

## Chapter 321

### State Forest Research and Experimental Tax

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#### CROSS REFERENCES

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Rehabilitation of forest lands, loaning credit of state to provide funds for, Const. Art. XI-E, § 1	Refunds, 306.260 to 306.280
321.100	Specific biennial appropriation required despite dedication or continuing appropriation, 291.238, 291.240
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**321.010 Definitions.** For the purpose of this chapter unless the context requires otherwise:

(1) "Commission" means the State Tax Commission.

(2) "Forest products" means and includes all products derived through the cutting, severing or otherwise removing of forest trees and windfalls.

(3) "Harvesting" means the cutting, severing or otherwise removing of timber or other forest products from the land.

(4) "Person" means an individual, partnership, corporation and any association of whatever nature.

(5) "Sale" means a sale as defined in ORS chapter 75.

**321.020 Privilege tax on harvesting forest products; duration, amount and measurement of tax.** (1) There hereby is levied a privilege tax, for the state fiscal year beginning July 1, 1947, and for each subsequent year thereafter to and including the state fiscal year ending June 30, 1953, upon each person engaged in the business of harvesting timber or other forest products for sale, profit or other commercial use.

(2) Subject to subsection (3) of this section, from and after July 1, 1947, there is levied and there shall be collected and paid a tax of five cents per thousand feet, board measure, on the total quantity of timber or other forest products harvested within this state, measured by use of any log scale which is or may be in general use in the logging industry and which is designed to measure total volume of merchantable timber or other forest products in board feet. However, if the commission finds that the scale used by any taxpayer in computing the tax due under this chapter does not accurately reflect the total quantity of merchantable timber or other forest products harvested by him, it may require the taxpayer to adopt another log scale in general use in the industry which in the commission's opinion will accurately reflect his merchantable harvest in board feet.

(3) The first 25,000 feet, board measure, of timber or other forest products harvested annually by any person otherwise subject to the provisions of this chapter during each fiscal year shall be excluded from the total quantity of harvested timber or other forest products which constitutes the measure of this tax.

**321.030 Payment of tax; returns.** (1) The taxes levied under ORS 321.020 are due and payable in quarterly instalments, on or before the thirtieth day of October, January, April and July, for the preceding calendar quarter.

(2) Each person engaged in the business of harvesting timber or other forest products shall, on or before the thirtieth day of October, January, April and July, make out a return on the form prescribed, showing the amount of the tax for which he is liable for the preceding calendar quarter and such other information as the commission considers necessary to correctly determine the tax due and shall mail or deliver the return, together with a remittance for the amount of the tax, to the office of the State Tax Commission. The return shall be signed and verified by the taxpayer or a duly authorized agent of the taxpayer. Whenever in its judgment good cause exists, the commission may allow further time for filing of a return and payment of tax.

**321.040 Crediting payments.** All payments received under this chapter must be credited, first, to penalty and interest accrued, and then to tax due.

**321.050 Recomputation of tax by commission; interest and penalties on deficiency or delinquency.** (1) If upon audit of the return or otherwise the commission believes that the return filed does not correctly reflect the amount of tax due or is incorrect in any particular, it shall recompute the tax. The amount determined to be due by the commission upon audit shall be the tax, and any delinquency or deficiency, plus \$1 shall be paid within 30 days after notice thereof is mailed by the commission to the taxpayer.

(2) A delinquent tax or a deficiency shall bear interest at the rate of one-half of one percent per month, or any fraction thereof from the time the return was due. If a delinquency or deficiency is due to negligence, but without intent to defraud, a penalty of six percent of the delinquent or deficient tax, plus \$1 shall be added, plus interest at the rate of one-half of one percent per month, or any fraction thereof, from the time the return was due. If all or any part of the delinquency or deficiency for which a determination is made is due to fraud or an intent to evade this chapter or authorized rules and regulations, a penalty of 100 percent of such amount, plus \$1 shall be added, plus interest at the rate of one percent per

month, or any fraction thereof, from the time the return was due.

**321.060 Determining and collecting tax on failure to make return.** If any person engaged in the business of harvesting timber or other forest products neglects or refuses to make a return required to be made by this chapter, the commission is authorized to determine the tax due, based upon any information in its possession or that may come into its possession. The commission shall give the person written notice by mail postpaid of the tax and delinquency charges determined and such tax plus the delinquency charges specified in ORS 321.050 shall be a lien from the time of harvest as provided in ORS 321.090. If the tax and delinquency charges are not paid within 30 days from the mailing of the notice, the commission shall proceed to collect the tax in the manner provided in ORS 321.070.

