

GUJARAT STATE TAX ON PROFESSIONS, TRADES CALLINGS AND EMPLOYMENTS RULES, 1976

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GUJARAT STATE TAX ON PROFESSIONS, TRADES CALLINGS AND EMPLOYMENTS RULES, 1976

Whereas the Government of Gujarat is satisfied that circumstances exist which render it necessary to take immediate action to make rules under the Gujarat State Tax on Professions, Trades, Callings and Employments Act, 1976 (President's Act No. 11 of 1976), and to dispense with the previous publication thereof; Now, therefore in exercise of the powers conferred by section 27 of the said Act and of all other powers enabling it in this behalf, the Government of Gujarat hereby dispenses with the condition of previous publication and makes the following rules, namely:

CHAPTER 1

PRELIMINARY

1. Short title and commencement :-

(1) These rules may be called the Gujarat State Tax on Professions, Trades, Callings and Employments Rules, 1976.

(2) They shall come into force at once.

2. Definitions :-

In these rules, unless the context otherwise requires

(1) "the Act" means the Gujarat State Tax on Professions, Trades, Callings and Employments Act, 1976 (President's Act No. 11 of 1976);

(2) "employee" means a person employed on salary or wages as defined in clause (g) of Section 2, and includes,

(i) a Government servant receiving pay from the revenues of the Government of India or of a State Government or the Railway fund.

(ii) a person in the service of a body, whether incorporated or not

which is wholly or substantially owned or controlled by a State Government or by the Government of India, when the body operates in the State of Gujarat even though its headquarters may be outside the State, and

(iii) a person engaged in any employment of an employer, not covered by items (i) and (ii);

(3) "Form" means a Form appended to these rules;

(4) "place of work" in relation to a person or employer, means the place where such person or employer, ordinarily carries on his profession, trade, calling or employment;

[(5) "prescribed authority" wherever it occurs in the Act and in these rules means:

(i) The Profession Tax Officer appointed under Section 12 having jurisdiction over the area in which the place of work of a person or employer is situated, and

(ii) the Profession Tax Officer City Dn. XI Ahmedabad, in the case of a person, or employer, who has no fixed or regular place of work in the State of Gujarat].

(6) "section" means a section of the Act;

(7) "treasury" means as respects a person or an employer, the treasury or sub- treasury, as the case may be, of the district or taluka, in which the place of work of such person or employer is situated.

CHAPTER 2

REGISTRATION AND ENROLMENT

3. Grant of certificate of registration :-

(1) An application for obtaining a certificate of registration under sub-section (1) of Section 5 shall be made in Form 1 within sixty days from the date of publication of these rules in the Official Gazette, and in the case of an employer not engaged in any profession, trade, calling or employment on the date of the commencement of the Act, within sixty days from the date of commencement of his profession, trade, calling or employment [and in the case of person becoming liable to pay tax at any time after the commencement of the Act, within sixty days from the date of commencement of his becoming liable to pay tax]. An

applicant having place of work within the jurisdiction of different prescribed authorities shall make an application for registration separately to each such authority in respect of his place of work within the jurisdiction of that authority.

(2)

(a) On receipt of an application for registration, the prescribed authority shall grant to the applicant a certificate of registration in Form 2 if he is satisfied that the application is in order and the necessary particulars have been furnished by the applicant.

(b) If the prescribed authority finds that the application is not in order or all the particulars necessary for registration have not been furnished, he shall direct the applicant to file a revised application or to furnish such additional information as may be considered necessary. After considering the revised application and the additional information. If, any, the prescribed authority shall grant a certificate of registration in Form 2.

4. Grant of certificate of enrolment :-

(1) An application for obtaining a certificate of enrolment under sub-section (2) of Section 5 shall be made in Form 3, within sixty days from the date of publication of the rules in the Official Gazette, and in the case of a person not engaged in any profession, trade, calling or employment on the date of the commencement of the Act, within sixty days from the date of commencement of his profession, trade, calling or employment and in the case of a person becoming liable to pay tax at any time after the commencement of the Act, within sixty days from the date of place of work in the State of Gujarat, whether within the jurisdiction of the prescribed authority or outside such jurisdiction, shall be granted only one certificate of enrolment.

(2) Where an applicant has more than one place of work within the State of Gujarat, he shall make a single application in respect of all such places, name in such application one of such places as the principal place of work for the purposes of these rules and submit such application to the prescribed authority in whose jurisdiction the said principal place of work is situated.

