

CHAPTER 77.

TAXATION OF FOREST CROP LANDS.

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77.01 Purposes. It is the intent of this chapter to encourage a policy of preserving from destruction or premature cutting the remaining forest growth in this state, and of reproducing and growing for the future adequate crops of forest products on lands not more useful for other purposes, so that such lands shall continue to furnish recurring forest crops for commercial use, all in a manner which shall not hamper the towns in which such lands lie from receiving their just tax revenue from such lands.

Note: Private logging railroad located on forest crop lands is not subject to assessment for taxation. 21 Atty. Gen. 660.

77.015 Lands in villages included. The provisions of sections 77.01 to 77.14 shall apply to villages for the same purposes as specified in section 77.01 and where in such sections the words "town" or "towns" appear they shall be substituted, for the purposes of this section, by the words "village" or "villages," respectively. [1937 c. 413]

77.02 Forest crop lands. (1) **PETITION.** The owner of any tract of land of not less than forty acres may file with the conservation commission a petition stating that he believes the lands therein described are more useful for growing timber and other forest crops than for any other purpose, that he intends to practice forestry thereon, that all persons holding incumbrances thereon have joined in the petition and requesting that such lands be approved as "Forest Crop Lands" under this chapter. Whenever any such land is incumbered by a mortgage or other indenture securing any issue of bonds or notes, the trustee or trustees named in such mortgage or indenture or any amendment thereto may join in such petition, and such action shall for the purpose of this section be deemed the action of all holders of such bonds or notes.

(2) **NOTICE OF HEARING, ADJOURNMENT.** Upon the filing of such petition the commission shall set such matter for public hearing at such time and place as it sees fit, but not later than one year from the date of such filing. Notice of the time and place of such hearing and a description, in specific or general terms, as the commission deems advisable, of the property requested to be approved as "Forest Crop Lands" shall be given to the owner of such land and to the assessor of the town or towns in which it is situated, by mail at least thirty days before the day of hearing. In addition a copy of such notice shall be published at least once in at least one newspaper published in the county or counties in which such land is located, the first publication to be at least thirty days before the day of hearing. Such hearing may be adjourned from time to time and no notice of the time and place of such adjourned hearing need be given, excepting the announcement thereof by the presiding officer at the hearing at which the adjournment is had.

(3) **DECISION, COPIES.** After hearing all the evidence offered at such hearing and after making such independent investigation as it sees fit the commission shall make its findings of fact and make and enter an order accordingly. If it finds that the facts give reasonable assurance that a stand of merchantable timber will be developed on such lands within a reasonable time, and that such lands are then held permanently for the growing of timber, rather than for agricultural, mineral, recreational or other purposes, and that all persons holding incumbrances against such land have in writing agreed to the petition, the order entered shall grant the request of the petitioner on condition that all unpaid taxes against said lands be paid within thirty days thereafter; otherwise the commission shall deny the request of the petitioner. If the request of the petitioner is granted, a copy of such order shall be forwarded to the state department of taxation, to the assessor of incomes, to the clerk of each town and to the register of deeds of each county in which any of the lands affected by said order are located. The register of deeds shall record the entry, transfer or withdrawal of all forest crop lands in a suitable manner on the county records and shall be entitled to a fee to be paid by the owner of 10 cents for each such government description recorded, but the minimum fee shall be 50 cents and the maximum

fee \$5. No recording of special classification or declassification is required. Any order of the department relating to the entry of forest crop lands issued on or before the twentieth day of March of any year shall take effect in such year, but all orders issued after the twentieth day of March of any year shall take effect the year following.

