

23 VAC 10-350. FOREST PRODUCTS TAX REGULATIONS

~~23 VAC 10-350-10. Short title.~~

~~The tax shall be known as the forest products tax which is levied, in addition to all other taxes, as a special fund tax for the purpose of protection and reforestation of Virginia forest lands.~~

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~~23 VAC 10-350-20. Definitions.~~

~~The following words, terms and phrases are defined herein for purposes of the tax imposed by Chapter 16 of Title 58.1 of the Code of Virginia only:~~

~~"F.o.b. loading out point" means the point at which product is loaded on a railroad car or barge, boat or other public transportation for shipment or the point of delivery by taxpayer's vehicles. The invoice value f.o.b. loading out point includes cost of manufacture and cost of delivery by taxpayer, but does not include costs of shipping by public transportation.~~

~~The term "forest product" includes logs; timber; pulpwood; excelsior wood; chemical wood, except dead chestnut wood; wood chips; bolts; billets; crossties; switch ties; poles; piles; fuel wood; posts; all cooperage products; mine ties; mine props; and any and all other types of forest products.~~

~~"Manufacturer" means any person in Virginia (1) who operates a sawmill for the conversion of logs into lumber in its various sizes and forms; or (2) who manufactures or processes forest products into products other than lumber, including operation of cooperage mills; veneer mills; excelsior mills; paper mills; chipmills; chemical plants or any other facilities for manufacturing or processing forest products into products other than lumber; or (3) who purchases from the person who severs (a) crossties; (b) switch ties; (c) mine ties, mine props, and other forest products used in connection with mining; (d) piles; (e) poles, except fish net poles; or (4) who severs posts, fuel wood, fish net poles, and similar products.~~

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~~"Shipper" means any person in Virginia who sells, ships or otherwise disposes of outside the Commonwealth by whatever means of transportation any forest product in an unmanufactured condition which was severed from the forests of Virginia. The term "shipper" includes, but is not limited to, an owner, lessee, wood yard operator, concessionaire, agent or contractor who sells, ships or disposes of outside the Commonwealth any unmanufactured forest products severed from Virginia forests.~~

~~"Severer" means any person who fells, cuts or otherwise separates timber or any other forest product from the soil.~~

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~~23 VAC 10-350-30. Levy of tax for forest conservation.~~

~~The forest products tax is levied upon and collectible from every manufacturer or shipper as defined in 23 VAC 10-350-20, for the purpose of furthering the conservation of the natural resources of Virginia by protecting and developing the forest resources and by the reforestation of the forest lands. The tax is applicable to any forest products severed from land located in Virginia whether owned privately, by the Commonwealth, or the United States.~~

~~The forest products tax is not applicable to any forest products severed from land located outside of Virginia nor to forest products manufactured in Virginia from timber severed from land located outside of Virginia.~~

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~~23 VAC 10-350-40. Lien.~~

~~Until the forest products tax and any applicable interest and penalties are paid, such tax, penalties and interest shall be a lien upon: (a) the severed forest products, (b) the forest products assembled for shipment or (c) any products manufactured therefrom and shall remain a lien upon all such products until the applicable tax, together with interest and penalties, if any, has been paid or until such forest products or products manufactured therefrom has been sold by the manufacturer, shipper, or severer.~~

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~~23 VAC 10-350-70. Optional rates for certain manufacturers and severers.~~

~~A. Generally. Any manufacturer of rough lumber who manufactures less than 500,000 board feet, or any person who severs for sale 100 or less cords of fuel wood, or any person who severs 500 or less posts for fish net poles, during any one calendar year, may elect to file an annual forest products tax return.~~

~~a. Manufacturers of rough lumber who annually manufacture between 300,000 and 500,000 board feet may pay an annual flat tax of \$460.~~

~~b. Manufacturers of rough lumber who annually manufacture less than 300,000 board feet may pay an annual flat tax of \$230.~~

~~c. Any person who severs for sale 100 or less cords of fuel wood, or any person who severs 500 or less posts for fish net poles, during any one calendar year may elect to file an annual forest products tax return in lieu of quarterly returns and pay the tax rates as set out in 23 VAC 10-350-50.~~

~~B. Limitation on tax for certain manufacturers. In the event the General Assembly fails to appropriate from the State's general fund an amount which at least equals the revenue estimated to be collected from the pine reforestation program, the alternative annual rate shall apply upon manufacturers taxed pursuant to the provisions of 23 VAC 10-350-60.~~

~~a. Manufacturers of rough lumber who annually manufacture between 300,000 and 500,000 board feet are required to pay an annual flat tax of \$60.~~

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~~b. Manufacturers of rough lumber who annually manufacture less than 300,000 board feet are required to pay an annual flat tax of \$30.~~

~~Note: The above alternative annual rates in subsection B are applicable only in the event that the General Assembly fails to appropriate Forest Products Tax revenue for reforestation of pine timberland activity. In such event, notification of applicable rates will be provided by the Department of Taxation.~~

