

1 HB364  
2 140120-3  
3 By Representatives Thomas and McMillan  
4 RFD: County and Municipal Government  
5 First Read: 21-FEB-12



1 further processing, for highway or road construction and  
2 maintenance.

3 "(2) COMMISSIONER. The Commissioner of Revenue of  
4 the Alabama Department of Revenue.

5 "(3) DEPARTMENT. The Alabama Department of Revenue.

6 "(4) OPERATOR. Any person engaged in mining or  
7 quarrying operations in the state, whether individually,  
8 jointly, or through a parent, subsidiary, or affiliated  
9 company, or by agent, employee, or contractor.

10 "(5) PERSON. Any individual or individuals,  
11 partnership, limited partnership, corporation, limited  
12 liability company, limited liability partnership, business  
13 trust, or any other association of persons.

14 "(6) POLLUTION CONTROL OR ABATEMENT. As defined in  
15 Section 40-23-4(a)(16) and shall include, but shall not be  
16 limited to, severed materials used in the treating, modifying,  
17 or disposing of water or air pollutants with lime or limestone  
18 in water treatment or scrubbing systems in order to comply  
19 with a federal, state, or local pollution control law or  
20 regulation.

21 "~~(6)~~ (7) PRODUCER. An operator engaged in the sale  
22 of severed materials.

23 "~~(7)~~ (8) PURCHASER. A person acquiring severed  
24 materials from a producer and liable for the tax imposed  
25 hereunder.

26 "~~(8)~~ (9) SEVERED MATERIAL. ~~Shall mean all~~ All  
27 natural minerals, including, but not limited to, sand, gravel,

1 sandstone, granite, shale, clay, except clay that produces  
2 lightweight aggregate, dolomite, and limestone.

3 "~~(9)~~ (10) STATE. The State of Alabama and its  
4 departments and agencies.

5 "~~(10)~~ (11) TON. A short ton of 2,000 pounds.

6 "§40-13-53.

7 "The term "severed material," as defined in  
8 subdivision (8) of Section 40-13-51 shall not include lime or  
9 limestone used for agricultural purposes or for pollution  
10 control or abatement purposes, nor rock dust used for settling  
11 coal dust in underground mines or similar uses, nor any  
12 natural minerals used for the purpose of producing portland  
13 cement, nor processed sand used in the foundry cores, mold,  
14 and linings, nor clay that produces lightweight aggregate,  
15 severed materials that are further processed into a finished  
16 aggregate or limestone product without being transported on a  
17 public road, marble and marble by-products, iron ore,  
18 quartzite, coal, oil, and natural gas and the severance of  
19 marble and marble by-products, iron ore, quartzite, coal, oil,  
20 and natural gas shall not be subject to the provisions of this  
21 article.

22 "(a) The tax levied by this article shall apply to  
23 all severed material severed from the ground within this state  
24 and sold as tangible personal property, regardless of the  
25 place of sale or the fact that delivery may be made outside  
26 the county, except that no tax shall be due on any such  
27 minerals that are sold to a purchaser for use outside the

1 state if provided such minerals are not transported on public  
2 roads in Alabama. Records relating to minerals purchased for  
3 use outside the state, including method of delivery, shall be  
4 available for verification and audit purposes to the  
5 department and the department shall make the records available  
6 to the county commission of the county from which the  
7 materials were severed upon request of the county commission.

8 "(b) Notwithstanding the provisions of subsection  
9 (a), or any other provisions in this article to the contrary:

10 "(1) Any severed material severed from the earth by  
11 an operator or producer and moved from one place to another on  
12 the same site, or transported to another site owned by the  
13 same operator or producer shall not be considered a severance  
14 thereof for purposes of taxation; and

15 "(2) Any severed materials or any other kind of  
16 material when severed and used for fill by an operator,  
17 producer or any other person, whether from the same  
18 construction site, job site, borrow pit, or any site other  
19 than a commercial quarry shall be exempt from the severance  
20 tax levied by this article.

21 "(3) Chert shall be exempt from the severance tax  
22 levied by this article, including any county or municipality  
23 owned and operated chert facility.

24 "(4) Severed materials which are sold, delivered, or  
25 transferred between separate legal entities are subject to the  
26 tax regardless of any common ownership or other affiliation  
27 between the producer and the purchaser.

