HOOVER, INC.,	)	
	)	
Plaintiff,	)	
	)	Appeal No.
	)	No. 01A01-9601-CH-00004
VS.	)	
	)	
	)	
RUTHERFORD COUNTY,	)	Rutherford Chancery
A Political Subdivision of the State	)	No. 93CV-924
of Tennessee; ED ELAM	)	
County Court Clerk of Rutherford County,	)	
Tennessee; and CHARLES W. BURSON,	)	
Attorney General of the State of Tennessee	)	
	)	
Defendants.	)	

IN THE COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT OF RUTHERFORD COUNTY

AT MURFREESBORO, TENNESSEE

HONORABLE ROBERT E. CORLEW III, CHANCELLOR

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AFFIRMED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:
SAMUEL L. LEWIS, JUDGE
WILLIAM C. KOCH, JR., JUDGE

HOOVER, INC.,	)	
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Tennessee; and CHARLES W. BURSON,	)	
Attorney General of the State of Tennessee	)	
	)	
Defendants	)	

O P I N I O N

The Plaintiff, Hoover, Inc., has appealed from a summary judgment dismissing its suit against the captioned defendants seeking refund of mineral severance taxes paid under protest.

On appeal, the only issue presented by Plaintiff is:

> Whether Chapter 111, Private Acts of 1983, authorizing the collection of severance tax by Rutherford County, was unconstitutional.

Defendants present the issue in the following form:

> Whether the collection of severance taxes by Rutherford County from Hoover, Inc. From March 8, 1993 until May 31, 1993 was improper such that Hoover, Inc. Is entitled to a refund of the severance taxers collected during said period?

Plaintiff operates a stone quarry in Rutherford County. It seeks to recover taxes paid to the County under protest on stone removed from the quarry from March 8, 1993, to May 31, 1993, on the ground that the enabling legislation for the tax was unconstitutional under Article XI, Section 8 of the Constitution of Tennessee which reads as follows:

> **General laws only to be passed**. - The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunities,

> [immunities] or exemptions other than such may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

In 1983, the General Assembly enacted Chapter 111, Private Acts of 1983, levying a mineral severance tax in Rutherford County and authorizing the County Commission to fix a tax rate of not more than $.25 per ton. The proceeds of the tax were allocated to the County General Fund for appropriation by the County Commission. The County Commission fixed a tax rate of $.25 per ton.

The following year, the General Assembly enacted Chapter 953 Public Acts of 1984 which authorized the collection of a $.15 per ton severance tax by all counties, excepting certain counties, including Rutherford County from the act. Rutherford County continued to collect its $.25/ton mineral severance tax pursuant to its private act.

Concerns over the constitutionality of the 1984 act prompted the General Assembly to enact Chapter 410, Private Acts of 1985 to permit, but not require, the counties already levying a mineral severance tax under a private act to begin collecting the tax under the state severance tax law. Rutherford County continued collecting the mineral severance tax under its private act.

On March 8, 1993, the Rutherford County Commission voted to reduce its severance tax rate from $.25/ton to $.15/ton - the rate set in the state severance tax law. Approximately two months later, on May 19, 1993, the General Assembly enacted Chapter 468, Private Acts of 1993, removing Rutherford County's exemption from the state severance tax law. This legislative action had no practical effect on Rutherford County's mineral severance tax because the Rutherford County Commission had already lowered its tax rate to $.15/ton. The legal significance of this legislation was that from and after May 31, 1993, Rutherford County's mineral severance tax was based on the state severance tax law rather than its

private act, but the $.15 per ton tax from March 8, 1993 to May 31, 1993, was collected under the authority of the original 1983 private act which Plaintiff alleges was unconstitutional and invalid.

In 1994, a panel of the Eastern Section of this Court held that the exclusion of remaining three counties from the state severance tax law based on population violated Tenn. Const. Art. I, § 8 and Tenn. Const. Art. XI, § 8 and elided these exclusions from the statute. *Nolichuckey Sand Co. v. Huddleston*, Tenn. App. 1994, 896 S.W.2d at 790-91. This decision had no practical effect on Rutherford County's collection of the mineral severance tax because its exclusion had already been repealed and because the county had been collecting its tax pursuant to the general state law since May 31, 1993.

Hoover, Inc.'s argument that the *Nolichuckey* decision invalidates Rutherford County's severance tax collections between March 8, 1993 and May 31, 1993 is misplaced. The *Nolichuckey* opinion is based on the constitutional principle that the General Assembly may not exclude counties from the operation of a general law based on their population unless there is a rational basis for doing so. *Nolichuckey Sand Co. v. Huddleston*, Tenn. App. 1994, 896 S.W.2d at 788-89, 790. The *Nolichuckey* opinion did not hold that the General Assembly could not enact a private act permitting a particular local government to levy a local tax for local purposes.