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~~23 VAC 10-350-80. Exemptions.~~

~~Forest products severed or cut by an individual owner from his own premises for his own use are exempt from forest products tax. For purposes of this exemption, the phrase "for his own use" means and is limited to the utilization of forest products by individual owners of timber in (1) construction or repair of their structures, buildings or improvements; (2) for their home consumption; or (3) for use by them in processing their farm products.~~

~~The tax does not apply to forest products severed and used by state educational institutions for experimentation in and teaching of forestry if such products are severed from land owned by the Commonwealth.~~

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~~23 VAC 10-350-110. Allocation of tax to localities.~~

~~At least 50% of the forest products tax collected from any county or city shall be allocated and subsequently expended in such county or city for carrying out the purposes of the forest products tax. Any allocated county or city forest products funds, unexpended within a two-year period, shall be credited at the end of each fiscal year, as special revenues for expenditure on a statewide basis for reforestation purposes.~~

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~~23 VAC 10-350-120. Returns to be filed by manufacturer or shipper; time of payment of tax.~~

~~A. Generally. Every manufacturer or shipper of forest products as defined by 23 VAC 10-350-20 shall file a forest products tax return with the Department of Taxation.~~

~~B. Return due date. The forest products tax return must be filed with the Department of Taxation no later than April 30, July 30, October 30, and January 30.~~

~~Any manufacturer of rough lumber who manufactures less than 500,000 board feet, or any person who severs for sale 100 or less cords of fuel wood, or any person who severs 500 or less posts for fish net poles, during any one calendar year, may elect to file an annual forest products tax return as regulated in 23 VAC 10-350-70.~~

~~Any manufacturer, or person who qualifies and elects to file annually with the Department of Taxation, must file such annual return within thirty days after December 31 of each year and certify that the quantity of forest products is true and correct and meets applicable quantity and rate limitations, if any.~~

~~C. Return information. Each return filed by the manufacturer or shipper must be on forms prescribed by the Department of Taxation. Each return must disclose the kinds of forest products and the gross quantity of each product (a) manufactured or (b) severed in this state and shipped or sold for shipment outside of this state in an unmanufactured condition during the preceding quarter; the cities or counties in which such products were severed from the soil, and the gross quantity of each product; the amount of tax due on each type of forest product; and any other reasonable and necessary~~

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~~information requested by the Department of Taxation for enforcing the tax on forest products.~~

~~D. Payment of tax. At the time of filing the return, the manufacturer, severer, or shipper must pay the amount of tax due.~~

~~1. For forest products piece rates, see 23 VAC 10-350-50.~~

~~2. For forest products annual return rates, see 23 VAC 10-350-50 or 23 VAC 10-350-70.~~

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~~23 VAC 10-350-130. Reports to be made by transporters of forest products; penalty.~~

~~A. Generally. The Tax Commissioner may request transporters of forest products to report information relative to the transportation of forest products which may include shipments of forest products out of, within, or across Virginia, the name of the shipper, date of shipment, quantity and type or character of such forest products, applicable units or measurements of the forest products, the point of receipt or shipment, the point of destination, and such other information as the Commissioner deems necessary.~~

~~B. Exception. Common carriers using bills of lading or way bills prescribed or approved by the Interstate Commerce Commission shall not be required to report all information relative to the transportation of forest products to the Tax Commissioner. Such common carriers shall be required to keep the usual records required for bills of lading and way bills at their offices in Virginia where such records are usually maintained.~~

~~C. Failure to file transporter's report. Any transporter who fails to file the report requested on forest products transported shall, upon conviction, be guilty of a Class 3 misdemeanor.~~

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~~23 VAC 10-350-140. When department may make return for delinquent taxpayer; penalty.~~

~~A. Generally. If any taxpayer, subject to forest products tax, fails to file any required forest products return, the Department may request by registered mail that the taxpayer file such delinquent return. If the taxpayer fails to file the required forest products return within 30 days after receiving written notice from the Department, the Department may make the return for the delinquent taxpayer upon the basis of available information and assess the taxes due upon such return.~~

~~B. Penalty. If the taxpayer fails to file the return which is due and the Department assesses the tax, it shall add a penalty to the tax for failure to file the return and pay the applicable tax. The penalty shall be 25% of the assessed tax due and shall be collected as a part of the tax.~~

~~The Department may waive all or a part of the 25% penalty if, in its discretion, good cause is shown by the taxpayer.~~

~~C. Interest. The total assessment of tax and penalty shall bear interest at the rate determined in accordance with §58.1-15 of the Code of Virginia from the date such taxes were due.~~

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~~23 VAC 10-350-150. [Reserved]~~

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~~23 VAC 10-350-160. Records to be kept.~~

~~A. Generally. Every manufacturer in this state and every shipper of forest products who ships out of this state such products in an unmanufactured condition, must keep and preserve adequate books and records on the forest products for at least three years following the date the tax is reported on such products.~~

~~1. "Adequate books and records" means records which separate the forest products into the various categories on which tax rates are computed and such other books and accounts as may be necessary to determine the amount of applicable tax.~~

