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Chapter XI - Taxation

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.

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Chapter XI - Taxation

Hotel/Motel Tax

Private Acts of 2002 Chapter 133

SECTION 1. As used in this act unless the context otherwise requires:

- (1) "Clerk" means the county clerk of Perry County, Tennessee.
- (2) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.
- (3) "County" means Perry County, Tennessee.
- (4) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.
- (5) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings or accommodations in any hotel.
- (6) "Operator" means the person operating the hotel whether as owner, lessee or otherwise.
- (7) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, governmental unit other than the United States or any of its agencies, or any other group or combination acting as a unit.
- (8) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days.

SECTION 2. The legislative body of Perry County is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient in an amount of five percent (5%) of the consideration charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided in this act.

SECTION 3. The proceeds received by the county from the tax shall be designated and used for such purposes as designated by the legislative body of the county.

SECTION 4. Such tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of the hotel and given directly or transmitted to the transient. Such tax shall be collected by such operator from the transient and remitted to the county.

When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected or charged, and the operator shall receive credit for the amount of such tax if previously paid or reported to the county.

SECTION 5.

(a) The tax levied shall be remitted by all operators who lease, rent or charge for any rooms, lodgings, spaces or accommodations in hotels within the county to the county clerk or such other officer as may by resolution be charged with the duty of collection thereof, such tax to be remitted to such officer not later than the twentieth (20th) day of each month for the preceding month. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for such occupancy, whether prior to, during, or after occupancy, as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation due to the county shall be that of the operator.

(b) For the purpose of compensating the operator for remitting the tax levied by this act, the operator shall be allowed two percent (2%) of the amount of the tax due, accounted for, and remitted to the clerk in the form of a deduction in submitting the report and paying the amount due by such operator, provided the amount due was not delinquent at the time of payment.

SECTION 6. The clerk, or other authorized collector of the tax, shall be responsible for the collection of such tax and shall deposit the proceeds of such tax in accounts for purposes stated herein. A monthly tax return shall be filed under oath with the clerk by the operator with such number of copies thereof as the clerk may reasonably require for the collection of such tax.

The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the clerk and approved by the county legislative body prior to use. The tax collection official shall audit each operator in the county at least once per year and shall report on the audits made on a quarterly basis to the county legislative body.

The county legislative body is authorized to adopt resolutions to provide reasonable rules and regulations for the implementation of the provisions of this act, including the form for such reports.

SECTION 7. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 8. Taxes collected by an operator which are not remitted to the county clerk on or before the due dates are delinquent. An operator is liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and is liable for an additional penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is unlawful and shall be punishable by a civil penalty not in excess of fifty dollars (\$50.00).

SECTION 9. It is the duty of every operator liable for the collection and payment to the county of any tax imposed by this act to keep and preserve for a period of three (3) years all records necessary to determine the amount of tax due and payable to the county. The clerk has the right to inspect such records at all reasonable times.

SECTION 10. The county clerk in administering and enforcing the provisions of this act has as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67 of Tennessee Code Annotated or otherwise provided by law for county clerks. For services in administering and enforcing the provisions of this act, the county clerk is entitled to retain as a commission five percent (5%) of the taxes collected.

Upon any claim of illegal assessment and collection, the taxpayer has the remedies provided in Title 67 of Tennessee Code Annotated. It is the intent of this act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected shall also apply to the tax levied under the authority of this act. The provisions of Tennessee Code Annotated, Section 67-1-707, shall be applicable to adjustments and refunds of such tax.

With respect to the adjustment and settlement with taxpayers, all errors of county taxes collected by the county clerk under authority of this act shall be refunded by the county clerk. Notice of any tax paid under protest shall be given to the county clerk and the resolution authorizing levy of the tax shall designate a city officer against whom suit may be brought for recovery.

SECTION 11. The proceeds of the tax authorized by this act shall be allocated to and placed in the general fund (or other fund) of Perry County to be used for the purposes stated in Section 3 of this act.

SECTION 12. The privilege tax levied by this act shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes.

SECTION 13. The tax levied pursuant to the provisions of this act shall only apply in accordance with the provisions of Tennessee Code Annotated, Section 67-4-1425.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. This act shall have no effect unless it is approved by a two thirds (2/3) vote of the county legislative body of Perry County. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and shall be certified by such presiding officer to the secretary of State.

SECTION 16. 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, this act shall take effect upon being approved as provided in Section 15.

Passed: April 17, 2002

Litigation Tax

Private Acts of 1980 Chapter 191

SECTION 1. There is hereby imposed a litigation tax on the privilege of litigating a civil and criminal action in the amount of five dollars (\$5.00) to be assessed and taxed as part of the costs of the cause of action on all such actions disposed of in the Circuit, Criminal, or Chancery Court of Perry County.

