

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1417

H. P. 1193

House of Representatives, March 19, 1981

Referred to the Committee on Taxation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Brenerman of Portland.

Cosponsor: Representative Post of Owl's Head.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Amend the Tree Growth Tax Law.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 12 MRSA § 8403, sub-§ 2, as enacted by PL 1979, c. 545, § 3, is amended to read:

2. Forest land. "Forest land" means land in contiguous parcels which ~~are~~ were subject to mandatory taxation pursuant to Title 36, chapter 105, subchapter II-A, as of April 1, 1979.

Sec. 2. 12 MRSA § 8405, sub-§ 3 first sentence, as repealed and replaced by PL 1979, c. 737, § 4, is amended to read:

Persons owning parcels of forest land, including persons claiming timber and grass rights in public reserved lands, which ~~are~~ were classified as forest land pursuant to Title 36, chapter 105, subchapter II-A, as of April 1, 1979, of more than 500 acres within the Spruce Fir Forest Protection District shall be subject to the pre-project and post-project excise taxes established under section 8406 on the privilege of owning and operating such parcels of forest land, except as provided in this subchapter.

Sec. 3. 36 MRSA § 573, sub-§ 3, as amended by PL 1973, c. 308, § 2, is repealed and the following enacted in its place:

3. **Forest land.** "Forest land" means land used primarily for growth of trees for commercial use, but shall not include ledge, marsh, open swamp, bog, water and similar areas, which are unsuitable for growing a forest product even though those areas may exist within forest lands. Land shall be included, upon presentation by the landowner of evidence that the land is being used primarily for growth of trees for commercial use, as follows:

- A. A sworn statement from the landowner establishing that the landowner is engaged in the business of selling or processing forest products;
- B. A sworn statement from a registered professional forester that the land is being managed primarily for growth of trees for commercial use; or
- C. A written forest management plan for the land, accompanied by a sworn statement from the landowner that he is following the plan.

Land which would otherwise be included within the definition shall not be excluded because of multiple use for public or private recreation or because it is under contract with a state or federal agency restricting its use for timber production. "Commercial use," as used in this subchapter, shall include an owner's use of wood harvested from the owner's land.

Sec. 4. 36 MRSA § 574, first sentence, as amended by PL 1973, c. 308, § 3, is repealed.

Sec. 5. 36 MRSA § 574, 2nd sentence, as amended by PL 1973, c. 308, § 3, is further amended to read:

An owner of a parcel containing forest land ~~of 500 acres or less~~ may apply at his election by filing with the assessor the schedule provided for in section 579; except that this subchapter shall not apply to any parcel containing less than 10 acres of forest land.

Sec. 6. 36 MRSA § 576, first sentence, as amended by PL 1973, c. 460, § 18, is further amended to read:

The State Tax Assessor shall determine the average annual net wood production rate for each forest type described in section 573, subsections 5 to 7, in each county or region to be used in determining valuations applicable to forest land under this subchapter, on the basis of the surveys of average annual growth rates applicable in the State made from time to time by the United States Forest Service or by the Maine Forestry Bureau.

Sec. 7. 36 MRSA § 576, 2nd ¶, as enacted by PL 1971, c. 616, § 8, is amended to read:

The State Tax Assessor shall determine the average stumpage value for each forest type described in section 573, subsections 5 to 7, applicable in each county, or in such alternative forest economic regions as he may designate, after passage of this subchapter and in each ~~even-numbered~~ year thereafter, taking into consideration the prices upon sales of sound standing timber of that forest type in

that area during the previous 2 calendar years year, and such other considerations as he deems appropriate.

Sec. 8. 36 MRSA § 576, next to the last ¶, as amended by PL 1977, c. 694, § 678, is further amended to read:

The State Tax Assessor shall hold one or more public hearings upon the foregoing matters to be determined, shall provide for a transcript thereof, and shall issue a rule or rules stating said determinations on or before October 1, 1978 and on or before October 1st ~~biennially~~ **each year** thereafter.

Sec. 9. 36 MRSA § 576-B, as last amended by PL 1977, c. 694, §§ 680-685, is further amended by adding before the first sentence a new sentence to read:

Until February 1, 1983, the percentage factor, by which the growth rates set by the State Tax Assessor pursuant to section 576 shall be reduced to reflect the growth which can be extracted on a sustained basis, shall be 10%.

