



Valuation and Taxation of Managed Timberland

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Loss, recovery and more loss

Original West Virginia forestlands had largely recovered from earlier indiscriminate harvesting by the onset of 20th Century.

However, the requirements and urgency of the war effort during World War II led to a second round of indiscriminate cutting.

The Forestry Amendment

To avoid further loss of significant timber resources, and to promote the regeneration of the State's timberlands, the 1945 Legislature adopted a joint resolution putting The Forestry Amendment to the West Virginia Constitution on the ballot, and it was adopted by a vote of the people in November, 1946.

Article VI, Section 53:

“The legislature may by general law define and classify forest lands and provide for cooperation by contract between the State and the owner in the planting, cultivation, protection, and harvesting thereof. Forest lands embraced in any such contract may be exempted for all taxation or be taxed in such manner, including the imposition of a severance tax or charge as trees are harvested, as the legislature may from time to time provide. But any tax measured by valuation shall not exceed the aggregate rates authorized by section one of article ten of this Constitution.”

Long-delayed Implementation for Property Tax Purposes

Despite the adoption of the Forestry Amendment, until the comprehensive review and revision of *ad valorem* property tax laws in conjunction with the Statewide Reappraisal of the mid-1980s, no particular methodology was objectively and consistently applied to the valuation of timberland for property tax purposes.

Pre-existing Severance Tax

Nevertheless, starting in 1935, (more than a decade before adoption of the Forestry Amendment) the harvesting of timber has been subject to the business and occupation tax imposed at rates increasing to 2% (1959), 2.2% (1971) and 2.5% (1980) on its value determined by its selling price. Starting in 1989, the business and occupation tax on timber production, having been renamed the “severance tax” as of 1987, began being imposed at the rate of 3.22%.

Pre-existing Severance Tax

Then, starting in 2005, an additional severance tax, dedicated to retirement of the State's workers' compensation debt, was imposed at the rate of 2.78%, making a total severance tax rate of 6% on the value of timber production. The rate of the regular tax was reduced in 2007 to 1.22%, making a total severance tax burden on the value of timber production of 4%.

Pre-existing Severance Tax

Though its imposition has been suspended since 2010, the regular severance tax is scheduled to resume at the rate of 1.22% as soon as the additional severance tax expires when the satisfaction of the State's workers' compensation debt is certified by the Governor.

Managed Timberland Tax Valuations

As a part of the Statewide Reappraisal in the mid-1980s, the managed timberland valuation method was adopted which, instead of basing the property tax value of timberland on the value of the land and of the current stand of timber, managed timberland, which qualified as such, was valued on the basis of its capacity to grow commercially-harvestable timber.

Managed Timberland Tax Valuations

Thus, the current statutory provision, governing the application of the managed timberland valuation method, is based on the Legislature's findings "that the public welfare is enhanced by encouraging and sustaining the abundance of high quality forest land within the State; that economic pressures may force industrial, residential or other land development inconsistent with sustaining the forests: and that tax policy should provide an incentive for private owners of forest land to preserve the character and use of land as forest land and to make management decisions which enhance the quality of the future forest."

WV Code §11-1C-11(a)

Managed Timberland Tax Valuations

First, the law defines *timberland* in general, as real property, that is not a farm woodlot (e.g. used to grow produce nursery stock, nuts, etc. for human consumption), which consists “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 of normal stocking of forest trees which are well distributed over the growing site. WV Code §11-1C-2(a).

Managed Timberland Tax Valuations

Managed timberland is timberland “that is managed pursuant to a plan [that will maintain the property as managed timberland].” In addition, the owner of managed timberland must enter into an initial written contract with the West Virginia Division of Forestry (WVDOLF), and annually certify to the WVDOLF, that he, she or it will follow approved forest management practices for the subject property. WV Code §11-1C-2(b).

Managed Timberland Tax Valuations

Once a property is qualified as such, the methodology for determining the taxable value of managed timberland requires measuring the present value of reasonably anticipated value accretions in the standing timber occurring over an 80-year growing to harvest cycle based, in turn, on historically weighted stumpage values for different species, the site's soil quality and applicable financial factors (i.e. historic interest rates, management and holding costs, and quantifiable risks due to various causes). WV Code of State Rules, 110-1H-1 et seq.

Managed Timberland Tax Valuations

Timberland that does not qualify as managed timberland is to be valued at fair market value based on recent sales of comparable property, unless it was part of a farm woodlot which receives farm use valuation. WV Code §§11-1C-5(a)(2)(B) and 11-1C-11b(b). In all events, the value of timberland (but not farm wood lots) in any given county shall always be more than the value of managed timberland of comparable soil quality in that county. WV Code §11-1C-11b(d).

Issues

- A. Recent anomaly of decreasing actual stumpage values (due to multi-year national construction downturn) yet increasing calculated managed timberland tax values based on present value methodology.
- B. Obsolete and arbitrary soil quality measurements used in valuation methodology.
- C. Extra-statutory substantive minimum values in legislative rules which distort methodology.

Issues (cont.)

- D. Proper construction of constitutional limit on tax burden based on value.
- E. Interstate competition.
- F. Uneven enforcement of rules intended to encourage accountable timber management by favorable tax valuation and to discourage avoidance of legal prerequisites for favorable tax valuation which require accountable timber management.

Thank You