

THE KERALA TAX ON EMPLOYMENT ACT, 1976

(Act 14 of 1976)

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THE KERALA TAX ON EMPLOYMENT ACT, 1976*

(Act 14 of 1976)

An Act to provide for the levy of a tax on employment

Preamble.—WHEREAS it is expedient to provide for the levy of a tax on employment,

BE it enacted in the Twenty-seventh Year of the Republic of India as follows —

1 Short title, extent and commencement.—(1) This Act may be called the Kerala Tax on Employment Act, 1976.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2 Definitions.—In this Act, unless the context otherwise requires,—

(a) "appellate authority" means an appellate authority appointed under section 3 ,

(b) the expressions "appoint", "appointment", "lodging house", "residence" and "reside" shall have the meanings respectively assigned to them in the Kerala Municipalities Act, 1960 (14 of 1961),

*** Received the assent of the Governor on the 22nd day of March, 1976 and published in the Kerala Gazette Extraordinary No 181. dated 22nd March 1976**

(c) "assessee" means a person by whom the tax on employment or any other sum of money is payable under this Act and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of the tax on employment payable by him ,

(d) "assessing authority" means the assessing authority appointed under section 3,

(e) "company" means a company as defined in section 6 of the companies Act, 1956 (Central Act 1 of 1956), and includes a foreign company within the meaning of section 591 of that Act and a co-operative society registered or deemed to be registered under the law relating to co-operative societies for the time being in force, whether its principal place of business is situated in the State or not,

(f) "employment" includes self-employment,

(g) "local authority" means a municipal corporation or a municipal council or a township committee or a panchayat,

(h) "prescribed" means prescribed by rules made under this Act,

(i) "State" means the State of Kerala,

Q) the expression "transacts business" shall be deemed to include the doing of acts of business of whatever nature, whether isolated or not, such as soliciting, obtaining or transmitting orders or buying, making, manufacturing, exporting, importing, recovering, transmitting or otherwise dealing with goods,

(k) "year" means the financial year,

3. Authorities —(1) The Government may, by notification in the Gazette, appoint such officers as they think fit to be assessing authorities for the purpose of this Act and may assign to them such local limits as the Government may think fit

(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Act and may assign to them such local limits as the Government may think fit.

(3) All officers and other persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board of Revenue •

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions

4 Charge of tax.—(1) Subject to the other provisions contained in this Act, there shall be charged on every person who exercises a profession, art or calling or transacts business or holds any appointment, public or private, within the State, a half-yearly tax (hereinafter referred to as tax on employment) at the rate specified in the Schedule.

Explanation.—A person shall be deemed to have exercised a profession, art or calling or held an appointment within the State, if that person has an office or place of employment within the State.

(2) A person shall be chargeable under the class appropriate to his aggregate income from all the sources specified in subsection (1) as being liable to the tax on employment.

(3) Where, for the purpose of transacting business within the State, a person has an office or has an agent or firm to represent him, such person shall be deemed to transact business within the State, whether or not such office, agent or firm has power to make binding contracts on behalf of such person, and the person in charge of such office or the agent or firm, as the case may be, shall be liable to the tax payable by the first mentioned person.

(4) A person otherwise liable to the tax on employment shall not cease to be liable to that tax by reason only of his head office or the place from which his business is controlled being situated outside the State or by reason only of the fact that his transactions are closed outside the State.

Explanation.—For the purposes of this section, "aggregate income" shall not include overtime wages or local allowances or allowances for house rent, carriage hire or travelling expenses or pension

5 Requisition on employers or their representatives to furnish list.—The assessing authority may by notice require any

employer or the head or secretary or manager of any public or private office, lodging house or club or a firm or company—

(a) to furnish, within a specified time, a list in writing of the names of all persons employed by such employer or by such office, lodging house, club, firm or company as officers, servants, dubashes, agents, suppliers or contractors, with a statement of the salary or income of such employed persons; and

(b) to furnish particulars in regard to any person of whom such employer, or head, secretary or manager, as the case may be, is the agent.

6 Returns.—(1) If in the opinion of the assessing authority the tax on employment is or will be due for any half-year from any person other than a person in respect of whom the assessing authority obtains to his satisfaction particulars of income under section 5, it shall serve a notice on such person either in that half-year or in the succeeding half-year ^N requiring him to furnish within such period, not being less than thirty days, as may be specified in the notice, a return showing the income on the basis of which, according to such person, he is liable to be assessed to the tax on employment for the half-year in question.