Sec. 10. 36 MRSA § 576-B, first sentence, as amended by PL 1977, c. 694, § 680, is further amended to read:

By February 1, ~~1978~~ **1983**, and every **4th odd-numbered** year thereafter, the State Tax Assessor shall determine and prescribe by rule the percentage factor by which the growth rates set by him pursuant to section 576 shall be reduced to reflect the growth which can be extracted on a sustained basis.

Sec. 11. 36 MRSA § 578, sub-§ 1, first sentence, as repealed and replaced by PL 1977, c. 282, is amended to read:

The municipal assessors or chief assessor of a primary assessing area shall adjust the State Tax Assessor's 100% valuation per acre for each forest type of their county or region by whatever ratio, or percentage of current just value, is then being applied to other property within the municipality to obtain the assessed values.

Sec. 12. 36 MRSA § 578, sub-§ 1, 3rd sentence, as repealed and replaced by PL 1977, c. 282, is amended to read:

For any tax year, **beginning on or after January 1, 1981**, in which a ~~municipality has a situation where the~~ municipality's aggregate tax assessed on lands classified under this subchapter is less than ~~90% of the aggregate tax that could have been assessed, but for this subchapter, on the same lands in 1972 if the lands were assessed according to the undeveloped acreage used in the state valuation then in effect, adjusted by the municipal ratio~~, the municipality shall have a valid claim against the State to recover the taxes lost, **with adjustments for any state school subsidies that may be affected by changes in municipal valuations caused by the use of undeveloped acreage valuation, to the extent that of 35% of such loss exceeds a 10% loss from 1972** upon proof of the facts in form satisfactory to the State Tax Assessor; **except that beginning on or after January 1, 1983, municipalities shall have a valid claim for 100% of such loss.**

Sec. 13. 36 MRSA § 578, sub-§ 1, 2nd ¶, as last repealed and replaced by PL 1977, c. 282, is repealed.

Sec. 14. 36 MRSA § 578, sub-§ 1, 3rd, 4th and 5th paragraphs, as enacted by PL 1977, c. 720, § 3, are repealed.

Sec. 15. 36 MRSA § 578, sub-§ 2, as amended by PL 1973, c. 308, § 8, is repealed and the following enacted in its place:

2. Unorganized territory. The State Tax Assessor shall use 100% valuation per acre for each type for each county or region to obtain the assessed value for the unorganized territory.

Sec. 16. 36 MRSA § 578, sub-§ 4 is enacted to read:

4. Reimbursement funding.

A. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

(1) Timber is deemed "cut" at the time in the ordinary course of business when the quantity of timber harvested is first definitely determined.

(2) "Forest landowner" means any individual, partnership or corporation liable for payment of the real property tax. In cases of divided ownership of land and the timber rights thereon, the owner of the timber rights is the forest landowner for purposes of this section.

(3) "Person" means, without limitation, any individual, partnership or corporation.

(4) "Timber" means all forest products having commercial value.

B. The State Tax Assessor shall have the powers and duties provided in this section. He shall adopt and amend such rules and regulations as may be reasonable and appropriate to carry out these responsibilities. He may contract with municipal governments, state governments and the Federal Government, or their agencies, to assist in the carrying out of any of his assigned tasks. He is authorized to request such technical assistance from the Bureau of Forestry of the Department of Conservation as the respective department may be able to provide.

C. Owners of all forest land in both the organized and unorganized territories shall be subject to this section.

D. The owners of forest land shall be subject to an excise tax levied upon the total number of cords harvested in each tax year.

(1) The tax rate for calendar year 1981 shall be 40¢ per cord for hardwood and 60¢ per cord for softwood or \$1.20 per 1,000 board feet for softwood and 80¢ per 1,000 board feet for hardwood.

(2) The Legislature shall annually by March 15th enact legislation to determine the rate for 1982 and each subsequent year. The rate shall be set at a level sufficient to provide revenue to fund reimbursement pursuant to this section. Annually, by the date of the convening of the Legislature, the State Tax Assessor shall certify his itemized estimate of the tax rate needed to fund the reimbursement for the subsequent calendar year, and to make up any deficiency in the fund for the present or prior years, taking into account unexpended balances of the Tree Growth Tax Law Reimbursement Fund.

