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.

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

(1) Tax of fifty dollars or less per month. — If a person’s annual tax liability under this article is reasonably expected to be fifty dollars or less per month, no installment payments of tax are required under this section during that taxable year.

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

(A) Each taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the
taxpayer is liable for the preceding month, sign the estimate and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of tax due to the office of the tax commissioner: Provided, That the installment payment otherwise due under this paragraph on or before the thirtieth day of June each year shall be remitted to the tax commissioner on or before the fifteenth day of June.

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

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

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

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

(b) Exceptions. — (1) Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he or she considers it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.
(2) Notwithstanding the provisions of subsection (a) of this section, taxpayers remitting tax on the privilege of severing timber may deduct the annual tax credit allowed in section ten of this article only on the annual return filed for any taxable year beginning on or after the first day of July, one thousand nine hundred ninety-eight. These taxpayers may not deduct any portion of the annual tax credit when they determine the amount of periodic installment payments of timber severance tax due during their taxable year.

§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
(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 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 commis-
sioner. 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 commis-
sioner 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 accru-
ing 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 facts to the director
of forestry. Upon the facts certified by the tax commis-
sioner, or upon facts gathered by the director, demonstrat-
ing 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 the first day of July, one thousand nine hundred ninety-eight.


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

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

(c) Special rule for purchasers of standing timber or of logs.—In addition to the records required by subsection (a) of this section, every person purchasing standing
timber, logs or wood products sawn or chipped in conjunction with a timber harvesting operation in this state delivered after the thirtieth day of June, one thousand nine hundred ninety-eight, shall obtain from the person from whom the standing timber, logs or wood products sawn or chipped in conjunction with a timbering harvest operation are purchased a true copy of the seller's then current business registration certificate issued under article twelve of this chapter or a copy of federal form 1099 for the year of the purchase. When the seller is a person not required by this chapter to have a business registration certificate, the purchaser shall obtain an affidavit from the seller: (1) Stating that the seller does not have a business registration certificate and that the seller is not required by this chapter to have a business registration certificate; (2) listing the seller's social security number or federal employer identification number; and (3) listing the seller's current mailing address. The tax commissioner may develop a form for this affidavit.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 7th day of 1998.