

# ROBERTS | TATE LLC

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November 17, 2015

COPY

**VIA U.S. Priority Mail**  
**Date & Time Stamp Return Requested**

Bryan County Board of Commissioners  
c/o Donna Waters, County Clerk  
P.O. Box 430  
Pembroke, GA 31321

Bryan County Tax Commissioner  
Carrol Anne Coleman  
P.O. Box 447  
Pembroke, GA 31321

Bryan County Tax Assessor  
Liz Lynn, Chief Appraiser  
P.O. Box 1000  
Pembroke, GA 31321

**Re: Refund owed as a result of Excessive and Illegally and Erroneously Assessed  
2010, 2011, 2012, 2013 and 2014 Ad Valorem Taxes Paid by Rayonier Forest  
Resources, LP and related entities**

Dear Commissioners, Tax Commissioner Coleman, and Ms. Lynn:

This firm represents Rayonier Forest Resources, L.P., Terrapointe, LLC and Belfast Commerce Center, LLC (collectively referred to as "Rayonier") who request refunds of all excessive, erroneous and illegal ad valorem taxes collected in Tax Years of 2010, 2011, 2012, 2013 and 2014 for the parcels listed and in the amounts set forth in Exhibit A (the "Subject Parcels").

Upon information and belief from 2010 through 2014, Bryan County failed to comply with the requirements of Title 48 of the Official Code of Georgia and Rules and Regulations of the Georgia Department of Revenue contained in the Georgia Appraisal Procedures Manual ("GAPM"). Specifically, these failures included but are not limited to the following:

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1. **Valuation based on state sales.**

The large acreage schedule in use by Bryan County for 2010 through 2014 were derived as part of a 2007 large acreage revaluation. 2007 was of course prior to the crash of the real estate market and a valuation from 2010 through 2014 based on factors using sales from prior to the 2008 market crash is per se invalid. See Blue Marlin Development, LLC v. BB&T, 302 Ga. App. 120 (2010) (Valuation based on stale sales is invalid). Under the GAPM, sales used in establishing size adjustment factors may not be older than 48 months. Ga. Comp. R. & Regs. 560-11-10-.09 (3)(b)(2)(iii).

2. **Failure to value based on existing use.**

Georgia law is clear that property must be valued based on its existing use. The documents provided indicate that the values on which taxes were based for 2010 through 2014 included sales purchased for speculation and development and not based on a continued existing use of timber production.

a. **Failure to verify sales.**

The property values for 2010 through 2014 were not based on existing use timberland sales. Georgia law is clear that the fair market value under O.C.G.A. § 48-5-2 must be based on the existing use of the property and not a higher and better use. This means that the sales used to value timberland must be verified to determine the reason for the purchase by the buyer. If it cannot be verified that a property was purchased for the purpose of continuing the existing use of timberland, it cannot be used to value timberland. The GAPM specifically provides that in collecting specific information on sales, information to be gathered by the BOA specifically includes: "the motivations of the buyer and seller, as obtained from actual interviews of the parties to the sales." Ga. Comp. R. & Regs. 560-11-10-.09(3)(a)(2). Determining the motivations of the buyer and seller must be sought, in part, to determine the use intended for the property by the purchaser.

Here, no sale verifications whatsoever have been provided. Many of the Subject Parcels are in areas of the county experiencing growth and conversion of property from an agricultural use to an alternative higher and better use. These observations in and of themselves indicate that the Subject Parcels have not been valued based on existing use. Rather, they have been valued based on sales of property purchased for speculation or alternative higher and better uses.

The inability to specifically identify the sales used and show mathematically how base values and adjustment factors were derived violates the GAPM and renders the large acreage schedules in use from 2010 through 2014 invalid.

**b. Rural land schedule includes categories relevant only to higher and better uses.**

The land classifications in use for the large acreage digests for 2010 through 2014 include classes for “homesite”, “water front”, and “road frontage.” Again, neither suitability for building a home, water frontage or road frontage are factors affecting the existing use value of property as timberland. They are factors which may provide increased value for converting rural land to higher and better uses. Such classifications are improper and illegal under the existing use requirement of Georgia law. Many of the Subject Parcels include acreage classified as “water front” and “road frontage” which clearly shows these properties have been valued based on factors other than existing use.

**3. Failure to value based on soil productivity and failure to accurately delineate soil type.**

The primary driving influence of the value of agricultural land and timberland is the type of soil and its productivity. In fact the GAPM actually defines the break between large and small acreage parcels as “the point below which the market factors of accessibility and desirability of the land primarily influence value, and above which the productivity of the soil and suitability for

timber growth primarily influence value.” Ga. Comp. R. & Regs. 560-11-10-.02(ee) (emphasis added). The GAPM is replete with references indicating the importance and requirement of valuing property based on soil condition and productivity. These provisions include:

d) Collecting and maintaining property information. The appraisal staff shall keep a record of information relevant to the ownership and valuation of all real property in the county and shall follow the procedures in this subparagraph when collecting and maintaining such real property data. . .

