

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Do Not Mark In This Box
Filing Date

1992 JUN 30 11 43

Form #7

Effective Date

July 29, 1992

NOTICE OF AN EMERGENCY RULE

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY: W.Va. Code § 19-1A-6

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 2A

TITLE OF RULE BEING FILED AS AN EMERGENCY: Division of Forestry

Woodland Fee

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

West Virginia Code § 19-1A-6 requires the Tax Commissioner to promulgate on or before July 1, 1992, regulations to effectuate the provisions of Section 19-1A-6. This emergency rule complies with that directive and provides appropriate guidance to owners of certain types of property for the payment of the required fee.

James H. Paige III
James H. Paige III
State Tax Commissioner

330



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
SECRETARY

CONSENT TO FILE RULE

June 26, 1992

To Whom It May Concern:

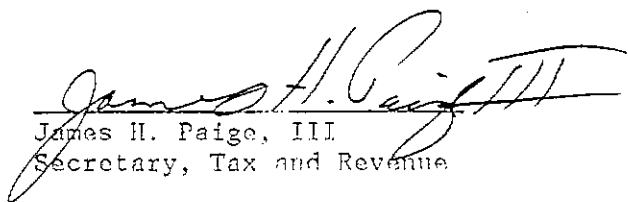
Title of Rule: Division of Forestry Woodland Lots

Title Number: 110

Series Number: 2A

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 26th day of June, 1992.


James H. Paige, III
Secretary, Tax and Revenue

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Division of Forestry Woodland Tax.
 Type of Rule: X Legislative Interpretive Procedural
 Agency: State Tax Division Address State Capitol
Charleston, WV

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

The fiscal effect of the proposed rule should not vary from that envisioned by the Legislature when it adopted W. Va. Code § 19-1A-6.

3. Objectives of these rules:

To effectuate the provisions of W. Va. Code § 19-1A-6.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Any revenue generated will be utilized for the purposes stated in W. Va. Code § 19-1A-6.

B. Economic Impact on Political Subdivisions: Specific Industries; Specific groups of citizens.

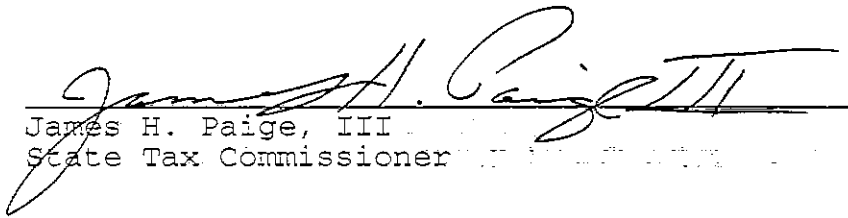
W. Va. Code § 19-1A-6 requires the fee to be paid by the owners of certain types of woodlands.

C. Economic Impact on Citizens/Public at Large.

The services provided by the Division of Forestry should be improved.

Date: June 30, 1992

Signature of Agency Head or Authorized Representative


James H. Paige, III
State Tax Commissioner

DATE: June 30, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Division

EMERGENCY RULE TITLE: Division of Forestry Woodland Fee

1. Date of filing: June 30, 1992
2. Statutory authority for promulgating the emergency rule: W.Va. Code § 19-1A-6
3. Date of filing of proposed legislative rule: N/A
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
The emergency rule is a new rule.
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
W.Va. Code § 19-1A-6 requires the State Tax Division to promulgate on or before July 1, 1992, rules to effectuate the provisions of Section 19-1A-6. As the payment and transfer of the fees required under Section 19-1A-6 will in part occur prior to the next regular legislative session, it is necessary to file the rule on an emergency basis in order to provide necessary guidance and prevent confusion.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.
W.Va. Code § 19-1A-6. The rule must be filed on or before July 1, 1992 to effectuate the provisions of Section 19-1A-6.
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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.
See question 6.
-
-
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DEPT OF TREES, VIRGINIA
DIVISION OF FORESTRY

EMERGENCY

WEST VIRGINIA LEGISLATIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 2A
JUNE 30, 1992

DIVISION OF FORESTRY WOODLAND FEE

§ 110-2A-1 General.

1.1 Scope. - These regulations establish general operating procedures for the administration of the Annual Forestry Fee ("Woodland Fee") to benefit the West Virginia Division of Forestry.

1.2 Authority - West Virginia Code § 19-1A-6.

1.3 Filing Date. - June 30, 1992.

1.4 Effective Date. - July 1, 1992.

§ 110-2A-2 Definitions.

As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular or in the plural.

2.1 "Timberland" - means any surface real property except farm woodlots of not less than ten contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site.

2.2 "Managed Timberland" - means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site, and that is managed pursuant to a plan provided for W. Va. Code § 11-1C-10.

