

Chapter 528

1959 REPLACEMENT PART

Reforestation Lands and Taxation Thereof

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528.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Board" means the State Board of Forestry.

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

(3) "Forest crop" means timber, chittam bark, Christmas trees and any other marketable growth from the forest soil.

(4) "Forest fee" means that uniform annual charge made by the state as license for using land for forest crop production.

(5) "Harvesting" means cutting, severing or removing for use or sale.

(6) "Legal description" means United States Government legal description, or description by metes and bounds.

(7) "Owner" means:

(a) The owner of the land as shown on the current tax roll;

(b) The owner of the timber as shown on the current tax roll, if all or part of the timber on the land is owned separately and that fact is shown on the current tax roll; and

(c) Each owner of an undivided interest who is shown on the current tax roll, if the land or timber, or both, are owned by more than one person holding undivided interests and that fact is shown on the current tax roll.

(8) "Protection" means safeguarding from fire, insects and disease.

(9) "Reforestation lands" means lands classified as reforestation lands under this chapter.

(10) "State Forester" means the State Forester or his authorized representative.

(11) "Yield tax" means that percentage of the gross value, immediately prior to harvesting, of any forest crop in addition to all ad valorem taxes and forest fees previously paid on land and crop. [Amended by 1955 c.578 §1; 1959 c.496 §1]

528.020 Purposes of chapter. The purposes of this chapter are:

(1) To promote the establishment of new forest crops on cutover or denuded, privately owned forest lands.

(2) To encourage thinnings and improvement cuttings to promote maximum growth and protection of immature stands.

(3) To provide the forest owner with tax relief during the growth period and to protect and maintain the county tax base and stabilize tax revenues.

(4) To discourage premature harvesting of forest crops. [Amended by 1959 c.496 §2]

528.025 Application of 1959 amendments and additions. The 1959 amendments and additions to this chapter apply to all forest lands classified as reforestation lands within this state, irrespective of the date when classified. [1959 c.496 §19]

528.030 State Forester to propose classification of certain lands as reforestation lands; listing of such lands; petition by owner for classification of lands. (1) The State Forester shall determine what lands within the state may be classified as reforestation lands, and, upon such determination, shall prepare a list of such lands, by counties, giving the legal description thereof and forward to the county assessor of each county wherein the lands are situated a list of the lands in that county which the State Forester proposes to recommend for classification as reforestation lands.

(2) An owner who wishes to have his land classified as reforestation lands may file a petition with the State Forester giving the legal description of such land and presenting evidence satisfactory to the State Forester that such lands are eligible for classification under this chapter and, thereupon, such land shall be included on the list forwarded to the county assessor under subsection (1) of this section. [Amended by 1959 c.496 §3]

528.040 Hearing on proposed classification; notice of hearing required. A hearing on the classification proposed under ORS 528.030 shall thereafter be held before the State Forester at the courthouse in the county seat in each county wherein any lands proposed for such classification are situated. The State Forester shall give notice of such hearing by publication in at least two issues of one or more newspapers having general circulation in the county wherein the hearing is to be held, the last publication of the notice to be at least 30 days prior to the date of the hearing. The State Forester shall also send by mail to each owner of land proposed for such classification in the county, at the address of the owner as shown on the records of the tax collector of the county, and to the commission and the assessor of the county a similar notice of the hearing. The notice shall be mailed at least 60 days prior to the date specified in the notice for the hearing and shall set forth the date

when and the place where the hearing will be held. At the hearing the State Forester shall hear all objections to, and suggestions, arguments and remonstrances for or against the proposed classification. [Amended by 1959 c.496 §4]

528.050 Recommendation and report as to classification; State Tax Commission to make final determination; objections to classification. (1) After the hearing, as provided in ORS 528.040, the board shall review the proposed classifications, and shall direct the State Forester to prepare a list of the lands which the board recommends for classification as reforestation lands for each of the counties, giving the legal descriptions of the lands, and shall forward the lists to the commission, together with a report of the hearings held by the State Forester, embodying the objections to and the arguments for the proposed classification with respect to each parcel or group of parcels of land.

(2) The commission shall consider the reports of the hearings and any matter bearing thereon, review the list of lands recommended by the board for classification as reforestation lands, and prepare an order finally determining the classification thereof.

(3) The commission shall forward certified copies of the order to the assessor and county clerk of the county wherein the lands are situated, one certified copy to the State Forester, and one certified copy to the owner, referring to his lands only. The county clerk shall record the order free of charge.