SECTION 2. There is hereby imposed a litigation tax on the privilege of litigating a civil or criminal action in the amount of two dollars and fifty cents (\$2.50) to be assessed and taxed as part of the costs of the cause of action on all such actions disposed of in the Court of General Sessions of Perry County.

SECTION 3. The litigation taxes provided in Section 1 and Section 2 shall be collected by the clerks of the various courts in which the actions are disposed of; and such clerks shall pay over the revenue generated by such litigation taxes to the county trustee every quarter and such revenue to be paid by the tenth (10th) of the month immediately following the end of the quarter in which such collections were made by the clerks.

SECTION 4. There is hereby created a special fund to be known as the "Courthouse Improvement and Maintenance Fund". The Trustee of Perry County shall deposit the litigation taxes collected under the authority of Section 3 into such fund. Such fund shall be subject to appropriations by the county legislative body for the purpose of improvements and maintenance of the Perry County Courthouse.

SECTION 5. The litigation taxes collected under this Act shall be considered suspended when the court having jurisdiction over the cause of action suspends the costs of such cause of action.

SECTION 6. As used in this Act, unless the context required otherwise: "cause of action" or "action" includes all ex parte hearings, advisory hearings, and contested proceedings in the enumerated courts.

SECTION 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 8. This Act shall have no effect unless it is approved by the two-thirds (2/3) vote of the county legislative body of Perry County. Its approval or nonapproval shall be proclaimed by the presiding officer of the Perry 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 8.

Passed: February 18, 1980.

Severance Tax

Private Acts of 1980 Chapter 207

SECTION 1. Perry 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 Perry County only and all revenues collected from the tax, except deductions for administration and collection provided for herein, shall be allocated to Perry County.

Administration and collection of this tax shall be by the county clerk of Perry 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 ten cents (10¢) 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 product is severed from the earth and ready for sale, whether before processing or after processing as the case 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 taxed under the provisions of Tennessee Code Annotated, Sections 67-5901 through 67-5905 nor Section 60-116. The tax 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 lien shall be entitled to preference over all judgments, encumbrances or liens whatsoever created.

As amended by: Private Acts of 2008, Chapter 84

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 Perry 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 accrues 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 miner product 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 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 Perry County Clerk.

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 of 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 same, 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 Perry 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 Perry County, not later than the tenth (10th) day of the month following the end of the calendar quarter. Any present or future revenues shall become part of the highway fund of Perry County.

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.

As amended by: Private Acts of 2008, Chapter 84

SECTION 7. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Perry County before November 1, 1980. Its approval or nonapproval shall be proclaimed by the presiding officer of the Perry County legislative body and certified by him to the Secretary of State.

SECTION 8. 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: March 3, 1980.

Taxation - Historical Notes

Assessor of Property

The following acts were superseded, repealed or failed to win local ratification, but they are listed here as a reference to laws which once affected the Perry County Assessor.

1. Private Acts of 1915, Chapter 607, fixed the salary of the Tax Assessor in Perry County at \$500 per year, payable quarterly out of the county treasury on the warrant of the County Judge, or Chairman.
2. Private Acts of 1933, Chapter 887, provided that the Tax Assessor of Perry County shall receive as compensation for his services the sum of \$400 per annum to be paid monthly out of regular county funds on the warrant of the County Judge, or Chairman.
3. Private Acts of 1949, Chapter 586, amended Section One, Private Acts of 1933, Chapter 887, by striking the provisions for the compensation of the Tax Assessor written therein and inserting a provision that the Tax Assessor shall receive for his services the amount prescribed by the Quarterly Court of the County which amount shall be paid to him monthly out of the county treasury on the warrant of the County Judge, or Chairman.

Taxation

The following is a listing of acts pertaining to taxation in Perry County which are no longer effective.

1. Acts of 1870-71, Chapter 50, authorized the counties and the cities of the State to impose taxes for county and municipal purposes in the following manner (1) that all taxable property be taxed according to its value and on the principles established for State taxation, and (2) that the credit of no county, or city, may be loaned to any person, firm, or corporation, unless a majority of the Quarterly Court first agrees to submit the question to a referendum vote of the people, and that the people approve the same by a three-fourths vote. Several counties, not including Perry County, exempted themselves from the three-fourths majority requisite for the next ten years, saying a simple majority would be sufficient to comply.
2. Private Acts of 1929, Chapter 462, amended Chapter 363, Private Acts of 1921, by striking Section 30 from the Act in its entirety, which provided for a wheel tax in Perry County. Chapter 363, above, was the Road Law for Perry County at the time. See the Section on Highways and Roads.
3. Private Acts of 2005, Chapter 20, amended Private Acts of 1980, Chapter 207 by increasing the severance tax from five cents (5¢) to ten cents (10¢). This act never received local approval.

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