

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE¹ RULING #98-41**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Effective date of the mineral severance tax authorized by Tennessee Code Annotated Section 67-7-201 et seq. and adopted in [COUNTY Z], Tennessee.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS²

On or about [DATE A, PRIOR TO 1985 BUT AFTER CHAPTER 953 OF THE PUBLIC ACTS OF 1984 WAS SIGNED INTO LAW ON JUNE 5, 1984], the [COUNTY Z] Commissioners met to consider the passage of a mineral severance tax upon sand, gravel, sandstone, chert and limestone pursuant to T.C.A. § 67-7-201 et seq. The Commissioners adopted a resolution relative to the mineral severance tax but the resolution did not state a specific rate of tax.

The minutes of the meeting at which the resolution was adopted indicate that the “Severance Tax Resolution” was passed by a vote of [NUMBER] ayes, [NUMBER] nays and [NUMBER] pass. The “Severance Tax Resolution” referenced in the [COUNTY Z] Commission meeting minutes is found at Minute Book [NUMBER], Pages [NUMBER] through [NUMBER] and was simply a verbatim copy of 1984 Tenn. Pub. Acts, Chapter

¹ The ruling request addressed to the commissioner of revenue was for a binding letter ruling. However, advisory revenue rulings are typically issued with respect to past transactions and activities and may be issued in the commissioner’s discretion. An advisory revenue ruling is being issued in response to this ruling request.

² Since an advisory revenue ruling is being issued in response to the ruling request, particular facts presented in the request for ruling that are unique to the business represented by the law firm requesting this ruling have been omitted.

953, which authorized county governments to levy a mineral severance tax at a rate not to exceed 15¢ per ton.

(On [DATE IN 1984], the Tennessee Department of Revenue received a certified copy of the [DATE A] resolution of the [COUNTY Z] Commissioners. The Department then proceeded to implement the resolution and collect the mineral severance tax from taxpayers in [COUNTY Z] based on a 15¢ per ton taxing rate in accordance with applicable law.)

In early [DATE AFTER 1985], some questions were raised as to whether the [COUNTY Z] mineral severance tax had been effectively adopted by the [COUNTY Z] Commissioners. As a result of these questions, both the attorney for [COUNTY Z] and the Director of Legal Services for the [PLACE OF EMPLOYMENT] (each serving in their respective capacities at that time), indicated in informal correspondence that the [COUNTY Z] Commissioners had not set a tax rate but had simply incorporated the general law enacted by the Tennessee legislature which allowed counties to set the amount of the severance tax at a tax rate which could not exceed 15¢ per ton. Therefore, they believed that no tax was then in effect and recommended action by the county legislative body to make the mineral severance tax effective in [COUNTY Z].

As a result of these informal opinions, the [COUNTY Z] Board of Commissioners met again on [DATE B, AFTER 1985] and, by a unanimous vote, adopted a resolution to levy a mineral severance tax in [COUNTY Z]. Section 5 of the resolution provides that “(f)or purposes of collection, this Resolution shall take effect on the first day of the month occurring at least thirty (30) days after the certified copy is received by the Department of Revenue . . .”

However, the minutes of the [DATE B] meeting also specifically state that this was “a clarification of action taken in 1984 by the [COUNTY Z] Commission under a special act. Some questions had arisen about the validity of the 1984 action.” Both the minutes of the [DATE B] meeting and Section 2 of the resolution adopted that day by the [COUNTY Z] Commission specifically state that the tax rate was to be 15¢ per ton.

The Department has received an affidavit dated [DATE D AFTER 1985] concerning the mineral severance tax adoption issue from [MR. X], currently serving as [PRESENT EMPLOYMENT] but who formerly served as [COUNTY Z] [OFFICIAL EMPLOYMENT CAPACITY] from [TERM OF EMPLOYMENT]. [MR. X]’s affidavit concerns his service in the latter capacity and his knowledge and recollection of the actions of the [COUNTY Z] Board of Commissioners regarding Public Chapter 953 of the Public Acts of 1984. In reference to the special session of the [COUNTY Z] Commissioners held on [DATE A], [MR. X] stated that “(a)lthough the minutes of the meeting are silent as to the amount of severance tax which was levied and to be collected by the Department of Revenue for the State of Tennessee, the Board of Commissioners did in fact set the rate at the maximum rate of fifteen (\$0.15) cents pursuant to the provisions of said act. The Department of Revenue was to be notified of the action of the

Board of Commissioners and the rate of fifteen (\$0.15) cents per ton was to be collected pursuant to said act. To the extent the minutes fail to reflect the fifteen (\$0.15) cents per ton levy they are in error and do not reflect the action taken on [DATE A].”

