THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
1162 Court Street NE
Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400
TDD: (503) 378-5938

March 5, 1996

Larry H. Fitzgerald
dba MRR & Associates, Inc.
5179 Coos Bay Wagon Road
Roseburg, OR 97470

Re: ***Petition for Public Records Disclosure Order: Oregon Department of Revenue Records***

Dear Mr. Fitzgerald:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on February 16, 1996,[1/] asks the Attorney General to direct the Oregon Department of Revenue (department) to make available the

> 1990, 1991, 1992, 1993 Tax Return for the Forest Products Harvest Tax, Western Oregon Timber Tax, and Western Oregon Small Tract Optional Tax, returns and payments that I have made and filed/sent to the Timber Tax Department.

You state in your petition that you requested copies of the above listed tax returns in 1994, and that the information or documents were not provided to you because the information was stored in a computer. You relate that in 1995, you again requested the above listed returns and were supplied with a Notice of Review, stating that no tax returns were available under account number 331041. For the reasons that follow, we respectfully deny your petition.

For purposes of the Public Records Law, a public record includes information maintained on paper or in electronic or microfiche form. ORS 192.410. Pursuant to ORS 192.430, the custodian of a public record that is maintained in machine readable or electronic form, must

---

1/ We appreciate your extending the time within which the law would have otherwise obligated us to respond.

"furnish proper and reasonable opportunity [for inspection] to assure access to the record." ORS 192.430. The custodian must also provide copies of such machine readable or electronic records in the form requested, if available. ORS 192.440(2). Susan Hicks, of the department's Timber Tax Section, has informed us that she will send copies of all returns or payment information that the department has for the years you requested that are maintained on paper, microfiche, computer file or otherwise.

Specifically, Ms. Hicks has informed us that the department will send you the following records:

1990 - Return filed for first half of year for Western Oregon Severance Tax (WOST).
Payment information related to return.

1991 - Returns filed for first and second halves of year for WOST and Forest Products Harvest Tax (FPHT).
Payment records related to the returns.

1992 - Assessments issued for first and second halves of year for WOST.
Assessments issued for first and second halves of year for FPHT.
Payment records related to the assessments.

1993 - Returns filed for first and second halves of year for WOST and FPHT. Notices of deficiency related to the WOST returns.
Payment records related to the WOST and FPHT returns.

If the department has no return or payment information, whether on paper or in electronic, microfiche or other form, the department has no obligation to, and cannot, make such information available because it does not exist as a public record. *See* ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL 5 (1995) ("Public Records Law does not impose on public bodies the duty to *create* public records") (emphasis in original). We have confirmed with Ms. Hicks that the following records that you requested do not exist with the department:[2/]

1990 - Return for second half of year for WOST. Returns for first and second halves of year for FPHT. Returns for Western Oregon Small Tract Optional Tax (WOSTOT) and payment information

---

[2/] According to Ms. Hicks, the department does not have copies of all of the requested returns because for the type of tax and years listed a return was never filed.

related to same. Refund for WOST filed return.

1991 - Returns for WOSTOT and payment information related to same.

1992 - Returns for first and second halves of year for WOST. Returns for first and second halves of year for FPHT. Returns for WOSTOT and payment information related to same.

1993 - Returns for WOSTOT and payment information related to same.

The Attorney General has no authority to order the department to produce records that do not exist. *See* ORS 192.450.

Because the department has agreed to provide copies of the requested records upon receipt of the appropriate fees from you for its photocopying costs,[3/] we deny your petition as moot. You may contact Susan Hicks at 503-945-8331 to make arrangements to obtain the requested records.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to
the Attorney General

ESH:CCB:AV:jpl:eob:JAA01C78
c: Susan Hicks, Timber Tax Section, Property Tax Division, Dept. of Revenue

---

[3/] The department may charge a fee reasonably calculated to cover its costs in making copies of the records available to you. ORS 192.440(3); OAR 150-192.440.