

RAJASTHAN TAX ON LUXURIES (IN HOTELS AND LODGING HOUSES) ACT, 1990

9 of 1996

[23rd September, 1996]

CONTENTS

1. Short title, extent and commencement
2. Definitions
3. Incidence of taxation
4. Charge, rate of tax and prohibition of unauthorised collections
5. Rounding off the tax
6. Hotelier to declare the name of owner of business
7. Exemption from tax
8. Liability of hotelier to pay tax
9. Liability of firms as hoteliers
10. Special provisions regarding liability to pay tax including any penalty or interest in certain cases
11. Applicability of provisions of this Act to a person liable to pay tax under section 10
12. Registration
13. Information to be furnished regarding changes in business
14. Certificate of registration to continue in certain circumstances
15. Payment Tax
16. Returns
17. Assessment, Rectification and Reassessment
18. Payment and recovery of tax including penalty and interest
19. Special mode of recovery
20. Levy of Interest
21. Imposition of Penalties
22. Violation by companies
23. Prosecution for Offences committed under this Act
24. Bill or cash memorandum to be issued to customer
25. Accounts and Records
26. Production and inspection of accounts and documents and search of premises
27. First Appeal
28. Second Appeal
29. Revision to the Rajasthan Taxation Tribunal in special cases
30. Determination of certain disputed question
31. Revision by Commissioner
32. Power to reduce or waive interest and penalty in certain cases
33. Power to transfer proceedings

34. Investigation of offences
35. Power to collect statistics
36. Disclosure of information relating to any hotelier
37. Power to take evidence on oath and production of documents
38. Refund of excess tax including the amount of penalty and interest
39. Indemnity
40. Bar to certain proceedings
41. Powers of the Authorities under the Act
42. Persons appointed under section 41 to be public servants
43. Removal of difficulties in the implementation of the Act
44. Power to make rules

RAJASTHAN TAX ON LUXURIES (IN HOTELS AND LODGING HOUSES) ACT, 1990

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An Act to provide for the levy and collection of a tax on luxuries provided in hotels and lodging houses and for matters connected therewith and incidental thereto. Be it enacted by the Rajasthan State Legislature in the Forty first year of the republic of India as follows:- 1 Published in the Rajasthan Gazette E.O. Part 4(Ka) dated 18.11.1996.

1. Short title, extent and commencement :-

(1) This Act may be called the Rajasthan Tax on Luxuries (in Hotels and Lodging Houses) Act, 1990. (2) It extends to the whole of the State of Rajasthan. (3) It shall come into force on such date¹ as the State Government may by notification in the Official Gazette appoint. 1. Came into force on 12th March, 1997 vide Notification No.F. 20(1) FD/Tax/90-127 dated 12.3.1997, Published in Raj. Gazette E.O. Part 4(Ga) (II) dated 12.3.1997.

2. Definitions :-

(1) In this Act unless the context requires otherwise,- (a) 1["business" includes the activities of providing residential accommodation or any place for the purpose of organizing parties, ceremonies or functions and any other service in connection with, or ancillary to, such activities for monetary consideration, whether or not such activities are carried on with motive to make gain or profit and whether or not any gain or profit accrues from such activities;] (b) "charges for lodging" includes charges for air-conditioning, 2[XXX] television, radio, music and extra beds and

the like but do not include any charges for food and drinks; (c) "Commissioner" means the Commissioner of Commercial Taxes (including the Additional Commissioner of Commercial Taxes or the Additional Commissioner of Commercial Taxes, Anti-Evasion) who shall be the Ex-officio Commissioner of Luxury Tax; (d) "concessional rate", in relation to a luxury provided in a hotel, means a rate lower than the normal rate fixed for such luxury by the hotelier or lower than fixed by any Government authority or under any law for the time being in force; (e) "customer" means the person who enjoys luxury provide in a hotel; (f) "Deputy Commissioner" means the Deputy Commissioner (Administration) or the Deputy Commissioner (Admn.), Anti-Evasion of the Commercial Taxes Department, who shall be the ex-officio Deputy Commissioner of Luxury Tax; (g) 1["hotel" includes a residential accommodation along with the lawns thereof, a lodging house, an inn, a public house or a building or parts of a building or any place, where a residential accommodation or a space for the purpose of organizing parties, ceremonies or functions is provided by way of business;] (h) "hotelier" means the owner of the hotel and includes the person who for the time being is incharge of the management of the hotel; 3[(i) "Luxury provided in a Hotel" means accommodation (such as room or other place or lawn etc. by whatever name called) and other services including air conditioning, coolers, heaters, geysers, 4[xxx] television, radio, music, entertainment, extra beds, linen articles and the like in a hotel, for which the rate of charges per day or part thereof is 5[seven hundred fifty rupees or more]; 6[(j) "Luxury Tax Officer" means the Assistant Commissioner or the Commercial Taxes Officer including the Assistant Commissioner, or the Commercial Taxes Officer, (Anti-evasion appointed or posted by the State Government in the Commercial Taxes Department]; (k) "person" includes any company or association or body of individuals incorporated or not, and also a Hindu undivided family, a firm, a local authority, a trust, a State Government and the Central Government; (l) "place of business" includes an office, or any other place which a hotelier uses for the purpose of his business or where he keeps his books of accounts; (m) "prescribed" means prescribed by the rules made under this Act; (n) "proprietor" in relation to a hotel, includes the person who for the time being is incharge of the management of the hotel; (o) "receipt" means the amount of monetary consideration received or receivable by a hotelier or by his agent for any luxury provided in a hotel but shall not include the tax payable under this Act and

