



This publication provides general information and is not meant to be a substitute for tax laws or regulations.

Carbon Offset Arrangements offer the opportunity to reverse or stabilize human and societal emissions from fossil fuels and land use through the sales of carbon offsets by forest landowners. Land in West Virginia leased by commercial entities for use in carbon offset programs is taxable under the personal income tax and the corporation net income tax as the lease of real property and sale of services within the state.

In forestry carbon programs, timber owners can contract into three different types of carbon offset projects: afforestation or reforestation, avoided conversion, and improved forest management. A timber owner who is participating in any of these activities can contract to (1) lease the forest carbon contained in standing trees for a certain amount of time and (2) manage the property pursuant to the requirements of the carbon program that best suits their management practices.

Several different transactions related to carbon capture transactions *may* be subject to income tax in West Virginia including:

- The lease of standing trees in West Virginia,
- The action of a third-party aggregator who bundles tracts for the purpose of qualifying for the credit,
- The sale of timber management services,
- Sale of carbon credits by the aggregator.

Different transactions may result in different tax consequences.

Whether located in West Virginia or out of state, a timber owner as well as an aggregator have income in West Virginia if it is derived from trees grown on a tract of land located in West Virginia.

Income

Taxability of income in West Virginia first depends on whether income from certain transactions is included in a taxpayer's federal adjusted gross income (Personal Income Tax) or federal taxable income (Corporation Net Income Tax). Once included at the federal level, taxability by West Virginia is then determined based on whether or not the income from the transaction was derived from West Virginia.

Profits from the lease of land in West Virginia are taxed as income to the property owner, regardless of whether the transaction is considered a lease of real property or merely a lease of the trees. Rental lease income is considered ordinary income, which allows a taxpayer to deduct eligible business expenses.

Timber Management Services are sourced based on where the product is received by the purchaser, meaning where the services were first available for use. A transaction between the timber owner and the aggregator is a taxable sale of timber management service. That service is typically "received," meaning "sourced," at the physical location of the tract upon which the trees that are being managed grow.
W. Va. §11-15B-14 and -15.

Sales and Use Tax

Timber owners are contracted to (1) lease trees for a stated period of time and (2) manage the property. Both of these activities are subject to West Virginia Sales and Use Tax. However, under the Sales and Use Tax, long term leases (leases exceeding 30 days) are exempt. While timber management contracts are exempt, a lease of real estate may be treated differently depending on the terms. Additionally, sales tax cannot be imposed on sales of intangible property, such as the sale of carbon credits or tax offsets arising from property owned within the state. With long term leases and intangibles having exemptions, timber management services for timber located in West Virginia would likely be the only taxable transaction without an exemption, requiring the sales tax to be paid by the aggregator and collected and remitted by the timber owner.

Property Tax

The Division of Forestry's Managed Timberland program allows enrolled tracts of land to be appraised for ad valorem property tax purposes only at its value as timberland - not at its fair market value. The eligibility criteria for participation in the managed timberland program does not preclude the profitable use of the land. However, it does exclude tracts that are subject to restrictions or regulations which limit the use of the tract in a way that precludes the commercial production and harvesting of the timber on it. *W. Va. §11-1C-2*. If a carbon credit lease agreement imposes restrictions on the harvesting of timber from the tract, then the tract should not receive preferential tax treatment as managed timberland.

For more information, you can:

- **Call** a Taxpayer Services Representative at (304)558-3333 or toll-free at (800) 982-8297
- **Email** taxhelp@wv.gov
- **Go Online** to tax.wv.gov