(4) No land shall be classified as reforestation lands over the objection of the owner. No land shall be classified as reforestation lands over the objection of the county court or board of county commissioners of the county wherein the lands are situated unless such classification is found by the State Board of Forestry to be in the public interest. [Amended by 1959 c.496 §5]

528.060 Eligibility for classification. (1) No lands shall be classified as reforestation lands unless the lands fall in one of the following classes:

(a) Lands denuded or substantially denuded of timber in merchantable quantities by fire, insects, disease or other causes.

(b) Cutover lands meeting a standard equivalent to the requirements acceptable for release under ORS 527.010 to 527.240.

(c) Lands supporting and having thereon only a minimum forest tree growth.

(2) In addition to the requirement of subsection (1) of this section, in order to be eligible for classification as reforestation lands, lands must meet all of the following requirements:

(a) Lands must have, in the judgment of the State Forester, adequate tree seed source available or be supporting minimum stocking of forest trees as required by ORS 527.010 to 527.240.

(b) Lands must be, in the judgment of the State Forester, suitable for and likely to produce new forest crops.

(c) Lands must be provided with protection from fire, insects and disease, as approved by the board and required by law. [Amended by 1959 c.496 §6]

528.070 Lands to be classified annually; declassification of lands improperly used or not protected or erroneously classified. (1) The State Forester shall annually determine what lands, not already classified as reforestation lands, should be so classified, and thereafter the procedure required of the agencies named in this chapter and described in ORS 528.030 to 528.060 shall be followed.

(2) The State Forester shall ascertain periodically if lands classified as reforestation lands are being protected as provided by law and are being used primarily for forest crop production; and, if the lands are not being so protected or used or, in his judgment, such lands are erroneously classified under the provisions of ORS 528.010 and 528.030 to 528.060, the State Forester shall recommend to the board that the lands be declassified. The State Forester shall send by registered or certified mail to the owner of the land, at the address of the owner as shown on the records of the tax collector of the county, notice of his recommendation and the basis thereof. Within 60 days of the mailing of such notice any owner to whom such notice was mailed who believes that such recommended declassification is improper may file a written petition with the board setting forth his reasons for objecting to such declassification. If such petition is filed, the board shall afford such owner the opportunity of appearing at an informal conference with the board or such member or members of its staff as the board may appoint to hear such petition. The board shall thereafter issue an order finally determining such petition. After issuing such order or, in the event no petition was filed, reviewing the basis for the recommendation, the board

may approve in whole or in part the list of lands for declassification. The State Forester shall forward a list of the lands approved for declassification to the commission, together with a written statement as to the basis therefor. The commission, upon the basis of such statement and approved list, shall order the lands so listed to be removed from classification as reforestation lands if the commission determines such declassification to be in the public interest. [Amended by 1959 c.496 §7]

528.080 Amount payable upon declassification; declassification upon transfer to exempt owner or upon application of owner.

(1) Whenever any parcel of land is removed from the classification of reforestation land under subsection (2) of ORS 528.070, it shall thereafter be subject to the ad valorem property tax of this state and there shall be due and owing to the county in which the parcel of land is situated a sum of money equal to the excess, if any, of the ad valorem property tax for comparable land and forest crop in that county over the amount of the forest fee and yield tax paid under this chapter upon the land and forest crops for each year while so classified. The excess, if any, shall be due and payable 30 days after the date of the order of removal, and unless so paid shall be subject to the same interest, penalty and cost charges as apply to delinquent ad valorem property taxes, and the procedure for its collection shall be the same as provided for by law.

(2) The owner of any parcel of land classified as reforestation land or the owner of any forest crop thereon shall, not less than 10 days prior to the transfer of either the land or the forest crop or any part thereof to an owner in whose hands the property is exempt from ad valorem taxation, give notice of such transfer by registered or certified mail to the tax collector of each county wherein the land or crop is situated, to the State Forester, and to the commission. The commission, immediately upon receipt of such notice, shall order the land removed from classification effective upon the date of the proposed transfer. As of the date of such transfer there shall be due and owing to each county in which such lands are situated a sum of money equal to the excess, if any, as determined under subsection (1) of this section. Such sum shall

be a debt due and owing to such county from the owner of the lands as of the date of transfer and shall be payable on or before 30 days after the date of transfer. Unless so paid, the sum shall be delinquent and, together with any accrued penalty, may be charged by the tax collector against the real property of the owner as delinquent taxes in the same manner and with the same force and effect as delinquent personal property taxes are charged against real property under ORS 311.645. Unless the notice provided for in this subsection is given, there shall be added to the sum due a penalty of 100 percent thereof, except that if it is shown that the failure to give the notice is due to reasonable cause and not to wilful neglect or fraud, there shall be added to the sum an amount equal to one-half of one percent thereof for each day or fraction of a day during which such failure continues, not exceeding 25 percent in the aggregate.

