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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

SENATE BILL NO. 716

(By Senator PLYMALE, ET AL)



PASSED MARCH 21, 1998

In Effect 90 Days From Passage

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WEST VIRGINIA SENATE

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Senate Bill No. 716

(BY SENATORS PLYMALE, HELMICK,
ROSS, MINEAR AND ANDERSON)

[Passed March 21, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact sections nine and eighteen, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section sixteen-a, all relating to the severance and business privilege taxes; providing that taxpayers severing timber and taking the annual tax credit on the severance and business privilege tax may only deduct the credit on the annual return; requiring every nonresident person or company who at time of severance owns West Virginia timber to have a business registration certificate, to give the tax commissioner written notice before severance of intention to sever West Virginia timber and to prepay estimated timber severance tax or post a corporate surety bond; setting forth certain reporting

requirements; defining nonresident person; imposing sanctions and money penalties for noncompliance; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That sections nine and eighteen, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section sixteen-a, all to read as follows:

ARTICLE 13A. SEVERANCE TAX.

§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article; exceptions.

1 (a) *General rule.* — Except as provided in subsection (b)
2 of this section, taxes levied under section three-a, three-b
3 or three-c of this article are due and payable in periodic
4 installments as follows:

5 (1) *Tax of fifty dollars or less per month.* — If a person's
6 annual tax liability under this article is reasonably
7 expected to be fifty dollars or less per month, no install-
8 ment payments of tax are required under this section
9 during that taxable year.

10 (2) *Tax of more than one thousand dollars per month.* —
11 For taxpayers whose estimated tax liability under this
12 article exceeds one thousand dollars per month, the tax is
13 due and payable in monthly installments on or before the
14 last day of the month following the month in which the
15 tax accrued: *Provided,* That the installment payment
16 otherwise due under this subdivision on or before the
17 thirtieth day of June each year shall be remitted to the tax
18 commissioner on or before the fifteenth day of June each
19 year:

20 (A) Each taxpayer shall, on or before the last day of each
21 month, make out an estimate of the tax for which the

22 taxpayer is liable for the preceding month, sign the
23 estimate and mail it together with a remittance, in the
24 form prescribed by the tax commissioner, of the amount
25 of tax due to the office of the tax commissioner: *Provided,*
26 That the installment payment otherwise due under this
27 paragraph on or before the thirtieth day of June each year
28 shall be remitted to the tax commissioner on or before the
29 fifteenth day of June.

30 (B) In estimating the amount of tax due for each month,
31 the taxpayer may deduct one twelfth of any applicable tax
32 credits allowable for the taxable year, and one twelfth of
33 any annual exemption allowed for that year.

34 (3) *Tax of one thousand dollars per month or less.* — For
35 taxpayers whose estimated tax liability under this article
36 is one thousand dollars per month or less, the tax is due
37 and payable in quarterly installments on or before the last
38 day of the month following the quarter in which the tax
39 accrued:

40 (A) Each taxpayer shall, on or before the last day of the
41 fourth, seventh and tenth months of the taxable year,
42 make out an estimate of the tax for which the taxpayer is
43 liable for the preceding quarter, sign the same and mail it
44 together with a remittance, in the form prescribed by the
45 tax commissioner, of the amount of tax due to the office of
46 the tax commissioner.

47 (B) In estimating the amount of tax due for each quarter,
48 the taxpayer may deduct one fourth of any applicable tax
49 credits allowable for the taxable year, and one fourth of
50 any annual exemption allowed for that year.

51 (b) *Exceptions.* — (1) Notwithstanding the provisions of
52 subsection (a) of this section, the tax commissioner, if he
53 or she considers it necessary to ensure payment of the tax,
54 may require the return and payment under this section for
55 periods of shorter duration than those prescribed in
56 subsection (a) of this section.

57 (2) Notwithstanding the provisions of subsection (a) of
58 this section, taxpayers remitting tax on the privilege of
59 severing timber may deduct the annual tax credit allowed
60 in section ten of this article only on the annual return filed
61 for any taxable year beginning on or after the first day of
62 July, one thousand nine hundred ninety-eight. These
63 taxpayers may not deduct any portion of the annual tax
64 credit when they determine the amount of periodic
65 installment payments of timber severance tax due during
66 their taxable year.

**§11-13A-16a. Nonresident person severing West Virginia
timber owned by the person at time of sever-
ance required to notify tax commissioner
prior to severance and prepay severance tax
or post bond.**

1 (a) *Business registration certificate required.* — Every
2 nonresident person who owns or purchases standing West
3 Virginia timber who either directly, or indirectly through
4 the activities of others, severs that timber shall apply to
5 the tax commissioner for a business registration certificate
6 as provided in article twelve of this chapter, before
7 beginning to do business in this state, whether or not the
8 person has a permanent place of business in this state.