2.3 "Farm Woodland" - means surface real property except timberland, managed timberland, farm woodlots or residential woodland, which has not met the qualifications for farm use valuation as defined by 110 CSR 1A, Section 2.6.3, but is currently being used primarily for horticulture, agriculture or grazing.

2.4 "Farm Woodlot" - means that portion of a farm in timber but shall not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

2.5 "Residential Woodland" - means any surface real property, except timberland, managed timberland, farm woodlots, or farm woodland, which is occupied for residential purposes by the owner or bona fide tenant. The parcel must be primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stock of forest trees which are well distributed over the growing site.

2.6 "Parcel" - means an area of surface real property described in a single description or as one of a number of lots in a plat.

2.7 "Owner" - means the person who by himself or his tenants has the freehold in his possession, whether in fee or for life. For the purposes of this regulation only, the property of a married couple, whether owned jointly or individually, shall be considered the same property owner.

2.8 "Annual Forestry Fee" - means a "woodland" fee paid for each parcel assessed in whole or in part as timberland or managed timberland; or a "woodland" fee paid for each parcel assessed in whole or in part as farm woodland, farm woodlot, or residential woodland.

§ 110-2A-3 Assessment and Payment of Annual Fee to Benefit Division of Forestry.

3.1 The Annual Forestry Fee shall appear on the property tax bill for each parcel of property assessed as farm woodland, farm woodlot, residential woodland, managed timberland or timberland parcels. The owner of the property as of July 1 of each year shall be subject to the assessment of the applicable fee, if any, regardless of any subsequent transfer of the property.

3.2 The Annual Forestry Fee is payable to the sheriff by the owner of property against which such fee is assessed when the ad valorem property taxes on such property for the first half of the

then current year are paid to the sheriff: Provided, that such fee shall be accepted at any time property taxes are paid either to the sheriff or, in the case of a public service business, to the State Auditor.

3.2.1 No owner shall pay a fee on more than three (3) parcels of farm woodland, farm woodlot or residential woodland property situate in the same county.

3.2.2 No owner shall pay a fee on more than twenty (20) parcels of timberland or managed timberland situate in the same county.

3.2.3 No owner shall pay more than one fee for any one parcel in the county.

3.3 If an owner has property taxes assessed against any individual parcel in more than one of the classifications against which a fee is charged under Section 3.1 of these regulations, the owner shall pay the highest applicable fee for that parcel.

3.4 Upon payment of the fee, the sheriff shall affix a stamp to the appropriate property tax receipt. The stamp may be a computer-generated series of print characters on the receipt, or a rubber stamp imprint. Upon full payment, the words "Woodland Fee Paid" shall appear on the receipt and be evidence of payment of the Annual Forestry Fee.

3.4.1 Both of these stamps shall be designed by the Director of the Division of Forestry and a sufficient number of rubber stamps shall be provided free of charge to each county sheriff.

3.4.2 Each sheriff must notify the Division of Forestry no later than June 15, 1992 of the number of rubber stamps required. The Division of Forestry must supply these stamps to each sheriff no later than July 15, 1992.

§ 110-2A-4 Remittance of Fees to the State Tax Commissioner in Separate Fund in State Treasury; Expenditures from Separate Fund by Division of Forestry; Refunds for Erroneous Fee Payments from Separate Account.

4.1 The sheriff shall forward the Annual Forestry Fees collected pursuant to W. Va. Code § 19-1A-6 at the same time and in the same manner as the sheriff remits the revenues from the property tax levies to the State.

4.1.1 The fees so collected shall be deposited in a separate account in the state treasury.

4.1.2 Expenditures for the purposes set forth in this section are not authorized from collections, but are to be made only through appropriation by the Legislature and in accordance with the provisions of W. Va. Code § 12-3-1 et seq. and upon fulfillment of the provisions set forth in W. Va. Code § 5A-2-1 et seq.

4.2 Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this section may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

4.3 The purposes of the funds in the account created for the deposit of the Annual Forestry Fees required by this section are to supplement normal funding for the Division of Forestry and include, but are not limited to:

4.3.1 Salaries for Division of Forestry employees.

4.3.2 Implementation of a fire protection plan.

4.3.3 Contributions toward costs incurred in fighting forest fires and training firefighters.

4.3.4 Other in-service training.

4.3.5 Forest resource surveys.

4.3.6 Purchases of equipment.

4.3.7 Insect and tree disease control.

4.3.8 Reforestation.

4.3.9 Silvicultural assistance to private landowners.

4.3.10 Preservation of water quality through fire control, erosion control, reclamation and replanting.

4.4 In the event a property owner in error pays a fee listed in Section 3.1, he may make application to the county assessor for a refund. After approval by the county assessor, and verification of payment by the county sheriff, the completed application shall constitute a voucher which, when presented by the property owner to the Director of Forestry, shall entitle the property owner to a refund of the erroneously paid Annual Forestry Fee.