ISSUES

1. Whether a mineral severance tax was in effect in [COUNTY Z] and could have been collected prior to the [DATE B] Resolution of the [COUNTY Z] Board of Commissioners.
2. Whether a taxpayer removing sand from [COUNTY Z] and selling it in Tennessee would be liable for the mineral severance tax for such activities occurring prior to the [DATE B] Resolution of the [COUNTY Z] Board of Commissioners.

RULINGS

1. Yes.
2. Yes.

ANALYSIS

I. GENERAL LEGISLATION AUTHORIZES THE ADOPTION OF A MINERAL SEVERANCE TAX BY [COUNTY Z].

T.C.A. § 67-7-201 et seq. authorizes Tennessee counties to levy mineral severance taxes upon sand and other minerals severed from the earth in the process of producing salable products. The tax authorized by that law may be levied by an individual county in Tennessee upon the adoption of a resolution by two-thirds (2/3) vote of the county legislative body of such county. T.C.A. § 67-7-212.

T.C.A. § 67-7-212 became law by the enactment of 1985 Tenn. Pub. Acts, Chapter 410, Sections 4 and 5 and has been recognized to be valid by the Tennessee courts. *See Menefee Crushed Stone Co. v. Taylor*, 760 S.W.2d 223 (Tenn. App., Middle Section, 1988) and *Nolichucky Sand Co., Inc. v. Huddleston*, 896 S.W.2d 782 (Tenn. App., Eastern Section, 1994).³

II. THE [DATE A] MINERAL SEVERANCE TAX

³ It should be noted that *Menefee* held 1984 Tenn. Pub. Acts, Chapter 953 (the predecessor Tennessee mineral severance tax statute, and the statute under which the [COUNTY Z] Commission adopted its [DATE A] resolution) unconstitutional. However, the court in both *Menefee* and *Nolichucky* concluded that 1985 Tenn. Pub. Acts, Chapter 410 - which was enacted in order to correct any perceived defects in Chapter 953 - was valid, yet each determined it did not become effective until July 8, 1985. (*See Nolichucky Sand Co., Inc. v. Huddleston*, 896 S.W.2d 782 at 786 (Tenn. App., Eastern Section, 1994).)

**RESOLUTION OF THE [COUNTY Z] COMMISSION MET THE
REQUIREMENTS OF CHAPTER 410 TO BECOME EFFECTIVE WHEN
CHAPTER 410 BECAME EFFECTIVE.**

The *Menefee* court determined that 1985 Tenn. Pub. Acts, Chapter 410 became effective on July 8, 1985. *Menefee Crushed Stone Co. v. Taylor*, 760 S.W.2d 223 at 227 (Tenn. App., Middle Section, 1988.) Thus, the prior resolution of the [COUNTY Z] Commissioners on [DATE A] to adopt a mineral severance tax pursuant to 1984 Tenn. Pub. Acts, Chapter 953 (the previously adopted mineral severance tax statute held unconstitutional by the court in *Menefee*⁴) was without authority unless such resolution was subsequently authorized by statute.

An apparent purpose of 1985 Tenn. Pub. Acts, Chapter 410 was to correct any perceived defects in Chapter 953. (The court observed this in *Menefee. Id.* at page 225). Section 3 of Chapter 410 was a new provision stating several requirements for an effective tax levy and collection. Section 6 of Chapter 410 expressly stated that “[a] resolution adopted by any county legislative body in conformance with Section 3 on or after June 5, 1984, shall be effective for the collection of the tax authorized herein.”