~~2. Exception. Manufacturers of rough lumber who manufacture less than 500,000 board feet, or any person who severs for sale 100 or less cords of fuel wood, or 500 or less posts for fish net poles, during any one calendar year, are excepted from the requirements to keep and preserve records which separate forest products into the various tax categories.~~

~~B. Examination by Commissioner. The Commissioner may examine during the usual business hours of the day records, books, papers, or other documents of the forest products manufacturer or shipper relating to the quantity and type of forest products, the cities or counties in which such products were severed and the amount of tax due on each type of forest product and to verify the truth and accuracy of any statement or any other relevant information.~~

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~~23 VAC 10-350-170. Penalty for failure to make return, keep records, or permit examination of records.~~

~~Any person who fails to file a forest products tax return, refuses to permit examination of records, or fails to keep the required records shall be guilty, upon conviction, of a Class 4 misdemeanor.~~

~~Each month's failure to make the required return or keep the required records and each refusal of a written demand of the Department to examine, inspect, or audit forest products records will constitute a separate offense.~~

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~~23 VAC 10-350-180. Penalty and interest for failure to pay the tax when due.~~

~~Any person who fails to pay the forest products tax when due shall pay in addition to the tax, a penalty of five percent of the amount of unpaid tax.~~

~~The total assessment of tax and penalty shall bear interest beginning six months from the date the tax became due and payable. Interest will be at the rate determined in accordance with §58.1-15 of the Code of Virginia. The penalty and interest will be assessed and collected as if a part of the tax.~~

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~~23 VAC 10-350-190. Audit of returns; tax underpaid; amended returns; and taxpayer appeals.~~

~~A. Generally. After the taxpayer files the required returns, the Department of Taxation may examine or audit the forest products tax returns and records and other information of the taxpayer within three years after the returns were filed and determine the correctness of such returns.~~

~~B. Tax overpaid. If the Department determines that the tax is overpaid on the forest products tax return, the Department of Taxation will refund to the taxpayer any tax which was overpaid.~~

~~All refunds of forest products tax shall be paid out of the Reforestation of Timberlands State Fund or the Protection and Development of Forest Revenues State Fund, whichever account is applicable.~~

~~C. Tax underpaid. If the Department determines within three years after the forest products tax return is due that the tax is underpaid, the Department of Taxation shall assess the taxpayer for any tax due together with applicable penalties and interest as regulated in 23 VAC 10-350-180.~~

~~Any taxpayer who disagrees with a forest products tax audit assessment may file an application for relief to the Tax Commissioner. Such application must be made within ninety days from the date of assessment.~~

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~~D. Amended return. If a taxpayer overpays the forest products tax, an amended return requesting refund of the overpaid tax must be filed with the Department within one year from the date such tax was due.~~

~~1. The taxpayer must file amended forest products tax returns for each period showing the correct amount of tax due and attach an explanation to the corrected returns.~~

~~2. The Department shall review the taxpayer's explanations and amended returns and shall make a determination upon such tax refund request.~~

~~3. All refunds of forest products tax shall be paid out of the Reforestation of Timberlands State Fund or the Protection and Development of Forest Revenues State Fund, whichever account is applicable.~~

~~Note: The return of a Taxpayer filed with the Department is treated, for forest products tax purposes, as a self-assessment. Section 58.1-1622 of the Code of Virginia limits the taxpayer to one year from December 31 of the year the assessment was made to apply to the Department for refund or appeal to the Commissioner or appeal to the courts.~~

~~Protective claim for refund rights under §58.1-1824 of the Code of Virginia are not applicable to the taxpayers subject to forest products tax because of the one year appeal limitation under §58.1-1622 of the Code of Virginia.~~

~~E. Penalties. In addition to assessing the tax, the Department shall assess a penalty on the unpaid tax.~~

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~~1. If the taxpayer files the forest products tax return and underpays or fails to pay the tax when due, the Department shall assess a penalty of five percent of the amount of unpaid tax.~~

~~2. If the Department in audit finds a tax deficiency the taxpayer shall be notified of the tax and interest due. If the taxpayer fails to pay the tax and interest due within thirty days from the date notified, the Department shall assess a penalty of $\frac{1}{2}$ of 1% per month from the date such taxes were due.~~

~~3. If the Department finds willful or fraudulent intent by the taxpayer to evade the tax due, it may assess an underpayment penalty of 25% of the tax due.~~

~~4. The Department may waive all or part of the penalties if, in its discretion, good cause is shown by the taxpayer.~~

~~F. Interest. The total assessment of tax and penalty shall bear interest at the rate determined in accordance with §58.1-15 of the Code of Virginia. The penalty and interest shall be assessed and collected as if a part of the tax.~~

~~G. Taxpayer appeals. Any taxpayer who is aggrieved by a forest products tax assessment must apply to the Department for correction or apply to court for correction within one year from December 31 of the year in which the assessment was made. (See Note to D above)~~