In *Hill v. Roberts*, 142 Tenn, 217 S.W. 826 (1919), the Plaintiffs attacked legislation which directed the county of Davidson and City of Nashville to levy a tax to fund the construction of a war memorial. The Supreme Court dismissed the attack cited Article 2, Section 29 of the State Constitution and said:

> We see no reason why the legislature may not require a particular levy by county authorities or by city authorities for county or city purposes. We do not think that article 2, section 29, expresses any prohibition against such procedure by the legislature, and we have recently held that no constitutional restriction upon the State's power to tax will be

> inferred. *Vertrees v. The State Board of Elections*, 141, Tenn. 645, 214 S.W. 737.

In *KnoxTenn Theaters, Inc. v. Dance*, 186 Tenn. 114, 208 S.W.2d 536 (1948), the General Assembly authorized Knox County to levy a tax upon theater tickets for the use of the County. The Supreme Court affirmed the dismissal of the attack and said:

> (4) the act is assailed also upon the theory that it confers upon Knox County and Knoxville benefits not made available to any other of the counties or cities of the State and imposes upon those attending amusements in Knox County a burden not so imposed elsewhere in the State and, therefore, violates the constitutional provisions referred to.
>
> When that reason is assigned for an attack upon the constitutionality of a special act as violative of these constitutional provisions, the issue cannot be determined until after it is ascertained whether the act primarily affects the county or municipality in its governmental or political capacity or whether primarily, rather than as a resulting incident, it affects the citizens of the governmental unit involved in their individual relations. This controlling distinction is clearly stated in our case of *Darnell v. Shapard*, 156 Tenn. 544, 552, 553, 3 S.W.(2d) 661, thus: "The determination of the validity of acts of the legislature attempting a classification of the counties of the State is largely influenced by the character of the legislation. If an act of the legislature affects particular counties as governmental or political agencies, it is good. It is good if it affects only one county in this capacity. No argument is required to sustain such an act. If, however, an act of the legislature primarily affects the citizens of particular counties or of one county in their individual relations, then such classification must rest on a reasonable basis, and, if the classification is arbitrary, the act is bad." Attention was again called to this controlling distinction in *State ex rel. Bales v. Hamilton County*, 170 Tenn. 371, 374, 95 S.W. (2d) 618, 619, in this language: "A distinction is to be drawn, however, between legislation primarily designed to affect the governmental agency as such and legislation designed primarily to affect the employees or citizens of such governmental agency as individuals."
>
> (5, 6) The special act attacked in this case clearly reflects it as a fact that it is "not designed primarily to affect" those attending theaters, etc., in Knox County, but that its primary purposes is to raise revenue for Knox County and its municipalities by the collection of the tax levied by this act. "The collection of taxes is beyond question a governmental function." *Southern v. Beeler, Atty. Gen.*, 183 Tenn. 272, 285, 195 S.W.(2d), 857, 863. The burden of paying the tax is the resulting

> incident of that primary purpose. It results that under the controlling distinction as restated in *Darnell v. Shapard, supra,* and in *State ex rel. Bales v. Hamilton County, supra,* this act does not offend these constitutional provisions, since it primarily affects Knox County and its municipalities as governmental agencies. The Trotter case, *State ex rel. Scandlyn v. Trotter*, 153 Tenn. 30, 281 S.W. 925, and the Town of McMinnville case, *Town of McMinnville v. Curtis*, 183 Tenn. 442, 192 S.W.(2d) 998, quoted from at length in the briefs, expressly point to this distinction and hold the special acts there under attack invalid because they were primarily designed to affect the citizens involved in their individual capacity or relations.

Constitutional requirements of uniformity in taxation do not apply to special legislation authorizing counties to levy taxes *Nashville, Chattanooga & St. L. Ry v. Marshall County*. 161 Tenn. 236, 30 S.W.2d 268 (1930).

Because of the foregoing authorities, there can be no successful challenge of the validity of the tax authorized by the General Assembly and levied by the county commission for the period in question.

The judgment of the Trial Court is affirmed. Costs of the appeal are taxed to the Appellant. The cause is remanded to the Trial Court for any necessary further proceedings.

AFFIRMED and REMANDED.

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HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

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SAMUEL L. LEWIS, JUDGE

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WILLIAM C. KOCH, JR., JUDGE