1           "(5) A producer who severs material from the earth  
2           and sells the severed material to the first purchaser without  
3           the materials being transported on a public road shall be  
4           exempt from the payment of the tax on the sale, provided that  
5           the materials will later be processed into a finished  
6           aggregate or limestone product for resale. In such instance,  
7           the tax shall be levied on the finished aggregate or limestone  
8           product made from such exempt material and shall be remitted  
9           by the first purchaser who shall be subject to the provisions  
10           of this chapter. The severance tax shall not apply to severed  
11           material that is wasted by any manufacturing process provided  
12           the material is not transported on a public road in this state  
13           and is not sold to another entity.

14           "(6) The federal government and the State of  
15           Alabama, along with their agencies and political subdivisions,  
16           including municipalities, counties, and city and county school  
17           boards, are sovereign governmental entities. Direct purchases  
18           by sovereign governmental entities are not subject to the tax  
19           hereunder.

20           "(c) Any severed material which has been severed and  
21           on which any county severance tax has accrued prior to October  
22           1, 2004, in the county in which the severance has occurred  
23           shall be exempt if such tax has been paid.

24           "§40-13-54.

25           "(a) The rate of the tax shall be ten cents (\$0.10)  
26           per ton on severed material sold as tangible personal  
27           property. Provided, however, that naturally occurring

1 unprocessed sand may be taxed at a higher rate by a local act  
2 and all such tax collected at such higher rate shall be  
3 remitted directly to the jurisdiction in which the operator  
4 severing such naturally occurring unprocessed sand is located.

5       "(b) ~~The~~ Except as provided in Section 40-13-55(c),  
6 the tax levied by this article shall be collected by the  
7 producer and become due and payable by the purchaser thereof  
8 at the time of sale or delivery, whichever first occurs,  
9 provided that the tax shall be identified as a severance tax  
10 on a bill of sale, invoice, or similar sales document to the  
11 purchaser thereof, otherwise the tax shall instead be the  
12 obligation of the producer. The tax levied under this chapter  
13 shall not be included in the measure of tax for any other tax  
14 imposed by the state.

15       "(c) A producer shall be allowed a credit against  
16 the tax levied hereunder for any severed material severance  
17 tax remitted to any county in connection with severed  
18 materials severed in one county and transported into another  
19 county for further processing by the producer or an affiliate  
20 of the producer.

21       "(d) A purchaser claiming an exemption shall provide  
22 the producer with the proper documentation which includes the  
23 full name and address of the purchaser, the date of sale, the  
24 type of product purchased, the product usage, and shall state  
25 that the severed materials will be used by an exempt entity or  
26 used for an exempt purpose. If the proper documentation of  
27 exemption is presented to the producer, the producer shall not

1 be liable for the tax imposed should the purchaser use the  
2 severed material for another purpose that is subsequently  
3 determined not to be exempt. In that case, the purchaser using  
4 the materials for other than an exempt purpose shall be liable  
5 for the tax. The exemption documentation form submitted by the  
6 purchaser shall be kept on file by the producer and submitted  
7 to the department upon request.

8 "§40-13-55.

9 "(a) The department shall administer and collect  
10 this tax and shall promulgate rules and regulations necessary  
11 and reasonable for the administration of this article. It  
12 shall be the duty of the department to include in such  
13 regulations an appropriate method to allocate funds collected  
14 to the county where the severed material was severed or  
15 processed. Any records related to the collection,  
16 distribution, and enforcement of this tax in a particular  
17 county, including severance tax returns, shall be made  
18 available to the county commission of the county upon request  
19 from the county commission.

20 "(b) The department and producers shall use the  
21 inventory accounting principle known as "first in-first out"  
22 in determining the tax payable on stockpiles or inventories of  
23 severed material sold, and to which county the tax revenue  
24 should be allocated, regardless of where the severed material  
25 is stored or sold. Any records detailing the allocation of  
26 funds under this subsection shall be forwarded to the county



1 commission in a county receiving an allocation at the time the  
2 monies are distributed to the county.

3 "(c) For severed materials governed by the  
4 provisions of Section 40-13-53(b) (5), the severance tax shall  
5 be collected at the time the product is first transported on a  
6 public road in this state. The first purchaser as defined in  
7 Section 40-13-53(b) (5) shall collect and remit the severance  
8 tax, and shall provide reports concerning this taxable event  
9 to the department as set out for producers in Section  
10 40-13-56.

11 "§40-13-56.