(3) There is established a Tree Growth Tax Law Reimbursement Fund to receive all tax moneys collected pursuant to this section. The State Tax Assessor is authorized and directed to expend each year as much of the fund as is necessary to reimburse municipalities pursuant to this section. If the amount available for reimbursement purposes is not sufficient to pay all of the approved claims for reimbursement, the State Tax Assessor shall prorate claims in proportion to the dollar amount of approved claims timely filed and on land at the time of proration. Any such deficiency in the fund shall be made up and reimbursed in a subsequent year. Any unexpended balance in the fund shall not lapse, but shall be carried forward for the next calendar year and shall be available for the purposes authorized by this section.

E. No tax shall be imposed under this chapter upon:

(1) The first 500 cords or equivalent measure of timber harvested in any year by any forest landowner; and

(2) The harvesting of any timber for the forest landowner's personal fuel purposes.

F. The Bureau of Forestry shall forward to the State Tax Assessor the reports of timber harvested submitted pursuant to Title 12, section 8604.

The State Tax Assessor may accept that report as sufficient evidence of the facts or may, either with or without hearing and notice thereof to the owner, investigate and determine the fact of the quantity of each variety and kind of product cut during the periods preceding the reports.

G. The State Tax Assessor shall assess and levy against each owner an excise tax on the volume of wood cut as determined under paragraph D. Upon making that assessment, the State Tax Assessor shall mail a duplicate of the certificate of assessment by registered mail to the owner who made the report of cutting at the owner's last known address. The tax thereby assessed shall become due and payable to the State Tax Assessor on the last day of the next calendar month after the mailing to the owner of that certificate of assessment.

H. The owner of the forest land shall be personally liable for any excise tax because of any wood products cut from that land, which tax shall also be a lien on those wood products wherever situated and in whatever form or, if mingled with other products, then on the common mass, until paid, while in the

possession of the owner or of any person other than a purchaser for value without notice in the ordinary course of business.

If any excise tax remains unpaid for 30 days after it becomes due, there shall be added a penalty of 10%, and the tax and penalty shall thereafter draw interest at the rate of 1% per month until paid.

At the expiration of 30 days, the State Tax Assessor shall report to the Attorney General any unpaid tax adding that penalty, and the Attorney General shall thereupon proceed to collect the same with interest by suit against the owner and by attachment or other legal means to enforce the lien or by any or all such means.

I. Any person aggrieved by a determination of the State Tax Assessor under this section may appeal in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. A person aggrieved hereunder is:

- (1) Any person with a legal interest in land subject to determination; and
- (2) Any municipality in which the land subject to determination is located.

J. Any person required under this section and Title 12, section 8604, to file a report of harvest or to pay any tax or supply any information, who intentionally fails to pay that tax, supply that information or make that report, at the time or times required by law or regulation shall, in addition to any other penalties provided by law, be guilty of a Class D crime.

K. Any person who makes and subscribes any report of harvest or other document required by law or regulation under this section, which contains or is verified by written declaration that it is made under the penalties of perjury, and which is not true and correct as to every material matter, or knowingly aids or procures the preparation or presentation in a matter arising under this chapter of a report or other document which if fraudulent or is false as to any material matter, shall be guilty of a Class D crime.

STATEMENT OF FACT

This bill requires proof of intent to use tree growth land for commercial timber purposes and defines commercial use to include an owner's use of timber for his own purposes in connection with the management plan requirement. It permits regional as well as county establishment of wood production rates. Stumpage values are to be determined annually and the discount factor is set at 10% to February 1, 1983, at which time it is set by the State Tax Assessor biennially along with the capitalization rate. Municipal reimbursement for the tax shifts created is set at 35% for 1981 and 1982 and 100% thereafter.

The reimbursement is funded from a severance tax, the revenues of which flow to a dedicated fund for the purpose of reimbursement.

This bill also repeals that part of the Tree Growth Law that mandates classification of parcels of 500 acres or more.