collected separately by the hotelier; (p) "registered hotelier" means a hotelier registered under this Act; (q) "rules" means the rules made under this Act; (r) "Sales Tax Act" means the Rajasthan Sales Tax Act, [1994]; (s) "State" means the State of Rajasthan; (t) "Tax" means the tax payable under this Act; (u) "turnover" means the aggregate of the amounts of the monetary consideration received or receivable by a hotelier or by his agent in respect of the luxuries provided in a hotel during a given period; (v) "year" means the financial year which shall also be known as the assessment year. (2) All words and expression which are used but are not defined in this Act and are defined in the Sales Tax Act shall have the meanings assigned to them in that Act. 1 Substituted. by Amendment Act No. 4 of 2007 2 Word "telephone" deleted by Rajasthan Act No. 8 of 1998, w.e.f. 31.7.1998. 3 Substituted by Rajasthan Act No. 9 of 1997, w.e.f. 30.3.1997. 4 Deleted by Rajasthan Act No. 8 of 1998, w.e.f. 31.7.1998. 5 Substituted by Rajasthan Act No. 10 of 2000, w.e.f. 6.5.2000. 6 Substituted by Rajasthan Act No. 8 of 1998, w.e.f. 31.7.1998.

3. Incidence of taxation :-

(1) There shall be levied a tax on the turnover of a hotelier and such tax shall be payable by him in accordance with the provisions of this Act. 1[(2) If a person other than the owner (including part-owner) is for the time being incharge of a hotel, then such person (excluding the manager or incharge of the hotel who is merely salaried employee and not the profit sharing body of the income of the hotel) and the owner (including part-owner) shall jointly and severally be liable to pay the tax.] 1 Substituted by Raj. Act No. 9 of 1997, w.e.f. 30.3.1997.

4. Charge, rate of tax and prohibition of unauthorised collections :-

(1) The tax payable by a hotelier under this Act shall be levied at such rate not exceeding twenty five per cent of his turnover, as notified from time to time by the State Government: Provided that different rates of tax may be notified for different slabs of tariff: Provided further that, where the charges are levied otherwise than on daily basis or per room then the charges for determining the tax liability under this section shall be computed proportionately 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 system/practice of the hotel. (2) Where, in addition to the charges for luxury provided in a hotel, service charges are levied and

appropriated by the hotelier and not paid to the staff, then such charges shall be deemed to be part of the charges for luxury provided in the hotel. 1[(3) Where luxury provided in a hotel to any person is not charged at all, or is charged at a concessional rate, then the tax chargeable in the cases of concessional rate shall be based on actual billing and not on fixed and published rates or charges for accommodation and other services as referred to in clause (i) of subsection (1) of section 2, and in case where luxury is provided free of charge, no tax shall be chargeable.] (4) Where extra beds or any other additional facilities are provided in a room of a hotel, tax shall also be levied and recovered on the charges of such extra beds or additional facilities. (5) (i) The tax shall not be levied and payable in respect of the turnover of receipts for supply of food and drinks, on the sale of which the hotelier is liable to pay sales tax under the Sales Tax Act. (ii) Where composite charges for boarding, lodging and other amenities are recoverable in a hotel, tax under this Act shall not be levied on that part of such charges on which sales tax is leviable under the Sales Tax Act. (6) No person shall collect any sum by way of tax in respect of his business to the extent he is not liable to pay it under the Act. (7) No person who is not liable to pay way of tax in respect of luxury provided in any hotel, shall collect any sum by way of tax from any other person and no hotelier shall collect any amount by way of tax in excess of the amount of tax payable by him under the provisions of this Act. 1 Substituted by Raj. Act No. 9 of 1997, w.e.f. 30.3.1997.

