CHAPTER 211

TAX ON PRODUCTION OF OIL AND GAS AND SEVERANCE OF SOLID MINERALS

PART I

TAX ON PRODUCTION OF OIL AND GAS

211.01 Definitions.—Whenever used in this chapter, the following words and terms shall have the definition and the meaning ascribed to them in this section, unless the intention to give a more limited meaning is disclosed by the context:

(1) The word "department" means the Department of Revenue.

(2) The word "annual" means the calendar year, or the taxpayer's fiscal year, when permission is obtained from the department to use a fiscal year as a tax period in lieu of a calendar year.

(3) The word "value" means the sales price, or market value, at the mouth of the well. If the oil or gas is exchanged for something other than cash, or if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the department shall determine the value of the oil or gas subject to tax, considering the sales price for cash at the place where produced of oil or gas of like quality. Where gas is returned to a horizon or horizons in the field where produced either through wells on the lease from which produced or on other leases, that portion of the gas so returned shall not be considered in arriving at the value of the gas produced.

(4) The word "taxpayer" means any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind liable for the tax imposed by this chapter.

(5) The word "oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and which are not the results of condensation of gas after it leaves the reservoir.

(6) The word "gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined as oil in subsection (5) above.

(7) The word "severed" means the extraction or withdrawal from below the surface of the soil or water of any oil or gas, whether such extraction or withdrawal shall be by natural flow, mechanically enforced flow, pumping, or any other means employed to get the oil or gas from below the surface of the soil or water, and shall include the withdrawal by any means whatsoever of oil or gas upon which the tax has not been paid, from any surface reservoir, natural or artificial, or from a water surface, and the recovery of escaped oil or gas on which the tax has not been paid.

(8) The word "person" means any natural person, firm, copartnership, joint venture, association, corporation, estate, trust, receiver, or any other group, or combination acting as a unit, and the plural as well as the singular number.

(9) The word "producer" means any person, owning, controlling, managing or leasing any oil or gas property, or oil or gas well, and any person who produces in any manner any oil or gas by taking it from the earth or water in this state, and shall include any person owning any royalty or other interest in any oil or gas or its value, whether produced by him, or by some other person on his behalf, either by lease contract or otherwise.

(10) The word "barrel," for oil measurements, means a barrel of 42 U.S. gallons of 231 cubic inches per gallon, computed at a temperature of 60 degrees Fahrenheit.

(11) The term "cubic feet," for gas measurement, means the volume of gas expressed in cubic feet and computed at a base pressure of 4 ounces per square inch above the average atmosphere barometric pressure of 144/10 pounds per square inch, a standard base and flowing temperature of 60° Fahrenheit; correction to be made for pressure according to Boyle's Law, and for specific gravity according to test made by the balance method.

(12) The word "production," for oil measurement, means the total gross amount of oil produced and saved, including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this chapter shall be measured or deter-

mined by tank tables compiled to show 100 percent of the full capacity of tanks without deduction for overage or losses in handling. Allowance for any reasonable and bona fide deduction for basis sediment and water, and for correction of temperature to 60° Fahrenheit will be allowed. If the amount of oil produced has been measured or determined by tank tables compiled to show less than 100 percent of the full capacity of tanks, then such amount shall be raised to a basis of 100 percent for the purpose of the tax imposed by this chapter.

(13) The word "production," for gas measurement, means the total gross amount of gas produced and sold, or used, including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this chapter shall be measured or determined by meter readings showing 100 percent of the full volume expressed in cubic feet.

(14) The term "gathering system" means the pipelines, pumps, compressors, meters, and other property used in gathering or removing oil or gas from the property on which it is produced, the tanks used for storage at a central place, loading racks and equipment for loading oil into tank cars or other transporting media, and all other equipment and appurtenances necessary to a gathering system for transferring oil or gas into trunk pipelines.

History.—s. 1, ch. 22784, 1945; s. 1, ch. 23883, 1947; s. 11, ch. 25035, 1949; ss. 21, 35, ch. 69-106; s. 46, ch. 71-377.

211.015 Tax on small wells.—All wells producing less than 100 barrels of oil per day or oil produced by tertiary methods shall be taxed at the rate of 5 percent of the gross value at the point of production. The proceeds from this tax shall be distributed in the same manner as the first and second gas tax.

History.—s. 2, ch. 77-408.

211.02 Levy of oil and gas tax and amount thereof; first and second taxes; basis of tax.—

(1) There is hereby levied, to be collected hereafter, as provided herein, an excise tax upon every person engaging or continuing within this state in the business of producing or severing oil or gas, as defined herein, from the soil or water for sale, transport, storage, or profit or for commercial use. The amount of such tax shall be measured by the value of the oil produced and saved, and by the value of the gas produced and sold, or used, and is hereby levied and assessed at the following rates: For oil, 8 percent of the gross value thereof at the point of production; and for gas, 5 percent of the gross value thereof at the point of production; said tax on oil and gas being made up of separate taxes, being:

(a) *First oil tax:* Seven-eighths of the total tax for the state for the use of the general revenue fund.

