

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

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ENROLLED, An Act,

To amend Sections 40-13-51, 40-13-53, 40-13-54, 40-13-55, 40-13-56, 40-13-57, and 40-13-58, Code of Alabama 1975, relating to the severance tax on certain materials; to further provide for the levy, collection, and administration of the tax, including the point when the tax is levied; to provide a definition to specify certain exemptions; and to require the Department of Revenue to provide the county commission of a county with certain tax records and information related to severance tax collections and payments from operators in the county.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-13-51, 40-13-53, 40-13-54, 40-13-55, 40-13-56, 40-13-57, and 40-13-58, Code of Alabama 1975, are amended to read as follows:

"§40-13-51.

"As used in this article, the following terms shall have the following meanings:

"(1) BORROW PIT. An area from which soil or other unconsolidated materials are removed to be used, without further processing, for highway or road construction and maintenance.

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

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

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

6           "(5) PERSON. Any individual or individuals,  
7 partnership, limited partnership, corporation, limited  
8 liability company, limited liability partnership, business  
9 trust, or any other association of persons.

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

17           "~~(6)~~ (7) PRODUCER. An operator engaged in the sale  
18 of severed materials.

19           "~~(7)~~ (8) PURCHASER. A person acquiring severed  
20 materials from a producer and liable for the tax imposed  
21 hereunder.

22           "~~(8)~~ (9) SEVERED MATERIAL. ~~Shall mean all~~ All  
23 natural minerals, including, but not limited to, sand, gravel,  
24 sandstone, granite, shale, clay, except clay that produces  
25 lightweight aggregate, dolomite, and limestone.

1           "~~(9)~~ (10) STATE. The State of Alabama and its  
2 departments and agencies.

3           "~~(10)~~ (11) TON. A short ton of 2,000 pounds.

4           "§40-13-53.

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

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

1 tax regardless of any common ownership or other affiliation  
2 between the producer and the purchaser.

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

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

22 "(c) Any severed material which has been severed and  
23 on which any county severance tax has accrued prior to October  
24 1, 2004, in the county in which the severance has occurred  
25 shall be exempt if such tax has been paid.

1           "§40-13-54.

2           "(a) The rate of the tax shall be ten cents (\$0.10)  
3 per ton on severed material sold as tangible personal  
4 property. Provided, however, that naturally occurring  
5 unprocessed sand may be taxed at a higher rate by a local act  
6 and all such tax collected at such higher rate shall be  
7 remitted directly to the jurisdiction in which the operator  
8 severing such naturally occurring unprocessed sand is located.

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

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

1           "(d) A purchaser claiming an exemption shall provide  
2 the producer with the proper documentation which includes the  
3 full name and address of the purchaser, the date of sale, the  
4 type of product purchased, the product usage, and shall state  
5 that the severed materials will be used by an exempt entity or  
6 used for an exempt purpose. If the proper documentation of  
7 exemption is presented to the producer, the producer shall not  
8 be liable for the tax imposed should the purchaser use the  
9 severed material for another purpose that is subsequently  
10 determined not to be exempt. In that case, the purchaser using  
11 the materials for other than an exempt purpose shall be liable  
12 for the tax. The exemption documentation form submitted by the  
13 purchaser shall be kept on file by the producer and submitted  
14 to the department upon request.

15           "§40-13-55.

16           "(a) The department shall administer and collect  
17 this tax and shall promulgate rules and regulations necessary  
18 and reasonable for the administration of this article. It  
19 shall be the duty of the department to include in such  
20 regulations an appropriate method to allocate funds collected  
21 to the county where the severed material was severed or  
22 processed. Any records related to the collection,  
23 distribution, and enforcement of this tax in a particular  
24 county, including severance tax returns, shall be made



1 available to the county commission of the county upon request  
2 from the county commission.

3 "(b) The department and producers shall use the  
4 inventory accounting principle known as "first in-first out"  
5 in determining the tax payable on stockpiles or inventories of  
6 severed material sold, and to which county the tax revenue  
7 should be allocated, regardless of where the severed material  
8 is stored or sold. Any records detailing the allocation of  
9 funds under this subsection shall be forwarded to the county  
10 commission in a county receiving an allocation at the time the  
11 monies are distributed to the county.

