

The Punjab Motor Spirit (Taxation of Sales) Act, 1939

Punjab Act 1 of 1939

Received the assent of His Excellency the Governor on the 8th April, 1939, and, was first published in the Punjab Gazette, Extraordinary, dated the 12th April, 1939.

LEGISLATIVE HISTORY ▼

An Act to provide for the levy of a tax on the [-] sale of motor spirit. Whereas it is expedient to provide for the levy of a tax on the

[-] sale of motor spirit; It is hereby enacted as follows :-

CHAPTER I

Preliminary

1. Short title and commencement. - (1) This Act may be called the Punjab Motor Spirit (Taxation of Sales) Act, 1939.

(2) It shall come into force on such date as the Governor may by Notification appoint.

Object & Reasons ▼

[2. Definitions. -]

In this Act unless there be anything repugnant in the context, -

- (a) "Government" means the Punjab Government;
- (b) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class;
- (c) "motor spirit" means any inflammable hydrocarbon (including any mixture of hydro-carbons, or any liquid containing hydrocarbon) which is ordinarily used for providing reasonably efficient motive power for any form of motor-vehicle;
- (d) "penalty" means a penalty imposed under section 9 of this Act;
- (e) "Petrol Taxation Officer" means such officer not below the rank of an [Assistant Excise and Taxation Officer], as may be appointed by Government to discharge the duties of petrol taxation officer under this Act with reference to any particular area;
- (f) "prescribed" means prescribed by rules made under this Act;
- [(g) "dealer" means any person who, on commission or otherwise, sells motor spirit to any person or keeps motor spirit for sale];
- (h) Omitted vide Punjab Act 10 of 1974.
- [(i) "sale" means sale of motor spirit made for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge : and the words "sell" "buy" and "purchase" with all their grammatical variations and cognate expressions shall be construed accordingly];
- (j) "vehicle" includes any carriage or conveyance used on land or in water or air;
- [(k) "Excise and Taxation Commissioner"] means the person for the time being appointed by Government to perform all or any of the functions and exercise all or any of the powers of the Excise and Taxation Commissioner; and
- (l) "Deputy Excise and Taxation Commissioner" means the person for the time being appointed by Government to perform all or any of the functions and exercise all or any of the powers of the Deputy Excise and Taxation Commissioner in any specified local area].

CHAPTER II

Taxation

3. Imposition of Tax. - [(1) There shall be levied and paid to the Government on ad valorem basis a tax on all sales of -

(a) diesel oil, at the rate of our paise in rupee; and

(b) other motor spirit, at the rate of six paise in a rupee].

[Provided that no sale of motor spirit at a stage subsequent to the first stage shall be liable to tax under this Act if the dealer effecting the sale at the subsequent stage furnishes to the Petrol Taxation Officer in the prescribed form and manner a certificate duly filled in and signed by the dealer from whom he purchased the motor spirit, to the effect that the tax in respect of sale such motor spirit has been paid].

[(1-A) For the purposes of this Act the first stage of sale of motor spirit shall be such as the Government may, by notification, specify].

[(2) The [State] Government may by notification exempt any [-]sales of motor spirit from liability to pay tax under the Act, either wholly or partially and on such conditions as it may think fit to impose].

4. Recovery of taxes as arrears of land revenue. - When the payment of any tax or penalty under this Act falls due the amount may be recovered as if it were an arrear of land revenue.

5. Power to determine certain questions. - (1) Any question as to whether a tax or penalty is recoverable under this Act, the person from whom it is due and the amount so recoverable shall be determined by the Petrol Taxation Officer for the area where the sale takes place.

(2) No such order shall be made final until an opportunity has been given to any person concerned to appear in person or by duly authorised agent before the Petrol Taxation Officer; but once the order has been made final a certificate given under the hand of the Petrol Taxation Officer shall, subject to the provisions of this Act with regard to appeal, review and revision be final and conclusive proof both as to the amount of tax or penalty which is due and as to the person from whom it is due.

[5A. Refunds.] - The Petrol Taxation Officer shall, in the prescribed manner, refund to a dealer applying in this behalf any amount of tax paid by such dealer in excess of the amount due from him under this Act :

Provided that no claim refund of any tax paid under this Act shall be allowed, unless it is made within a period of three years from the date of its payment into the treasury or within three years of the final order passed in appeal, revision or review, whichever period expires later.

CHAPTER III

Licensing of Dealer.