(b) *Second oil tax:* One-eighth of the total tax for the county in which the oil is produced for the use of the general revenue fund of the board of county commissioners.

(c) *First gas tax:* 80 percent of the total tax for the state for the use of the general revenue fund.

(d) *Second gas tax:* 20 percent of the total tax for the county in which the gas is produced for the use of the general revenue fund of the board of county commissioners.

(2) It is the intention of the Legislature to impose the first oil and gas tax as a state excise tax and to impose the second oil and gas tax as a county excise tax to compensate the county in which oil and gas is produced for the loss of ad valorem taxes by reason of the provision of this chapter, and to make it possible for the board of county commissioners of such county to provide the additional public services that will be required in a county where oil and gas are produced.

(3) The tax is hereby levied upon the basis of the entire production in this state, including what is known as the royalty interest, on which production the amount of such tax shall be a lien, regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state; and the tax shall accrue at the time such oil is severed from the soil or water, and in its natural, unrefined, or unmanufactured condition, provided, however, oil and gas used for lease operations on the lease where produced shall not be taxed hereunder.

History.—s. 2, ch. 22784, 1945; s. 2, ch. 23883, 1947; s. 1, ch. 77-408.

211.03 Measure of value.—In computing the tax levied under this chapter, where the gross proceeds of sales of such oil or gas are taken as the measure of the value of such products for the purpose of computing the tax, if such products shall have been sold on a delivered price, the actual freight charge prepaid by the taxpayer or included in the invoice price on such products to the place of delivery shall be deducted from the gross proceeds of sales used in determining the amount of the tax.

History.—s. 3, ch. 22784, 1945; s. 3, ch. 23883, 1947.

211.031 Exclusion from value of production.—The value of any oil or gas production shall not include any wellhead or other production taxes imposed by the United States on producers to the extent such tax or taxes do not provide a credit or deduction for the taxes imposed by this chapter.

History.—s. 3, ch. 77-408.

211.04 Assessment upon escaped oil; claims against same.—

(1) When any regular monthly report required from taxpayers by this chapter does not disclose the actual source of any oil taxable under this chapter, but does show such oil to have escaped from a well or wells and to have been recovered from streams, lakes, ravines, or other natural depression; it shall be the duty of the department to collect, in addition to the excise tax herein imposed, an additional amount equal to 12½ percent of the gross value of such escaped oil. The department shall hold such additional collection in a special escrow account for a period of 12 months from the date of the collections, during which time any person or persons, who claim to be the rightful owner or owners of any royalty interest in the escaped oil, may present proper and satisfactory proof of such ownership to the department. If the department shall be satisfied as to the ownership of such escaped oil, then it shall pay to such claimant or claimants a proportionate part of such additional collection held in escrow, according to their proper interest or interests. No payment to any claimant shall be made, however, before it is

approved by the Department of Legal Affairs or before it is ordered by any court having proper jurisdiction.

(2) After the lapse of 12 months from the date of any additional collection, if no claim or claims have been made to it, or to the balance remaining of it after the payment by the department of any claim or claims, the department shall distribute the additional collection or any balance of it in the same manner as is herein provided for the distribution of the tax imposed by this chapter.

History.—s. 4, ch. 22784, 1945; s. 4, ch. 23883, 1947; ss. 11, 21, 35, ch. 69-106.

211.05 Penalty for failure to pay tax.—Should the taxpayer fail to pay when due the tax levied hereunder and same becomes delinquent, such tax as a penalty for such delinquencies shall bear interest at the rate of 18 percent per annum from the date such tax is due and payable and shall be collected in the manner hereinafter provided. If any taxpayer shall fail to make the report or return herein required as to the production of oil or gas from any well in this state it shall be the duty of the department to examine the books, records and files of such taxpayer to ascertain the amount and value of such production, to compute the tax thereon as herein provided, and it shall add thereto the cost of such examination, together with any penalties accrued thereon.

History.—s. 5, ch. 22784, 1945; s. 5, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.06 Oil and gas tax trust fund; distribution.—

(1) All taxes herein levied and collected shall be placed in a special fund known as the oil and gas tax trust fund and shall be monthly distributed by the department as follows:

(a) The proceeds from the first oil and gas tax shall be paid into the state treasury to the credit of the general revenue fund of the state.

(b) The proceeds from the second oil and gas tax shall be paid into the general revenue fund of the board of county commissioners of the county in which the tax is imposed.

(2) The department is authorized and empowered to adjust and make proper settlements and refunds in cases of overpayment of the tax or where payment is made when no tax is due or when payment is made through error, under regulations prescribed by it, and there is hereby appropriated a sufficient amount for the Comptroller to refund said taxes, when and if on proper application and proof filed with him within 1 year from the date of the payment of such taxes, he deems it necessary to make such refunds, and this provision shall in no way prejudice any right of action that may accrue to any person liable for the payment of the tax to contest in any court of competent jurisdiction the payment of any or all of the taxes imposed herein.

History.—s. 6, ch. 22784, 1945; s. 6, ch. 23883, 1947; s. 2, ch. 61-119; s. 1, ch. 65-146; ss. 21, 35, ch. 69-106.