(3) Upon written application of the owner of the land, the State Forester shall recommend to the commission that reforestation lands be removed from classification and if such lands are declassified they shall thereafter be subject to the ad valorem property taxes and in addition there shall be due and owing from the owner of the land to the county wherein the lands are located a sum of money equal to the excess as determined under subsection (1) of this section, or a sum equal to twelve and one-half percent of the current market value of all the forest crops situated on the land, whichever is the greater. When lands are declassified under this subsection, such lands are not eligible for classification under the provisions of this chapter until ad valorem property taxes have been paid on the lands for a period of not less than 10 years following declassification unless the forest crops thereon have been removed excepting those required under the provisions of ORS 527.010 to 527.240. With each application for declassification under this section, the owner shall pay to the State Forester a fee for inspection by the commission of the lands proposed to be declassified. The fee is \$25 for the first 160 acres or less and 10 cents per each additional acre in excess of 160 acres. The inspection fee shall be credited to the General Fund as miscellaneous receipts.

(4) Any order of removal from classification heretofore or hereafter issued applies to both the land and the forest crop thereon

and, except as provided in subsection (2) of this section, becomes effective on June 30 following the date of the order unless the order specifically provides for an earlier effective date. [Amended by 1955 c.578 §2; 1959 c.496 §8]

528.090 Reforestation lands to be removed from assessment roll; forest fee in lieu of ad valorem tax; collection of fee. (1) No order of classification as reforestation lands shall become effective until July 1 following the date thereof. After classification of any lands as reforestation lands and after notice thereof, given as in this chapter provided, the county assessor shall remove such lands from the current assessment roll and enter them on a separate roll or continue showing the lands on the assessment and tax roll but with an entry clearly designating such lands as reforestation lands. Whether such lands are maintained on the current or separate roll, the roll shall be prepared in the manner provided by ORS 308.220.

(2) In lieu of the ad valorem property tax, there shall annually be due and payable by the owner of such reforestation lands a forest fee. The premises, during the period of classification as reforestation lands, shall be subject only to an annual forest fee of 10 cents per acre on lands west of the summit of the Cascade Mountains or five cents per acre on lands east of the summit of the Cascade Mountains and, in addition to a yield tax on all forest crops harvested from such land, as in this chapter provided. For the purposes of this subsection, the summit of the Cascade Mountains shall be considered to be a line beginning at the intersection of the northern boundary of the State of Oregon and the western boundary of Wasco County, thence southerly along the western boundaries of the counties of Wasco, Jefferson, Deschutes and Klamath to the southern boundary of the State of Oregon. The Legislative Assembly finds and declares that the forested areas situated within eastern Oregon predominate in ponderosa pine trees and associated species, and that the forested areas situated within western Oregon predominate in Douglas fir and associated species; that the rate of growth and the amount of forest crops produced differ in eastern and western Oregon; and that, therefore, in order to give recognition to such differences and their effect on the amount of taxes that

equitably should be paid, different annual forest fee rates are established by this subsection for eastern and western Oregon.

(3) The forest fee shall become effective as of the effective date of classification, July 1, and on such date become a lien against the premises and shall become due and payable at the same time and in the same manner, with the same interest, penalty and cost charges as apply to the ad valorem property taxes in this state, and, in case of delinquency, shall be subject to the same procedure for foreclosure as are property tax liens. [Amended by 1955 c.578 §3; 1959 c.496 §9]

528.095 Defects in notice and other defects, when cured. The removal of any lands from the assessment roll by the county assessor, and the listing by him upon a separate roll of such lands as reforestation lands as provided by ORS 528.090, when done each year for a period of five consecutive years, shall constitute sufficient notice of the classification of such lands as reforestation lands so as to cure any defect in the notice provided for in ORS 528.040 or such other defect as would otherwise void the classification. [1955 c.578 §6]

528.100 Permit required before harvesting forest crop from reforestation lands; unit value of crop to be set forth in permit.

(1) No person shall harvest or cause to be harvested any forest crop, or remove or cause to be removed any forest growth, from privately owned lands which have theretofore been classified as reforestation lands, without first having obtained a written permit so to do from the commission.

(2) The permit shall set forth the unit value, by units of proper measurement, of the respective kinds of forest crops on the premises. The unit value of a particular grade and species is the retail market value thereof for 1,000 board feet or an equivalent value for such other applicable unit of such grade and species for current harvesting and conversion into wood products. The retail market value per unit of measurement of a particular grade and species of timber upon a tract shall be determined by a method which makes reasonable allowance for species, quality, growing conditions, age, volume after allowance for defect and breakage, costs of removal, accessibility to point of conversion, topography, costs of conversion into logs, and any other relevant factors.