(iii) Land and location characteristics. The appraisal staff shall maintain a record of the land and location characteristics. The record should include, but not be limited to, location, frontage, width, depth, shape, size, topography, landscaping, slope, view, drainage, hydrology, off-site improvements, soil condition, soil productivity, zoning, absorption, nuisances, use, covenants, neighborhood, corner influence, proximity to recreational water, and quality of access.”

Ga. Comp. R. & Regs. 560-11-10-.09(2)(d)(1)(iii).

1. Site analysis. The appraisal staff shall utilize the trends and factors affecting the value of the subject property, such as its accessibility and desirability. The existing zoning, existing use, existing covenants and use restrictions in the deed and in law shall be applied. The other factors the appraiser shall apply include, but are not limited to, environmental, economic, governmental, and social factors. Site-specific information that may be considered includes, but is not limited to, location, frontage, width, depth, shape, size, topography, landscaping, slope, view, drainage, hydrology, off-site improvements, soil condition, soil productivity, zoning, absorption, nuisances, use, covenants, neighborhood, corner influence, proximity to recreational water, and the quality of access”

Ga. Comp. R. & Regs. 560-11-10-.09(3)(a)(1).

**Land productivity values.** The appraisal staff should analyze sales of large acreage tracts to extract the value of all improvements, crop allotments, standing timber, and any other factors that influence the value above the base land value. **The appraisal staff should then stratify the sales into two categories of open land and woodland. The base land values should be further stratified into up to nine productivity grades for each category of land, with grade one being the best, using the productivity classifications of the United States Department of Agriculture Natural Resources Conservation Service, where available.**

The appraisal staff should analyze sales within the strata and **determine benchmark values for as many productivity grades as possible.** The missing strata values are then determined by extrapolating between grades.

Ga. Comp. R. & Regs. 560-11-10-.09(3)(b)(2)(i) (emphasis added). Accurate spatial soil maps from which the correct soil type and productivity classification for each of the Subject Parcels existed at all relevant times from the NRCS Soil Data Mart. However, for 2010 through 2014 Bryan County used inaccurate soil delineations and classifications to value the Subject Parcels.

Moreover, the base values in the rural land schedules used for 2010 through 2014 were not in fact based on soil productivity at all. It is a fundamental principal of rural land valuation that more productive soils are more valuable than less productive soils. Under the GAPM, soil class 1 is for the most productive soils while soil class 9 is for the least productive soils. Inexplicably, the base values for woodlands soil class 1- 5 actually increase from the most productive soils (soil class 1) to soil class 5. Determined properly, the base values from soil class 1-5 should decrease from soil class 1- 5. Accordingly, it is clear that the woodland base values have not been determined in compliance with the GAPM.

**4. Lack of data used to derive large acreage schedules**

It is clear that the current large acreage schedules used for 2010 through 2014 were derived based on the 2007 large acreage revaluation. However, no data appears to exist showing how such values were derived. Title 48 requires that:

(d) Records and information availability. Notwithstanding the provisions of Code Section 50-18-71, in the case of all public records and information of the county board of tax assessors pertaining to the appraisal and assessment of real property:

(1) The taxpayer may request, and the county board of tax assessors shall provide within ten business days, copies of such public records and information, including, but not limited to, all documents reviewed in making the assessment, the address and parcel identification number of all real property utilized as qualified comparable properties, and all factors considered in establishing the new assessment.

O.C.G.A. 48-5-306(c). The GAPM provides:

Records Retention 4. Records retention schedules. The appraisal staff shall develop, in accordance with the provisions of Code

section 50-18-99, records retention schedules for each series of documents maintained in their office and have such schedules approved by the board of tax assessors before submitting the schedules to the State Records Committee for official approval pursuant to Code section 50-18-92.

Ga. Comp. R. & Regs 560-11-10-.09(d)(4). Accordingly, the failure and inability to provide the data on which the large acreage schedules in use from 2010 through 2014 were based violates Title 48 and the GAPM.

**a. No identification of sales used to derive base values**

No sales have been identified from which the base values in use for 2010 through 2014 were derived. This violates Title 48 and the GAPM.

**b. No identification of sales used to derive adjustment factors**

No sales have been identified from which the adjustment factors in use for 2010 through 2014 were derived. This violates Title 48 and the GAPM.

**c. No data provided showing removal of timber and improvement value and its source**

No data showing the removal of timber value and improvement value or how such timber and improvement values were calculated has been provided for the sales used in determining the large acreage schedules in use from 2010 through 2014. Moreover, no data indicating whether timber and improvement values were removed from the sales nor documentation reflecting how such timber and improvement values were derived has been provided. This violates Title 48 and the GAPM.