211.07 When taxes due; statements; information; penalties; powers of Department of Revenue.—

(1) The taxes levied hereunder shall be due and payable on or before the 25th day of the calendar month next succeeding the calendar month in which the tax accrued.

(2) Every producer of oil or gas, as defined in this chapter, shall on or before the 25th day of each calendar month file with the department a statement on forms prescribed by the department, showing the location of each oil or gas well operated or controlled by such producer during the last preceding calendar month, the kind of oil or gas produced; the gross quantity thereof produced, and the actual cash value thereof at the time and place of production, including any and all premiums received from the sale thereof; the amount of royalty payable thereof; and, where such royalty is claimed to be exempt from taxation by law, the facts on which such claim of exemption is based; and such other information as the department may require. Such statement shall be accompanied by a return showing the amount of tax payable on the oil or gas covered by such report, together with a remittance for the amount of the tax due. Such statement and report shall be mailed or sent to the office of the department and shall be signed by the taxpayer or duly authorized agent of the taxpayer and shall be verified by oath.

(3) The department shall have the power to require any person engaged in the production of oil or gas, and the purchaser thereof, or the owner of any royalty interest therein to furnish any information by it deemed necessary for the purpose of computing correctly the amount of tax to be levied and collected under the provisions of this chapter; and to examine the books, records and files of such persons, and shall have power to conduct hearings and compel the attendance of witnesses and the production of books, records and papers of any person.

(4) Any person or any member of any firm, association or corporation, or any officer, official, agent or employee of any corporation who shall fail or refuse to testify; or who shall fail or refuse to produce any books, records or papers which the department shall require; or who shall fail or refuse to furnish any other evidence which the department may require; or who shall fail or refuse to answer any competent questions which may be put to him by the department, touching the business, property, assets or effects of any such person, firm, association or corporation, or relating to the gross production tax imposed by this chapter, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; and each day such refusal on the part of such person shall constitute a separate and distinct offense.

(5) The department shall have the power and authority to ascertain and determine whether or not any return herein required to be filed with it is a true and correct return of the gross products and of the value, quantity or volume thereof of such person engaged in the production of oil or gas; and, if any person has made an untrue or incorrect return of the gross production or value, or quantity, or volume thereof, as hereinbefore required, or shall have failed or refused to make such return, the department shall, under rules and regulations prescribed

by it ascertain the correct amount of either, and compute said tax.

History.—s. 7, ch. 22784, 1945; s. 7, ch. 23883, 1947; ss. 21, 35, ch. 69-106; s. 122, ch. 71-136.

211.08 Common carriers to furnish information; inspection of bills of lading.—

(1) When requested by the department, all transporters, railroads, motor vehicles, pipelines, or other carriers, of oil or gas out of, within, or across the state shall be required to furnish the Department of Natural Resources such information relative to the transportation of such oil or gas as may be required.

(2) The department shall have authority to inspect bills of lading, waybills, or other similar documents, and such books and records as may relate to the transportation of oil or gas in the facilities of each transporter herein referred to; and the department shall further be empowered to demand the production of such bills of lading, waybills or other similar documents and books and records relating to the transportation of oil or gas at any point in the state which it may designate.

(3) Provided, however, that in case of common carriers using bills of lading or waybills prescribed or approved by the Interstate Commerce Commission, such common carriers shall only be required to keep the usual records at office or offices in this state where such records usually are kept.

History.—s. 8, ch. 22784, 1945; s. 8, ch. 23883, 1947; s. 11, ch. 25035, 1949; ss. 21, 25, 35, ch. 69-106.

211.09 Collection of tax.—

(1) The tax hereby imposed is levied upon the producers of such oil or gas in the proportion of their ownership at the time of severance, but, except as otherwise herein provided, shall be paid by the person in charge of the production operations, who is hereby authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance, the proportionate amount of the tax herein levied before making payments to such producers; said tax shall become due and payable as provided by this chapter, and such tax shall constitute a first lien upon any of the oil or gas so produced, when in the possession of the original producer, or any purchaser of such oil or gas in its unmanufactured state or condition.

(2) When any person in charge of production operations shall sell the oil or gas produced by him to any person under contracts requiring such purchaser to pay all owners of such oil or gas direct, then the person in charge of the production operations may not be required to deduct the tax herein levied, but, in which event, such deduction shall be made by the purchaser before making payments to each owner of such oil or gas, and the purchaser in that case shall account for the tax; provided that nothing herein shall be construed as releasing the person in charge of production operations from liability for the payment of said tax.

(3) When any person in charge of production operations shall sell oil or gas produced by him on the open market, or shall use or dispose of the oil or gas for fuel or any purpose other than for lease operations on the lease where produced, he shall withhold the tax imposed by this chapter, and, if he is required to pay other interest holders, is hereby authorized, empowered and required to deduct from any amounts due them the amount of the tax levied and due under the provisions of this chapter before making payment to them.