(3) The unit value, determined as provided in subsection (2) of this section, shall be filed and open to public inspection. [Amended by 1955 c.326 §10; 1959 c.496 §10]

528.110 Forest crops harvested from reforestation lands subject to yield tax; report of crop harvested. Except as provided in ORS 528.115, all forest crops harvested from lands classified as reforestation lands shall be subject to a yield tax of 12.5 percent of the value, as determined by the commission, of every unit thereof. In the harvesting of forest crops on such lands the owner shall keep an exact record of the number and kinds of units of all forest products harvested from the lands described in the written permit required by ORS 528.100. Within 30 days after June 30, and within 30 days after December 31, of each year, the owner shall submit a report to the commission and to the tax collector of the county wherein the lands are situated listing the number and kinds of units of all forest products harvested from the lands during the preceding six months. The reports shall be made on forms prepared and approved by the commission. The report to the tax collector shall be accompanied by the owner's remittance, in legal tender, of the yield tax due hereunder. [Amended by 1953 c.326 §10; 1959 c.496 §11]

528.115 Exemption from yield tax. No yield tax is payable on forest products harvested from lands classified under this chapter if they are harvested by the owner for use on the premises and if such harvest annually does not exceed 10,000 feet, board measure, or an equivalent measurement of such products. [1959 c.496 §13]

528.120 Penalty for failure to obtain harvesting permit or to pay tax; collection of penalty, procedure. (1) Any person or owner harvesting forest crops from lands which have been classified as reforestation lands who fails first to obtain a permit from the commission, or to make his remittance of yield taxes due under ORS 528.110 within the 30-day period, shall be subject to a penalty of an additional yield tax of 10 percent of the tax due in addition to interest on any unpaid yield tax, at the rate of one-half percent per month for each month or fraction of a month (computed from the time the tax became due) during which such

tax remains unpaid. The amount of the yield tax, penalty and interest shall be a first lien against the forest crops and land and a debt due and owing to the county from the owner of the lands at the time the forest crops are harvested.

(2) The tax collector of the county wherein the lands are situated shall, in addition to the remedies provided by statute for the collection of taxes against real and personal property, maintain an action against the owner of the land for its collection with the penalty and with interest thereon. The action shall be maintained in the name of the county in which the taxes are due.

(3) At the time of commencement of the action for the collection of said taxes, penalty and interest, the county shall have the benefit of all laws of this state pertaining to provisional remedies against real and personal property of the party against whom the taxes have been levied, without the necessity of filing an affidavit, as otherwise provided by statute. The county clerk of the county wherein the action is commenced shall immediately issue a writ of attachment upon application therefor by the plaintiff. The writ shall be directed to the sheriff of as many counties as the district attorney may direct. [Amended by 1953 c.326 §10; 1955 c.578 §4; 1959 c.496 §14]

528.130 [Repealed by 1953 c.326 §10]

528.140 Disposition of forest fees and yield taxes. (1) All forest fees collected under the provisions of this chapter shall be deposited by the tax collecting officer with the county treasurer in the same manner and at the same time that other taxes are remitted to the treasurer. The county treasurer shall apportion the same to the various taxing districts in which the lands are situated in the proportion that the tax levy of each taxing agency or district bears to the total tax levy against the property within such taxing district for the year in which the levy is made.

(2) All yield taxes and amounts paid when reforestation lands are declassified shall be deposited promptly by the tax collecting officer with the county treasurer. The county treasurer shall apportion the same to the various taxing districts in which the lands are situated in the manner provided by subsection (2) of ORS 275.270 without an order by the county court, and shall hold such moneys in special accounts in the name

of the taxing body to which they are apportioned.

(3) Not later than July 10 of each year, the county treasurer shall certify to the county assessor the balance in each account as of June 30 immediately preceding. The assessor shall subtract from the levy of each taxing body the amount of the balance in the account for such taxing body as certified by the county treasurer and shall extend on the assessment roll in each case no more than the remainder of the property tax levy of the taxing body for the current fiscal year. Immediately upon extension of the remainder of the tax levies, the county assessor shall certify to the county treasurer that the amounts of the balances as certified by the county treasurer should be distributed to the respective taxing bodies.