5. Rounding off the tax :-

The amount of tax, penalty, interest, composition money or any other sum payable under the provisions of this Act, shall be rounded off to the nearest rupee and for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee, and if such part is less than fifty paise, it shall be ignored: Provided that, nothing in this section shall apply for the purpose of collection by the hotelier of any amount by way of tax under this Act.

6. Hotelier to declare the name of owner of business :-

Every hotelier, who is liable to pay tax, and who is a Hindu undivided family, or an association or club or society or firm or company, or who carries on business as the guardian or trustee or otherwise on behalf of another person, shall within the period prescribed send to the authority prescribed, a declaration in the

manner prescribed stating the name of the person or persons who is the owner or who are the owners of the hotel. Such declaration may be revised from time to time.

7. Exemption from tax :-

(1) Subject to such conditions as it may impose, the State Government may, if it is necessary so to do in the public interest, by notification in the Official Gazette, exempt prospectively or retrospectively, with or without conditions, any class of hotels or any specific class of luxuries provided in a hotel from payment of the whole or any part of tax payable under the provisions of this Act. (2) Where a hotelier or person has availed of such exemption and any of the conditions subject to which such exemption was granted is not complied with for any reason whatsoever, then such hotelier or person shall be liable to pay luxury tax on the luxury provided in a hotel in accordance with the other provisions of this Act.

8. Liability of hotelier to pay tax :-

(1) Liability to pay tax under this Act shall arise on the first day on or after the date of commencement of this Act when luxury provided in a hotel is enjoyed by a customer. (2) Whether or not a hotelier is able to recover charges for the luxuries provided by him in his hotel, he shall be liable to pay tax in accordance with the provisions of this Act and the rules made thereunder.

9. Liability of firms as hoteliers :-

Where a hotel is owned, managed or run by a firm, then the firm and each of the partners of the firm shall be jointly and severally liable for payment of tax: Provided that, where any partner retires from the firm, he shall be liable to pay the tax, penalty and the interest, if any, remaining unpaid at the time of his retirement, and any tax due upto the date of his retirement, even if assessment of tax or levy of penalty and interest (if any) is made on a later date.

10. Special provisions regarding liability to pay tax including any penalty or interest in certain cases :-

(1) Where a hotelier, liable to pay tax under this Act, dies, then-
(a) if the business carried on by the hotelier is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay the tax including any penalty or interest due from such hotelier under this Act in the like manner and to the same extent as the deceased hotelier; or (b) if the business carried on by the hotelier is

discontinued after his death, his legal representative shall be liable to pay out of the estate of the deceased, in the like manner and to the same extent as the deceased hotelier would have been liable to pay if he had not died, the tax (including any penalty or interest) due from such hotelier under this Act whether such tax (including any penalty or interest) has been assessed before his death but has remained unpaid or is assessed after his death. (2) Where a hotelier liable to pay tax under this Act is a Hindu undivided family and the joint family property is partitioned amongst the various members or group of members, then each member or group of members shall be jointly and severally liable to pay the tax (including any penalty or interest) due from the hotelier under this Act upto the time of partition whether such tax (including any penalty or interest) has been assessed before partition but has remained unpaid or is assessed after partition. (3) Where a hotelier, liable to pay tax under this Act is a firm and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay the tax (including any penalty or interest) due from the firm under this Act upto the time of dissolution, whether such tax (including any penalty or interest) has been assessed before such dissolution but has remained unpaid or is assessed after dissolution. (4) Where a hotelier, liable to pay tax under this Act transfers or otherwise disposes of his business in whole or in part or effects any change in the ownership thereof, in consequence of which he is succeeded in the business or part thereof by any other person, then the hotelier and the person succeeding shall jointly and severally be liable to pay tax (including any penalty or interest) due from the hotelier under this Act upto the time of such transfer, disposal or change, whether such tax (including any penalty or interest) has been assessed before such transfer, disposal or change but has remained unpaid, or is assessed thereafter. (5) Where a hotelier, liable to pay tax under this Act- (a) is the guardian of a ward on whose behalf the business is carried on by the guardian; or (b) is a trustee who carries on the business under a trust for a beneficiary; then, if the guardianship or trust is terminated, the ward or the beneficiary, as the case may be, shall be liable to pay the tax (including any penalty or interest) due from the hotelier upto the time of termination of the guardianship or trust, whether such tax (including any penalty or interest) has been assessed before the termination of the guardianship or trust, but has remained unpaid, or is assessed thereafter. (6) Where a hotelier, liable to pay tax under this Act, is

succeeded in the business by any person, then such person, unless he already holds a certificate or registration, shall, within 30 days thereof, apply for registration.