(4) Every person in charge of production operations by which oil or gas is severed from the soil or water in this state, who fails to deduct and withhold, as required herein, the amount of tax from sale or purchase price, when such oil or gas is sold or purchased under contract or agreement, or on the open market, or otherwise, shall be liable to the state for the full amount of taxes, interest, and penalties due which should have been deducted, withheld and remitted to the state; and the department shall proceed to collect the tax from the person in charge of production operations, under the provisions of this chapter, as if he were the producer of the oil and gas.

History.—s. 9, ch. 22784, 1945; s. 9, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.10 Procedure where tax in dispute.—When the title to any oil or gas that has been severed or is being severed from the soil or water, is in dispute, or whenever the producer of such oil or gas, or the purchaser thereof, shall be withholding payments on account of litigation, or for any other reason, such producer or purchaser is hereby authorized, empowered and required to deduct from the gross amount thus held, the amount of the tax herein levied and imposed, and to make remittance thereof to the department as provided by this chapter.

History.—s. 10, ch. 22784, 1945; s. 10, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.11 Lien of tax.—The tax, interest, and penalty shall constitute and remain a lien upon the property, assets, and effects of the taxpayer until paid or until barred under chapter 95, and may be recovered in an action by the department on behalf of the state in any county where the property, assets, and effects are located. All penalties and other revenue derived hereunder in addition to any delinquent tax shall be apportioned in the same manner as the taxes are apportioned.

History.—s. 11, ch. 22784, 1945; s. 11, ch. 23883, 1947; ss. 21, 35, ch. 69-106; s. 34, ch. 74-382.

211.12 Delinquent taxes.—When any tax provided for in this chapter shall become delinquent the department shall issue its warrant directed to the sheriff of any county wherein the same or any part thereof accrued for the collection of said tax, interest and penalty; and the sheriff to whom the said warrant shall be directed shall proceed to levy upon the property, assets and effects of the person, firm, association or corporation against whom said tax is assessed and shall sell the same and make return thereof as upon execution and such sheriff shall execute and deliver to the purchaser a bill of sale or deed as the case may be. The state, through the Department of Revenue, shall be authorized to make bids at any such sale to the amount of the tax, penalty and costs accrued. In the event such bid is successful, the sheriff shall issue proper muniment of title to the department which shall hold such title for the use and benefit of the state; and any taxpayer or transferee of such taxpayer shall have the right at any time within 30 days from the date of such sale to redeem such property upon the payment of all taxes, penalties and costs accrued to the date of redemption. Such applicants shall not be entitled to a credit upon such taxes, penalties and costs by reason of anv revenue that might have accrued to the state or other purchaser under sale prior to such redemption. After the expiration of the period of redemption herein provided for, the department may sell such property at public auction upon giving a 7-day notice in writing, said notice to be published in one issue in a newspaper of general circulation published in the county in which such property is located, to the highest and best bidder for cash, or, if such newspaper is not published in said county, then such notice shall be published in a newspaper of general circulation published in Leon County. Upon a sale had thereof or when a redemption is made the department, for and on behalf of the state, shall issue bill of sale or quitclaim deed as the case may be, to the successful bidder or other redemptioner. Such muniment of title shall be executed by the department.

History.—s. 12, ch. 22784, 1945; s. 12, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.13 Tax exclusive.—No other excise or license tax in addition to the tax provided herein shall be imposed by the state, counties, municipalities, drainage districts, road, school and other taxing districts within this state upon any person who produces in any manner any oil or gas by taking it from the earth or water of this state. The several property appraisers of this state and tax assessors of the cities therein, when assessing the value of any land for ad valorem taxes, shall not increase the value thereof by reason of the fact that there may be oil or gas under the surface of such land, inasmuch as it is impossible under known valuation methods to accurately ascertain the true value of oil and gas in place and taxation thereof is more certainly accomplished after its capture or severance from the earth or water. The value of land for ad valorem tax purposes shall not be increased by reason of the location thereon of any producing oil or gas equipment or machinery used in and around any oil or gas well and actually used in the operation thereof.

History.—s. 13, ch. 22784, 1945; s. 13, ch. 23883, 1947; s. 19, ch. 72-360; s. 1, ch. 77-102.

211.17 Rules and regulations.—The department shall prescribe rules and regulations and appropriate forms for effectuating the purposes of ss. 211.14-211.18.

History.—s. 14, ch. 22784, 1945; s. 14, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.18 Records.—It shall be the duty of the clerk of the circuit court to keep a record book to be provided by the board of county commissioners of the county for the purpose of accepting for record any subsurface owner's interest in real estate of said county and any owner of subsurface interest in the lands of said county may register with the clerk the name of such owner, his address, the description of the land in which he has subsurface interest and such recording shall entitle such subsurface owner to notice by registered mail with return receipt requested of nonpayment of taxes by the surface owner, sale of tax certificates affecting the surface of said lands, application for tax deed of the surface interest and any foreclosure proceedings against said lands for unpaid taxes thereon, and no tax deed nor foreclosure proceedings shall affect such subsurface owner's interest if the notice hereby provided for is not given. For his services in registering such subsurface owner's interest as herein provided, the clerk shall receive a fee of $1, plus the fee per page for recording now provided by law. Where an owner of a subsurface interest or interests has registered with the clerk of the circuit court of the county in which said subsurface interest is located, the name of such owner, his address, and the description of the land in which he has subsurface interests pursuant to the provisions of chapter 22784, Acts of 1945, such registration shall be and operate as a registration of his subsurface interests and shall entitle the owner thereof to the notices and immunities hereinabove provided the same as if such owner had registered with said clerk his subsurface interests under and pursuant to this chapter.