(4) The moneys held in special accounts by the county treasurer under this section shall not be considered as probable receipts in preparing estimates of receipts under ORS 294.305 to 294.415. [Amended by 1959 c.496 §15]

528.150 Double taxation forbidden. Any land and forest crop while classified under the provisions of this chapter shall not be otherwise assessed and taxed under the laws of this state; but nothing contained in this chapter shall prevent:

(1) The assessment and taxation under the ad valorem property tax laws of all buildings, improvements, water and power rights, mineral or other values, other than forest crops, upon any lands taxed under the provisions of this chapter.

(2) The collection of ad valorem property taxes which prior to the classification of the land as reforestation lands became a lien against the land or any portion thereof.

(3) The collection of taxes, charges or assessments made pursuant to law for protection.

(4) The collection of taxes under ORS chapter 321. [Amended by 1959 c.496 §16]

528.160 Administration of chapter. (1) The commission shall issue permits for harvesting forest crops from reforestation lands, fix unit values of forest crops immediately prior to harvesting and make orders, rules and regulations necessary to carry out and accomplish the purposes of this chapter.

(2) The State Forester, with the approval of the board, may make orders, rules and regulations necessary to carry out and

accomplish the purposes of this chapter. [Amended by 1953 c.326 §10; 1959 c.496 §17]

528.170 Right of entry of commission and board; examination of books and records; taking testimony. Members of the commission or of the board, or authorized representatives of either the commission or board may go upon any lands classified under this chapter. The commission or board, for the purpose of ascertaining the correctness of any return or report made pursuant to this chapter by any owner or agent, may examine or cause to be examined, by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matter, and may require the attendance of the owner or of any person having knowledge of the premises, and may take testimony and require proof material for its information, with power to administer oaths to such persons. [Amended by 1953 c.326 §10]

528.180 Oaths and acknowledgments; false return or representation prohibited. (1) All officers empowered by law to administer oaths, members of the board or commission and such officers as they may designate may administer an oath to any person or take the acknowledgment of any person in respect to any return or report required by this chapter or by the rules and regulations of the board or commission under this chapter.

(2) No person shall knowingly make any false return or false representation under the provisions of this chapter. [Amended by 1953 c.326 §10]

528.190 Review of administrative decisions; undertaking required before harvesting crop which is subject of proceedings; undertaking to secure payment of yield tax.

(1) Any person aggrieved by any act of the State Forester, board or commission affecting his property or interest as a taxpayer under the reforestation law may appeal to the commission by filing a petition with the commission in the form and manner prescribed for appeals thereto under the ad valorem property tax laws from county boards of equalization, to the extent that they may be properly deemed to apply; provided, that such petition must be filed within 30 days after the order complained of is mailed to the petitioner or the act complained of is made known to him. All petitions shall be heard in the manner prescribed by such laws,

and appeals to the State Board of Tax Appeals and to the circuit court and Supreme Court may be taken as therein provided.

(2) Before harvesting any forest crop which is the subject of proceedings before the commission, the State Board of Tax Appeals or the courts, the owner thereof shall furnish a good and sufficient undertaking in such an amount as the commission shall deem adequate and proper to insure that the county shall not incur any loss of taxes pending adjudication of the issues. The undertaking shall be with one or more sureties qualified to become bail upon an arrest who shall file an affidavit from which it shall appear that such sureties are qualified and that taken together, they are worth double the amount specified in the undertaking over and above all debts and liabilities and property exempt from execution.

(3) Whenever the commission has reasonable doubt as to the financial responsibility of a permittee, it shall require such permittee to furnish a good and sufficient undertaking in such an amount as the commission shall deem adequate and proper to insure that the county shall not incur any loss of yield tax revenue. The undertaking

shall be determined as provided in subsection (2) of this section. [Amended by 1953 c.326 §10; 1959 c.496 §18]

Note: A 1959 Act creating a State Board of Tax Appeals was vetoed by the Governor. Consequently, the references to the State Board of Tax Appeals in ORS 528.190 should be disregarded.

528.200 to 528.980 [Reserved for expansion]

528.990 Penalties. (1) In addition to the penalties provided in ORS 528.120, violation of subsection (1) of ORS 528.100 is punishable, upon conviction, by a fine of not more than \$1,000 or by imprisonment in the county jail for not more than six months, or both. Each day's harvesting of such forest products without a permit shall constitute a separate and distinct violation.

(2) Violation of subsection (2) of ORS 528.180 is punishable, upon conviction, by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for not less than 30 days nor more than one year, or both. Such fine and imprisonment shall not relieve any person from full payment, with penalty and interest, of any amount due under this chapter.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on November 1, 1959.

Sam R. Haley
Legislative Counsel

CHAPTER 529

[Reserved for expansion]