

**ANDHRA PRADESH SALES OF MOTOR SPIRIT TAXATION
ACT, 1960**

16 of 1960

[29th April, 1960]

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SCHEDULE 1 :- SCHEDULE

**ANDHRA PRADESH SALES OF MOTOR SPIRIT TAXATION
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[29th April, 1960]

An Act to consolidate and amend the law relating to the levy of a

tax on the sales of motor spirit in the State of Andhra Pradesh. Be it enacted by the Legislature of the State of Andhra Pradesh in the Eleventh Year of the Republic of India as follows :-

1. Short title, extent and commencement :-

(1) This Act may be called the Andhra Pradesh Sales of Motor Spirit Taxation Act, 1960.

(2) It extends to the whole of the State of Andhra Pradesh.

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

2. Definitions :-

In this Act, unless the context otherwise requires,

(a) "Commercial Tax Officer" means any person appointed to be a Commercial Tax Officer under Section 4 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957);

(b) "Deputy Commissioner" means any person appointed to be a Deputy Commissioner of Commercial Taxes under Section 4 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957);

(c) "dealer" means any person who carries on the business of buying, selling, supplying or distributing motor spirit, directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes

(i) the Central Government, a State Government, local authority, a company, a Hindu undivided family or any society (including a Co-operative Society), club, firm or association which carries on such business;

(ii) a society (including a Co-operative Society), club, firm or association which sells, supplies or distributes motor spirit to its members; and

(iii) a commission agent, a broker, a del credere agent, an auctioneer or other mercantile agent by whatever name called who carries on the business of buying, selling, supplying or distributing goods, on behalf of any principal.

Explanation:- Every person who acts as an agent on behalf of

dealer residing outside the State and buys, sells, supplies or distributes motor spirit in the State or acts on behalf of such dealer as

(1) a mercantile agent as defined in the Indian Sale of Goods Act, 1930 (Central Act 3 of 1930); or

(2) an agent for handling motor spirit or documents of title relating to motor spirit; or

(3) an agent for the collection or the payment of the sale price of motor spirit or as a guarantor for such collection or payment; and every local branch of a firm or a company situated outside the State shall be deemed to be a dealer for purposes of this Act;

(d) "Government treasury" means a treasury or sub treasury of the State Government and includes any office, branch or agency of the Reserve Bank of India transacting treasury business for the State Government;

(e) "motor spirit" means any substance which by itself or in admixture with other substances is ordinarily used, directly or indirectly, to provide reasonably efficient fuel for automotive or stationary internal combustion engines, and includes petrol, diesel oil, and other internal combustion oils, but does not include power alcohol, kerosene, furnace oil, coal or charcoal;

(f) "notification" means a notification published in the Andhra Pradesh Gazette;

(g) "petrol" means dangerous petroleum as defined in the Petroleum Act, 1934 (Central Act 30 of 1934);

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

(i) "sale" with all its grammatical variations and cognate expressions, means every transfer of property by one person to another in the course of trade or business for cash or for deferred payment or for any other valuable consideration and includes a transfer of property in motor spirit involved in the supply or distribution of motor spirit by a society (including a co operative society), club, firm or association to its members;

(j) "Schedule" means a Schedule appended to this Act;

(k) "State" means the State of Andhra Pradesh;

(l) "tax" means a tax payable under this Act;

(m) "year" means the twelve months ending on the 31st day of March.

3. Payment of tax :-

(1) Subject to the provisions of this Act, there shall be levied at the point of first sale in the State of every kind of motor spirit a tax at the rate specified in the Schedule which shall be paid by the dealer effecting such sale.

Provided that in the case of motor spirit produced in the State by Caltex Oil Refining (India) Limited, and sold by it to an oil distributing company other than Caltex (India) Limited, the sale by such oil distributing company shall be deemed to be the first sale;

Provided further that in the case of motor spirit produced in the State by Caltex Oil Refining (India) Limited and sold by it to Caltex (India) Limited and sold by Caltex (India) Limited to any other oil distributing company, the sale of that motor spirit by such other oil distributing company shall be deemed to be the first sale;

Provided also that in the case of motor spirit produced in the State by Caltex Oil Refining (India) Limited and sold by it to Caltex (India) Limited and sold by Caltex (India) Limited to a dealer other than an oil distributing company, such sale of motor spirit by Caltex (India) Limited shall be deemed to be the first sale.

Explanation:- For the purpose of this sub section, the expression "oil distributing company" means Burmah Shell Oil Storage and Distributing Company of India, Caltex (India) Limited, ESSO Standard Eastern Incorporated, Indo Burmah Oil Corporation and Indian Oil Corporation.

(2) The burden of proving that any sale effected by a dealer is not liable to tax shall lie on the dealer.