(2) On receipt of a notice under sub-section (1), the person shall submit a return showing the income derived by him during the half-year for which the tax on employment is claimed or during the previous half-year and may produce any evidence on which such person may rely in support of the return made

7. Return after due date and amendment of return.—If

any person has not furnished a return within the time specified in a notice under sub-section (1) of section 6 or having furnished a return under that section discovers any omission or wrong statement therein, he may furnish a return or a ^A revised return, as the case may be, at any time before the assessment is made

8 Assessment.—(1) If a list with the statement as required by section 5 or a return as required by sub-section (1) of section 6 is furnished and the assessing authority is satisfied

that it is correct and complete, it shall levy the tax on employment from the person liable to be assessed on the basis of such statement or return.

Explanation —If a person produces the notice of demand of income tax served on him under the Income Tax Act, 1961 (Central Act 43 of 1961), for the year comprising the half-year in question, the assessing authority shall be bound to take one-half of the income mentioned in such notice of demand as the income derived from the sources on which the tax on employment is leviable under this Act, as the income of the said sources for the purpose of levying the tax on employment.

(2) If the assessing authority is not so satisfied, it shall serve a notice on the person concerned, requiring him either to attend in person at its office on a date to be specified in the notice or to produce or cause to be produced on that date evidence on which he may rely in support of his return

(3) The assessing authority, after hearing such evidence as the person may produce and such other evidence as it may require on any specified points, shall, by order in writing, assign to the person the class in the scale appropriate to the half yearly income of such person as estimated by it.

(4) If any person fails to make a return in response to any notice under sub-section (1) of section 6 or fails to comply with the terms of any notice issued under sub-section (2) of this section, the assessing authority shall, by order in writing, assign to the person concerned the class in the scale appropriate to the half yearly income of such person as estimated by it

(5) The assessing authority may, when classifying any person under sub-section (3) or sub-section (4), do so on general considerations with reference to the nature and reputed value of the business transacted, the share and rental of residential and business premises, the quantity and number of articles dealt with, the number of persons employed and the income tax paid by such persons.

(6) The assessing authority shall not be entitled to call for the accounts of any person.

9 Power to assess in case of escape from assessment.— If for any reason any person liable to pay the tax on employment has escaped assessment in any half-year, the assessing authority may, at any time within three years from the date on which such person should have been assessed, serve on such person a notice assessing him to such tax and demanding payment thereof within thirty days from the date of such service, and the provisions of this Act shall, so far as may be, apply as if the assessment was made in the half-year to which such tax relates.

10 Notice of demand.—When any tax on employment is due in consequence of any order passed under this Act, the assessing authority shall serve upon the assessee or other person liable to pay such tax a notice of demand in the prescribed form specifying the sum so payable and the time within which it shall be paid.

11 Recovery of tax.—Any amount specified as payable in a notice of demand under section 10 shall be paid within the time, at the place and to the person mentioned in the notice, or if no time is so mentioned, then on or before the 1st day of the second month following the day of service of the notice, and any assessee failing so to pay shall be deemed to be in default

12 Mode of recovery.—Without prejudice to any other mode of recovery, arrears of the tax on employment may be recovered under the provisions of the Revenue Recovery Act for the time being in force as if it were an arrear of public revenue due on land

13 Appeals.—(1) Any person objecting to the amount of the tax on employment specified in the notice of demand served under section 10 or denying his liability to be assessed under this Act or objecting to any order of the assessing authority under this Act* may appeal to the appellate authority against the assessment or against such order:

Provided that no such appeal shall lie unless the tax on employment has been paid

(2) An appeal under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appeal shall be presented within a period of sixty days from the date of service of the notice of demand relating to the assessment or the date of service of the order, as the case may be, but the appellate authority may admit an appeal presented after the expiration of the said period, if it is satisfied that the appellant had sufficient cause for not presenting it within the said period *

Provided, however, that no such appeal shall be admitted after a period of six months from the date of service of the notice of demand relating to the assessment or the date of service of the order, as the case may be

(4) The appellate authority shall fix a day and place for the hearing of the appeal and may, from time to time, adjourn the hearing and make or cause to be made such further inquiry as it thinks fit

(5) At the hearing of the appeal, the assessing authority shall also have a right to be heard

(6) In disposing of an appeal, the appellate authority may,—

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(a) in the case of an order of assessment,—

(i) confirm, reduce, enhance or annul the assessment, or

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed;

(b) in the case of any other order, confirm, cancel or vary such order

(7) The appellate authority shall, on the conclusion of the appeal, communicate the orders passed by it to the appellant and the assessing authority

(8) The orders passed by the appellate authority shall, subject to the provisions of section 15, be final and shall not be liable to be questioned in a court of law

14, Reference to District Court.—(1) The appellate authority may, if it is satisfied either *suo motu* or on application by any party to an appeal under section 13 that the decision on

the appeal involves a question of law, draw up a statement of the case and refer it to the District Court.