12 "For the purpose of ascertaining the amount of tax  
13 due and payable under this article, it shall be the duty of  
14 all producers to transmit to the department, on or before the  
15 twentieth day of the month next succeeding the month in which  
16 the tax accrues, a return upon the forms provided by the  
17 department. The return shall show the month or period covered,  
18 the total number of tons of each type of severed material sold  
19 from each production unit operated, owned, or controlled by  
20 the producer in each county during the period covered, the  
21 amount of the tax due, and such other information as the  
22 department may reasonably require to allocate the tax between  
23 raw materials severed and finished products sold, as the case  
24 may be in particular counties. The return shall be signed by  
25 the producer and shall be accompanied by the full amount of  
26 the tax shown to be due in good and immediate funds. A copy of  
27 the severance tax return shall be made available to any county

1 commission receiving a portion of the tax paid upon request by  
2 the county commission.

3 "§40-13-57.

4 "(a) The tax levied by this article shall become  
5 delinquent on the twenty-first day of the month next  
6 succeeding the month in which the tax is due. Provided,  
7 however, that the department, for good cause shown, may extend  
8 the time for making a return required under this article  
9 pursuant to rules adopted by the department.

10 "(b) The department ~~may~~ shall impose interest and  
11 penalties on unpaid taxes which become delinquent. One-half of  
12 all interest and penalties collected with respect to the tax  
13 imposed by this article shall be retained by the department to  
14 help defray the expenses of administration and collection of  
15 the tax.

16 "(c) No penalties shall be imposed by the department  
17 against a producer or purchaser for any severance tax due  
18 under the act adding this subsection based upon an  
19 interpretation of the provisions of that act until and unless  
20 such time as the department has adopted rules related to such  
21 provision of that act and the rules have been effective for 60  
22 days thereafter. Thereafter, any penalties assessed under this  
23 tax may be abated by a showing of reasonable cause.

24 "§40-13-58.

25 "(a) All revenues collected from the tax levied  
26 pursuant to this article, less an amount to cover the expenses  
27 of administration and collection and one-half of all interest

1 and penalties collected, as provided in subsection (b) of  
2 Section 40-13-57, shall be remitted quarterly to the governing  
3 body of the county from which the severed material was severed  
4 within 60 days following the end of a calendar quarter along  
5 with a report prepared by the department detailing how the  
6 amount remitted was determined. Notwithstanding the above, the  
7 aggregate amount retained by the department to defray the  
8 expenses described herein shall not exceed 1.5 percent of the  
9 total revenues collected during such calendar quarter and  
10 shall be credited to its current service revenue.

11 " (b) The revenues remitted to a county as provided  
12 in subsection (a) shall be deposited into a fund held and  
13 dispensed by the county commission and designated as the  
14 severed material severance tax fund. At least 75 percent of  
15 such funds shall be allocated and utilized by the county for  
16 the construction, maintenance, and repair of the county's road  
17 system or, if provided by local legislation, for a local  
18 economic development authority, public transit, construction  
19 and maintenance of county roads and bridges, or the  
20 reclamation of lands where natural materials have been  
21 severed. Notwithstanding the foregoing, revenues distributed  
22 to Franklin County as provided in subsection (a) shall be  
23 allocated and utilized exclusively for economic development.  
24 Twenty-five percent of the funds distributed to a county as a  
25 result of the severance of materials from within the corporate  
26 limits of a municipality in the county shall be expended by

1 the county on county roads or other projects authorized by  
2 this article within the corporate limits of that municipality.

3 "(c) Revenues collected by the tax imposed by this  
4 article shall be remitted back to the county from which the  
5 severed material was originally produced based on total tons  
6 severed in such county subject to the severance tax multiplied  
7 by the rate of tax, less sums due the department, as provided  
8 in subsection (a), based on forms submitted to the department  
9 from the operator or producer.

10 "(d) Any adjustment of taxes, interest, or penalties  
11 which is necessary to adjust any error in the calculation,  
12 collection, or disbursement may be made at a subsequent  
13 collection or disbursement."

14 Section 2. This act shall become effective October  
15 1, 2012, following its passage and approval by the Governor,  
16 or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on County and Mu-  
nicipal Government..... . . . . . 21-FEB-12

Read for the second time and placed  
on the calendar with 1 substitute  
and..... . . . . . 08-MAR-12

Read for the third time and passed  
as amended..... . . . . . 26-APR-12

Yeas 95, Nays 0, Abstains 0

Greg Pappas  
Clerk