(3) On receipt of an application in Form 3, the prescribed authority may call upon the applicant to furnish such additional information or evidence as may be necessary for determining the amount of tax

payable by him according to Schedule I to the Act.

(4) After considering the application and such additional information or evidence as may be furnished, the prescribed authority shall grant a certificate of enrolment in Form 4.

(5) Where the applicant has more than one place of work in the State as many copies of the certificate shall be issued to him as there are additional places of work, in respect of the places of work other than the principal place of work.

4A. Declaration under Section 4 :-

The declaration under the second proviso to Section 4 shall be in Form 4A

5. Amendment of certificate of registration :-

Where the holder of a certificate of registration granted under rule 3 desires the certificate to be amended, he shall submit an application for this purpose to the prescribed authority setting out the specific matters in respect of which he desires such amendment and reasons therefor, together with the certificate of registration, and such authority may if satisfied with the reasons given make such amendments as it thinks necessary in the certificate of registration.

6. Amendment of certificate of enrolment :-

(1) The certificate of enrolment granted under Rule 4 shall remain valid so long as it is not cancelled under sub-rule (2) of Rule 7.

(2) An application for a revised certificate or enrolment by a person referred to in sub-section (2) of Section 5 shall be made in Form 3 within sixty days from the date of such person becoming liable to pay tax at a rate higher or lower than the one mentioned in this certificate of enrolment. On receipt of such application the prescribed authority may call upon the applicant to furnish such additional information or evidence as may be necessary for determining the amount of tax payable by him according to Schedule 1 to the Act and after so determining the amount of tax payable by the applicant, the prescribed authority shall make necessary amendment in the certificate of enrolment under his dated signature indicating the year from which the tax at the revised rate shall be payable.

7. Cancellation of certificate :-

(1) The certificate of registration granted under rule 3 may be cancelled by the prescribed authority after he has satisfied himself that the employer after he has satisfied himself that the employer to whom such a certificate was granted has ceased to be an employer.

(2) The certificate of enrolment granted under Rule 4 may be cancelled by the prescribed authority after he is satisfied that the enrolled person is dead or his liability to pay tax has ceased:

8. Exhibition of certificate :-

The holder of the certificate of registration or the certificate of enrolment, as the case maybe, shall display conspicuously at his place of work the certificate of registration or the certificate of enrolment or a copy thereof.

9. Issue of duplicate copy of certificate :-

If a certificate of registration or a certificate of enrolment granted under these rules is lost, destroyed or defaced or becomes illegible, the holder of the certificate shall apply within a reasonable time to the prescribed authority for the grant of a duplicate copy of such certificate. The said authority shall, after such verification as may be necessary, issue to the holder of the certificate a copy of the original certificate, after stamping thereon the words "Duplicate copy".

CHAPTER 3

RETURNS, NOTICES AND PAYMENT OF TAX

10. Commissioner to give a public notice :-

The Commissioner shall in the month of April every year give a public notice by publication in the newspapers directing all persons liable to pay tax under the Act to get themselves registered or enrolled, as the case may be (unless they are already registered or enrolled), and to furnish returns and pay the tax according to provisions of the Act and these rules.

11. Return :-

(1) Every employer registered under sub-section (1) of Section 5 shall furnish to the prescribed authority within fifteen days of the expiry of a previous month, a return in Form 5.

(2) Notwithstanding anything contained in [sub-rule (1)], the Commissioner may on an application being made by an employer registered under sub-section (1) of Section 5 in Form-5B for

permission to furnish annual return, permit him to furnish returns subject to the following conditions,

(a) that the return shall be in Form 5-A.

(b) that the employer shall pay into Government treasury within fifteen days of the expiry of each previous month an amount equivalent to the tax payable at the rates specified in [entry 1 in Schedule I] to the Gujarat State Tax on Profession, Trades, Callings and Employments Act, 1976 on account of salaries or wages that he may pay to his employees.

(c) that the return specified in clause (a) shall show salaries of wages paid by the employer in respect of the year and shall be furnished before the last day of the month following the year to which the return relates and if the tax payable according to the return is more than the tax paid for each month under clause (b), the employer shall furnish alongwith the return, a receipted copy of the chalan showing the payment of the differential amount of tax, interest and penalty if any.

(d) that if the employer comits a breach of any of the foregoing conditions, the permission granted under this rule shall be liable to be cancelled.

(3) Such return shall be furnished to the prescribed authority separately for each place of work, unless the employer is permitted to file a consolidated return under sub-rule (4).