(2) If the District Court is not satisfied that the statement in a case referred under this section is sufficient to enable it to determine the question raised thereby, the court may refer the case back to the appellate authority to make such additions thereto or alterations therein as the court may direct in that behalf.

(3) The District Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded and shall send a copy of such judgment under the seal of the court to the appellate authority which shall pass orders on the appeal in conformity with such judgment

(4) For the purposes of this section, "District Court" means the District Court having jurisdiction over the area in which the assessee exercises his profession, art or calling or transacts business or holds appointment.

15 Powers of revision of **the District Collector**.—The District Collector may at any time call for and examine the record of any proceeding pending before or disposed of by the appellate authority or the assessing authority and may pass such order in reference thereto as thinks fit *

Provided that no such order shall be passed under this section without notice to the party who may be affected by the order

Provided further that no order passed on the basis of a reference under section 14 to the extent covered by the answer to such reference shall be subject to revision by the District Collector.

16 Rectification of mistakes.—(1) The appellate authority or the revisional authority may at any time within three years from the date of an order passed by it on appeal or revision, as the case may be, and the assessing authority may at any time within three years from the date of any assessment or order passed by it, of its own motion, rectify any mistake apparent from the record of the appeal, revision, assessment or

order, as the case may be, and shall, within the like period, rectify any such mistake which has been brought to its notice by an assessee

Provided that no such rectification shall be made which has the effect of enhancing an assessment or reducing a refund unless the assessee has been given reasonable opportunity of being heard in the matter

(2) Where any such rectification has the effect of reducing an assessment, the assessing authority shall make any refund which may be due to such assessee

(3) Where any such rectification has the effect of enhancing an assessment or reducing a refund, the assessing authority shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 10 and the provisions of this Act shall apply accordingly

17 Power to take evidence on oath, etc.—The appellate authority, the assessing authority and the revisional authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act *5 of 1908), when trying a suit in respect of the following matters, namely —

- (a) enforcing the attendance of any person and examining him on oath or affirmation ,
- (b) requiring the discovery and production of documents
- (c) receiving evidence on affidavit.
- (d) issuing commissions for the examination of witnesses

18 Refunds.—(1) If any person satisfies the assessing authority that the amount of the tax on employment paid by him exceeds the amount with which such person is properly assessable under this Act. he shall be entitled to a refund of such excess

(2) The appellate authority in the exercise of its appellate powers or the revisional authority in the exercise of its revisional powers, if satisfied to the like effect, shall cause a refund to be made by the assessing authority of any amount found to have been wrongly paid or paid in excess.

19. Limitation of claims for refund.—No claim to any refund of the tax on employment under section 18 shall be admitted unless it is made within three years **from** the date of the order of assessment or, where an appeal has been preferred or where there has been a revision, within three years from the order in appeal or revision, as the case may be

20 Prosecutions.—(1) If any person fails without reasonable cause—

(a) to furnish within the specified time a list and statement or particulars which such person is bound to furnish to the assessing authority under section 5, or

(b) to furnish a return on or before the date specified in any notice under sub-section (1) of section 6,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues

(2) A person shall not be proceeded against for an offence under this section except at the instance of the **assessing** authority

(3) The District Collector may, either before or after the institution of proceedings, compound any such offence

Explanation.—For the purposes of this section, "Magistrate" means a Judicial Magistrate of the First Class or a Judicial Magistrate of the Second Class specially empowered by the Government to try offences under this Act

21 Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence

(2) Notwithstanding anything contained in sub-section (i) where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

22 Manner of service of notice—(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908)

(2) Any such notice or requisition may be addressed,—

(a) in the case of a firm or a Hindu undivided family or an Ahyasanthana family or branch or a Marumakkathayam tarwad or tavazhi or a family to which the provisions of the Kerala Namboodiri Act, 1958, apply, to any member of the firm or to the Manager. Yajaman or Karanavan, as the case may be, or any adult member of the family, branch, tarwad or tavazhi,