5. **Failure to perform absorption analysis**

Again, while no sales used to derive the size adjustment factors used for 2010 through 2014 has been provided, the sales list that has been provided does not reflect any arms-length sales of properties over 761 acres. Accordingly, there are no sales identified on which to base a size adjustment for parcels over 761 acres. Where no such sales data exists, the GAPM provides that adjustments should be made for absorption based on the small sales that do exist. Absorption is performed by using:

comparable sales to develop values for the size tracts for which comparables exist, and then adjust[ing] these values for larger tracts by (1) estimating a rate of absorption for the smaller tracts for which data exists, (2) dividing the large tract into smaller, marketable sections, (3) developing a sales schedule with estimated income by year reflecting the absorption rate and the value characteristics of each of the smaller tracts, (4) discounting the income schedule to the present using an appropriate discount rate, and (5) summing the resulting values to arrive at an estimated value for the property.

Ga Comp. R. & Reg. 560-11-10-.09 (3)(b)(2)(iv). Many of the Subject Parcels are greater than 761 acres. Accordingly, the 2010 through 2014 values for the Subject Parcels are invalid as they are based on improper size adjustments not based on an absorption analysis.

6. **Lack of uniformity and equalization**

Georgia law likewise requires that:

the board shall see that all taxable property within the county is assessed and returned at its *fair market value* and that fair market values as between the individual taxpayers are *fairly and justly equalized* so that each taxpayer shall pay as nearly as possible only such taxpayer's proportionate share of taxes

O.C.G.A. § 48-5-306(a) (emphasis added). The Georgia constitution further requires that “all taxation shall be *uniform* upon the same class of subjects within the territorial limits of the authority levying the tax.” Ga Const Art. 7, § 1, ¶ III. Inexplicably, for 2010 through 2014 other large acreage timberland parcels which have better soils and in many instances are substantially smaller than the Subject Parcels were valued at far less than the Subject Parcels.

There is no explanation for this difference in value given the existing use of both the Subject Parcels and other owner’s parcels as timberland. The sole reason for such different valuation lies in the use of sales purchased for speculation, development and alternative higher and better uses in valuing the Subject Parcels. Under Leverett v. Jasper County Board of Tax Assessors, 233 Ga. App. 470, 504 S.E.2d 559 (1998), valuing other owner’s parcels based on existing use sales while valuing the Subject Parcels based on sales purchased for alternative higher and better uses violates the uniformity and equalization requirements rendering the valuations at issue invalid.

7. **Failure to consider and utilize the income approach**

The definition of fair market value further requires that “the income approach, if data is available, shall be considered in determining the fair market value of income-producing property.” No documentation has been provided indicating the consideration or use of the income approach at any time between 2010 and 2014. To be sure, income approach data existed at all relevant times.

These failures render the valuations on which taxes were paid for 2010 through 2014 invalid and thus all taxes collected based on such valuations illegal and erroneous mandating refunds under O.C.G.A. § 48-5-380. Rayonier has calculated the tax overpayment using proper soil delineation and income approach valuations as follows:



Year	Base Refund	Interest	Total Refund
2010	\$ 96,908.53	\$ 14,297.98	\$ 111,206.51
2011	\$ 131,256.68	\$ 35,235.51	\$ 166,492.19
2012	\$ 174,673.73	\$ 41,465.62	\$ 216,139.35
2013	\$ 119,115.85	\$ 24,981.38	\$ 144,097.23
2014	\$ 126,311.39	\$ 13,894.25	\$ 140,205.64
TOTAL	\$ 648,266.18	\$ 129,874.74	\$ 778,140.92

Each of the Subject Parcels' specific refunds is addressed in the spreadsheets attached hereto as Exhibit A. **The requested refund amounts are subject to mathematical or technical adjustment should there be future discovery of the basis for such adjustment.** Additionally, it appears that the acreage on which property taxes were based for 2010 to the present is greater than the actual acreage for parcels 063-001 and 057-100 and may be greater than the actual acreage for additional parcels as well. This is a factual error also resulted in erroneous taxation giving rise to the need for refund. Rayonier is investigating the actual acreage for all parcels and the amount of the additional refund owed as result of this factual error.

Rayonier requests that the excessive, erroneous, and illegal taxes collected as a result of the errors identified herein be refunded, plus interest, in the amount of \$778,140.92 plus the refund owed as a result of factual errors in the amount of acreage on which taxes were based for 2010 through 2014. Rayonier requests that this request for refund be placed on the County Commission's agenda to be considered as quickly as possible.

If I may provide any additional information, I will be happy to do so.

Sincerely,



James L. Roberts, IV

Bryan County Refund Request  
November 17, 2015  
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JLR/bma

cc: Kyle Sawicki, Esq.  
Mark Hebert  
Jimmy Burnsed

# Exhibit “A”













Summary of Refund Due

Year	Base Refund	Interest	Total Refund
2010	\$ 96,908.53	\$ 14,297.98	\$ 111,206.51
2011	\$ 131,256.68	\$ 35,235.51	\$ 166,492.19
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