§ 110-2A-5 Assessor Estimate of Woodland and Timberland Fee Parcel Count; Review of Estimates by State Tax Commissioner.

5.1 In order for the Director of the Division of Forestry to project the number of stamps to be required in each county and the amount of revenue which may be realized by the fee imposed by W. Va. Code § 19-1A-6, each county assessor shall forward to the State Tax Commissioner the number of landowners in the county that own parcels assessed as:

5.1.1 Managed timberland or timberland and therefore subject to the appropriate fee.

5.1.2 Residential woodland, farm woodlot or farm woodland and therefore subject to the appropriate fee.

5.2 The Tax Commissioner shall review each county's list, make any corrections or additions as may be necessary, notify the appropriate county assessor of any correction or addition, and forward each county's list, as well as statewide totals, to the Director of the Division of Forestry.

§ 110-2A-6 Dispute Resolution.

6.1 When a property owner disagrees with the assessment of a Woodland Fee or a Timberland Fee as it appears on their property tax bill, they may apply to the county assessor for an abatement of the fee. If the assessor agrees to the abatement, he must notify the county sheriff that this relief has been granted. The county sheriff must forward a record of abatements granted to the Director of the Division of Forestry by November 15 and April 15 of each year.

6.2 When a property owner and county assessor disagree about the appropriate Woodland Fee or Timberland Fee classification of a parcel, the property owner may request in writing that the assessor in writing certify the question to the Director of the Division of Forestry. The assessor shall forthwith certify the question along with any supporting information to the Director of the Division of Forestry. Upon receipt of the certified question, the Director of the Division of Forestry shall, within sixty (60) days of receipt of the question, decide the question in writing. Such decisions shall be directed to the assessor originating the questions.

6.3 No dispute involving an Annual Forestry Fee shall be a basis for altering, delaying or extending the times for payment of the ad valorem property tax or the application of interest and penalties.

§ 110-2A-7 Record of Unpaid Annual Forestry Fees.

7.1 Each county sheriff is required to maintain a record of all unpaid Woodland Fees and Timberland Fees available for review by representatives of the Director of the Division of Forestry.

7.2 Partial Fee Payment - the sheriff shall not accept partial payment of the Annual Forestry Fee. Partial payments shall be returned to the person tendering payment with directions to remit payment in full.

7.3 Fee amounts included with the property tax payment are to be accepted by the sheriff, but the property tax must be credited first. The remaining monies are to be applied to the satisfaction of the fee as the two dollars (\$2) or ten dollars (\$10) per parcel was determined.



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

July 29, 1992

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Tax Division

RULE: New Rule, Series 2A, Division of Forestry Woodland Fee

DATE FILED AS AN EMERGENCY RULE: June 30, 1992

DECISION NO. 15-92

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

KEN HECHLER
Secretary of State

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1992 JUL 30 AM 9 45



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
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(Plus all the volunteer
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

DECISION

EMERGENCY RULE DECISION (ERD 15-92)

AGENCY: State Tax Department
RULE: New Rule, Series 2A, Division of Forestry Woodland Fee

FILED AS AN EMERGENCY RULE: June 30, 1992

- par. 1 The State Tax Department (Department) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the thirty-five day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State June 30, 1992 and with the LRMRC June 30, 1992.

par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §19-1A-6 reads in part:

The tax commissioner, on or before the first day of July, one thousand nine hundred ninety-two, and thereafter as necessary, shall promulgate such regulations as may be necessary to effectuate the provisions of this section in accordance with §29A-3-1 et seq.

par. 9 It is the determination of the Secretary of State that the Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

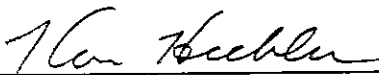
(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Division are as follows:

West Virginia Code §19-1A-6 requires the Tax Commissioner to promulgate on or before July 1, 1992, regulations to effectuate the provisions of Section 19-1A-6. This emergency rule complies with that directive and provides appropriate guidance to owners of certain types of property for the payment of the required fee. As the payment and transfer of the fees required under §19-1A-7 will in part occur prior to the next regular legislative session, it is necessary to file the rule on an emergency basis in order to provide necessary guidance and prevent confusion.

- par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . . "necessary...to prevent substantial harm to the public interest".
- par. 14 Although the intent of the Legislature through the language contained in §19-1A-6 is somewhat ambiguous, this rule is necessary because:
1. The emergency will cause substantial harm to the public interest; and
 2. The emergency will occur before the legislature will have an opportunity to meet to address it; and
 3. Legal authority is necessary in order to provide the response.
- par. 15 This decision shall be cited as Emergency Rule Decision 15-92 or ERD 15-92 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Tax Department, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____