(4) On an application in Form-5-C, the Commissioner may by an order permit an employer having more than one place of work and registered under sub section (1) of Section-5 with more than one prescribed authorities, to furnish a consolidated return relating to all or any of the places of work of the employer with any one of the prescribed authorities.

(5) The Commissioner may by order cancel the permission of file a consolidated return

(i) on request from the employer concerned, or

(ii) for any other reason to be recorded in writing after giving opportunity of being heard to the employer concerned].

12. Notice under sections 5(6), 6(3) and 7 :-

The notice under sub-section (6) of section 5, under sub-section (3)

of section 6 or under clause (a) of sub-section (2), or sub-section (3) of Section 7 , shall be issued by the prescribed authority in Form 7.

13. Notice under section 5(5) :-

The notice under sub-section (5) of Section 5 to a person liable to registration or enrolment shall be issued by the prescribed authority in Form 7.

14. Order of assessment :-

The order of assessment under Section 7 shall be passed in Form 8.

15. Notice of demand under section 7(4) etc :-

The notice of demand under sub-section (4) of section 7 and for other demands, including the penalty imposed under the Act, shall be issued by the prescribed authority in Form 9.

16. Payment of tax by employers :-

An employer in respect of employees as defined in rule 2(2) (ii) and (iii) shall make payment of tax and interest and penalty (if any) by deposit of the requisite amount in the treasury by chalan in Form 10 under the head [0028]. Other Taxes on Income and Expenditure-(i) Taxes on Professions, Trades, Callings and Employments (a) Tax on employments / (b) Tax on professions, trades and callings". The chalan shall be in quadruplicate. The copies marked 'Original' and 'Duplicate' shall be returned to the employer duly receipted, of which the copy marked 'Duplicate' shall be submitted by him to the prescribed authority.

17. Deduction of tax amount from the salary or wages of employees :-

(1) The drawing and disbursing officer in the case of non-gazetted Government servants and the treasury officer or the Pay and Accounts Officer or the Accountant General, or any other paying authority as the case may be, in the case of gazetted Government servants, shall be responsible for the deduction of due amount of tax from the pay bill of employee as defined in rule 2(2) (i). The deduction shall be made every month, and the pay or wages of such an employee for the month of February shall not be permitted to be drawn unless the tax due for the period March to February or part thereof or from the month in which the employee has attracted liability to pay the tax to February, as the case may be, has been fully deducted and a statement showing such deduction has been enclosed with the pay bill. In the case of a paying authority who

does not obtain funds from the treasury, the payment at the tax deducted by it shall be made in the manner prescribed in rule 16 before the 15th day of the month following the month to which the pay or wages relate. The drawing and disbursing officer or the treasury officer, or any other paying authority, as the case may be, shall furnish to the Commissioner not later than 30th April every year a certificate that the tax payable in respect of the employees for whom they drew or passed pay bills during the year immediately preceding has been deducted in accordance with the provisions of Schedule I to the Act. The Commissioner may, if he considers necessary, require a drawing and disbursing officer, or a treasury officer, or a treasury officer, as the case may be, to furnish him with a statement relating to the payment of salary made to the Government servants during any specified period. Such statement shall show the name of the employee, the details of salary drawn, the amount of tax deducted therefrom and the period to which the tax relates.

(2) An employer shall be responsible for deduction of the due amount of tax from the salary or wages of the employees as defined in rule 2 (2) (ii) and (iii) and for depositing in the treasury the amount so deducted in the manner prescribed in Rule 16.

(3) Notwithstanding the provisions contained in rule 16, sub-rules (1) and (2) of this rule and rule 18, the liability of an employee to pay tax shall not cease until the due amount of tax in respect of him has been fully paid to the Government account, and without prejudice to the aforesaid provisions the said amount may be recovered from him if the employer or the prescribed authority is satisfied that the amount has been deducted from his salary or wages.

18. Liability for default in deducting or paying tax in respect of salary or wages :-

Any person responsible for the payment of salary or wages, who does not deduct the due amount of tax or after deducting it fails to pay it into the Government account as required by these rules shall, without prejudice to any action under any other law for the time being in force for which he may render himself liable, be deemed to be in default in respect of the tax.

19. Employer to keep account of deduction of tax from salary of the employees :-

Every employer liable to pay tax shall maintain a register in which

shall be entered the amount of salary and wages paid to each of the persons in his employ and the said register shall contain a column in which shall be shown the amount deducted from the salary and wages of the employee on account of the tax.