[6. Person not to carry on business as dealers without licence. - After the expiry of a period of two months from the commencement of the Punjab Motor Spirit (Taxation of Sales) Amendment Act, 1974, no person shall carry on business as a dealer unless he is in possession of a valid licence :

Provided that nothing in this sub-section shall apply to a dealer who does not effect the sale of motor spirit at the first stage :

Provided further that a licence issued under this Act before the commencement of the Punjab Motor Spirit (Taxation of Sales) Amendment Act, 1974, shall on such commencement, be deemed to be cancelled].

7. Grant of licence. - (1) Except as provided hereunder, a licence shall be granted to any person applying therefor [in the prescribed form to the petrol Taxation Officer on payment of a fee of not more than [one hundred rupees], if any, as may be prescribed.

(2) Every such licence shall be valid without renewal only up to the thirty- first day of March following the date on which it is granted but may be renewed annually.

(3) The grant or renewal of a licence may be refused if any previous licence of the applicant [or of any person with whom the applicant has been working as a partner] has been cancelled [or if the applicant or any person with whom he has been working as a partner has been convicted of any offence relating to the motor spirit or if the Petrol Taxation Officer is satisfied that the applicant has been made only for the purpose of enabling any person to carry on business as a [-]dealer without a licence.

[(4) No licence under this Act [except in case of licence for the [-]sale of powerine or diesel oil] shall be granted to any person who does not hold a licence for the storage of dangerous petroleum under the Petroleum Act, 1934, and if any such licence granted under that Act, is cancelled, suspended or is not renewed, any licence granted under this Act to the holder thereof shall be deemed to be cancelled, suspended or not renewed as the case may be.

(5) If an application for the renewal of licence under this Act is made within such time before its expiry as may be prescribed by Government, the holder of the licence shall be deemed to be in possession of a valid licence until the licence is renewed or until he is informed that the renewal of the licence has been refused.

8. Suspension or cancellation and restoration of a licence. - (1) The Petrol Taxation Officer may after giving the licensee an opportunity to be which may be prescribed as the conditions subject to which a licence is granted.

(2) A licensee shall not be entitled to any compensation for the suspension or cancellation of his licence under the foregoing sub-section.

(3) A licence cancelled or suspended under this section may be restored by the Petrol Taxation Officer on payment of such fee as may be prescribed.

CHAPTER IV

Penalties and powers of prevent evasion

9. Imposition of penalty. - If any tax due under this Act is not paid within the time fixed by notice issued in the prescribed manner, the Petrol Taxation Officer may impose a penalty not exceeding the amount of the tax due, in addition to the payment of the tax. Provided that no such penalty shall be imposed unless the person on whom it is to be imposed or his duly authorised agent is given an opportunity of being heard by the Petrol Taxation Officer.

10. Punishment for unauthorised sale. - Whoever contravenes the provisions of section 6 shall be punishable with fine which may extend to one thousand rupees or to a sum double the amount of the tax due in respect of the sale of any motor spirit conducted by or on behalf of such person, whichever is greater.

11. Issue of warrants. - (1) A Magistrate may issue a warrant -

(a) for the arrest of any person whom he has reason to believe to have committed an offence punishable under this Act; or

(b) for the search, whether by day or by night, of any building, vessel, vehicle or place in which he has reasons to believe that any motor spirit is sold or is kept for sale.

(2) All warrants issued under this section shall be executed in accordance with provisions of the Code of Criminal Procedure, (1898 V of 1898) by the Police Officer or if the Officer issuing the warrant deems fit by any other person.

12. Searches how made. - All searches made under the provisions of this Act shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898.

13. Procedure for arrest without warrant. - The provisions of section 61 of the Code of Criminal Procedure, 1898, shall apply to all arrests without warrant made under the provisions of this Act.

14. Duty of certain persons to report offences, etc. - Every person employed by Government, by any local body or by the Court of Wards, every village headman, village accountant and village watchman shall give immediate information to the [Deputy Excise and Taxation Commissioner] of the commission of any offence or of the intention of preparation to commit any offence punishable under this Act which may come to his knowledge.

15. Power of investigation. - (1) Every officer of the [Excise and Taxation Department] not below such rank as may be prescribed shall within the area for which he is appointed, have power to investigate all offences punishable under this Act.

(2) Every such officer shall, in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence.

(3) Every such officer may enter at any reasonable time the premises of any [-]dealer and with or without notice examine and take copies of extracts from any account books or registers for the purpose of testing the accuracy of any prescribed returns or of informing himself as to any particulars regarding which information is required for the purposes of this Act or of any rules thereunder.

