

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1992 SEP -8 AM 10:38
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: STATE TAX DIVISION TITLE NUMBER: 110

CITE AUTHORITY W.Va. CODE § 19-1A-6

AMENDMENT TO AN EXISTING RULE: YES NO

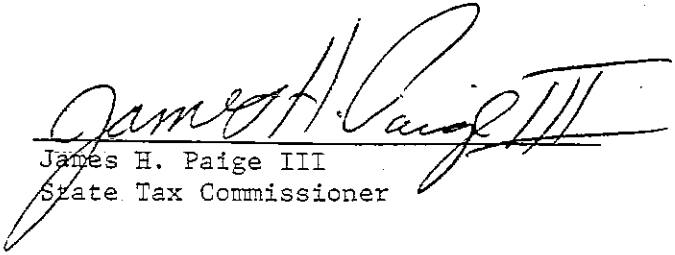
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 2A

TITLE OF RULE BEING PROPOSED: DIVISION OF FORESTRY WOODLAND FEE

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


James H. Paige III
State Tax Commissioner



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State of West Virginia 1992 SEP -6 AM 10:38
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

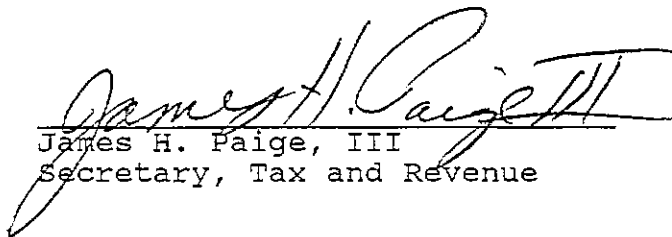
September 4, 1992

To Whom It May Concern:

Title of Rule: Division of Forestry Woodland Fee
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 4th day of September, 1992.


James H. Paige, III
Secretary, Tax and Revenue



GASTON CAPERTON
GOVERNOR

State of West Virginia
Department of Tax and Revenue

TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

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OFFICE OF WEST VIRGINIA
SECRETARY JAMES H. PAIGE III
SECRETARY

STATEMENT OF CIRCUMSTANCES

West Virginia Code § 19-1A-6(b) requires the Tax Commissioner to promulgate regulations to effectuate the provisions of said section, such provisions imposing a woodland fee on the owners of certain types of woodlands.

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FISCAL NOTE FOR PROPOSED RULES 1992 SEP -8 AM 10:38

Rule Title: Division of Forestry Woodland Fee OFFICE OF WEST VIRGINIA
 SECRETARY OF STATE

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Division Address State Capitol
Charleston, WV 25305

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 enacted 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: September 4, 1992

Signature of Agency Head or Authorized Representative



James H. Paige III
State Tax Commissioner

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DATE: September 8, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

FROM: State Tax Division

LEGISLATIVE RULE TITLE: Division of Forestry Woodland Fee

1. Authorizing statute(s) citation W.Va. Code § 19-1A-6

2. a. Date filed in State Register with Notice of Public
Comment Period: June 30, 1992

b. What other notice, including advertising, did you give of
the hearing?

None

c. Date of Public Comment Period: July 1, 1992 through
July 31, 1992

d. Attach list of persons who appeared at hearing, comments
received, amendments, reasons for amendments.

Attached No Comments received

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing: (be
exact)

September 8, 1992

f. Name and phone number(s) of agency person(s) to contact
for additional information:

Robert Hoffman - 558-3940

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AGENCY APPROVED

WEST VIRGINIA LEGISLATIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 2A

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. -

1.4 Effective Date. -

§ 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.

Appalachian Power Company
PO Box 1986
Charleston, WV 25327-1986
304 348 4700

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OFFICE OF THE SECRETARY OF STATE
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Legal Division
Department of Tax and Revenue
PO Box 1005
Charleston, WV 25324-1005

July 23, 1992

Re: Comments On Proposed Rules Regarding Division
of Forestry Woodland Fee

These comments address the above proposed rules (Title 110,
Series 2A) filed with the Secretary of State on June 30, 1992.

- (1) Basing the woodland fee on "parcels" may result in unfairness since the size of parcels may differ. Thus, similarly situated property owners may pay different numbers of fees. Should WV Code §19-1A-6 be revisited in the 1993 regular session as is anticipated, consideration should be given to remedying this possible inequity.
- (2) It is not clear which county should receive the fee if a parcel lies in more than one county.
- (3) §110-2A-6.1 addresses "(w)hen a property owner disagrees with the assessment of a Woodland Fee or a Timberland Fee as it appears on their property tax bill . . ." However, it appears to fail to specify the dispute resolution procedure should the assessor disagree to an abatement. Is the latter intended to be covered by §110-2A-6.2 which addresses "(w)hen a property owner and county assessor disagree about the appropriate Woodland Fee or Timberland Fee classification of a parcel . . ."?
- (4) §110-2A-6.2 fails to provide a mechanism for the property owner to dispute a decision of the Director of the Division of Forestry.

Comments Submitted By:
P. Scott Icard
Governmental Affairs Manager

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1992 SEP -8 11 10 38

RESPONSE TO COMMENTS RELATED TO PROPOSED
RULE, DIVISION OF FORESTRY WOODLAND FEE, 110 C.S.R. 2A

COMMENT: "Basing the woodland fee on 'parcels' may result in unfairness since the size of parcels may differ. Thus, similarly situated property owners may pay different numbers of fees. Should West Virginia Code § 19-1A-6 be revisited in the 1993 Regular Session as is anticipated, consideration should be given to remedying this possible inequity."

RESPONSE: It is possible that this legislation will again be reviewed by the 1993 Legislature. The basis for the fee is established in the law and cannot be altered through legislative regulation. It is known that another unit of measurement could be considered, for example acreage as opposed to parcel. In any event, changes to the unit upon which the fee is to attach is appropriate for legislative review.

COMMENT: "It is not clear which county should receive the fee if a parcel lies in more than one county."

RESPONSE: The legislation does not deal with this concern, nor does the proposed regulation. However, should disputes involving parcels lying in more than one county arise, West Virginia Code § 11-4-14 may be used as a basis for resolution.

COMMENT: "§110-2A-6.1 addresses '(w)hen a property owner disagrees with the assessor of a Woodland Fee or a Timberland Fee as it appears on their property tax bill ...'. However, it appears to fail to specify the dispute resolution procedure should the assessor disagree to an abatement. Is the latter intended to be covered by § 110-2A-6.2 which addresses '(w)hen a property owner and county assessor disagree about the appropriate Woodland Fee or Timberland Fee classifications of a parcel ...'?"

RESPONSE: The latter section is intended to offer a mechanism for resolving these problems. The dispute resolution process was designed to avoid arguments at the local level where the categories of property are in dispute. In many instances, the Division of Forestry is the best source of information concerning the categories of property.

COMMENT: "§ 110-2A-6.2 fails to provide a mechanism for the property owner to dispute a decision of the Director of the Division of Forestry."

RESPONSE: This statement is correct. Future legislative consideration on this issue may involve a further dispute resolution. Amendments for the Legislative Rules could further accommodate this concept. In the absence of specific appeal process beyond the Division of Forestry, avenues would be available to Circuit Court.