11. Applicability of provisions of this Act to a person liable to pay tax under section 10 :-

Where in respect of any tax (including any penalty or interest) due from a hotelier under this Act, any other person is liable for payment thereof under section 10, then such other person shall be deemed to be a hotelier for the purpose of this Act, and all the relevant provisions of this Act shall in respect of such liability apply to such person also, as if he were the hotelier.

12. Registration :-

(1) Every hotelier liable to pay tax under this Act shall obtain registration certificate from the appropriate Luxury Tax Officer in such manner and form as may be prescribed. (2) Every hotelier required to obtain a registration shall within sixty days from the date of commencement of this Act or if he was not carrying on business on that date shall within thirty days of his becoming liable to pay tax, apply for grant of a registration certificate. (3) No hotelier liable to pay tax under this Act shall provide accommodation by way of business, unless he possesses a valid certificate of registration as provided by this Act: Provided that, it shall be lawful for the hotelier to provide or continue to provide accommodation by way of business, if the hotelier has applied for registration within the prescribed time. (4) If the Luxury Tax Officer is satisfied that the application for registration is in order, he shall register the applicant and issue to him a certificate of registration in the prescribed form. (5) A registration certificate granted under sub-section (4) shall be given from the date on which liability to tax arises under this Act. (6) The Luxury Tax Officer may, after considering any information furnished or otherwise called for or received under any provisions of this Act, amend from time to time the certificate of registration. (7) Where a registered hotelier discontinues, transfers or otherwise disposes of his activity of providing accommodation by way of business or where he ceases to be liable to pay the tax, the Luxury Tax Officer may suo motu or on application of such hotelier in the prescribed form, shall, after making such inquiry as may be necessary, cancel the certificate of registration with effect from such date as he may fix in accordance with the rules: Provided that, the cancellation of certificate of registration on an application of the hotelier or otherwise shall not

effect the liability of the hotelier to pay the tax (including any penalty or interest) due for any period upto the date of cancellation whether such tax (including any penalty or interest) is assessed before or after the date of cancellation.

13. Information to be furnished regarding changes in business :-

(1) If a hotelier liable to pay tax under this Act- (a) sells or otherwise disposes of his business or any part thereof, or effects or makes any other change in the composition of the ownership of the business, or (b) discontinues his business, or changes the place thereof or opens a new place of business, or (c) changes the name or nature of his business, or (d) enters into a partnership or other association in regard to his business, he shall within thirty days inform the Luxury Tax Officer having jurisdiction accordingly. (2) Where any such hotelier dies, his executor, administrator or other legal representative or where any such hotelier is a firm and there is a change in the constitution of the firm or the firm is dissolved, every person who was a partner thereof shall, in like manner, inform the said authority of such death, change in the constitution or dissolution, as the case may be.

14. Certificate of registration to continue in certain circumstances :-

Where a registered hotelier- (a) effects change in the name of his business, or (b) is a firm, and there is a change in the constitution of the firm without dissolution thereof, or (c) is a trustee of a trust, and there is change in the trustees thereof, or (d) is a guardian of a ward, and there is change of guardian, then merely be reasons of any of the circumstances aforesaid, it shall not be necessary for the hotelier, or the firm with the changed constitution, or the new trustees, or new guardian, to apply for a fresh certificate of registration and on information being furnished in the manner required by section 13 the certificate of registration shall be amended.

15. Payment Tax :-

Every hotelier who is liable to pay tax under this Act shall deposit tax payable under this Act in the authorised Bank or the Government Treasury within twenty one days after the close of each calendar month, to which such tax relates: Provided that the State Government may by notification in the Official Gazette require any hotelier or class of hoteliers to deposit such tax a

shorter interval or at an extended interval.

16. Returns :-

(1) Every registered hotelier shall furnish returns for such period, by such dates, and to such authority, as may be prescribed. (2) If any hotelier, having furnished return under sub-section (1) discovers any omission or incorrect statement therein, he may furnish a revised return before the time prescribed for the submission of the immediate next return.

