WEST VIRGINIA CODE: §11-13A-16A

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

(a) Business registration certificate required. -- Every nonresident person who owns or purchases standing West Virginia timber who either directly, or indirectly through the activities of others, severs that timber shall apply to the Tax Commissioner for a business registration certificate as provided in article twelve of this chapter, before beginning to do business in this state, whether or not the person has a permanent place of business in this state.

(b) "Nonresident person" defined. -- The term "nonresident person" means a "person" or "company" as defined in section three of this article that, if an individual, is a nonresident of this state for purposes of the tax imposed by article twenty-one of this chapter and, if any other person, does not have its commercial domicile in this state, or during the three months preceding the date the application for business registration certificate is filed with the Tax Commissioner did not have a permanent office in this state for the conduct of timbering operations in this state or any other permanent place of business in this state for the conduct of timbering operations as that term is defined in section three, article one-b, chapter nineteen of this code.

(c) Notice of contract. -- Every nonresident person who severs West Virginia timber, either directly or through the activity of others, which that person owns, in whole or in part, at the time that it is severed, shall give the Tax Commissioner written notice of the nonresident person's intent to sever the West Virginia timber identified in the notice. This notice shall be given no earlier than ninety days before the timbering operation begins and no later than thirty days before the timbering operation begins. The notification shall include all of the information required by section six, article one-b, chapter nineteen of this code, the estimated gross value of the timber described in the notice that will be severed and any other information the Tax Commissioner may require: Provided, That the Tax Commissioner may accept as the notification required by this section, a true copy of the notice the nonresident person gave under section six, article eleven-b, chapter nineteen of this code to the director of forestry, the estimated gross value of the timber described in the notice that will be severed and any additional information the Tax Commissioner may require.

(d) Prepayment of severance tax. -- If the nonresident person owns, in whole or in part, the timber at the time that it is severed, the nonresident person shall, at the time the notice required by subsection (c) of this section is given to the Tax Commissioner, pay to the Tax Commissioner four percent of the estimated gross value of the timber to be severed that is described in the notice: Provided, That the estimated gross value shall not be less than the actual price paid or to be paid for the stumpage. The Tax Commissioner shall deposit this amount in a revolving account in the Treasurer's Office to be known as the "Forestry Tax

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Fund" pending completion of severance of the timber identified in the notice given under subsection (c) of this section, the filing of all required tax returns and payment of all timber severance taxes due under this article attributable to severance of the timber described in the notice given under subsection (c) of this section, including any additions to tax, penalties and interest imposed for failure to timely pay the severance taxes. Within thirty days after the timber identified in the notice is severed, the nonresident person shall file with the Tax Commissioner a report reconciling the amount of prepaid severance tax with the amount of severance taxes actually due on the gross value of the timber at the point where the privilege of severing timber ends. If this report shows that additional timber severance taxes are due, that amount shall be paid when the report is filed with the Tax Commissioner. If the report shows that the amount of timber severance taxes prepaid exceeded the amount actually due, the Tax Commissioner shall refund the difference.

(e) Surety bond. -- In lieu of the prepayment of timber severance tax required by subsection (d) of this section, the nonresident person may furnish to the Tax Commissioner a corporate surety bond in an amount equal to four percent of the estimated gross value of the timber to be severed that is described in the notice: Provided, That the estimated gross value shall not be less than the actual price paid or to be paid for the stumpage, to guarantee timely payment of the taxes due under this article that may be attributable to the timber described in the notice given under subsection (c) of this section. The form of the bond shall be approved by the Tax Commissioner. The surety shall be qualified to do business in this state. The bond shall be conditioned that the nonresident person shall pay all timber severance taxes due under this article attributable to severance of the timber described in the notice given under subsection (c) of this section, including any additions to tax, penalties or interest that may be imposed due to any failure of the nonresident person to pay those taxes as they become due.

(f) Conditions for surety. -- Any surety on a bond furnished under subsection (e) of this section shall be qualified to do business in this state. The surety shall be relieved, released and discharged from all liability accruing on the bond after the expiration of sixty days from the date the Tax Commissioner receives the written request of the surety to be discharged. The written request for discharge may be filed with the Tax Commissioner by personal service or by certified mail, postage prepaid, addressed to the Tax Commissioner at his or her office in Charleston, West Virginia. A request for discharge shall not relieve, release or discharge the surety from liability already accrued, or which shall accrue before expiration of the sixty-day period. Whenever any surety seeks discharge as provided in this subsection, it is the duty of the principal of the bond to supply the Tax Commissioner with another corporate surety bond.

(g) Penalty for noncompliance. -- (1) A nonresident person who fails to comply, in whole or in part, with the requirements of this section shall forfeit the license issued to that person under section four, article one-b, chapter nineteen of this code for a period of one year for the first offense and for a period of two years for each subsequent violation of this section. When the Tax Commissioner determines that a nonresident person is failing to comply, in whole or in part, with the requirements of this section, the commissioner shall certify those

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facts to the director of forestry. Upon the facts certified by the Tax Commissioner, or upon facts gathered by the director, demonstrating failure of the nonresident person to comply, in whole or in part, with the requirements of this section the director shall then issue an order notifying the nonresident person that the license issued under section four, article one-b, chapter nineteen of this code has been forfeited. A forfeiture order may be appealed as provided in article one-b, chapter nineteen of this code. In addition, the nonresident person shall pay a money penalty equal to fifty percent of the timber severance tax that should have been paid that was not timely paid. This amount shall be in addition to the amount of timber severance taxes not timely paid plus interest and applicable additions to tax. This penalty shall be collected by the Tax Commissioner in the same manner as taxes are collected under this article.

(2) If a nonresident person underestimates the amount of timber severance taxes that must be prepaid under subsection (d) of this section by more than twenty-five percent, the nonresident person shall pay a money penalty equal to fifty percent of the timber severance tax that should have been prepaid that was not prepaid or guaranteed by the surety bond given under subsection (e) of this section. This amount shall be in addition to the amount of timber severance taxes not timely paid plus interest and applicable additions to tax. This penalty shall be collected by the Tax Commissioner in the same manner as taxes are collected under this article.

(h) Effective date. -- The provisions of this section apply to timber severed by a nonresident person on or after July 1, 1998.

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