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Advisory Bulletin No. 22/06/11 – Stumpage liability & lump sum timber sale licences

PURPOSE

This bulletin provides information to customers and BC Timber Sales (BCTS) staff regarding stumpage liability as it relates to lump sum timber sale licences (LSTSLs).

BACKGROUND

LSTSLs (i.e., those for which stumpage is calculated using the information provided by a cruise of the timber conducted before the timber is cut) were introduced by BCTS in late 2008 and now comprise a significant component of the program's annual sales plans. Given the results-based nature of the BCTS tenure model and an initial focus on the pursuit of innovative ways of minimizing waste and marketing low value fibre, BCTS was reluctant to provide formal guidance with respect to stumpage liability issues. However, now that the innovative TSL initiative has matured and LSTSLs are in mainstream use such guidance is now considered appropriate.

DEFINITION

For the purposes of this bulletin, “stumpage” in respect of a LSTSL means the total stumpage value plus the applicable bonus offer.

GUIDANCE

Section 130 of the *Forest Act* stipulates, among other things, the circumstances that money is required to be paid to the government (e.g., stumpage in respect of a LSTSL). The section also establishes the authority for government to place a lien in favour of the government to recover that money. Section 131 of the *Forest Act* further establishes that a person who acquires or deals in timber can also be held liable for any unpaid money due the Crown in respect of that timber.

In the above context, staff in the Forest Revenue Operations department of the Ministry of Finance (i.e., the government agency with the primary responsibility for invoicing and collecting stumpage) have expressed the following views regarding how they will typically apply section 130 and 131 *Forest Act* authority insofar as LSTSLs are concerned:

Question 1 - Will the grade of any timber purchased by a person who acquires or deals in timber on which stumpage has not been paid from a LSTSL be considered with respect to stumpage liability?

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Answer 1 – In the case of LSTSLs it is unlikely that timber grades would be used to determine a person's stumpage liability. Forest Revenue Operations will instead seek to recover stumpage based on the total volume of wood purchased divided by the total value of the LSTSL. For example, if the total stumpage on a LSTSL is \$1.2 million and a person acquires 50% of the timber volume on which stumpage hasn't been paid then that person would be found liable for \$600,000 in stumpage due the Crown.

Question 2 – How would stumpage liability be determined where the total volume of timber removed from the LSTSL is less than the cruise volume upon which the stumpage is based (i.e., volume shortfall)?

Answer 2 – Forest Revenue Operations will seek to recover stumpage based on the volume of timber a person who acquires or deals in timber on which stumpage has not been paid receives. For example, the total stumpage on a LSTSL with an estimated volume of 50,000 m³ is \$1.8 million. A total volume of timber cut and removed from the LSTSL is 40,000 m³ and 25% of that 40,000 m³ is acquired by a log broker (i.e., 10,000 m³). In such a case, in the event the LSTSL holder has not paid stumpage on the 10,000 m³ the broker could be found liable for \$360,000 in stumpage (i.e., 10,000 m³ represents 20% original timber volume estimated by the cruise, so the stumpage liability is 20% of \$1.8 million or \$360,000).

Question 3 – How would stumpage liability be determined where the timber volume is destroyed prior to delivery a person acquiring or dealing in the timber?

Answer 3 – Stumpage liability to anyone who deals in wood on which stumpage has not been paid will be limited to the volume of timber they received. As such, in this example since the person did not receive any timber before it was destroyed they would not bear any of the stumpage liability.

Question 4 – How would stumpage liability be determined with respect to the LSTSL holder where the total volume of timber removed from the LSTSL is less than the timber cruise volume estimate upon which the stumpage is based (i.e., volume shortfall)?

Answer 4 – Pursuant to section 106 of the *Forest Act*, the cruise is the sole means by which stumpage is determined for a LSTSL. As such, and given the binding nature of the LSTSL application and LSTSL itself, the LSTSL holder is liable paying all stumpage due the Crown regardless of the volume of timber that person actually cuts and removes from the cutting authority area or is estimated in the cruise.



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Question 5 – How would stumpage liability be determined with respect to the LSTSL holder where the total volume of timber removed from the LSTSL exceeds the timber cruise volume estimate upon which the stumpage is based (i.e., volume overage)?

Answer 5 – In this situation the LSTSL holder's stumpage liability is limited to the stumpage the person committed to pay in their successful LSTSL application and as set out in the LSTSL itself.

Question 6 – How would stumpage liability be determined with respect to a LSTSL holder where all or a portion of the timber is destroyed by fire prior to delivery to mill?

Answer 6 – Subject to extenuating circumstances, the LSTSL holder will be considered liable for all stumpage due the Crown irrespective whether that timber was cut, removed or destroyed by fire.

CONTACTS

For further information regarding this advisory bulletin please contact Shawn Hedges, Ministry of Forests, Lands and Natural Resource Operations at (250) 387-8944 or shawn.hedges@gov.bc.ca.