



TAX BULLETIN 15-5

Virginia Department of Taxation

June 25, 2015

IMPORTANT INFORMATION REGARDING THE FOREST PRODUCTS TAX

Effective July 1, 2015, House Bill 1724 (2015 *Acts of Assembly*, Chapter 170) revises the Forest Products Tax by shifting the imposition of the tax to the first manufacturer processing forest products into various sizes and forms or into other products; using or consuming forest products; or storing forest products for sale or shipment out of state. The intent of the legislation is to shift the imposition of the Forest Products Tax from processors operating in the woods to commercial taxpayers operating from fixed places of business in order to reflect current industry practices and enable taxpayers to more easily comply with the law.

This Tax Bulletin is intended to provide guidance to affected taxpayers regarding the new law. To the extent that House Bill 1724 conflicts with the Forest Products Tax Regulations (23 *Virginia Administrative Code (VAC)* 10-350-10 *et seq.*), the legislation supersedes the regulations, and this Tax Bulletin, developed pursuant to the legislation, should be followed.

Definitions

"Fixed place of business" means a mill, plant, yard, or other location at which occurs a regular and continuous course of dealing. The use of portable machinery or equipment, such as portable sawmills and portable chippers, by themselves, at the place of severance of forest products does not constitute a fixed place of business.

"Forest product" means wood, derived from trees severed in Virginia for commercial purposes, of any type or form, including but not limited to logs, timber, pulpwood, excelsior wood, chemical wood, woodchips, biomass chips, fuel chips, mulch, bolts, billets, crossties, switch ties, poles, piles, fuel wood, posts, all cooperage products, tanbark, mine ties, mine props, and all other types of forest products used in mines.

"Manufacturer" means any person that for commercial purposes at a fixed place of business (i) processes forest products into various sizes and forms, including chips; (ii) processes forest products into other products; (iii) uses or consumes forest products; or (iv) stores forest products for sale or shipment out of state.

"Shipper" means any person in this Commonwealth that sells or ships outside the

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Commonwealth by railroad, truck, barge, boat, or any other means of transportation any forest product in an unmanufactured condition, whether as owner, lessee, woodyard operator, agent, or contractor.

"Severer" means any person in this Commonwealth that fells, cuts, or otherwise separates timber or any other such forest product from the soil.

"Small Manufacturer" means any manufacturer of rough lumber who during the calendar year manufactures 500,000 or less board feet.

"Small Severer" means any person who severs for sale 100 or less cords of fuel wood, or 500 or less posts or fish net poles.

Imposition of the Tax

Prior to July 1, 2015, the Forest Products Tax was payable by every person engaged in business in Virginia as a manufacturer or shipper of forest products for sale, profit, or commercial use, including businesses operating out of mobile locations. Historically, mills and other large businesses were responsible for the tax. However, in recent years, more timber is being chipped, milled, or otherwise processed in the forests by logging companies before it is transferred to manufacturers for use or further processing. These changes in business practices resulted in more businesses processing forest products from mobile locations becoming subject to the tax.

Effective July 1, 2015, the Forest Products Tax is imposed on the first manufacturer using, consuming, or processing forest products unless the tax has been previously paid by the severer of the forest products. The Forest Products Tax also is imposed on the first manufacturer storing forest products for sale or shipment out of state unless the tax has been previously paid by the severer of the forest products. The manufacturer will not be liable for the Forest Products Tax if the manufacturer has received written documentation, such as a signed agreement, bill of sale, or invoice, from the severer that the tax has been paid. Such documentation must include (i) the severer's name, address, and Virginia forest products tax registration number; (ii) the date of sale or delivery; (iii) a description of the products sold or delivered; and (iv) a statement that the Virginia Forest Products Tax has been paid with regard to the forest products sold or delivered.

If there is no manufacturer or the manufacturer is not registered for the tax, then the tax is levied on the severer of the forest products. A signed agreement, bill of sale, or invoice between the severer and a manufacturer stating that the manufacturer is registered and liable for the tax on any forest products sold or delivered to the manufacturer shall relieve the severer of liability for the tax on such forest products.

Example 1:

A severer cuts down trees in the Commonwealth that are sold to a mill in the Commonwealth that processes the forest products into paper at a fixed place of business. The severer has not paid the Forest Products Tax on the forest products.

As the mill is the first manufacturer and is an in-state manufacturer, the mill is liable for the tax. The mill must register and pay the tax.

Example 2:

A severer cuts down trees in the Commonwealth that are sold to a mill in the Commonwealth that processes the forest products into paper at a fixed place of business. The severer has paid the Forest Products Tax on the forest products.

