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Severance Tax

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Severance Tax

Private Acts of 1981 Chapter 79

SECTION 1. Carter County, by resolution of its county legislative body, is authorized to levy a tax on all sand, gravel, limestone, phosphate rock, and all other mineral products severed from the ground within its jurisdiction. The tax shall be levied for the use and benefit of Carter County only, to be allocated to its Highway Department, and all revenues collected from the tax except deductions for administration and collection provided for herein, shall be allocated to Carter County.

Administration and collection of this tax shall be by the County Clerk of Carter County who shall have the power to promulgate all rules and regulations necessary and reasonable for the administration of the provisions of this Act.

SECTION 2. The rate of the tax shall be set by the county legislative body, but shall not exceed fifteen cents (15¢) per ton of sand, gravel, limestone, phosphate rock, or other mineral products severed from the ground in the county. Every interested owner shall become liable at the time the sand, gravel, limestone, phosphate rock, or other mineral products is severed from the earth and ready for sale, whether before processing or after processing may be.

The term "sand, gravel, limestone, phosphate rock, or other mineral product" shall mean sand, gravel, limestone, phosphate rock, or any other mineral severed from the earth in the process of producing a saleable product by whatever means of severance used. It shall not include, however, any mineral taxes under the provisions of Tennessee Code Annotated, Sections 67-5901 through 67-5905, Section 60-116 or any lime or limestone used for agricultural purposes. The tax shall be levied upon the entire production in the county regardless of the place of sale or the fact that delivery may be made outside the county. The tax shall accrue at the time the sand, gravel, limestone, phosphate rock, or other mineral product is severed from the earth and in its natural or unprocessed state. The tax levied shall be a lien upon all sand, gravel, limestone, phosphate rock, and other mineral products severed in the county and upon all property from which it is severed, including but not limited to mineral rights of the producer, and such liens shall be entitled to preference over all judgments, encumbrances or lien whatsoever created.

SECTION 3. The tax levied by this Act shall be due and payable on the first day of the month succeeding the month in which the sand, gravel, limestone, phosphate rock, or other mineral products are severed from the soil. For the purpose of ascertaining the amount of tax payable, it shall be the duty of all operators in Carter County to transmit to the County Clerk on or before the fifteenth (15th) day of the month next succeeding the month in which the tax accrued a return upon forms provided by him. The return shall show the month or period covered, the total number of tons of each type of mineral, sand, gravel, limestone, phosphate rock, or other mineral products severed from each production unit operated, owned or controlled by the taxpayer during the period covered, the amount of the tax and such information as the County Clerk may require. The return shall be accompanied by a remittance covering the amount of tax due as computed by the taxpayer.

SECTION 4. The tax levied by this Act shall become delinquent on the sixteenth (16th) day of the month next succeeding the month in which such tax accrues. When any operator shall fail to make any return and pay the full amount of the tax levied on or before such date there shall be imposed, in addition to other penalties provided herein, a specific penalty in the amount of ten percent (10%) of the tax due. Whenever a penalty is imposed there shall also be added to the amount of tax and penalty due interest thereon at the rate of eight percent (8%) per annum from the date due until paid. A further penalty of fifty percent (50%) of the amount due may be added if the nonpayment of the tax is due to an intent to evade payment. If the tax is delinquent for a period of sixty (60) days or if the nonpayment of the tax is due to an intent to evade payment, the person liable for such payment may be restrained and enjoined from severing sand, gravel, limestone, phosphate rock, or other mineral products that have been severed and sold and upon which the tax is due. Restraint proceedings shall be instituted in the name of the county by the District Attorney General for the county at the request of the Carter County Judge and County Clerk, or may be filed by the County Attorney when so requested.

All such penalties and interest imposed by this Act shall be payable to and collectible by the County Clerk in the same manner as if they were a part of the tax imposed and shall be retained by the County Clerk's Office to help defray the expenses of administration and collection.

Any person required by this Act to make a return, pay a tax, keep records, or furnish information deemed necessary by the County Clerk for the computation, assessment, or collection of the tax imposed by this Act, who fails to make the return, pay the tax, keep the records, or furnish the information at the time required by law or regulation is, in addition to other penalties provided by law, guilty of a misdemeanor,

and upon conviction is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than one (1) year or both.

Any person who willfully or fraudulently makes and signs a return which he does not believe to be true and correct as to every material fact is guilty of a felony and subject to the penalties prescribed for perjury under the law of this state. For the purposes of this section the word "person" also includes an officer or employee of a corporation or a member or employee of a partnership who is under duty to perform the act in respect to which the violation occurs.

SECTION 5. When any person shall fail to file any form, statement, report or return required to be filed with the County Clerk, after being given written notice of such failure, the County Clerk is authorized to determine the tax liability of such person from whatever source of information may be available to him. An assessment made by the County Clerk pursuant to this authority shall be binding as if made upon the sworn statement, report or return of the person liable for the payment of such tax; and any person against whom such an assessment is lawfully made, shall thereafter be estopped to dispute the accuracy thereof except upon filing a true and accurate return, together with such supporting evidence as the County Clerk may require indicating precisely the amount of the alleged inaccuracy.

SECTION 6. All revenues collected from the severance of sand, gravel, limestone, phosphate rock, or other mineral products in Carter County less an amount to cover the expenses of administration and collection and all of the penalties and interest collected, which shall be retained by the Office of the County Clerk, and credited to its current service revenue to cover the expense of administration and collection, shall be remitted quarterly to the County Trustee of Carter County, not later than the tenth (10th) day of the month following the end of the calendar quarter. These revenues shall become a part of the general fund of Carter County, subject to appropriation by the County Legislative Body for the use and benefit of the County Road Department.

Any adjustment of taxes, penalties, or interest which is necessary to adjust any error in collection or disbursement may be made at a subsequent collection or disbursement.

SECTION 7. Any tax levied by authority of this Act shall not apply to any mineral products severed pursuant to any written contract entered into prior to the ratification of this Act by the Carter County legislative body.

SECTION 8. This Act shall have no effect unless it is approved by two thirds (2/3) vote of the county legislative body of Carter County. Its approval shall be proclaimed by the presiding officer of the county legislative body and certified by him to the Secretary of State.

SECTION 9. For the purpose of approving or rejecting the provisions of this Act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective upon being approved as provided in Section 7.

Passed: April 16, 1981.

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