There is no indication or suggestion that the [DATE A] resolution of the [COUNTY Z] Commission failed in any way to meet the requirements stated in Chapter 410, Section 3. Thus, the [DATE A] resolution of the Commissioner became effective on July 8, 1985 unless the resolution’s failure to specifically state a tax rate in writing was a fatal defect.

**III. THE [COUNTY Z] COMMISSIONERS’ [DATE A]
RESOLUTION’S FAILURE TO STATE A TAX RATE WAS NOT
FATAL TO THE ESTABLISHMENT OF THE TAX.**

There is a presumption in favor of the correctness of all tax assessments. 72 Am Jur. 2d, *State and Local Taxation* § 713. The issues presented here do not specifically concern a tax assessment in the traditional sense. That is, the Department of Revenue may not have “assessed” one or more taxpayers by recording a liability (or liabilities) on its books and records and then communicating it (or them) to the affected taxpayer(s) by notice.

However, “assessment” has been determined by the courts to embrace all proceedings for raising money by the exercise of the power of taxation from the inception to the conclusion of the proceedings. *Id.* § 704. Mineral severance taxes upon sand removed from the earth in [COUNTY Z] and sold in Tennessee have been voluntarily reported and paid by various taxpayers and have been collected by the Department since the mid-1980’s based on the purported tax levy by the [COUNTY Z] Commissioners under their 1984 resolution. Thus, it must be presumed that the tax which the [COUNTY Z]

⁴ See footnote 3 above.

Commissioners attempted to impose by virtue of their [DATE A] resolution was a valid levy.⁵

The affidavit provided by [MR. X] indicates that the minutes of the [COUNTY Z] Commissioner's meeting on [DATE A] were in error to the extent that they failed to reflect the fact that a tax rate of 15¢ per ton was being adopted. This affidavit suggests that a tax rate was actually set by the Commissioners but that such fact simply was not reflected in writing in its minutes for that meeting.

It is not conceded that the 1984 resolution of the [COUNTY Z] Board of Commissioners was defective because it failed to state a specific tax rate since [MR. X]'s affidavit states that the action of the Board (memorialized by the [DATE A] minutes and resolution) was to set a 15¢ per ton mineral severance tax in [COUNTY Z] pursuant to the 1984 enactment.

The minutes of the [COUNTY Z] Board of Commissioners' [DATE B] meeting contained language which suggests a post-[DATE B] effective date for that resolution and the mineral severance tax. However, these minutes also contain language clearly indicating that the meeting was intended to be a "clarification" of the Board's earlier minutes dated [DATE A]. Additionally, the Board's unanimous adoption of the [DATE B] resolution which included this language is a strong indication of the original "intent" of the local legislative body when the [DATE A] resolution was adopted and also the desire of the current body to correct any perceived deficiency of the earlier resolution *retrospectively* if that were possible.

It has been said by authorities on legislative procedure that there is an inherent right of a legislative body to correct its journal. P. Mason, *Manual of Legislative Procedure*, § 700 (1979). It does not depend upon the constitution or upon statute. *Id.* The minutes of a meeting of a legislative body can be corrected whenever the error is noticed and only a majority vote is required for the adoption of the corrections or amendments, even though the minutes have previously been approved and it is too late to reconsider the vote. *Id.*, § 406.

Therefore, based on this authority, even if the 1984 resolution of the [COUNTY Z] Board of Commissioners was defective, the defect was not fatal and the [DATE B] Board minutes and resolution appear to "correct" any defect in the Board's 1984 resolution.

CONCLUSION

Therefore, the mineral severance tax authorized by T.C.A. § 67-7-201 et seq. was in effect in [COUNTY Z] from and after July 8, 1985, and a taxpayer removing sand from [COUNTY Z] and selling it in Tennessee after that date but before the [DATE B]

⁵ The Department is unaware of any question having been raised since the [DATE A] resolution of the [COUNTY Z] Commissioners as to the validity of the tax based on any defect in the original county legislative body resolution.

resolution of the [COUNTY Z] Board of Commissioner is liable for the [COUNTY Z] mineral severance tax at the rate of 15¢ per ton.

Thomas R. Bain
Tax Counsel

APPROVED: _____
Ruth E. Johnson
Commissioner

DATE: 9-30-98