9 (b) *“Nonresident person” defined.* — The term “nonresi-
10 dent person” means a “person” or “company” as defined in
11 section three of this article that, if an individual, is a
12 nonresident of this state for purposes of the tax imposed
13 by article twenty-one of this chapter and, if any other
14 person, does not have its commercial domicile in this state,
15 or during the three months preceding the date the applica-
16 tion for business registration certificate is filed with the
17 tax commissioner did not have a permanent office in this
18 state for the conduct of timbering operations in this state
19 or any other permanent place of business in this state for
20 the conduct of timbering operations as that term is
21 defined in section three, article one-b, chapter nineteen of

22 this code.

23 (c) *Notice of contract.* — Every nonresident person who
24 severs West Virginia timber, either directly or through the
25 activity of others, which that person owns, in whole or in
26 part, at the time that it is severed, shall give the tax
27 commissioner written notice of the nonresident person's
28 intent to sever the West Virginia timber identified in the
29 notice. This notice shall be given no earlier than ninety
30 days before the timbering operation begins and no later
31 than thirty days before the timbering operation begins.
32 The notification shall include all of the information
33 required by section six, article one-b, chapter nineteen of
34 this code, the estimated gross value of the timber de-
35 scribed in the notice that will be severed and any other
36 information the tax commissioner may require: *Provided,*
37 That the tax commissioner may accept as the notification
38 required by this section, a true copy of the notice the
39 nonresident person gave under section six, article eleven-
40 b, chapter nineteen of this code to the director of forestry,
41 the estimated gross value of the timber described in the
42 notice that will be severed and any additional information
43 the tax commissioner may require.

44 (d) *Prepayment of severance tax.* — If the nonresident
45 person owns, in whole or in part, the timber at the time
46 that it is severed, the nonresident person shall, at the time
47 the notice required by subsection (c) of this section is
48 given to the tax commissioner, pay to the tax commis-
49 sioner four percent of the estimated gross value of the
50 timber to be severed that is described in the notice:
51 *Provided,* That the estimated gross value shall not be less
52 than the actual price paid or to be paid for the stumpage.
53 The tax commissioner shall deposit this amount in a
54 revolving account in the treasurer's office to be known as
55 the "Forestry Tax Fund" pending completion of severance
56 of the timber identified in the notice given under subsec-
57 tion (c) of this section, the filing of all required tax returns
58 and payment of all timber severance taxes due under this

59 article attributable to severance of the timber described in
60 the notice given under subsection (c) of this section,
61 including any additions to tax, penalties and interest
62 imposed for failure to timely pay the severance taxes.
63 Within thirty days after the timber identified in the notice
64 is severed, the nonresident person shall file with the tax
65 commissioner a report reconciling the amount of prepaid
66 severance tax with the amount of severance taxes actually
67 due on the gross value of the timber at the point where the
68 privilege of severing timber ends. If this report shows that
69 additional timber severance taxes are due, that amount
70 shall be paid when the report is filed with the tax commis-
71 sioner. If the report shows that the amount of timber
72 severance taxes prepaid exceeded the amount actually
73 due, the tax commissioner shall refund the difference.

74 (e) *Surety bond.* — In lieu of the prepayment of timber
75 severance tax required by subsection (d) of this section,
76 the nonresident person may furnish to the tax commis-
77 sioner a corporate surety bond in an amount equal to four
78 percent of the estimated gross value of the timber to be
79 severed that is described in the notice: *Provided*, That the
80 estimated gross value shall not be less than the actual
81 price paid or to be paid for the stumpage, to guarantee
82 timely payment of the taxes due under this article that
83 may be attributable to the timber described in the notice
84 given under subsection (c) of this section. The form of the
85 bond shall be approved by the tax commissioner. The
86 surety shall be qualified to do business in this state. The
87 bond shall be conditioned that the nonresident person
88 shall pay all timber severance taxes due under this article
89 attributable to severance of the timber described in the
90 notice given under subsection (c) of this section, including
91 any additions to tax, penalties or interest that may be
92 imposed due to any failure of the nonresident person to
93 pay those taxes as they become due.

