

**Assam Tax On Luxuries (Hotels And Lodging Houses)
(Amendment) Act, 2009**

21 of 2009

[26 August 2009]

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PREAMBLE

further to amend the Assam Tax On Luxuries (Hotels and Lodging Houses) Act, 1989.

Whereas it is expedient further to amend the Assam Tax On Luxuries (Hotels and Lodging Houses) Act, 1989 (Assam Act V of 1989), hereinafter referred to as the principal Act, in the manner hereinafter appearing;

It is hereby enacted in the Sixtieth Year of the Republic of India as follows:-

1. Short title, extent and commencement :-

- (1) This Act may be called the Assam Tax On Luxuries (Hotels and Lodging Houses) (Amendment) Act, 2009.
- (2) It shall have the like extent as the principal Act.
- (3) It shall come into force at once.

2. Amendment of title, long title, preamble and short title :-

In the principal Act, in the title, long title, preamble and short title for the words "hotels and lodging houses", wherever they occur, the words and punctuation mark "hotels, lodging houses and hospitals" shall be substituted.

3. Amendment of section 2 :-

In the principal Act, in section 2,--

(a) for clause (2), the following shall be substituted, namely:-

"(2) "business" includes the activities of providing accommodation or space for residence, marriage, reception, banquets, ceremonies, events, functions, seminars, conventions, meetings or exhibition-cum-sale and for medical treatment and any other service in connection with or ancillary to such activities of providing accommodation or space, for monetary consideration, whether or not such activities of providing accommodation or space is carried on with motive to make gain or profit and whether or not any gain or profit accrues from such activities;"

(b) for clause (5), the following shall be substituted, namely:-

"(5) "hotel" means a building or part of a building along with the lawns thereof, where accommodation or space with or without board is provided by way of business for a monetary consideration and includes a lodging house, a luxury boat, a heritage home, an inn, and a public house but it does not include students hostel and residential house let out on monthly rents;

Explanation. I.--A club and a holiday resort for which charges are collected for providing accommodation whether or not in the course of business shall be deemed to be a hotel for the purpose of this Act.

Explanation. II.--Any premises or part of premises, a marriage hall or a community hall or any other place where accommodation or space is provided, by way of business for a monetary consideration, whether business activities are conducted in such place regularly or not, shall also be deemed to be a hotel for the purpose of this Act;

(c) after clause (5), a new clause (5A) shall be inserted, namely:-

"(5A) "hospital" includes a nursing home, therapy centre or any other treatment centre, by whatever name called, where residential accommodation with or without board is provided by way of business for a monetary consideration to any person or his attendant, for the treatment of such person, but does not include a

hospital under control of the Central Government or the State Government;"

(d) in clause (7), after the after the existing provision, the following explanation shall be inserted, namely :-

"Explanation.-Where accommodation or space is provided for the purpose of marriage, reception, banquet, ceremonies, events, functions, seminars, conventions, meetings or exhibition-cum-sale, luxury provided in a hotel shall mean the accommodation or space and other services provided for charges including air conditioning, chairs, tables, utensils and vessels, shamiana, tent, electricity, water, fuel, interior or exterior decoration, music systems, orchestra, live telecast, and the like;"

(e) after clause (7), a new clause (7A) shall be inserted, namely:-

"(7A) "luxury provided in a hospital" means the accommodation provided in a hospital to any person or his attendant for charges including the charges for air conditioning, television or radio, or any other service provided thereto in connection with the residence but does not include any charges for food, medicines, professional medical services and any medical test;"

(f) in clause (9), after the words "a hotelier", the words " or a proprietor" shall be inserted;

(g) after clause (10), a new clause (10A) shall be inserted, namely;-

"(10A) "proprietor" in relation to a hospital means the person who owns the hospital and includes the person who for the time being is in charge of the management of such hospital;"