4. Registration of dealers :-

(1) Every dealer carrying on business in motor spirit shall get himself registered under this Act.

(2) An application for registration shall be made to the prescribed authority in such manner, in such form and within such time and shall be accompanied by such fee as may be prescribed.

(3) Where a dealer has more than one place of business whether in the same town or village or in different towns and villages, he shall apply for registration and obtain a separate registration certificate in respect of such place of business.

(4) The prescribed authority shall register the applicant and issue to him a certificate in the prescribed form if he is satisfied that the application is bona fide and is in order.

(5) The prescribed authority shall have power for good and sufficient reasons

(i) to refuse to register a person under sub section (1);

(ii) to register an applicant subject to such conditions, if any, as may be prescribed including in the case of an applicant who is liable to pay tax under this Act, the making of such deposit or the furnishing of such security as such authority may consider necessary, to ensure the payment of the tax which may, from time to time, be payable by him; and

(iii) to cancel, suspend or modify or amend any registration certificate issued by him:

Provided that no order under this sub section shall be made unless the dealer concerned has been given an opportunity of being heard.

(6) Nothing in this section shall apply to the State Government or any department thereof carrying on business as a dealer.

5. Maintenance of true and correct accounts and records by dealers etc. :-

(1) Every person registered under this Act shall maintain a true, correct and up to date account showing such particulars and in such form as may be prescribed; and different particulars may be prescribed for different classes of dealers.

(2) Every person registered under this Act shall submit to the prescribed authority in respect of every month such return containing such particulars of his dealings in motor spirit during that month, in such form and manner, and before such date, as may be prescribed.

6. Receipt for payment of tax to be furnished along with return :-

Along with the return referred to in sub section (2) of Section 5, the dealer shall furnish a receipt from a Government treasury for the amount of the tax due in respect of the motor spirit sold by him in the State during the preceding month, according to the return:

Provided that in lieu of receipt from a Government treasury, the prescribed authority may permit any dealer to adduce satisfactory proof of such other mode of payment of the amount of tax due as may be prescribed.

7. Determination of tax and levy of penalties in certain cases :-

(1) If no return is submitted by a dealer under sub section (2) of Section 5, in respect of any month before the date prescribed in that behalf, or if the return submitted appears to the prescribed authority to be incorrect or incomplete, the prescribed authority shall, after making such inquiry as he considers necessary, determine to the best of his judgment, the amount of the tax due from such dealer in respect of such month:

Provided that before taking action under this sub section, the dealer shall be given a reasonable opportunity of proving the correctness or completeness of the return, if any, filed by him.

(2) Where the amount of tax due from a dealer is determined by the prescribed authority to the best of his judgment under sub section (1), the prescribed authority may also direct the dealer to pay in addition to the tax so determined, a penalty not exceeding one and half times the tax due on the sales not disclosed by the dealer in his return, in cases where a return has been submitted, and one and a half times the amount of the tax determined where no return has been submitted :

Provided that before issuing any direction for the payment of any penalty under this sub section, the prescribed authority shall give the dealer a reasonable opportunity to explain the failure to submit the return or the submission of the incorrect or incomplete return, as the case may be, and make such inquiry as he considers necessary.

(3) The amount of tax determined under sub section (1) and the penalty levied, if any, under sub section (2) shall be paid by the dealer in such manner and within such time, not being less than fifteen days from the date of service of the notice of demand as

may be specified in such notice.

8. Payment of tax :-

(1) If the tax assessed or the penalty levied under this Act and the fees payable towards registration, are not paid by a dealer within the time specified therefor, the whole of the amount then remaining unpaid may be recovered from him as if it were an arrear of land revenue.

(2) The penalty levied under this Act shall be without prejudice to the institution of any proceeding for an offence under this Act or for the recovery of the entire amount remaining unpaid under sub section (1).

9. Recovery of tax and other dues payable under the Act from persons from whom money is due to the dealers :-

(1) The prescribed authority may, at any time, or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to him) require any person from whom money is due or may become due to the dealer, or any person who holds or may subsequently hold money for or on account of the dealer, to pay to the prescribed authority, either forthwith if the money has become due or is so held, or within the time specified in the notice (but not before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the dealer in respect of the arrears of tax, penalty or fees of the whole of the money when it is equal to or less than that amount.

(2) The prescribed authority may, at any time or from time to time, amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the dealer and the receipt of the prescribed authority shall constitute a good and sufficient discharge of the liability of such person to the extent of the amount referred to in the receipt.

(4) Any person discharging any liability to the dealer after receipt of the notice referred to in this section, shall be personally liable to the prescribed authority to the extent of the liability discharged or the extent of the liability of the dealer for the amount due under

this Act, whichever is less.