As the mill is the first manufacturer and is an in-state manufacturer, the mill would be liable for the tax except that the severer has previously paid the Forest Products Tax. In order to avoid being liable for the Forest Products Tax, the mill must receive written documentation from the severer that includes (i) the severer's name, address, and Virginia forest products tax registration number; (ii) the date of sale or delivery; (iii) a description of the products sold or delivered; and (iv) a statement that the Virginia forest products tax has been paid with regard to the forest products sold or delivered.

Example 3:

A severer cuts down trees in the Commonwealth that are sold to an out-of-state mill that processes the forest products into paper at a fixed place of business. The out-of-state mill has voluntarily registered to pay the Forest Products Tax. The severer has not paid the Forest Products Tax on the forest products.

As the mill is the first manufacturer, the mill is liable for the tax. The severer is relieved of any liability for the Forest Products Tax if he has received a signed agreement, bill of sale, or invoice stating that the manufacturer is registered and liable for the tax on any forest products sold or delivered to the manufacturer.

Example 4:

A severer cuts down trees in the Commonwealth that are sold to an out-of-state mill that processes the forest products into paper at a fixed place of business. The out-of-state mill is not registered to pay the Forest Products Tax.

As the mill is not registered for the tax, the severer is liable for the Forest Products Tax. The severer must register and pay the tax.

Example 5:

A severer cuts down trees in the Commonwealth and chips the trees with a portable chipper. The severer then sells the chips to a mill in the Commonwealth that processes the forest products into paper at a fixed place of business. The severer has not paid the Forest Products Tax on the forest products.

The severer is not a manufacturer as the forest products are not processed at a fixed place of business. As the mill is the first manufacturer and is an in-state manufacturer, the mill is liable for the tax. The mill must register and pay the tax.

Example 6:

A severer cuts down trees in the Commonwealth and chips the trees with a portable chipper. The severer then sells the chips to a biomass plant in the Commonwealth for use as fuel. The severer has not paid the Forest Products Tax on the forest products.

The severer is not a manufacturer as the forest products are not processed at a fixed place of business. As the biomass plant is using or consuming the forest products for commercial purposes at a fixed place of business, it is the first manufacturer and liable for the tax. The biomass plant must register and pay the tax.

Example 7:

A severer cuts down trees in the Commonwealth that are sold to customers for retail sale.

As there is no manufacturer, the severer is liable for the Forest Products Tax. The severer must register and pay the tax.

Example 8:

A sawmill, operating at a fixed place of business in the Commonwealth, purchases trees from a severer and chips the trees. The sawmill then sells the chips to a biomass plant. The severer has not paid the Forest Products Tax on the forest products.

As the sawmill is the first manufacturer and is an in-state manufacturer, the sawmill is liable for the tax. The sawmill must register and pay the Forest Products Tax. As the

biomass plant is not the first manufacturer, the biomass plant would not be liable for the tax.

Example 9:

A severer cuts down trees in the Commonwealth that are sold to a mill yard in the Commonwealth. The mill yard cuts the forest products into specific lengths for sale to sawmills. The severer has not paid the Forest Products Tax on the forest products.

As the mill yard is processing the forest products into various sizes and forms for commercial purposes at a fixed place of business, it is the first manufacturer and liable for the tax. The mill yard must register and pay the tax.

Example 10:

A severer cuts down trees in the Commonwealth that are sold to a mill yard in the Commonwealth. The mill yard holds the forest products for sale to an in-state sawmill. The mill yard does not process the forest products. The severer has not paid the Forest Products Tax on the forest products.

The mill yard is not a manufacturer as the forest products are not processed at a fixed place of business and the forest products are not stored for sale or shipment out of state. As the sawmill is the first manufacturer and is an in-state manufacturer, the sawmill is liable for the tax. The sawmill must register and pay the Forest Products Tax.

Example 11:

A severer cuts down trees in the Commonwealth that are sold to a mill yard in the Commonwealth. The mill yard holds the forest products for sale to an out-of-state sawmill. The mill yard does not process the forest products. The severer has not paid the Forest Products Tax on the forest products.

As the mill yard is storing the forest products for sale out of state for commercial purposes at a fixed place of business, it is the first manufacturer and liable for the tax. The mill yard must register and pay the tax.

Example 12:

A severer cuts down trees in the Commonwealth and uses a contract shipper to transport the trees to an out-of-state sawmill. The out-of-state mill is not registered to pay the Forest Products Tax.