(h) for clause (11), the following shall be substituted, namely :-

"(11) "receipts" means the amount of monetary consideration received or receivable, by-

(a) a hotelier or by his agent in respect of the luxuries provided in a hotel;

(b) a proprietor or by his agent in respect of the luxuries provided in a hospital;"

(i) in clause (15), after the words "in a hotel" the words " or in a hospital" shall be inserted;

(j) for clause (16), the following shall be substituted, namely :-

"(16) "turnover of receipts" means the aggregate of the amounts of monetary consideration received or receivable during a given period by,-

(a) a hotelier or by his agent in respect of the luxuries provided in a hotel;

(b) a proprietor or by his agent in respect of the luxuries provided

in a hospital;";

(k) clause (17) shall be omitted.

4. Amendment of section 3 :-

In the principal Act, in section 3,--

(i) for sub-section (2), the following shall be substituted, namely :-

"(2) There shall be levied a tax on the turnover of receipts at the following rates, namely:-

(a) where the charge for luxury provided in a hotel is less than three hundred rupees per day per room.	Nil.
(b) where the charge for luxury provided in a hotel is three hundred rupees or more but does not exceed one thousand rupees per day per room.	Five per centum of such turnover of receipts.
(c) where the charge for luxury provided in a hotel exceeds one thousand rupees but does not exceed two thousand rupees per day per room.	Eight per centum of such turnover of receipts.
(d) where the charge for luxury provided in a hotel exceeds two thousand rupees per day per room.	Twelve per centum of such turnover of receipts.

Provided that where the charges are levied otherwise than on daily basis or per room, then, the charges, for determining the liability to tax under this section shall be computed proportionately as for a day and per room, based on the total period of occupation of the accommodation for which the charges are made according to the rules or practice of the hotel.";

(ii) for sub-section (2A), the following shall be substituted, namely:-

"(2A) Notwithstanding anything contained in sub-section (2), there shall be levied a tax on the turnover of receipts,--

(i) in respect of a luxury boat and heritage home, at the rate of five per centum if the charges for luxury provided exceeds two hundred rupees per day per room;

(ii) in respect of any place where accommodation or space is provided for marriage, reception ceremonies, events, functions, seminar, convention, banquet, meeting or exhibition-cum-sale, at the rate of eight per centum if the charges for luxury provided exceeds five thousand rupees per day;"

(iii) after sub-section (7), a new sub-section (8) shall be inserted, namely :-

"(8) The State Government may, by notification in the Official Gazette, vary the rates of tax under this Act and on such notification being issued, the rate of tax shall be deemed to have been amended accordingly:

Provided that the rate of tax to be varied by the State Government in respect of any class of luxury shall not exceed twenty per centum."

5. Substitution of section 3A :-

In the principal Act, for section 3A, the following shall be substituted, namely:-

3A. "Liability of proprietor of a hospital to pay tax

(1) Subject to the provisions of the Act, there shall be levied and collected a tax on the turnover of receipts in respect of luxuries provided in a hospital.

(2) The tax in sub-section (1) shall be levied at the following rates, namely:-

(a) where the charge for luxury provided in a hospital is less than one thousand rupees per day per room.	Nil.
(b) where the charge for luxury provided in a hospital is rupees one thousand or more but does not exceed two thousand five hundred rupees per day per room.	Five percent of turnover of receipts.
(c) where the charge for luxury provided in a hospital exceeds two thousand five hundred rupees per day per room.	Eight percent of turnover of receipts.

(3) The tax levied under sub-section (1) shall be paid by every proprietor.

(4) The provisions of this Act and the rules made thereunder, in so far as they apply to the hotelier with regards to registration, accounts, return, payment of tax, assessment, appeal, revision, references, refunds, payment of interest, offence and penalties, prosecution, compounding of offences and other procedural matters, shall apply mutatis mutandis to the proprietor of a hospital."