(5) Where any person to whom a notice under this section is sent proves to the satisfaction of the prescribed authority that the sum demanded or any part thereof is not due by him to the dealer, or that he does not hold any money for or on account of the dealer, then nothing in this section shall be deemed to require such person to pay the sum demanded or any part thereof to the prescribed authority.

(6) The provisions of this section shall be without prejudice to any action that maybe taken for the recovery of the money due from the dealer.

10. Recovery of tax where business of dealer is transferred :-

Where the ownership of the business of a person liable to pay tax is transferred, any tax or other amount payable under this Act in respect of such business and remaining unpaid at the time of the transfer, may, without prejudice to any action that may be taken for its recovery from the transferor, be recoverable from the transferee as if he were the person liable to pay such tax or other amount.

11. Powers to order production of accounts and powers of entry, inspection, etc. :-

(1) Any officer authorised by the State Government in this behalf may for the purposes of this Act, require any dealer to produce before him the accounts, registers and other documents and to furnish any other information relating to his business.

(2) All accounts, registers and other documents maintained by a dealer in the course of his business, the motor spirit in his possession and his offices, shops, godowns, vessels or vehicles shall be open to inspection at all reasonable times by such officer.

(3) If any such officer has reason to suspect that any dealer is attempting to evade the payment of any tax or other fee due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or other documents of the dealer as he may consider necessary and shall give the dealer a receipt for the same. The accounts, registers and documents so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this

Act:

Provided that such accounts, registers and documents shall not be retained for more than thirty days at a time except with the permission of the next higher authority.

(4) For the purposes of sub section (2) or sub section (3), any such officer shall have power to enter and search, at all reasonable times, any office, shop, godown, vessel, vehicle or any other place of business or any building or place where such officer has reason to believe that the dealer keeps or is, for the time being, keeping any motor spirit, accounts, registers or other documents of his business:

Provided that no residential accommodation (not being a shop cum residence) shall be entered into and searched by such officer except on the authority of a search warrant issued by a magistrate having jurisdiction over the area, and all searches under this sub section, shall, so far as may be made in accordance with the provisions of the Code of Criminal Procedure, 1898 (Central Act 5 of 1898), subject to the rules, if any, made in this behalf.

(5) The power conferred by sub section (4) shall include the power to break open any box or receptacle in which any motor spirit, accounts, registers, or other documents, of the dealer may be contained, or to break open the door of any premises where any such motor spirit, accounts, registers, or documents may be kept:

Provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premises, if he is present therein, fails or refuses to open the door on being called upon to do so;

(6) Any such officer shall have power to seize and confiscate any motor spirit which is found in any office, shop, godown, vehicle, vessel or any other place of business or any building or place of the dealer, but not accounted for by the dealer in his accounts, registers and other documents maintained in the course of his business:

Provided that before taking action for the confiscation of goods under this sub section, the officer shall give the person affected an opportunity of being heard and make an inquiry in the prescribed manner.

Explanation:- It shall be open to the State Government to authorise different classes of officers for the purpose of taking action under sub section (1), (2) and (3).

12. Offences and penalties :-

(1) Any person who

(a) fails to pay within the time allowed, any tax assessed on him or any penalty levied, or any fee due from him, under this Act; or

(b) being a person obliged to register himself as a dealer under this Act, does not get himself so registered; or

(c) wilfully acts in contravention of the provisions of this Act or the rules made thereunder, shall on conviction be liable to be punished with fine which may extend to two thousand rupees.

(2) Any person who -

(a) prevents or obstructs inspection, entry, search or seizure by an officer authorised under Section 11, in contravention of the terms thereof, or

(b) wilfully submits an untrue return or fails to submit a return a return as required by the provisions of this Act, or the rules made thereunder; or

(c) fraudulently evades the payment of any tax, fee or other amounts due from him under this Act, shall, on conviction, be liable to be punished with simple imprisonment which may extend to six months or with fine which may extend to two thousand rupees with both.

13. Power to compound offences :-

The prescribed authority may accept from any person who has committed or is reasonably suspected of having committed an offence against this Act, by way of composition of such offence

(a) Where the offence consists of the failure to pay, or the evasion of, any tax recoverable under this Act, in addition to the tax so recoverable a sum of money not exceeding one thousand rupees or double the amount of the tax recoverable, whichever is greater; and

(b) in other cases, a sum of money not exceeding one thousand rupees.

14. Bar of jurisdiction of Courts :-

No Court shall entertain any suit or other proceeding to set aside or modify or question, the validity of any order or decision made or passed by any officer or authority under this Act or any rule made thereunder.

15. Protection of acts done in good faith :-

(1) No suit, prosecution or other proceeding shall lie against any officer or servant of the State Government without the previous sanction of the State Government for any act done or purporting to be done under this Act, and no such suit, prosecution or other proceeding shall be instituted after the expiry of six months from the date of the act complained of.