**321.070 Warrant for collection of tax.**

(1) If any tax imposed by this chapter, or any portion of such tax, is not paid within 30 days after the return is due or 30 days after the notice of delinquency or deficiency is mailed, as the case may be, the commission shall issue a warrant, under its official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the taxpayer owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return the warrant to the tax commission and to pay to it the money collected by virtue thereof, within 60 days after receipt of the warrant. The sheriff shall, within five days after the receipt of the warrant, file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when the copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property of the taxpayer against which it is issued, in the same manner as a judgment duly docketed in the office of the clerk. The sheriff thereupon shall proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions

issued against property upon judgments of a court of record, and he is entitled to the same fees for his services in executing the warrant, to be added to and collected as a part of the warrant liability.

(2) In the discretion of the tax commission, a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect this tax, and in the execution thereof, such agent has the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty.

(3) If a warrant is returned not satisfied in full, the tax commission shall have the same remedies to enforce the claim for taxes against the taxpayer as if the state had a recorded judgment against the taxpayer for the amount of the tax.

**321.080 Satisfactions and releases of liens of docketed warrants.** The commission is authorized to execute and file satisfactions or releases of the liens created under ORS 321.070.

**321.090 Tax as lien; attachment and foreclosure.** The tax imposed by this chapter shall operate as a first lien on the timber or other forest products from the time of harvest. The lien shall follow the timber or other forest products in the same manner as provided for liens on logs under ORS 87.125 to 87.140 and 87.615 to 87.675 and may be attached and be foreclosed in the manner provided in those statutes.

**321.100 Tax as debt; action to recover tax.** All taxes, interest and penalties due and unpaid under this chapter shall constitute a debt due the State of Oregon and may be collected, together with interest, penalty and costs, by appropriate judicial proceeding, which remedy is in addition to all other existing remedies.

**321.110 Hearing or redetermination of tax by commission.** (1) Any person from whom an amount is determined to be due under the provisions of this chapter may petition the commission in writing for a hearing or redetermination thereof within 20 days from the date of mailing of the notice of deficiency or delinquency. The petition shall set out in full the grounds upon which the deficiency or delinquency is claimed to be erroneous. If a petition for hearing or redetermination is not filed with the commission within the 20 days, the

amount determined to be due shall become final. If a petition is filed within the 20 days, the commission shall notify the petitioner of the time and place fixed by it for the hearing or redetermination.

(2) Upon such hearing the commission shall review the determination of the amount of tax due, including penalty and interest thereon, and shall redetermine such amount if it is necessary upon the law and fact to do so. The order or decision of the commission upon a petition for a hearing or redetermination shall be in writing and an original copy thereof, signed by the commission, shall be mailed to the petitioner within five days from the date of issuing or rendering the order or decision. All such orders or decisions shall become final 30 days after notice thereof is mailed to the petitioner unless an appeal is taken to the circuit court as provided in ORS 321.120.

**321.120 Appeal from commission to circuit court.** (1) Any person who has petitioned for a hearing or redetermination as provided in ORS 321.110 and whose interest has been adversely affected by the action of the commission may appeal from the order or decision by filing with the secretary of the commission, before the order or decision becomes final, a notice of appeal specifying the grounds of appeal signed by the petitioner or his attorney.

(2) Within 20 days of the receipt of the notice of appeal, the secretary of the commission shall prepare and forward to the appellant or his attorney a transcript of the record of the hearing or redetermination together with a copy of the petition for redetermination, a copy of the order or decision of the commission entered upon the hearing and a copy of the notice of appeal, all duly certified.

(3) Within 30 days of the filing of the notice of appeal with the commission, the appellant shall file the record of the proceedings before the commission as furnished by the secretary of the commission with the clerk of the circuit court of the county designated in subsection (4) of this section. Thereafter, such circuit court has jurisdiction of the matter but not otherwise.

(4) If the petitioner is an individual resident of this state, the appeal shall be taken to the circuit court of the county wherein the individual resides. If the appeal is taken by a nonresident individual or by a corporation, association, partnership or any

other person, it shall be taken in the circuit court of Marion County.

