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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



ENROLLED

SENATE BILL NO. 716

(By Senator RYNAGE, ET AL)



PASSED MARCH 11, 1998

In Effect NINETY DAYS FROM Passage

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SENATE OF WEST VIRGINIA

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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)
2 of this section, taxes levied under section three-a, three-b
3 or three-c of this article shall be due and payable in
4 periodic installments as follows:

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

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

20 (A) Each such taxpayer shall, on or before the last day of
21 each month, make out an estimate of the tax for which the
22 taxpayer is liable for the preceding month, sign the same
23 and mail it together with a remittance, in the form pre-
24 scribed by the tax commissioner, of the amount of tax due
25 to the office of the tax commissioner: *Provided*, That the
26 installment payment otherwise due under this paragraph

27 on or before the thirtieth day of June each year shall be
28 remitted to the tax commissioner on or before the fifteenth
29 day of June, beginning the fifteenth day of June, one
30 thousand nine hundred eighty-eight.

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

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

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

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

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

58 (2) Notwithstanding the provisions of subsection (a) of
59 this section, taxpayers remitting tax on the privilege of
60 severing timber may deduct the annual tax credit allowed
61 in section ten of this article only on the annual return filed

62 for any taxable year beginning on or after the first day of
63 July, one thousand nine hundred ninety-eight. These
64 taxpayers may not deduct any portion of the annual tax
65 credit when they determine the amount of periodic
66 installment payments of timber severance tax due during
67 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.

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 such 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 such other
36 information as the tax commissioner may require: *Pro-*
37 *vided*, That the tax commissioner may accept as the
38 notification required by this section, a true copy of the
39 notice the nonresident person gave under section six,
40 article eleven-b, chapter nineteen of this code to the
41 director of forestry, the estimated gross value of the
42 timber described in the notice that will be severed and
43 such additional information as the tax commissioner may
44 require.

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

63 imposed for failure to timely pay the severance taxes.
64 Within thirty days after the timber identified in the notice
65 is severed, the nonresident person shall file with the tax
66 commissioner a report reconciling the amount of prepaid
67 severance tax with the amount of severance taxes actually
68 due on the gross value of the timber at the point where the
69 privilege of severing timber ends. If this report shows that
70 additional timber severance taxes are due, that amount
71 shall be paid when the report is filed with the tax commis-
72 sioner. If the report shows that the amount of timber
73 severance taxes prepaid exceeded the amount actually
74 due, the tax commissioner shall refund the difference.

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

95 (f) *Conditions for surety.* — Any surety on a bond
96 furnished under subsection (e) of this section must be
97 qualified to do business in this state. The surety shall be
98 relieved, released and discharged from all liability accru-
99 ing on such bond after the expiration of sixty days from

100 the date the tax commissioner receives the written request
101 of the surety to be discharged. The written request for
102 discharge may be filed with the tax commissioner by
103 personal service or by certified mail, postage prepaid,
104 addressed to the tax commissioner at his or her office in
105 Charleston, West Virginia. A request for discharge shall
106 not relieve, release or discharge the surety from liability
107 already accrued, or which shall accrue before expiration
108 of the sixty day period. Whenever any surety shall seek
109 discharge as provided in this subsection, it shall be the
110 duty of the principal of such bond to supply the tax
111 commissioner with another corporate surety bond.

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

137 the same manner as taxes are collected under this article.

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

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

§11-13A-18. Records.

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

5 (b) *Period of retention.* — Every taxpayer shall keep
6 such 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 shall automat-
10 ically extend the time period for keeping the records for
11 all 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.

Frank Schoonover
.....
Chairman Senate Committee

Nick Trantoni
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll Adams
.....
Clerk of the Senate

Gregory W. Gray
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

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

The within *disapproved* this the *20th*
March
day of, 1998.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/18/48

Time

2:35 pm