History.—s. 14, ch. 22784, 1945; s. 14, ch. 23883, 1947.

211.19 Appeal to courts.—Any person aggrieved by any findings or order of the department shall have the right of redress in accordance with the provisions of ss. 194.171, 194.181 and 194.211.

History.—s. 15, ch. 22784, 1945; s. 15, ch. 23883, 1947; ss. 21, 35, ch. 69-106.

211.20 Construction of chapter.—Nothing in this chapter shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due under existing laws, prior to July 1, 1947, whether such assessment, appeal, suit, claim or action shall have been begun before the said date, or shall thereafter be begun; and any existing law amended or repealed by this chapter is expressly continued in full force, effect and operation for the purpose of the assessment and collection of any taxes due under it prior to July 1, 1947, and for the imposition of any penalties, forfeitures or claims for a failure to comply therewith.

History.—s. 16, ch. 22784, 1945; s. 16, ch. 23883, 1947.

PART II

TAX ON SEVERANCE OF SOLID MINERALS

211.30 Definitions.—In addition to the definitions contained in s. 211.01 of part I, the following words and terms shall have the definition and meaning ascribed to them in this section, unless the intention to give a more limited meaning is disclosed by the context:

(1) The words "solid mineral" mean all solid minerals, including, but not limited to, clay, gravel, phosphate rock, lime, shells (excluding live shellfish), stone, sand, and any rare earths which have heretofore been discovered or may be discovered in the future, which are contained in the soils or waters of this state.

(2) The word "severed" means the extraction or withdrawal from the soil or water of this state, either on or below the surface, of any solid minerals.

(3) The word "producer" means any person severing solid minerals from the soils and waters of this state.

(4) The word "production," for measuring solid minerals, means the total gross amount severed from the soils and waters of this state from any type of production unit, including but not limited to mines, quarries, pits, or other sites of extraction.

(5) The word "value" means the sales price or true market price of the solid mineral at the point of severance. If the solid mineral is exchanged for something other than cash or is not sold but is further refined, processed, or otherwise retained, or if the relation between the buyer and seller is such that the consideration paid, if any, is not indicative of the true market price, the true market price shall be determined by the average market price per ton of the solid mineral at the point of severance for the year for which the tax is being paid. This shall be determined by the Department of Revenue after notice and hearing to the taxpayers affected. When there is no market value or evidence of sales of a solid mineral within the state, the department may use the true market value in this state of a comparable mineral in competition with the solid mineral the value of which is being determined or such other method as may be determined to arrive most equitably at the value of the solid mineral. In calculating or determining the true market price at the point of severance, it is the intent of the legislature not to include any shipping, handling, processing, or other charges arising between the point of severance and point of sale.

(6) The words "point of severance" mean that point, at which the solid mineral being severed is identifiable as to kind and quality and is capable of being transported for use or further processing.

(7) The words "site of severance" mean the mine, quarry, pit, or other geographical location at which a solid mineral is actually being severed from the soils and waters of this state.

(8) The words "taxable year" means calendar year.

History.—s. 1, ch. 71-105; s. 1, ch. 75-40.

211.31 Levy of tax on severance of solid minerals; rate, basis, distribution, and implementation of tax.—

(1) There is hereby levied, to be collected as provided herein, an excise tax upon every person engaging in the business of severing solid minerals from the soils and waters of this state for commercial use. Except as provided in subsection (3), such tax shall be 5 percent of the value at the point of severance of the identifiable solid minerals severed. The proceeds of the tax imposed by this subsection, excluding the amount credited for ad valorem tax payments, shall be paid into the State Treasury as follows:

(a) 50 percent to the credit of the general revenue fund of the state; and

(b) 50 percent to the credit of a Land Reclamation Trust Fund to be established for refunds under the provisions of s. 211.32(3).

(2) The 5 percent rate provided in subsection (1) shall be suspended for a period of 4 years beginning July 1, 1971. In its place the following rates shall be applicable for the periods set forth:

(a) July 1, 1971 through June 30, 1973—3 percent of the value of solid minerals severed.

(b) July 1, 1973 through June 30, 1975—4 percent of the value of solid minerals severed.

(3) The excise tax upon persons engaged in the business of severing phosphate rock from the soils and waters of this state for commercial use shall be 10 percent of the value at the point of severance of the identifiable phosphate rock severed. The proceeds from the tax imposed by this subsection, excluding the amount credited for ad valorem tax payments, shall be paid into the State Treasury as follows:

(a) 75 percent to the credit of the General Revenue Fund of the state; and

(b) 25 percent to the credit of the Land Reclamation Trust Fund established for refunds under the provisions of s. 211.32(3).