17. Assessment, Rectification and Reassessment :-

(1) The amount of tax due from a hotelier liable to pay tax under this Act, shall be assessed separately for each financial year (known as assessment year) by the Luxury Tax Officer having jurisdiction: Provided that such officer may, after giving the hotelier a reasonable opportunity of being heard, provisionally assess tax, due from any hotelier for any period at any time if no full tax payable by him is deposited or if no return is filed by him or if evasion of tax in any form is detected against him: Provided further that the provisional assessment made in the preceding proviso shall be subject to the final assessment. (2) If the Luxury Tax Officer is satisfied that the returns furnished by a registered hotelier in respect of any period are correct and complete, he shall assess the amount of tax due from the hotelier on the basis of such returns. (3) If the Luxury Tax Officer is not satisfied that the returns furnished by a registered hotelier in respect of any period are correct and complete, and he thinks it necessary to require the presence of the hotelier or the production of further evidence, he shall serve on such hotelier a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all evidence on which such hotelier relies in support of his returns or to produce such evidence as is specified in the notice. On the date specified in the notice, or as soon as may be thereafter, the Luxury Tax Officer shall, after considering all the evidence which may be produced, assess the amount of tax due from the hotelier. (4) If a registered hotelier fails to comply with the terms of any notice issued under sub-section (3) the Luxury Tax Officer shall assess, to the best of his judgement, the amount of tax due from him. (5) Where all the returns are filed by a registered hotelier for any year, no order of assessment under sub-section (3) or (4) in respect of that year shall be made after the expiry of three years from the end of the said year, and if for any reason such order is not made within the period aforesaid, then the

returns so filed shall be deemed to have been accepted as correct and complete and the assessment shall be deemed completed accordingly: Provided that, where a fresh assessment is to be made in view of any order made in appeal under this Act or by the High Court or by the Supreme Court such assessment shall be made within one year from the date of the receipt of such order by the Luxury Tax Officer: Provided further that, in computing any period of limitation laid down in this sub-section the time during which the assessment remained stayed under the orders of any competent authority or of the High Court or of the Supreme Court shall be excluded: Provided also that, the Commissioner in the interest of the revenue and for reasons to be recorded in writing, issue directions not to proceed with the assessment of any particular hotelier or class of hoteliers for any particular period and the period covered by such direction to stay the assessment proceeding shall be excluded in computing the period of limitation laid down in this sub-section. (6) If a registered hotelier does not furnish return in respect of any period by the prescribed date, the Luxury Tax Officer shall, at any time within five years from the end of the year in which such period occurs, after giving the hotelier a reasonable opportunity of being heard, proceed to assess, to the best of his judgement, the amount of the tax (if any) due from him. (7) If the Luxury Tax Officer has reason to believe that a hotelier is liable to pay tax in respect of any period, but has failed to apply for registration or failed to apply for registration within time as required under the Act, the Luxury Tax Officer shall, at any time, within eight years from the end of the year in which such period occurs, after giving the hotelier a reasonable opportunity of being heard, proceed to assess, to the best of his judgement, the amount of tax (if any) due from the hotelier, in respect of that period, and any period of periods subsequent thereto. (8) Notwithstanding anything contained in foregoing provisions of this section, where the Luxury Tax Officer is not satisfied about the correctness or the completeness of the accounts of a hotelier, or where no method of accounting has been regularly employed by a hotelier, the Luxury Tax Officer may, after giving the hotelier a reasonable opportunity of being heard, assess to the best of his judgment, the amount of tax (if any) due from him. (9) With a view to rectifying any mistake apparent from the record, any authority referred to in this Act or the rules made there under, may amend any order passed by it: Provided that no rectification under this sub-section shall be made after the expiry of 1[three years] from the date of the order sought

to be amended. (10) If for any reason there is any under assessment in any form of any hotelier, the Luxury Tax Officer suo motu or on the direction of the Commissioner or the Deputy Commissioner may proceed to reassess such hotelier: Provided that such reassessment shall not be made after the expiry of 1[five years] from the end of the relevant assessment year.