20. Payment of tax by persons other than employers :-

A person liable to pay tax, not being a person specified in entry 1 in Schedule I to the Act, shall make payment of tax within the period specified in sub-section (2) of section 8 by paying the requisite amount into the treasury. Every payment shall be accompanied by a chalan in Form 10 in quadruplicate. The receipted copy marked "Duplicate" shall be submitted to the prescribed authority as a proof of the payment of the tax having been made.

21. Notices for failure to enrol, for failure to pay tax etc :-

(1) The notice for hearing in pursuance of section 7A to a person enrolled under sub-section (2) of section 5, who has failed to pay the amount of tax due from him shall be in Form 11 and the notice of demand for payment of tax to such person shall be in Form 12.

(2) The notice for hearing in pursuance of Section 7A to a person who has failed to get himself enrolled under sub-section (2) of Section 5 shall be in Form 13 and the notice of demand to such person shall be in Form 14.

(2) If a person liable to pay tax has wilfully failed to get himself enrolled, then without prejudice to the action that may be taken against him under sub-section (5) of Section 5, the prescribed authority shall after giving that person a reasonable opportunity of being heard and after such inquiry, as may be deemed fit, or otherwise, assess the tax due to the best of his judgment and serve on him a notice of demand in Form 14 to pay the tax within fifteen days of the receipt of the notice. Notice of hearing in such case shall be issued by the prescribed authority in Form 13. The notice under sub-section (6) of Section 5 in respect of persons liable for enrolment shall also be in Form 13.

CHAPTER 4

SHIFTING OF PLACE OF WORK

22. Shifting of place of work :-

(1) If the holder of a certificate of registration or a certificate of enrolment in one area shifts his place of work to another area, he

shall, within fifteen days of such shifting, give notice thereof to the prescribed authority from whose office the certificate was issued, and shall, at the same time, send a copy of such notice to the prescribed authority exercising jurisdiction over the area to which the place of work is being or has been shifted.

(2) With effect from the commencement of the month immediately succeeding that in which the notice is given, the prescribed authority having jurisdiction over the area to which the place of work has been shifted shall exercise all powers and discharge all functions pertaining to the determination and recovery of tax, and matters ancillary thereto, in respect of the sender of such notice.

22A. Manner of withdrawal from Gujarat State Employment Promotion Fund :-

In each year, such sum not exceeding the amount provided in the budget estimates of that year for meeting the expenditure on the measures that may be implemented by the State Government relating to the schemes of removal of unemployment and under-employment, as the State Government may determine, may be withdrawn from the Gujarat State Employment Promotion Fund (herein-after referred to as "the said Fund") for the purpose mentioned in sub-section (1) of section 11A provided that:

(i) in determining the sum to be withdrawn from the said Fund, the amount required for meeting the expenditure on the schemes of the removal of unemployment and under employment shall be taken into account first and if any balance is thereafter available, the amount required for other purposes relating to employment promotion, may be taken into account;

(ii) If the balance available in the said fund is less than the sum so determined, the sum to be withdrawn shall be restricted to the balance available;

(iii) If the balance expenditure incurred during a year for measures implemented by the State Government for dealing effectively with the problems relating to the removal of unemployment and under-employment is less than the sum withdrawn from the said Fund, the difference shall be made good by transfer of an equal amount from the Consolidated Fund of the State to the said Fund during the year next following.

23. Appeal and Revision :-

An appeal under section 13 or an application for revision under Section 14 shall

(a) be made in Form 15.

(b) be presented to the appropriate appellate or revisional authority, as the case may be, by the appellant or applicant in persons or by his authorised agent or legal practitioner or be sent by registered post to the said authority;

(c) contain a clear statement of the relevant facts and state precisely the relief prayed for;

(d) be accompanied by a true typed copy of the order against which appeal or revision is filed, as well as of all relevant earlier orders and papers; and

(e) be duly signed and verified by the appellant or applicant, as the case may be.

24. Rectification :-

A notice for giving reasonable opportunity to a person or an employer before passing an order under section 15 adversely affecting him shall be issued in Form 16.

25. Refund of tax :-

Where the prescribed authority receives an application for refund of tax under Section 19, he shall, if he is satisfied that a refund is due to the applicant in terms of the provisions of the said section record an order showing the amount of refund due and shall issue to the applicant a refund payment order in Form 17. "or, as the case may be, an order in Form 18 adjusting the amount of refund towards the amount of tax payable for any period.