94 (f) *Conditions for surety.* — Any surety on a bond
95 furnished under subsection (e) of this section shall be

96 qualified to do business in this state. The surety shall be
97 relieved, released and discharged from all liability accru-
98 ing on the bond after the expiration of sixty days from the
99 date the tax commissioner receives the written request of
100 the surety to be discharged. The written request for
101 discharge may be filed with the tax commissioner by
102 personal service or by certified mail, postage prepaid,
103 addressed to the tax commissioner at his or her office in
104 Charleston, West Virginia. A request for discharge shall
105 not relieve, release or discharge the surety from liability
106 already accrued, or which shall accrue before expiration
107 of the sixty-day period. Whenever any surety seeks
108 discharge as provided in this subsection, it is the duty of
109 the principal of the bond to supply the tax commissioner
110 with another corporate surety bond.

111 (g) *Penalty for noncompliance.* — (1) A nonresident
112 person who fails to comply, in whole or in part, with the
113 requirements of this section shall forfeit the license issued
114 to that person under section four, article one-b, chapter
115 nineteen of this code for a period of one year for the first
116 offense and for a period of two years for each subsequent
117 violation of this section. When the tax commissioner
118 determines that a nonresident person is failing to comply,
119 in whole or in part, with the requirements of this section,
120 the commissioner shall certify those facts to the director
121 of forestry. Upon the facts certified by the tax commis-
122 sioner, or upon facts gathered by the director, demonstrat-
123 ing failure of the nonresident person to comply, in whole
124 or in part, with the requirements of this section the
125 director shall then issue an order notifying the nonresident
126 person that the license issued under section four, article
127 one-b, chapter nineteen of this code has been forfeited. A
128 forfeiture order may be appealed as provided in article
129 one-b, chapter nineteen of this code. In addition, the
130 nonresident person shall pay a money penalty equal to
131 fifty percent of the timber severance tax that should have
132 been paid that was not timely paid. This amount shall be

133 in addition to the amount of timber severance taxes not
134 timely paid plus interest and applicable additions to tax.
135 This penalty shall be collected by the tax commissioner in
136 the same manner as taxes are collected under this article.

137 (2) If a nonresident person underestimates the amount of
138 timber severance taxes that must be prepaid under
139 subsection (d) of this section by more than twenty-five
140 percent, the nonresident person shall pay a money penalty
141 equal to fifty percent of the timber severance tax that
142 should have been prepaid that was not prepaid or guaran-
143 teed by the surety bond given under subsection (e) of this
144 section. This amount shall be in addition to the amount of
145 timber severance taxes not timely paid plus interest and
146 applicable additions to tax. This penalty shall be col-
147 lected by the tax commissioner in the same manner as
148 taxes are collected under this article.

149 (h) *Effective date.* — The provisions of this section apply
150 to timber severed by a nonresident person on or after the
151 first day of July, one thousand nine hundred ninety-eight.

§11-13A-18. Records.

1 (a) *General.* — Every taxpayer liable for reporting or
2 paying tax under this article shall keep records, receipts,
3 invoices and other pertinent papers in the form required
4 by the tax commissioner.

5 (b) *Period of retention.* — Every taxpayer shall keep the
6 records for not less than three years after the annual
7 return is filed under this article, unless the tax commis-
8 sioner in writing authorizes their earlier destruction. An
9 extension of time for making an assessment automatically
10 extends the time period for keeping the records for all
11 years subject to audit covered in the agreement for
12 extension of time.

13 (c) *Special rule for purchasers of standing timber or of*
14 *logs.* — In addition to the records required by subsection
15 (a) of this section, every person purchasing standing

16 timber, logs or wood products sawn or chipped in conjunc-
17 tion with a timber harvesting operation in this state
18 delivered after the thirtieth day of June, one thousand
19 nine hundred ninety-eight, shall obtain from the person
20 from whom the standing timber, logs or wood products
21 sawn or chipped in conjunction with a timbering harvest
22 operation are purchased a true copy of the seller's then
23 current business registration certificate issued under
24 article twelve of this chapter or a copy of federal form
25 1099 for the year of the purchase. When the seller is a
26 person not required by this chapter to have a business
27 registration certificate, the purchaser shall obtain an
28 affidavit from the seller: (1) Stating that the seller does
29 not have a business registration certificate and that the
30 seller is not required by this chapter to have a business
31 registration certificate; (2) listing the seller's social
32 security number or federal employer identification
33 number; and (3) listing the seller's current mailing ad-
34 dress. The tax commissioner may develop a form for this
35 affidavit.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Condy Schenover
.....
Chairman Senate Committee

Neil Francisco
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

Russell E. White
.....
Clerk of the Senate

Burgess M. Bond
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *approved* this the *7th*
day of *April*, 1998.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 10:55 am