18. Payment and recovery of tax including penalty and interest :-

(1) The tax including penalty and interest shall be payable by a hotelier on the basis of assessment or other orders. (2) The tax already deposited by a hotelier shall be adjusted against the tax (including penalty and interest) determined as a result of the assessment or any other order passed under the Act and the balance of the amount shall be payable by such hotelier within fifteen days from the date of the service of the notice of demand: Provided that Luxury Tax Officer, for reasons to be recorded in writing and after having obtained previous approval of the Deputy Commissioner in the case where the total outstanding demand payable does not exceed rupees fifty thousand, and of the Commissioner in the case where the total outstanding demand payable exceeds rupees fifty thousand, may permit the hotelier to pay such demand in installments, with such conditions as may be specified, within a period not exceeding three years from the date of the service of the notice of demand: Provided further that in such cases the hotelier shall be required to pay interest on the amount paid from the date it first became due till the date of payment. (3) In default of payment of tax including penalty and interest under sub-section (1) or sub-section (2), the amount payable shall be recoverable as arrears of land revenue: Provided that where a hotelier has preferred an appeal under the provisions of this Act, the Deputy Commissioner in the case where the amount of demand does not exceed rupees fifty thousand and the Commissioner in the case where the amount of the demand exceeds rupees fifty thousand, may stay the recovery of such demand or any part thereof, during the tendency of the appeal if the hotelier furnishes sufficient security to his satisfaction in such form and in such manner as may be prescribed: Provided further that where recovery of tax or any part thereof is stayed under the preceding proviso, the amount of such demand shall be recoverable with interest at the prescribed rate on the amount ultimately found due, and such interest shall be payable on such amount from the

date it first became due. (4) Without prejudice to the provisions of sub-section (3), the Luxury Tax Officer may recover the demand payable in the prescribed manner by attachment and sale of movable or immovable property of the defaulting hotelier.

19. Special mode of recovery :-

The provisions of special mode of recovery under section 1[53] of the Sales Tax Act shall mutatis mutandis apply in the case of recovery of tax including penalty and interest under this Act. 1 Substituted by Raj. Act No. 9 of 1997, w.e.f. 30.3.1997.

20. Levy of Interest :-

If a hotelier does not pay tax within the time he is required to pay tax under the provisions of this Act or does not deposit any demand arising as the result of assessment, rectification, reassessment or other order within the time provided in this Act, he shall be liable to pay interest at the rate of two percent of the amount of such tax or demand for each month or part of it after the last day by which he should have paid such tax or demand.

21. Imposition of Penalties :-

(1) Where a hotelier required to obtain a registration certificate under sub-section (1) of section 12 fails to apply for the same within the time specified in sub-section (2) of the said section, the Luxury Tax Officer having jurisdiction may, after giving him a reasonable opportunity of being heard, direct him to pay by way of penalty a sum not exceeding five thousand rupees, subject to a minimum of one thousand rupees in addition to the amount of tax payable by him. (2) If the Luxury Tax Officer in the course of any proceeding under this Act, is satisfied that any hotelier has without reasonable cause failed to furnish the return under sub-section (1) of section 16 within the time allowed, he may direct that such hotelier shall pay by way of penalty in addition to the amount of the tax, if any, payable by him, rupees five per day for the period during which the default in furnishing of such return continues but not exceeding in the aggregate twenty-five percent of the tax assessed for the period to which the return relates. (3) If any person- (a) not being a hotelier liable to pay tax under this Act, collects any sum by way of tax, or (b) being a registered hotelier, collects any amount by way of tax in excess of the tax payable by him, or (c) otherwise collects tax in contravention of any of the provisions of this Act, he shall be liable to pay, in addition to any tax for which he may be liable, a penalty equal to double the sum

of the unauthorised collection. (4) If a hotelier liable to pay tax under this Act fails to keep a true account of his turnover or fails to keep any accounts or records in accordance with any direction given under this Act, or does not issue bills to his customers as required under the provisions of this Act, he shall be liable to pay a penalty of an amount not exceeding two thousand and five hundred rupees, subject to a minimum of one thousand rupees: Provided that in case of subsequent offence the amount of penalty shall not be less than two thousand rupees but shall not exceed five thousand rupees. (5) If a hotelier is found to evade tax in any form or by any method, he shall be liable to pay, in addition to tax for which he may be liable, a penalty equal to double the sum of the tax evaded. (6) If a hotelier contravenes any of the provisions of this Act or the rules made thereunder for which no specific penalty is provided for or if a person aids or abets the commission of any such violation, he shall be liable to pay a penalty of an amount not exceeding five thousand rupees, subject to a minimum of one thousand rupees. (7) Whoever, commits any of the violations specified in sub section (1) and (3) to (6) and the violation is a continuing one under any of the provisions of these sub-sections shall further be penalised with a daily penalty of rupees fifty during the period of the continuance of the violation. (8) No penalty under this section shall be imposed on any hotelier or person without affording an opportunity of being heard.