(2) No officer or servant of the State Government shall be liable in respect of any such act in any civil or criminal proceeding, if the act was done in good faith in the course of the execution of duties imposed on him or in the discharge of functions entrusted to him by or under this Act.

16. Appeal :-

(1) Any person objecting to an order passed under this Act, not being an order passed by any Court or Magistrate, may, within thirty days from the date on which the order was served on him, appeal

(a) in case such order is passed by a Commercial Tax Officer, to the Deputy Commissioner of the division concerned; and

(b) in any other case, to the Commercial Tax Officer; Provided that -

(i) the appellate authority may admit an appeal preferred after the period of thirty days aforesaid, if it is satisfied that the dealer had sufficient cause for not preferring the appeal within that period;

(ii) no appeal against the order passed under Section 7 determining the tax due from the dealer shall be entertained under this sub section unless it is accompanied by satisfactory proof of the payment of the tax so determined; but the appellate authority may in its discretion stay the payment of the whole or part of the tax so determined.

(2) The appellate authority may, after giving the appellant an

opportunity of being heard, pass such orders on the appeal as such authority thinks fit.

(3) Every order passed in appeal under this section shall, subject to the powers of revision conferred by Section 17, be final.

17. Revision :-

(1) The Board of Revenue or the Deputy Commissioner may, suo motu at any time or on application made within six months from the date of communication of the order, call for and examine the record of any order passed or any proceedings recorded by any authority, officer or person subordinate to them, under this Act, for the purpose of satisfying themselves as to the legality or propriety of such order, or as to the regularity of such proceedings, and may pass such order in reference thereto as they think fit.

(2) No order shall be passed under sub section (1) enhancing any tax unless an opportunity has been given to the dealer to show cause against the proposed enhancement.

17A. Power to summon witnesses and production of documents :-

(1) A registering appellate or revising authority shall, for the purposes of this Act, have power:

- (a) to summon and enforce the attendance of any person;
- (b) to examine any person on oath or affirmation; and
- (c) to compel production of any document.

(2) Any proceeding before such registering, appellate or revising authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196, of the Indian Penal Code".

18. Power to amend schedule :-

The State Government may, by notification, alter, add to, or cancel, any of the entries in the schedule to this Act:

Provided that no such notification shall be made unless a draft thereof has been approved by the Legislative Assembly.

19. Power to make rules :-

(1) The State Government may by notification make rules to carry

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) all matters expressly required or allowed by this Act to be prescribed;

(b) the regulation of the sale of motor spirit for the purpose of enforcing the provisions of this Act;

(c) the duties and powers of inspecting and other officers appointed or authorised to exercise any powers under this Act, and the procedure to be followed by such officers;

(d) the form in which appeals under Section 16 may be preferred; and

(e) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the purposes of this Act.

(3) In making a rule under sub section (1) or sub section (2), the State Government may provide that a breach thereof shall be punishable with fine which may extend to two thousand rupees.

(4) The rules made under this Act shall, as soon as possible after they are made be placed on the table of the Legislative Assembly for fourteen days and shall be subject to such modification, whether by way of repeal or amendment, as the Assembly may make during the session in which they are so placed.

20. Repeal :-

(1) The Madras Sales of Motor Spirit Taxation Act, 1939, (Madras Act VI of 1939), is hereby repealed:

Provided that such repeal shall not affect the previous operation of the said Act, or any right, title, obligation or liability already acquired, accrued or incurred thereunder and subject thereto anything done or any action taken (including any appointment, notification, notice, order, rule, form, regulation, certificate, licence, permit) in the exercise of any power conferred by or under the said Act shall be deemed to have been done, or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was

taken; and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.

(2) Notwithstanding anything in sub section (1),

(a) any person who has been registered as an importer, a wholesale dealer or a retail dealer under the said Act, shall be deemed to have been registered as a dealer under this Act;

(b) any proceeding commenced under the said Act and pending at the commencement of this Act before any officer or authority shall, after such commencement, be transferred to and disposed of by the officer or authority who would have had jurisdiction to dispose of it under this Act, as if it had been in force on the date on which the proceeding was commenced.

21. Power to remove difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, make such provisions, not inconsistent with the purposes of this Act, as appear to them to be necessary or expedient for removing the difficulty.

SCHEDULE 1

SCHEDULE

SCHEDULE			
(See Section 3)			
Description of motor spirit			Rate of tax
(1)			(2)
			Per gallon
1.	Aviation turbine fuel	.....	12 np.
2.	Aviation motor spirit other than turbine fuel	.....	19 np.
3.	Petrol other than Aviation motor spirit	.....	37 np.
4.	Diesel oil	.....	7 np.
5.	Motor spirit not falling under any of the above categories	.....	19 np.