(5) SPECIAL CLASSIFICATION. In making its findings, the commission shall separately determine whether any of such lands bears a stand of merchantable timber and whether less than fifty per cent of the original volume thereof has been removed since the year 1915. If it so finds, it shall order such lands to be entered, but the order of entry shall be stamped with the words "Special Classification" in red ink, and such lands shall be subject to higher acreage share rates as provided in section 77.04 (2) and to annually increasing percentages of severance tax as provided in subsection (5) of section 77.06. Whenever 50 per cent or more of the merchantable saw timber shall have been removed, the special classification shall be discontinued as hereinafter provided and such lands shall then continue under the provisions of this chapter as though they had been entered without special classification. [1933 c. 327 s. 2, 3; 1935 c. 27; 1943 c. 20; 1943 c. 275 s. 33]

Note: Chapter 327, Laws 1933, amending this section, relating to the approval of lands as forest crop lands, so as to provide that the action of trustees under a mortgage incumbering land in joining in the petition shall be deemed the action of all holders of the mortgage bonds, has no retroactive ef-

fect. *Wabeno v. State Conservation Commission*, 220 W 502, 264 NW 497.

Chapter 327, Laws 1933, amending this section, applies only to mortgages or other indentures executed subsequently to its enactment. 26 Atty. Gen. 355.

77.03 Taxation of forest crop lands. From and after the filing of the order with the officers mentioned in subsection (3) of section 77.02 the lands described therein shall be "Forest Crop Lands," on which taxes shall thereafter be payable only as hereinafter provided. The passage of this act, petition by the owner, the making and recording of the order hereinbefore mentioned shall constitute a contract between the state and the owner, running with said lands, for a period of fifty years, unless terminated as hereinafter provided, with privilege of renewal by mutual agreement between the owner and the state, whereby the state as an inducement to owners and prospective purchasers of forest crop lands to come under this chapter agrees that until terminated as hereinafter provided, no change in or repeal of this chapter shall apply to any land then accepted as forest crop lands, except as the conservation commission and the owner may expressly agree in writing. If at the end of fifty years said contract is not renewed by mutual consent, the merchantable timber on said land shall be estimated by an estimator jointly agreed upon by the conservation commission and the owner, and in the event said conservation commission and said owner fail to agree, then and in that event, an estimator shall be appointed by the judge of the circuit court of the district in which said lands lie, whose estimate shall be final, and the cost thereof shall be borne jointly by the conservation commission and the owner; and the ten per cent severance tax paid on the stumpage thereon as agreed in the same manner as if said stumpage has been cut. The owners, excepting the owners of farm wood lots, by such contract consent that the public may hunt and fish on said lands, subject to such regulations as the conservation commission may from time to time prescribe.

Note: Provisions of 77.03, whereby owner of forest crop lands consents that public may hunt and fish thereon, subject to regulation by conservation commission, apply to county forest crop lands included in county forest reserve, regardless of provisions of 59.98 (2) (e). 25 Atty. Gen. 657.

77.04 Taxation. (1) TAX ROLL. The clerk on thereafter making up the tax roll shall enter as to each forest crop land description in a special column or some other appropriate place, in such tax roll headed by the words "Forest Crop Lands" or the initials "F. C. L.," which shall be a sufficient designation that such description is subject to this chapter, but for lands entered under the special classification the designation shall be made in red ink including the year of entry. Such lands shall thenceforth be assessed and be subject to review as provided in chapter 70 of the statutes, and such assessment may be used by the department of taxation in the determination of the tax upon withdrawal of such lands as forest crop lands as provided in section 77.10. No tax shall be levied on forest crop lands except the specific annual taxes as hereinafter provided.

(2) TAX PER ACRE; PAYMENT; PENALTY. Any owner, other than a county, shall be liable for and pay to the town treasurer on or before the thirty-first day of January of each year on each such description a sum herein called the "acreage share" computed at the rate of ten cents per acre on all lands except those under special classification as defined in subsection (5) of section 77.02 which shall be subject to the following rates per acre:

- 1st year—40 cents
- 2nd year—35 cents
- 3rd year—30 cents
- 4th year—25 cents
- 5th year—25 cents

6th year—20 cents
 7th year—20 cents
 8th year—15 cents
 9th year and thereafter—10 cents

"1st year" as used in this subsection means the calendar year dating the order of entry. If such acreage share be not paid by the thirty-first day of January to the town treasurer it shall be subject to interest at the rate of eight-tenths of one per cent per month or fraction thereof from the first day of January preceding. The said lands shall be returned as delinquent and sold for delinquent taxes in the manner provided for the sale of lands for taxes but no bid shall be received on such sale except from the county, and the county shall not be liable to the town for any amount except the acreage share subsequently paid by the owner. At the expiration of three years from the date of sale of any tax certificate acquired by the county hereunder, the county clerk shall promptly take a tax deed under the provisions of section 75.36, except that county board authorization shall not be required. On taking such deed the county clerk shall certify that fact and specify the descriptions to the conservation commission.