22. Violation by companies :-

(1) Where any violation under this Act has been committed by a company, every person who at the time the violation 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 responsible for violation and shall be liable to be proceeded against and penalised or punished accordingly: Provided that, nothing contained in this sub-section shall render any such person liable to any penalty or punishment provided in this Act if he proves that the violation was committed without his knowledge or that he exercised all due diligence to prevent the commission of such violation. (2) Notwithstanding anything contained in sub-section (1), where any violation 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 also be deemed to be responsible for that violation and shall be liable to be proceeded against and penalised or punished accordingly. Explanation.-- For the purposes of this section.-- (a) "company" means a 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.

23. Prosecution for Offences committed under this Act :-

(1) Who ever, knowingly furnishes a false return shall, on conviction be punished. (i) In case where the amount of tax, which could have been evaded if the false return had been accepted as true, exceeds Rs. 10,000/- with simple imprisonment for a term which may extend to six months or with a fine not exceeding twenty thousand rupees, subject to a minimum of ten thousand rupees; (ii) In any other case, with simple imprisonment for a term, which may extend to three months or with a fine not exceeding ten thousand rupees, subject to a minimum of five thousand rupees.

(2) Whoever, knowingly keeps false account of the receipts or turnover in contravention of the provisions of this Act shall, on conviction, be punished with simple imprisonment for a term which may extend to six months or with a fine not exceeding twenty thousand rupees, subject to a minimum of five thousand rupees.

(3) Whoever (i) wilfully attempts, in any manner whatsoever, to evade any tax leviable under this Act, or (ii) wilfully attempts, in any manner whatsoever, to evade any payment of any tax or penalty or interest under this Act, shall, on conviction, be punished-

(a) in case where the amount involved exceeds Rs. 50,000/- during the period of a year, with simple imprisonment for a term which may extend to one year or with a fine not exceeding twenty thousand rupees, subject to a minimum of ten thousand rupees.

(b) in any other case, with simple imprisonment for a term which may extend to six months or with a fine not exceeding ten thousand rupees, subject to a minimum of five thousand rupees.

(4) Whoever, voluntarily obstructs any officer making inspection or search or seizure under the provisions of this Act, on conviction be punished with simple imprisonment which may extend to six months and with a fine not exceeding twenty thousand rupees, subject to a minimum of ten thousand rupees.

(5) Whoever, aids or abets any person in commission of any act or offence specified in sub-sections (1) to (4) shall, on conviction be punished with the same punishment as provided for the principal offender.

(6) For the second and subsequent offence committed by a hotelier or any

other person under any of the above sub-section (1) to (5), the minimum imprisonment shall be for one month, except for the offence committed in clause (a) of sub-section (3), the minimum imprisonment shall be for two months. (7) The Luxury Tax Officer concerned shall be empowered to launch the prosecution under subsections (1) to (5) with the prior permission of the Commissioner. (8) No prosecution for an offence under this Act shall be instituted in respect of the same facts on which a penalty has been imposed by the competent authority under any provision of this Act.

24. Bill or cash memorandum to be issued to customer :-

A registered hotelier shall issue to the customer or customers a bill or cash memorandum serially printed, numbered, signed and dated by him or his servant, manager or agent and showing therein such other particulars as may be prescribed. He shall keep a counterfoil or duplicate of such bill or cash memorandum duly signed and dated, and preserve it for a period of not less than eight years from the year to which it relates.

25. Accounts and Records :-

(1) Every hotelier liable to pay tax under this Act and every hotelier who is required so to do by the Luxury Tax Officer by notice served on him, shall keep a true account of the Luxury provided by him in the hotel as prescribed in the Rules. (2) If the Luxury Tax Officer considers that the accounts kept are not sufficiently clear or are ineligible to enable him to determine whether or not the hotelier is liable to tax during any period, or are so kept as not to enable a proper scrutiny of the returns or the statement furnished, the Luxury Tax Officer may require such hotelier by notice in writing to produce information in the proforma and such details and evidence as in his opinion is necessary for the purpose of proper assessment. (3) The Commissioner may, subject to such conditions or restrictions as may be prescribed in this behalf by notification in the Official Gazette, direct any class of hoteliers to maintain accounts and records showing such particulars regarding their business in such form, and in such manner, as may be specified by him. (4) Every registered hotelier shall keep all his accounts, registers and documents relating to his business at the place or places of business specified in his certificate of registration or, with the previous approval of the Luxury Tax Officer at such other place as may be approved by the Luxury Tax Officer.