**321.130 Hearing and determination by circuit court.** The circuit court in which the appeal is perfected shall hear and determine the matter in the manner of a suit in equity. If, upon the hearing, the court finds the amount of the tax determined by the commission is correct and was made fairly and in good faith, it shall affirm the order or decision of the commission and enter its order or judgment accordingly, but if the court finds that the amount of the tax was greater or less than the amount determined by the commission, or if the same was not fairly or in good faith made, the court shall set aside the order or decision of the commission, determine the amount of the tax and enter its order or judgment accordingly.

**321.140 Appeal to Supreme Court.** An appeal may be taken by the taxpayer or the commission to the Supreme Court in the manner that appeals are taken in suits in equity, irrespective of the amounts involved

**321.150 Collection of tax not stayed by appeal; effect of paying taxes pending appeal; costs and disbursements.** (1) No proceeding for the collection of the taxes provided for in this chapter shall be stayed by reason of the taking or pending of any appeal, except upon order of the court and only in those cases wherein a good and sufficient undertaking has been executed in favor of the commission and approved by the court covering the entire amount of the tax imposed and any and all costs that may be involved. The undertaking shall be filed with the clerk of the court.

(2) The payment of taxes while appeal is pending shall not operate as a waiver of the appeal or the right to a refunding of taxes found to be excessively determined.

(3) The provisions of law governing costs and disbursements on appeal shall be applicable to the appeal.

**321.160 Enforcement of chapter; rules and regulations; requiring information.** (1) This chapter shall be enforced and the tax imposed by this chapter shall be collected by the State Tax Commission which shall have the power to prescribe forms and to promulgate rules and regulations for the ascertainment, assessment and collection of the tax imposed by this chapter.

(2) For the purpose of determining the

tax imposed by this chapter, the commission may:

- (a) Require any person to furnish any information deemed necessary.
- (b) Examine the books, records and files of such person.
- (c) Subpena and examine witnesses and administer oaths.

**321.170 Disposition of revenues; Timber Harvest Tax Account; State Forest Research and Experimental Fund.** (1) The revenue from the tax imposed by this chapter shall be remitted to the State Treasurer who shall deposit it in the General Fund to the credit of the Timber Harvest Tax Account of the State Tax Commission.

(2) All expenses incurred in the collection of the revenue from this tax and all refunds of the tax which have been audited and approved by the commission shall be paid out of the Timber Harvest Tax Account on warrants drawn by the Secretary of State and for this purpose a balance of \$30,000 shall be maintained to the credit of that account.

(3) On February 1, May 1, August 1 and November 1 of each year, all moneys in excess of \$30,000 remaining to the credit of the Timber Harvest Tax Account shall be transferred from the General Fund and deposited in and to the credit of the State Forest Research and Experimental Fund, which fund hereby is created and the moneys to be deposited therein hereby are made available to the State Board of Forestry which shall expend 40 percent of such moneys for experiments and research as may be necessary to develop techniques for the rehabilitation, protection and management of forest lands, and 60 percent for research in the utilization of waste resulting from the harvesting, processing and manufacturing of forest crops, and other expenses incurred by the Forest Products Laboratory pursuant to ORS 526.210 to 526.250.

(4) The Secretary of State shall audit all duly approved claims lawfully incurred in carrying out the provisions of this chapter and shall draw his warrants on the State Treasurer for the payment thereof.

(5) All unexpended balances remaining in such funds shall continue to be available for the purposes of this chapter and shall not revert to, nor at any time be made a part of, the General Fund.

**321.180 Receipts under this chapter not to replace regular revenues.** No moneys collected under this chapter shall be used to replace, or as a substitute for, moneys regularly appropriated or otherwise made available to the State Board of Forestry for the administration, management and protection of state forest lands.

**321.190 Prohibited acts.** No person engaged in the business of harvesting timber or other forest products shall:

(1) Refuse to make any return required by this chapter.

(2) Make any false or fraudulent return or false statement on any return.

(3) Evade the payment of the tax, or any part thereof, imposed by this chapter.

(4) Aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this chapter.

(5) Disobey any subpena or subpena duces tecum of the commission.

(6) Refuse to testify when required so to do.

**321.200 Short title.** This chapter may be cited as the State Forest Research and Experimental Tax Law.

**321.990 Penalties.** Violation of any provision of this chapter is a misdemeanor and, upon conviction, is punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding one year, or both.

## CHAPTERS 322 TO 325

[Reserved for expansion]