12 "(c) For severed materials governed by the  
13 provisions of Section 40-13-53(b) (5), the severance tax shall  
14 be collected at the time the product is first transported on a  
15 public road in this state. The first purchaser as defined in  
16 Section 40-13-53(b) (5) shall collect and remit the severance  
17 tax, and shall provide reports concerning this taxable event  
18 to the department as set out for producers in Section  
19 40-13-56.

20 "§40-13-56.

21 "For the purpose of ascertaining the amount of tax  
22 due and payable under this article, it shall be the duty of  
23 all producers to transmit to the department, on or before the  
24 twentieth day of the month next succeeding the month in which  
25 the tax accrues, a return upon the forms provided by the

1 department. The return shall show the month or period covered,  
2 the total number of tons of each type of severed material sold  
3 from each production unit operated, owned, or controlled by  
4 the producer in each county during the period covered, the  
5 amount of the tax due, and such other information as the  
6 department may reasonably require to allocate the tax between  
7 raw materials severed and finished products sold, as the case  
8 may be in particular counties. The return shall be signed by  
9 the producer and shall be accompanied by the full amount of  
10 the tax shown to be due in good and immediate funds. A copy of  
11 the severance tax return shall be made available to any county  
12 commission receiving a portion of the tax paid upon request by  
13 the county commission.

14 "§40-13-57.

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

21 "(b) The department ~~may~~ shall impose interest and  
22 penalties on unpaid taxes which become delinquent. One-half of  
23 all interest and penalties collected with respect to the tax  
24 imposed by this article shall be retained by the department to

1 help defray the expenses of administration and collection of  
2 the tax.

3 "(c) No penalties shall be imposed by the department  
4 against a producer or purchaser for any severance tax due  
5 under the act adding this subsection based upon an  
6 interpretation of the provisions of that act until and unless  
7 such time as the department has adopted rules related to such  
8 provision of that act and the rules have been effective for 60  
9 days thereafter. Thereafter, any penalties assessed under this  
10 tax may be abated by a showing of reasonable cause.

11 "§40-13-58.

12 "(a) All revenues collected from the tax levied  
13 pursuant to this article, less an amount to cover the expenses  
14 of administration and collection and one-half of all interest  
15 and penalties collected, as provided in subsection (b) of  
16 Section 40-13-57, shall be remitted quarterly to the governing  
17 body of the county from which the severed material was severed  
18 within 60 days following the end of a calendar quarter along  
19 with a report prepared by the department detailing how the  
20 amount remitted was determined. Notwithstanding the above, the  
21 aggregate amount retained by the department to defray the  
22 expenses described herein shall not exceed 1.5 percent of the  
23 total revenues collected during such calendar quarter and  
24 shall be credited to its current service revenue.

1           "(b) The revenues remitted to a county as provided  
2 in subsection (a) shall be deposited into a fund held and  
3 dispensed by the county commission and designated as the  
4 severed material severance tax fund. At least 75 percent of  
5 such funds shall be allocated and utilized by the county for  
6 the construction, maintenance, and repair of the county's road  
7 system or, if provided by local legislation, for a local  
8 economic development authority, public transit, construction  
9 and maintenance of county roads and bridges, or the  
10 reclamation of lands where natural materials have been  
11 severed. Notwithstanding the foregoing, revenues distributed  
12 to Franklin County as provided in subsection (a) shall be  
13 allocated and utilized exclusively for economic development.  
14 Twenty-five percent of the funds distributed to a county as a  
15 result of the severance of materials from within the corporate  
16 limits of a municipality in the county shall be expended by  
17 the county on county roads or other projects authorized by  
18 this article within the corporate limits of that municipality.

19           "(c) Revenues collected by the tax imposed by this  
20 article shall be remitted back to the county from which the  
21 severed material was originally produced based on total tons  
22 severed in such county subject to the severance tax multiplied  
23 by the rate of tax, less sums due the department, as provided  
24 in subsection (a), based on forms submitted to the department  
25 from the operator or producer.

1           "(d) Any adjustment of taxes, interest, or penalties  
2           which is necessary to adjust any error in the calculation,  
3           collection, or disbursement may be made at a subsequent  
4           collection or disbursement."

5           Section 2. This act shall become effective October  
6           1, 2012, following its passage and approval by the Governor,  
7           or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 26-APR-12, as amended.

Greg Pappas  
Clerk

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Senate

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03-MAY-12

Passed