(b) in the case of a local authority or company, to the principal officer thereof ,

(c) in the case of any other association or body of individuals, to the principal officer or any member thereof ,

(d) in the case of any other person (not being an individual), to the person who manages or controls his affairs

23 Liability of agents of companies, firm, associations, etc , to tax on employment.—The tax on employers leviable from a company, firm, association, Hindu undivided family, Ahyasanthana family or branch, Marumakkathayam tarwad or tavazhi or a family to which the provisions of the Kerala

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Namboodiri Act, 1958, apply, may be levied from the agent of the company, firm or association or the Manager, Yajaman or Karanavan of the family, branch, tarwad or tavazhi, as the case may be

-r 24 Statements, returns etc., to be confidential.—All statements made, returns furnished or accounts or documents produced in connection with the assessment of the tax on employment under this Act shall be treated as confidential and shall not be granted to the public

25 Computation of periods of limitation.—In computing the period of limitation prescribed for an appeal under this Act, the time required for obtaining a copy of the order complained of shall be excluded

26 Bar of jurisdiction.—No suit shall lie in any civil court to set aside or modify any assessment made under this Act and no prosecution, suit or other legal proceeding shall lie against the Government or any authority or officer for anything in good faith done or intended to be done under this Act

27 Power of assessing authority, etc., to call for information from local authorities.—The assessing authority or the appellate authority or the District Court or the revisional authority may, for the purposes of this Act, call for any information regarding an assessee from the local authority to which that assessee is liable to pay the profession tax payable under the law governing that local authority, and such local authority shall be bound to furnish the information

28 Removal of difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general or special order published in the Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to them to be necessary or expedient for the purpose of removing the difficulty :

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act

29 Power to make rules.—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for—

(a) the procedure for the assessment, levy and collection of the tax on employment;

(b) the form of the notice of demand mentioned in section 10,

(c) the mode and manner of payment of the tax on employment;

(d) the powers and duties of authorities and officers under this Act,

(e) the conditions of service of the assessing authorities and appellate authorities,

(f) the form in which appeals under this Act shall be presented and the manner in which they shall be verified,

(g) the manner in which and the authority to which applications for refund shall be made and the procedure to be followed in respect of such applications, and

(h) any other matter which has to be, or may be, prescribed

(3) Every rule made under this Act shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid, or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

30 Establishment of Housing Fund and its utilisation.—

(1) On the commencement of this Act, there shall be established a fund to be called the Kerala State Poor Housing Fund {hereinafter in this section referred to as 'the Housing Fund'}.

(2) The proceeds of the tax on employment levied and collected under this Act, together with the fines, interest and fees recovered thereunder, shall first be credited to the Consolidated Fund of the State and, after deducting the expenses

of collection and recovery as determined by the Government, the remaining amount shall, under appropriation duly made by law in this behalf, be entered into, and transferred to the Housing Fund

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(3) Any amount transferred to the Housing Fund shall be charged on the Consolidated Fund of the State

(4) No sum shall be paid or applied from and out of the Housing Fund except in the manner and for the purpose provided in sub-sections (5) and (6)

(5) The amount standing to the credit of the Housing Fund shall be expended in such manner and subject to such conditions as may be prescribed for the purpose of providing house sites for landless poor persons

Explanation.—For the purposes of this sub-section, "landless poor person" means a person who does not hold any land which is fit for construction of a dwelling house, either as owner or as tenant having fixity of tenure, and whose annual income is not more than six hundred rupees

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(6) The Housing Fund shall be held and administered on behalf of the Government by an officer not below the rank of Secretary to the Government, subject to such general or special directions as may be given by the Government from time to time

31 Repeal.—The Kerala Tax on Employment Ordinance, 1975 (16 of 1975), is hereby repealed

THE SCHEDULE

(Sec section 4)

Rates of tax on employment

<i>Class</i>	<i>Half-yearly income</i>	<i>Rs.</i>
I	Not more than Rs 1,800	Nil.
II	More than Rs. 1,800 but not more than Rs 3,000 00	6
III	More than Rs 3,000 but not more than Rs 4,800 00	18
IV	More than Rs 4,800 but not more than Rs 6,000 50	37
V	More than Rs 6,000 but not more than Rs 9,000 00	50