tom Reeves, Miscellaneous Tax Specialist