(3) APPORTIONMENT OF FOREST CROP LAND INCOME. Out of all moneys received by any town from any source on account of forest crop lands in such town, the town treasurer shall first pay twenty per cent to the county treasurer, retain forty percent for the town and apportion the remainder to the various common school districts or parts of such districts in which the said forest crop lands are located, in proportion to the acreage which the said lands within each school district or part thereof bears to the total acreage of the said lands in the town. [1931 c. 39; 1933 c. 327 s. 2; 1935 c. 83; 1937 c. 282; 1939 c. 329; 1943 c. 20]

Note: Amounts received by town pursuant to ch. 29, Laws 1937, were "on account of forest crop lands" and twenty per cent there-

of is payable to county under 77.04 (3). 31 Atty. Gen. 19.

77.05 State contribution. (1) CERTIFICATION. On or before the twentieth day of April the county treasurer of each county containing forest crop lands shall certify to the conservation commission for each owner, other than a county, the legal descriptions in each town on which the owner has paid the acreage share pursuant to subsection (2) of section 77.04, and also on acreage share previously returned delinquent and subsequently paid, except on lands on which an order of cancellation has been issued by the conservation commission pursuant to subsection (1) of section 77.10.

(2) As soon after the twentieth day of April of each year as feasible, the conservation commission shall pay to each town treasurer on each description as above certified and also on all county-owned forest crop lands in each town the sum of ten cents per acre out of the appropriation made by subsection (2) of section 20.07; provided, that if the total payments hereunder in any one year shall exceed the appropriation for that year then such payment of ten cents per acre shall be proportionately reduced. [1931 c. 39; 1933 c. 327 s. 2; 1935 c. 83, 109, 477; 1937 c. 282]

Note: Acreage canceled from entry of forest crop lands in March should not be included in following apportionment and payment made to towns under this section. Cancellation of forest crop land entries completed prior to April 20th in any year shall exclude such acreage from next payment of state contributions. 31 Atty. Gen. 228.

77.06 Forestation. (1) CUTTING TIMBER REGULATED. No person shall cut any merchantable wood products on any forest crop lands where the forest crop taxes are delinquent nor until 30 days after the owner has filed with the conservation commission and also with the department of taxation a notice of intention to cut, specifying the descriptions and estimated amount of wood products to be removed, and also the volume to be left as growing stock. The department of taxation, unless it shall find and certify that because of the financial standing of the owner a bond may properly be waived, may require a bond executed by some surety company licensed in this state or other surety or sureties approved by the department of taxation for such amount as such department of taxation may reasonably require for the payment to the conservation commission of the severance tax hereinafter provided. The conservation commission, after examination of the lands specified, may limit the amount of forest products to be removed in order that adequate growing stock may be left to furnish recurring forest crops. Cutting in excess of such limitation shall render the operator liable to double the severance tax prescribed in subsection (5) of section 77.06. In cases of double severance tax one-half shall be distributed as provided in subsection (3) of section 77.07 and one-half shall be paid to the town treasurer for distribution under the provisions of subsection (3) of section 77.04. Merchantable wood products include all wood products except wood used for fuel by the owner.

(2) APPRAISAL OF TIMBER, ZONES. During the month of July in each year the conservation commission, at such time and place as it shall fix, and after such public notice thereof as it deems reasonable, shall hold a public hearing, and not later than September

first thereafter shall make and file, open to public inspection, a determination of the reasonable stumpage values of the wood products usually grown in the several towns in which any forest crop lands lie. If the conservation commission finds there is a material variance in such stumpage values in the different localities, it may fix separate zones and determine such values for each zone.

(3) REVALUATION. As to any locality or zone in which the conservation commission deems there has been no material variance from the preceding year in stumpage values, it may omit to make any new valuation in any year, in which event the last preceding valuation shall continue in force until changed in a succeeding year.