(4) The expenses of administering this part shall be borne by the Land Reclamation Trust Fund.

History.—ss. 1, 3, ch. 71-105; s. 2, ch. 75-40; s. 1, ch. 77-406.
cf.—s. 193.481 Assessment of oil, mineral, and other subsurface rights.

211.32 Tax on solid minerals; credit for ad valorem taxes and royalties; certain exclusions; refund for restoration and reclamation.—

(1)(a) A taxpayer shall be entitled to a credit against the tax imposed by this part in an amount equal to the full amount of ad valorem taxes paid upon the separately assessed mineral interest of the real property upon which the site of severance is located. However, in no event shall the ad valorem tax credit exceed 20 percent of the taxes due under this part.

(b) The amount of ad valorem taxes allowed for credit may be accumulated from year to year on property upon which a site of severance may be or is located.

(c) A credit for payment of ad valorem taxes shall be allowed only if the taxpayer has a program for reclamation and restoration of the site of severance approved by, and filed with, the Department of Natural Resources.

(2) Solid minerals which are extracted by the owner of the site of severance for the purposes of improving the site of severance and, so long as a reclamation plan is approved by the county, when the site of severance is located in accordance with subsection (3)(a), or by the state, should the county not have provision for approving such a plan, solid minerals upon which a sales tax is ultimately paid to the state or which are sold to governmental agencies in this state, including cities and counties, shall not be subject to the tax imposed by this part.

(3)(a) Each taxpayer shall institute and complete a reclamation and restoration program upon each site of severance subject to the taxes imposed by this part, in accordance with criteria adopted by the Department of Natural Resources, which shall include the following standards:

1. Control of the physical and chemical quality of the water draining from the area of operation;
2. Soil stabilization, including contouring and vegetation;
3. Elimination of health and safety hazards;
4. Conservation and preservation of remaining natural resources; and
5. Time schedule for the completion of the program and the various phases thereof.

The Department of Natural Resources may adopt as criteria local ordinances which, at the minimum, meet the above standards. The mandatory obligation to institute and complete a reclamation and restoration program under this paragraph shall not apply to acres disturbed by the severance of solid minerals before July 1, 1975. However, if such acres are included within sites of severance that are subject to reclamation and restoration programs approved by the Department of Natural Resources, such acres shall be treated as being subject to this paragraph for purposes of the refunds provided under paragraph (d).

(b) The reclamation and restoration program may include qualified sites other than the site of severance upon which the taxes were paid. The Department of Natural Resources may adopt a list of sites qualifying under this paragraph, which must meet, at the minimum, the following qualifications:

1. The restoration or reclamation of the site and the program to be instituted is in the public interest; and
2. The location of the site is in an area where economic considerations would not be conducive to immediate restoration or reclamation of the site.

(c) As part of accomplishing a program of restoration and reclamation at a particular site of severance or at other sites qualified pursuant to paragraph (b), the taxpayer may request the Department of Natural Resources to accept a portion or portions of the site as state land. Such a request shall be accompanied by an offer to transfer to the state title to the land involved and suitable ingress thereto and egress therefrom. If such request is granted by the Department of Natural Resources, the refund under this election shall be computed on the fair market value of the land at the time of transfer, as determined by the taxpayer and the Department of Natural Resources, with the approval of the [1]Board of Trustees of the Internal Improvement Trust Fund and concurred in after public hearing by said board.

(d) The Comptroller shall, upon written verification of compliance with paragraphs (a), (b), or (c) of this subsection by the Department of Natural Resources, and upon verification of the cost of the restoration and reclamation program or, if paragraph (c) is elected, the fair market value of the land, grant refunds, to be paid from the Land Reclamation Trust Fund, of the taxes paid under this part, in an amount equal to 100 percent of the costs incurred in complying with paragraphs (a) or (b), or 100 percent of the fair market value of the land transferred in complying with paragraph (c), subject to the following limitations:

1. A taxpayer shall not be entitled to refunds in excess of the amount of taxes paid by the taxpayer under this part which are deposited in the Land Reclamation Trust Fund.
2. A taxpayer shall not be entitled to the payment of a refund for costs incurred in connection with a particular restoration and reclamation program unless and until the taxpayer is accomplishing the program in reasonable compliance with the criteria established by the Department of Natural Resources.
3. To insure completion of reclamation, a taxpayer shall not be entitled to the payment of refunds which would reduce the balance of the taxpayer's account in the Land Reclamation Trust Fund below an amount equal to 30 percent of the moneys in the trust fund as of the end of the preceding taxable year, including the portion of the taxes paid into the trust fund for that year, multiplied by a fraction, the numerator of which is the number of acres eligible for reclamation refunds remaining to be reclaimed by the taxpayer at the end of the preceding taxable year and the denominator of which is the total number of acres eligible for reclamation refunds to the taxpayer during the same year. However, the foregoing completion holdback, on a per acre basis, shall never be less than the per acre completion holdback utilized for the first taxable year for which a refund is claimed.