CHAPTER 6**MISCELLANEOUS****26. Service of Notices :-**

(1) Notices under the Act or the rules made thereunder may be served by any of the following methods, namely:

(i) by delivering or tendering a copy of the notice to the addresses or any adult member of his family residing with him or to a person regularly employed by him; or

(ii) by post: provided that, if upon an attempt having been made

to serve any such notice by any of the above mentioned methods the authority under whose order the notice was issued is satisfied that the addressee is keeping out of the way for the purpose of avoiding service or that, for any other reasons, the notice cannot be served by any of the above mentioned methods, the said authority shall order the service of the notice to be effected by affixing a copy thereof on some conspicuous part of the addressee's office or of the building in which his office is located or where he habitually resides, or upon some conspicuous part of any place of profession, trade, callings, employment office or residence last notified by him and such service shall be deemed to have been made on the addressee personally.

(2) When the serving officer delivers or tenders a copy of the notice to the addressee personally or to any of the persons referred to in clause (i) of sub-rule (1), he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice.

(3) When the notice is served by affixing a copy thereof in accordance with the proviso to sub-rule(1), the serving officer shall return the original to the authority which issued the notice with a report endorsed thereon or annexed thereto stating that he so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the addressee's office or the building in which his office is or was located or his place of profession, trade, calling, employment or residence was identified and in whose presence the copy was affixed. The serving officer shall also require the signature or thumb impression of the person identifying the addressee's office or building or place of profession, trade, calling, employment or residence to his report.

(4) When service is made by post, the service shall be deemed to be effective if the notice has been properly addressed and sent by registered post with acknowledgment due and unless the contrary is proved, the service shall be deemed to have been effected at the time at which the notice would have been delivered in the ordinary course of postal business.

(5) The authority under whose orders the notice was issued shall, on being satisfied from the report of the messenger or the postal acknowledgment or by taking such evidence as he deems proper that the notice has been served in accordance with this rule record the fact and make an order to that effect.

(6) If the authority is not satisfied that the notice has been properly served, he may, after recording an order to that effect, direct the issue of a fresh notice.

27. Grant of copies :-

(1) If any employer or a person wants to have a certified copy of a document filed by him or of an order concerning him passed by any authority, he shall make to the authority concerned an application bearing adhesive court fee stamp of the value of twenty five paise for an ordinary copy or such stamp of the value of rupee one and twenty five paise for a copy which he desires to be supplied within two days of his applying for the same.

(2) On receipt of the application, the said authority shall inform the applicant of the amount of court-fee stamps required, under the provisions of sub-rule (3) for supply of the copy. After the requisite amount of court fee stamps is furnished by the applicant, the said authority shall cause a certified copy of the document or order to be prepared and granted to the applicant.

(3) Additional fee in the shape of court fee stamp shall be payable for the grant of copies at rates given below:

(a) Copying fee for the first 200 words or less of the documents.---
--One rupee,

(b) For every additional 100 words or fraction thereof.-----Fifty paise,

(c) A uniform extra copying fee of Rupee one per copy shall be charged on an application for a copy required by the applicant within two days of his applying for the same.

27A. Free supply of certified copies of certain orders :-

Notwithstanding anything contained in rule 27, certified copy of an order passed under Section 5 , Section 6 , RULE 7, Section 7A , Section 9 , Rule 10, Rule 13, Section 14 , Section 15 or Section 16 shall be furnished free of charge to the assessee, the appellant, the applicant or as the case may be to any other person adversely affected thereby and if the order is passed by an officer or authority higher than the prescribed authority, another copy of such order shall be sent to the prescribed authority.]

28. Fees on applications and memorandum of appeal :-

Fees at the following rates shall be payable on applications and

memorandum of appeal relating to or arising out of proceedings under the Act and other matters ancillary or incidental thereto:

(a) Memorandum of appeal against [an order of assessment or penalty or both against any other orders specified in sub-section (1) of section 13]-----Rupees five only

(b) Application for revision of an appellate or revisional order concerning an order of assessment or penalty or both or against any other order passed in appeal.-----Rupees ten only

(c) Application for grant of a duplicate copy of registration certificate or enrolment certificate.-----Rupees two only

Provided that no fee shall be payable in respect of any application filed by or on behalf of any authority appointed under the Act.

29. Payment of fees :-

All fees shall be paid in Court fee stamps.