6. Insertion of a new section 3B :-

In the principal Act, after section 3A, a new section 3B shall be inserted, namely:-

"3B. "Composition of tax liability.

Notwithstanding anything contained in this Act, the State Government may, by notification published in the Official Gazette and subject to such conditions and restrictions as it may specify therein, permit any hotelier or a proprietor to pay at his option in lieu of amount of tax payable under the provisions of the Act by such hotelier or a proprietor, an amount by way of composition as may be fixed by the State Government in such notification."

7. Amending Act 5 - Substitution of section 5 :-

In the principal Act, for section 5, the following shall be substituted, namely:-

"5. "Taxing authorities and exercise of powers.

(1) Subject to the provisions of the Act and the rules made thereunder, the authorities competent to register, receive returns, assess or re-assess, recover and enforce payment of tax and impose penalty under the Assam Value Added Tax Act, 2003 (Assam Act VIII of 2003), hereinafter referred to as the VAT law, shall, within their local jurisdiction under the VAT law, be competent to register, receive returns, assess or re-assess, recover

and enforce payment of tax including imposition of penalty due from any hotelier or proprietor whose place of business is located within such jurisdiction as if the tax were a tax under the VAT law and the hotelier or the proprietor was a dealer, within the meaning of the VAT law carrying on business within such jurisdiction and for this purpose they may exercise all or any of the powers conferred upon them by or under that Act.

(2) Subject to the provisions of this Act and rules made thereunder, the provisions relating to security, interest, assessments and re-assessments, recovery of tax, interest, penalty or any other sum including special mode of recovery, first charge, period of limitation, refund, retention of accounts, requirement to provide information, transfer of liability of any firm or Hindu undivided family to pay tax in the event of dissolution of such firm or partition of such family, inspection, search and seizure, appeals, revisions, references, refunds, compounding of offences and treatment of documents furnished by dealer as confidential, of the Assam Value Added Tax Act, 2003 (Assam Act VIII of 2003) and the rules made thereunder, orders, notifications issued thereunder shall mutatis mutandis apply to an hotelier or a proprietor in respect of tax levied and payable under this Act, as if those provisions were mutatis mutandis incorporated in this Act and the rules framed and orders and notification issued under those provisions were mutatis mutandis issued under the relevant provisions so incorporated under this Act."

8. Amendment of section 15 :-

In the principal Act, in section 15, in sub-section (1), for the clauses (A) and (B), the following shall be substituted, namely:-

"(A) where there has been contravention referred to in sub-clause (i) or (ii) of clause (a), a penalty of an amount not exceeding double the sum collected by way of tax, subject to a minimum of ten thousand rupees;

(B) where there has been a contravention referred to in sub-clause (ii) of clause (a) or in clause (b), penalty of amount not exceeding fifty thousand rupees subject to a minimum of ten thousand rupees, and in addition any sum collected by the person by way of tax in contravention of section 11, shall be forfeited to the State Government"

9. Substitution of section 19 :-

In the principal Act, for section 19, the following shall be substituted, namely:-

"19. Power to make rules.

(1) The State Government may, subject to the condition of previous publication, by notification, make rules for carrying out the purposes of this Act:

Provided that if the State Government is satisfied that circumstances exist which render it necessary for it to take immediate action, if any, it may make any rules without such previous publication:

Provided further that any rule under this Act may be made so as to have the retrospective effect.

(2) In particular and without prejudice to the generality of the foregoing provision, the State Government may make rules for all or any of the following matters, namely :-

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

(b) the manner of payment of tax;

(c) the form in which accounts and registers shall be maintained by a hotelier;

(d) any other matter which is required or allowed by this Act to be prescribed.

(3) The State Government shall cause every rule made under this Act and every notification issued under this Act to be laid, as soon as may be, after it is published before the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions in which it is so laid or the sessions immediately following, and if the State Legislature agrees in making any modification in the rule or notification or that the rule or notification should not be made, the rule or notification 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 or notification."