(4) Every such officer may detain and arrest any person whom he has reason to believe to be guilty of any offence punishable under this Act.

16. Offences to be bailable. - All offences punishable under this Act shall bailable.

17. Punishment for vexatious search or arrest. - Any officer or person exercising powers under this Act who -

(a) without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel, vehicle or place; or

(b) vexatiously and unnecessarily detains, searches, or arrests any person;

shall on conviction be punishable with fine which may extend to five hundred rupees.

18. Punishment for vexatious delay. - Any officer or person exercising powers under this Act who vexatiously and unnecessarily delays forwarding to a Magistrate any person arrested under this Act and not released by him on bail shall on conviction be punishable with fine which may extend to two hundred rupees.

19. Power to compound offences. - (1) The [Deputy Excise and Taxation Commissioner concerned] may accept from any person who has committed an offence punishable under this Act, by way of composition of such offence, a sum of money not exceeding one thousand rupees or a sum double the amount of the tax payable under section 3 in respect of any sale conducted by such person, whichever is greater.

(2) On the payment of such sum of money to the [Deputy Excise and Taxation Commissioner concerned], the accused person, if in custody, shall be discharged, and no further proceedings shall be taken against such person in respect of such offence.

CHAPTER V

Miscellaneous

20. Powers. - The powers of Government to appoint any person or to invest any person with any authority prescribed by the Act may be exercised by the [Excise and Taxation] Commissioner, subject to the orders of Government.

21. Protection of persons acting in good faith and limitation of suits and prosecution. - (1) Any civil criminal proceedings instituted against any person in respect of any act done or purporting to be done in the exercise of any powers or the execution of any duty under this Act shall be dismissed unless the court is satisfied that the act complained of was not done in good faith.

(2) No suit shall be instituted against the [Government] and no prosecution or suit shall be instituted against any person in respect of anything done or intended to be done, under this Act, unless the suit or prosecution has been instituted within six months from the date of the act complained of.

22. Appeal and revision. - (1) Any person aggrieved by any order under this Act, or rules made thereunder other than an order made by a criminal court, may appeal-

[-]

(b) to the [Deputy Excise and Taxation Commissioner concerned] if such order is passed by any other officer or person exercising powers under this Act.

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3), be final.

(3) The [Excise and Taxation Commissioner, may at any time, call for and examine the record of any order of, or the proceedings recorded by, any officer or person for the purpose of satisfying himself as to the legality or propriety of such order passed by or as to the regularity of such proceedings of such officer or person and may pass such order in reference thereto as he thinks fit.]

23. Review. - Any order made under this Act, other than an order made by a criminal court, may be reviewed by the officer making it or his successor, but not to the disadvantage of the person against whom it is made, unless he has done anything to mislead the officer passing the order.

24. Power to make rules. - (1) Government may make rules to carry out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, Government may make rules for the purpose of -

(a) the recovery of the tax leviable under section 3 including the fixing of the time when the tax is to be paid;

(b) the fixing of licence fees;

(c) imposing on [-] dealers keeping the duty of furnishing returns and of keeping records and registers of stocks and daily sales, prescribing forms for such returns, and registers of stocks and daily sales and the particulars to be contained therein, respectively, and the manner in which the same are to be verified and all such other conditions thereof as may be necessary and prescribing a period within which such returns must be submitted;

(d) prescribing the localities in which motor spirit may be sold, the assessment of tax and the issue of notices requiring payment and for the recovery of unpaid tax;

(e) providing for or, restricting the assignment or transfer of licences and the manner in which licences granted to firms are to operate during the period of or on the dissolution of a partnership;

(f) prescribing the arrangements to be made when a licensee dies or becomes subject to a legal disability, the period during which, and the persons by whom, the business of such a licensee may be carried on without a licence;

(g) requiring the production of licences on demand, and

(h) prescribing the period (which shall not be less than one month from the date of the order appealed against) within which an appeal under section 22 of the Act may be presented; and prescribing the manner in which such appeal shall be presented.

(i) prescribing the form and manner in which a certificate is to be furnished by the dealer under the proviso to sub-section (1) of section 3;

(j) prescribing the manner for the refund of tax paid in excess of the amount due.

(3) In making any rule Government may provide that a breach thereof shall be punishable with fine which may extend to one hundred rupees, and, where the breach is a continuing one, with further fine which may extend to twenty rupees for every day after the first day during which the breach has continued.

(4) All rules made under this Act shall be subject to the condition of previous publication.