(4) CUTTING REPORTED. On or before the fifteenth day of May and also of November succeeding any time in which any merchantable wood products were cut on any forest crop lands, the owner shall transmit to the conservation commission a written statement of the products so cut for the six months preceding the first day of that calendar month, specifying the variety of wood, kind of product, and quantity of each variety and kind as shown by the scale or measurement thereof made on the ground as cut, skidded or loaded as the case may be. If no such scale or measurement is made on the ground, an estimate thereof shall be made and such estimate corrected by the first scale or measurement made in the due course of business and such correction at once transmitted to the conservation commission. The conservation commission may accept such reports as sufficient evidence of the facts, or may either with or without hearing and notice of time and place thereof to such owner, investigate and determine the fact of the quantity of each variety and kind of product so cut during said periods preceding such reports.

(5) TAX LEVY ON RIGHT TO CUT TIMBER. The department of taxation, upon certification by the conservation commission during January of each year, shall assess and levy against such owner a severance tax on the right to cut and remove such wood products as were removed during the periods covered by the preceding May and November reports above provided for, at the rate of 10 per cent of the value of such wood products based upon the stumpage value then in force as hereinbefore provided, on all lands except those under special classification as defined in subsection (5) of section 77.02 which shall be subject to the following rates:

1st year	— 2 per cent
2nd year	— 3 per cent
3rd year	— 4 per cent
4th year	— 5 per cent
5th year	— 6 per cent
6th year	— 7 per cent
7th year	— 8 per cent
8th year	— 9 per cent
9th year and thereafter	— 10 per cent.

"1st year" as used in this subsection means the calendar year dating the order of entry. Upon making such assessment, the department of taxation shall promptly certify the same to the conservation commission and mail a duplicate of such certificate by registered mail to the owner who made the report of cutting at his last known post-office address. The tax thereby assessed shall become due and payable to the conservation commission on the last day of the next calendar month after the mailing to the owner of such certificate of assessment. On timber cut from forest crop lands on which the state has paid forestry aid pursuant to subsection (5) of section 59.98, the county shall pay a severance tax of 50 per cent, of which one-fifth shall be distributed as prescribed by subsection (3) of section 77.07 and four-fifths restored to the forestry fund provided by subsection (14) of section 20.20. [1933 c. 327 s. 2; 1935 c. 83, 109, 477 s. 10; 1937 c. 282; 1939 c. 346; 1943 c. 20]

Note: Tax commission must assess the tax in force when timber was cut rather than mission certifies the severance (77.06, Stats. 1935). 24 Atty. Gen. 488. schedule in force at time conservation com-

77.07 Severance tax. (1) LIABILITY FOR TAXES, LIENS. The owner of the land shall be personally liable for any severance tax because of any wood products cut therefrom, which tax shall also be a lien on such 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 such owner, or of any other person than a purchaser for value without notice in the usual course of business.

(2) PENALTY, COLLECTIONS. If any severance tax remain unpaid for thirty days after it becomes due, there shall then be added a penalty of ten per cent, and such tax and penalty shall thereafter draw interest at the rate of one per cent per month until paid. At the expiration of said thirty days the conservation commission shall report to the attorney-general any unpaid severance tax, adding said penalty, and the attorney-general shall thereupon proceed to collect the same with penalty and interest by suit against the owner

and by attachment or other legal means to enforce the lien and by action on the bond mentioned in subsection (1) of section 77.06, or by any or all such means.

(3) **DIVISION OF TAX MONEY.** All severance taxes collected in cash shall be divided as follows: The state shall retain an amount equal to the total acreage payments on the lands to which the said severance taxes relate, made by the state under section 77.05 with interest thereon at the rate of five per cent per annum, all penalties imposed under subsection (2) and an amount equal to five per cent of such total acreage payments to cover costs of administration, and the balance shall be paid to the town treasurer to be apportioned as provided in subsection (3) of section 77.04. [1933 c. 327 s. 3; 1935 c. 83]