(e) Claims for reclamation refunds under paragraph (d) shall be filed on an annual basis within 60 days after the taxpayer has paid the tax imposed under this part for the preceding taxable year. The taxpayer may include in the claim for refund all costs incurred in complying with paragraphs (a) or (b), or the values of all land transferred in complying with paragraph (c), for the period July 1, 1971, through December 31 of the preceding taxable year, to the extent that such costs or values have not been previously allowed for refund purposes.

(f) To encourage the rapid accomplishment of reclamation, the taxes credited to the Land Reclamation Trust Fund in excess of the amounts retained to insure completion of reclamation under paragraph (d) shall be available for refund to the taxpayer under paragraph (d) for a maximum period of 5 years from the date the tax is paid. In allocating the tax paid into the Land Reclamation Trust Fund for a particular taxable year to refunds claimed and received by the taxpayer, the taxes first paid into the trust fund shall be deemed the taxes first paid out in refunds. The department shall determine by July 1 of each year that portion of the Land Reclamation Trust Fund for which refund claims have not been timely filed and allowed in accordance with this paragraph, and such portion shall be transferred to the General Revenue Fund, provided that no such transfer shall reduce the balance in the Land Reclamation Trust Fund to the account of a particular taxpayer below the amount required to be maintained therein to insure completion of reclamation under paragraph (d).

(g) If, during any 3 consecutive taxable years, a taxpayer has not performed work under any approved reclamation and restoration program and if, at the end of such 3-year period, the taxpayer has completed reclamation on all lands he is obligated to reclaim pursuant to paragraph (a), then all moneys in the Land Reclamation Trust Fund to the taxpayer's account at the end of such period shall be transferred to the General Revenue Fund.

(h) If the Department of Natural Resources determines that a taxpayer has abandoned a reclamation program subject to this part or has failed to complete such program by the completion date specified by the Department of Natural Resources, and if the Department of Natural Resources further determines that the taxpayer, after 60 days' notice of such deficiency from the Department of Natural Resources, has failed to return work on the reclamation program to a rate of progress that would reasonably insure completion of the program within not more than 6 months after the date of such deficiency notice from the Department of Natural Resources or within not more than 6 months from the completion date established by the Department of Natural Resources, whichever period is longer, then such reclamation program shall be permanently ineligible for purposes of reclamation refunds under this part. At the time of such final determination, the completion holdback applicable to unreclaimed acres in such ineligible program under paragraph (d) shall be transferred from the Land Reclamation Trust Fund to the credit of the General Revenue Fund, and no costs incurred or the value of any land transferred by the taxpayer after the date of such final determination in connection with such ineligible program shall be allowed for refund purposes under paragraph (d).

(i) In determining a taxpayer's compliance with completion dates specified by the Department of Natural Resources for reclamation programs under this part, such completion dates shall be extended by the period of any delays attributable to causes beyond the reasonable control of the taxpayer.

(j) The Department of Natural Resources shall be empowered to institute a civil action in any court of competent jurisdiction for the purpose of obtaining injunctive relief necessary to compel a taxpayer, or any person or persons claiming a fee interest in the land subject to reclamation, to comply with the mandatory reclamation provisions of paragraph (a). If a person other than the taxpayer is compelled to reclaim land pursuant to this paragraph, then such person shall be entitled to receive the reclamation refunds that would be available to the taxpayer under paragraph (d) if the taxpayer had performed said reclamation.

(k) The obligation to reclaim under paragraph (a) shall run with the land and shall be enforceable against any person claiming a fee interest in the land subject to said obligation.

(l) The amendments by ch. 75-40, Laws of Florida, to paragraphs (d), (e), (f) and (g) shall apply to the balance in the Land Reclamation Trust Fund on July 1, 1975, regardless of the date the taxes were paid that gave rise to said balance and to refund claims filed on or after July 1, 1975, regardless of the date the reclamation costs were incurred on which the claim is based.

(m)1. There is hereby created a Phosphate Land Reclamation Study Commission composed of seven members to be appointed by the Governor. The Governor shall designate one member of the commission to serve as chairman, and the commission shall meet at the call of the chairman. Members of the commission shall receive no compensation but shall receive travel and per diem as provided by s. 112.061.

2. The Department of Natural Resources shall provide the commission with the staff necessary to carry out the duties of the commission. Advice and expertise in economic matters shall be provided by the Division of Budget of the Department of Administration upon request of the commission.

3. The Phosphate Land Reclamation Study Commission shall make a study of the reclamation of land in this state disturbed by the severance of pebble phosphate rock. In making its study, the commission shall consider, but not be limited to:

a. An inventory of lands in the state disturbed by the severance of pebble phosphate rock prior to July 1, 1975, which lands have not been reclaimed. Such inventory shall consider the ownership of the land and the ownership of mineral rights in such lands.

b. An estimate of the present and future costs of reclaiming lands which have been disturbed by the severance of phosphate rock.