The contract shipper is not a manufacturer as the shipper does not process the trees, use or consume the trees, or store the trees for sale or shipment out of state. As the sawmill is not registered for the tax, the severer is liable for the Forest Products Tax. The severer must register and pay the tax.

Registration of Manufacturers and Severers

Every in-state manufacturer processing forest products into various sizes and forms or into other products; using or consuming forest products; or storing forest products for sale or shipment out of state who is liable for the tax must be registered for the Forest Products Tax. If an in-state manufacturer is not currently registered for the Forest Products Tax, he must register with the Department of Taxation (Department) by filing Form R-1, Business Registration Application either through the Department's online services or by mail. Out-of-state manufacturers also may register to pay the Forest Products Tax with the Department. Out-of-state manufacturers who have registered for the Forest Products Tax are liable for the tax until, upon request or otherwise, the registration is terminated by the Department.

Severers who sell or deliver forest products severed in the Commonwealth to any person who is not registered for the Forest Products Tax are liable for the tax. Any severer liable for the tax must register to pay the Forest Products Tax with the Department using Form R-1, Business Registration Application.

Chips and Mulch Consisting of Both Pine and Other Species

Effective July 1, 2015, the Forest Products Tax is imposed on loads of chips and mulch consisting of both pine and other species, including products such as biomass chips and fuel chips, at the rate of \$0.10 per ton. An alternative rate of \$0.03 per ton is imposed in the event that the General Assembly fails to appropriate General Fund revenues for the reforestation of timberland activity.

Generally, loads of chip and mulch are comprised of debris left after logging and consist of both pine and other species. This is particularly true for loads sold for biomass chips and fuel chips. Taxpayers have generally found it difficult to determine the exact ratio of pine and other species in each load in the past, which created an administrative burden in determining the amount of tax due. The new category and rate for mixed loads, including biomass chips and fuel chips, should ease this administrative burden.

Small Manufacturers and Severers

Small manufacturers and severers may elect to pay the Forest Products Tax annually on or before January 30. In such instances, the taxpayer must notify the Department of the annual election. Additionally, small manufacturers may elect to pay a flat tax of \$230 if the amount of

rough lumber cut in the calendar year is 300,000 board feet or less and \$460 if the amount of rough lumber cut is between 300,000 board feet and 500,000 board feet. Small severers are liable for the Forest Products Tax at the same rates as all other manufacturers and severers.

Exemptions

The Forest Products Tax applies to the severance of timber and other forest products from Virginia soil, including land owned by the Commonwealth of Virginia or by the United States within the geographical confines of Virginia, where the forest products severed enter commercial channels of trade for competitive markets.

The Forest Products Tax does not apply to:

- Forest products severed from soil outside Virginia. (Source: *Va. Code* § 58.1-1601)
- Forest products severed from land owned either by this Commonwealth or the United States that do not enter commercial channels of trade for competitive markets. (Source: *Va. Code* § 58.1-1608)
- Individual owners of timber who occasionally sever or cut such timber from their own premises for use in the construction or repair of their own structures, buildings, or improvements, for their home consumption, or in the processing of their own farm products. (Source: *Va. Code* § 58.1-1608)
- Forest products severed from land owned by this Commonwealth and used by state educational institutions for experimentation in and teaching of forestry where severance is necessary for or incidental to such experimentation and teaching (Source: *Va. Code* § 58.1-1608)

Returns and Records

A Forest Products Tax return is due within 30 days after the close of each quarter, even if no forest products have been handled during the quarter. Full payment of the tax due must accompany the return. A penalty of five percent of the tax due is imposed for late payments.

Every manufacturer and severer, except for small manufacturers and severers, liable for the Forest Products Tax must keep and preserve records and other such books or accounts as may be necessary to determine the amount of tax for which he is liable, under the provisions of this chapter. The records must be organized so that the forest products handled are grouped into classifications that conform to the various tax rates levied by this chapter. Such records and books shall be kept and preserved for a period of three years and shall be open for examination at any time by the Department. (Source: *Va. Code* § 58.1-1617)

Additional Information

This Tax Bulletin is available on-line in the Laws, Rules, and Decisions section of the Department's website, located at www.tax.virginia.gov. More information regarding the Forest Products Tax also may be found on the Department's website. If you have any questions regarding the payment of the Forest Products Tax, please contact the Miscellaneous Tax Unit at (804) 786-2450. Manufacturers and severers may register for the Forest Products Tax by filing Form R-1, Business Registration Application either through the Department's online services at www.tax.virginia.gov or by mail. Questions regarding the registration process should be directed to Customer Services at (804) 367-8037.