WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1998

ENROLLED

SENATE BILL NO. 710

(By Senator [Name of Senator])

PASSED March 11, 1998
In Effect NINETY DAYS FROM PASSAGE
ENROLLED

Senate Bill No. 716

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

[Passed March 11, 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; to further amend said article by adding thereto a new section, designated section sixteen-a, all relating to the severance and business privilege taxes; requiring every nonresident person or company who at time of severance owns West Virginia timber to have a business registration certificate, give 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 that article thirteen-a be further amended by adding thereto a new section, designated section sixteen-a, 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) of this section, taxes levied under section three-a, three-b or three-c of this article shall be due and payable in periodic installments as follows:

2. (1) 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.

3. (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 shall be 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, beginning the fifteenth day of June, one thousand nine hundred eighty-eight;

4. (A) Each such 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 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: 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, beginning the fifteenth day of June, one thousand nine hundred eighty-eight.

(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 such 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 shall be 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 such 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 such year.

(b) Exceptions. — (1) Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he or she deems 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 this code.

(c) Notice of contract. — Every nonresident person who severs West Virginia timber, either directly or through the activity of others, which such 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 de-
scribed in the notice that will be severed and such other
information as the tax commissioner may require: Pro-
vided, 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
such additional information as 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 commis-
sioner 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 subsec-
tion (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 must be approved by the tax commissioner. The surety must be qualified to do business in this state. The bond must 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 must be qualified to do business in this state. The surety shall be relieved, released and discharged from all liability accruing on such 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 shall seek
discharge as provided in this subsection, it shall be the
duty of the principal of such 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 such 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 shall apply to timber severed by a nonresident person on or after the first day of July, one thousand nine hundred ninety-seven.


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

(b) Period of retention. — Every taxpayer shall keep such 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 shall automatically extend 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 ad-
dress. 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 disapproved this the 20th day of March, 1998.

Governor