77.08 Supplemental severance tax. At any time within one year after May fifteenth or November fifteenth when any cutting should have been reported, the conservation commission after due notice to the owner and opportunity to be heard, and on evidence duly made a matter of record, may determine whether the quantity of wood products cut from any such land, did in fact substantially exceed the amount on which the severance tax theretofore levied was based, and if so shall so notify the department of taxation, and thereupon the department of taxation shall assess a supplemental severance tax which, in all respects, shall have the same force and effect as the former severance tax, except only it shall not be a lien on any property the title of which has passed to a purchaser for value without notice. [1943 c. 20]

77.09 False reports, penalties. Any person who fails to report or shall intentionally make any false statement or report to the conservation commission required by section 77.06 shall be guilty of a misdemeanor, and punishable on conviction thereof by imprisonment in the county jail for not exceeding one year or by fine not exceeding one thousand dollars, or both.

Note: Enforcement of this section is upon conservation commission. Prosecution must be brought through office of district attorney of county where unauthorized cutting of timber was done. Penalty clause does not apply to those who trespass in cutting timber, but only to owner. 22 Atty. Gen. 515.

77.10 Withdrawal of forest crop lands. (1) **INVESTIGATIONS, REFUNDS, FORFEITURES.** (a) The conservation commission shall once in 5 years, or on the application of the department of taxation or the owner of any forest crop lands or the town board of the town in which said lands lie and may on its own motion at any time cause an investigation to be made and hearing to be had as to whether any forest crop lands shall continue under this chapter. If on such hearing after due notice to and opportunity to be heard by the department of taxation, the town and the owner, the conservation commission shall find that any such lands are not meeting the requirements set forth in section 77.02, the entry of such lands shall be canceled and copies of the order of withdrawal specifying the descriptions shall be filed with the conservation commission, the department of taxation, the assessor of incomes, the clerk of the town, and the register of deeds of the county in which such lands lie, and none of the provisions of this chapter shall thereafter apply to them, except section 77.07 so far as it may be needed to collect any previously levied severance or supplemental severance tax. However, in case said cancellation is accomplished within 5 years from the date that said land became forest crop lands hereunder, the owners shall thereupon repay to the conservation commission the amounts of all moneys thereon paid by the state with interest at 5 per cent per annum less any severance tax paid thereon. If at any time after 5 years the owner shall make use of the land for anything other than forestry, excepting grazing on farm wood lots, the conservation commission shall issue an order of withdrawal and the owner shall be liable for the tax and penalty provided in subsection (2) hereof. In either case, if the owner shall not repay said amounts on or before the thirty-first day of January next succeeding the return of such lands to the general property tax roll as provided in subsection (4) hereof, the conservation commission shall certify to the county treasurer the descriptions and the amounts due, and the county treasurer shall sell such lands as delinquent according to the procedure prescribed in subsection (2) of section 77.04. Whenever any county clerk shall have certified to the taking of tax deed pursuant to subsection (2) of section 77.04 the conservation commission shall issue an order of withdrawal as to the lands covered in such tax deed.

(b) Whenever any owner of forest crop lands conveys such land he shall, within ten days of the date of the deed, file with the conservation commission on forms prepared by the commission a transfer of ownership signed by him and an acceptance of transfer signed by the grantee certifying that he intends to continue the practice of forestry on such land. The conservation commission shall forthwith issue a notice of transfer to all officers designated to receive copies of orders of entry and withdrawal. Whenever a purchaser of forest crop lands declines to certify his intention to continue the practice of forestry thereon, such action shall constitute cause for cancellation of entry under paragraph (a) hereof.

(2) **ELECTION TO WITHDRAW LANDS.** (a) Any owner of any forest crop lands on

which all acreage share has been paid may elect to withdraw all or any of such lands from this chapter, by filing with the conservation commission a declaration withdrawing from this chapter any description owned by him which he specified, and by payment by such owner, other than a county, to the conservation commission within thirty days the amount of all real estate tax that would ordinarily have been charged against such lands had they not been subject to the provisions of this chapter with simple interest thereon at five per cent per annum, less any severance tax and supplemental severance tax or acreage share paid thereon, with interest computed according to the rule of partial payments at the rate of 5 per cent per annum. The exact amount of such tax shall be determined by the department of taxation after hearing and upon due notice to all parties interested, provided that when the tax rate of the current year has not been determined the rate of the preceding tax year may be used. On receiving such payment the conservation commission shall issue an order of withdrawal and file copies thereof with the department of taxation, the assessor of incomes, the clerk of the town and the register of deeds of the county in which such land lies. Such land shall then cease to be forest crop lands.