4. On or before March 1, 1978, the Phosphate Land Reclamation Study Commission shall report the results of its study to the Governor, the President of the Senate, and the Speaker of the House of Representatives. At that time, it may also recommend:

a. Legislation designed to promote and assure the restoration and reclamation of land disturbed by the severance of solid minerals which, in the absence of incentives provided by law, might not be restored or reclaimed.

b. Whether s. 211.32(3)(n) should be amended, modified, or repealed.

5. There is hereby appropriated from the Land Reclamation Trust Fund to the Department of Natural Resources the sum of $150,000. To further assist the commission, 3 time-limited, exempt positions are hereby created in the Department of Natural Resources.

(n) Notwithstanding any other provision in this part, refunds from the taxes levied under this part based upon the severance of solid minerals on or after July 1, 1978, shall be paid from the Land Reclamation Trust Fund only for the cost of restoration and reclamation of land:

1. Disturbed by the severance of solid minerals prior to July 1, 1975; or

2. Included within a site of severance on or before the effective date of this act, with a restoration and reclamation program theretofore filed with the Department of Natural Resources.

History.—s. 1, ch. 71-105; ss. 3, 6, ch. 75-40; s. 2, ch. 77-406.

[1]**Note.**—See ss. 10 and 15, ch. 75-22 transferring the board's powers to the Departments of Natural Resources and Environmental Regulation.

211.33 Administration of the severance tax; estimated tax; confidentiality of returns.—

(1) For the 1977 taxable year, the department shall determine the value of solid minerals by March 1, 1978. The tax imposed by this part for the 1977 tax

year shall be due on or before April 1, 1978, and shall be paid at the same time the annual return is filed. Increased taxes imposed by this act shall apply to the severance of solid minerals and to the performance of land reclamation occurring on and after July 1, 1977. The annual return shall be signed by the taxpayer or his duly authorized agent and shall be verified by oath. The return shall be filed on or before April 1 for the preceding taxable year and shall include the following:

(a) The location of each site of severance operated or controlled by the taxpayer during the taxable period and the total number of acres in each site;

(b) The kind [1][and] quantity of the solid minerals severed;

(c) The value of the severed resources at the point of severance;

(d) If claiming an ad valorem tax credit, copies of the ad valorem tax return and receipts for payment thereof; and

(e) Such other information as the department may require.

(2)(a) For the taxable year commencing January 1, 1978, and all subsequent taxable years, every taxpayer shall make a declaration of estimated tax for the taxable year, in such form as the department shall prescribe. The term "estimated tax" shall mean the amount the taxpayer estimates to be his tax under this part for the taxable year. A taxpayer may amend a declaration under regulations prescribed by the department.

(b) The declaration is required to be filed on or before the first day of the fifth month of the taxable year. The estimated tax shall be paid in four equal installments. The first installment shall be paid at the time of the required filing of the declaration; the second and third installments shall be paid on or before the first day of the seventh and tenth months of the taxable year, respectively; and the fourth installment shall be paid on or before the first day of the next taxable year.

(c) If an amended declaration is filed, the remaining installments, if any, shall be ratably increased or decreased, as the case may be, to reflect the increase or decrease in the estimated tax occasioned by such amendment.

(3)(a) For the taxable year commencing January 1, 1978, and all subsequent taxable years, the department shall determine the value of solid minerals by March 1 of the year following the close of the taxable year.

(b) The department shall provide by regulation for a credit against estimated taxes of any amount determined by the department to be an overpayment of the tax imposed by this part for the preceding tax year.

(c) Except as provided in subsection (5), the taxpayer shall pay the amount of any tax due for the preceding tax year by April 1.

(4) Any amount paid as estimated tax shall be deemed assessed upon the due date for the taxpayer's return for the taxable year.

(5)(a) Except as provided in paragraph (d), the taxpayer shall be liable for interest at the rate of 12 percent per year and for a penalty in an amount determined at the rate of 10 percent per year upon the amount of any underpayment of estimated tax determined under this subsection.

(b) For purposes of this subsection, the amount of any underpayment of estimated tax shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to 80 percent of the tax shown on the return for the taxable year or, if no return were filed, 80 percent of the tax for such year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) The period of the underpayment for which interest and penalties shall apply shall commence on the date the installment was required to be paid and shall terminate on the date on which the amount of underpayment is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subparagraph (b)1. for such installment date.

(d) No penalty or interest for underpayment of any installment of estimated tax shall be imposed if the total amount of all such payments made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the lesser of:

1. An amount equal to 80 percent of the tax finally due for the taxable year; or

2. An amount equal to the tax shown on the taxpayer's return for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding year.

(6) The information contained in any tax return or declaration of any estimated taxes shall be confidential; however, this shall not be construed to prohibit the publication of statistics so classified as to prevent the identification of particular returns when more than one return is made by a particular segment of the industry and identification would adversely affect competitive conditions.

History.—s. 1, ch. 71-105; s. 4, ch. 75-40; s. 3, ch. 77-406.

[1]**Note.**—Bracketed word substituted for the word "of" by the editors.

211.34 Local ordinances not preempted.—Nothing in this act shall be deemed to preempt local ordinances that impose stricter land reclamation standards.

History.—s. 5, ch. 75-40.