(b) Upon receipt of any such taxes by the state the conservation commission shall first deduct all moneys paid by the state on account of such lands under the provisions of subsection (2) of section 20.07, with interest thereon computed according to the rule of partial payments at the rate of five per cent per annum. The balance the said commission shall within twenty days remit to the town treasurer who shall pay twenty per cent to the county treasurer, retain forty per cent for the town and apportion the remainder to the various common school districts or parts of such districts in which the said forest crop lands were located, in proportion to the acreage which the said lands within each school district or part thereof bears to the total acreage of the said lands in the town.

(3) DECLASSIFICATION; COPIES. At the request of any owner of forest crop lands under special classification, the conservation commission shall examine such lands and shall also conduct a hearing, if the town board so desires, to determine whether such special classification shall be discontinued. If the commission finds that such classification shall be discontinued, it shall issue an order of declassification and send copies to all officials to whom the order of entry was sent.

(4) TAXATION AFTER WITHDRAWAL. When any description ceases to be a part of the forest crop lands, by virtue of any order of withdrawal issued by the conservation commission, taxes thereafter levied thereon shall be payable and collectible as if such description had never been under this chapter. [1933 c. 327 s. 2, 3; 1933 c. 411; 1933 c. 491 s. 4; 1935 c. 83, 109, 477; 1937 c. 282; 1939 c. 513 s. 26; 1943 c. 20]

Note: County lands entered under forest crop law may be withdrawn without payment by county of taxes and without refund of acreage aid paid by state. (Stats. 1931). 20 Atty. Gen. 1150; 22 Atty. Gen. 115. Withdrawal of forest crop lands cannot be completed until taxes mentioned in (2) (Stats. 1933) have been paid. 23 Atty. Gen. 790.

When lands are withdrawn from operation of forest crop law pursuant to provisions of (2) (a) such lands are to be taxed for years during which they were under law at same rate as was applied to other lands in taxing district for same years. 26 Atty. Gen. 529.

77.11 Accounts of conservation commission. The conservation commission shall keep a set of forest crop lands books in which shall always appear as to each description in each town containing any such lands, the amount of taxes paid by the state to the town and received by the state from the owner. All such payments shall be paid out of and receipts credited to the general fund. [1935 c. 83]

77.12 Review of findings, venue. Any finding of fact made under this chapter after due notice and hearing shall be final and conclusive, except and unless set aside or modified by the judgment of the circuit court for either Dane county, or of the county in which the land lies in either of which action may be brought for that purpose, within thirty days after the making of the finding sought to be reviewed.

77.13 County lands eligible, condition. Any county which has title to any lands eligible to registration as forest crop lands shall be deemed an owner as this term is used in this chapter and may register and withdraw such lands under the provisions of this chapter in the same manner and on the same basis as other owners, except that any such county shall not be required to pay the acreage share prescribed in section 77.04 and the real estate tax prescribed in subsection (2) of section 77.10 on any of its lands registered as forest crop lands. However, when voluntary withdrawal and sale of forest crop lands results in breaking up well blocked county forests the conservation commission shall deduct from the next payment of state contribution to the town within which such lands are located, the amount previously paid on the withdrawn lands. No county clerk shall issue a deed conveying county forest crop lands until such lands have been withdrawn and any deed issued contrary hereto shall be void. [1933 c. 411; 1937 c. 282]

77.14 Forest crop lands propaganda, protection, appropriation. (1) The conservation commission shall publish and distribute information regarding the method of taxation of forest crop lands provided in this chapter, and is authorized to employ a fire warden in charge of fire prevention in forest crop lands. All actual and necessary expenses incurred by the conservation commission or by the department of taxation in the performance of their duties under this chapter shall be paid from the appropriation made in subsection (2) of section 20.07 upon certification by the commission incurring such expenses. [1943 c. 20]