26. Production and inspection of accounts and documents and search of premises :-

(1) The Luxury Tax Officer may require any hotelier to produce before him any accounts or documents, or to furnish any information, relating to his business, or any other information as may be necessary for the purposes of this Act. (2) All accounts, registers and documents relating to the business of any hotelier and cash kept in any place of business of any hotelier shall at all reasonable times be open to inspection by the Luxury Tax Officer, and the Luxury Tax Officer or any person authorised by him may take or cause to be taken such copies or extracts of the said accounts, registers or documents and such inventory of cash found as appear to him necessary for the purposes of this Act. (3) If the Luxury Tax Officer has reason to believe that any hotelier has evaded or is attempting to evade the payment of any tax due from him, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the hotelier as may be necessary, and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceeding under this Act or for a prosecution: Provided that the accounts, registers and documents so seized shall not be retained by such officer beyond a period of six months from the date of seizure, without the written order of the Commissioner for reasons to be recorded in writing. (4) For the purposes of sub-section (2) or sub-section (3), the Luxury Tax Officer may enter and search any place of business of any hotelier or any other place where the Luxury Tax Officer has reason to believe that the hotelier keeps or is for the time being keeping any account, registers or documents of his business. (5) Where any books of accounts, other documents or money are found in the possession or control of any person in the course of search, it shall be presumed, unless the contrary is proved, that such books of accounts, other documents or money belong to such person. Provisions of Criminal Procedure Code, 1973 shall apply to such search and seizure.

27. First Appeal :-

An appeal against any order of a Luxury Tax Officer shall lie to the Deputy Commissioner (Appeals) appointed under the Sales Tax Act and all the provisions relating to such appeal in the Sales Tax Act and the Rules made thereunder shall mutatis mutandis apply.

28. Second Appeal :-

An appeal against any order passed by the Deputy Commissioner

(Appeal) under section 27 of this Act, shall lie to the 1 [Tax Board], constituted under the Sales Tax Act and all the provisions relating to such appeal in the Sales Tax Act and the Rules made thereunder shall mutatis mutandis apply. 1 Substituted by Rajasthan Act No. 9 of 1997, w.e.f. 30.3.1997.

29. Revision to the Rajasthan Taxation Tribunal in special cases :-

1[The Luxury Tax Officer or any person aggrieved by an order passed under section 28, may apply to the Rajasthan Taxation Tribunal as constituted under section 3 of the Rajasthan Taxation Tribunal Act, 1995 (Rajasthan Act No. 19 of 1995), for revision of such order on the ground that the case involves a question of law; and the provisions of section 86 of the Sales Tax Act shall mutatis mutandis apply to such revision]. 1 Substituted by Raj. Act No. 9 of 1997, w.e.f. 30.3.1997.

30. Determination of certain disputed question :-

(1) If any question arises, otherwise than in a proceeding before a Court or in any proceedings for assessment already initiated under this Act, about the interpretation or the scope of any provision of this Act, the Commissioner shall make an order determining such questions. (2) The Commissioner may direct that the determination shall not affect the liability of any person under this Act, in respect of the period prior to the determination. (3) If any such question arises from any order already passed under this Act, no such question shall be entertained for determination under this section, but such question may be raised in appeal against or by way of revision of such order.

31. Revision by Commissioner :-

The Commissioner may call for and examine the record of any proceedings under this Act, and if he considers that any order passed therein by Luxury Tax Officer is erroneous and is prejudicial to the interest of the State revenue, he may, after making or causing to be made such enquiry as he considers necessary, and after giving to the hotelier a reasonable opportunity of being heard, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment: Provided that the Commissioner shall not revise an order, if such order has been made more than three years previously.

32. Power to reduce or waive interest and penalty in

certain cases :-

Notwithstanding anything contained in this Act, the Commissioner may, on an application made in this behalf by a hotelier and after recording his reasons for so doing, reduce or waive the amount of any interest or penalty or both payable by such hotelier under this Act, if he is satisfied that- (a) to do otherwise would cause genuine hardship to the hotelier having regard to the circumstances of the case; (b) the hotelier has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

33. Power to transfer proceedings :-

The Commissioner may, after giving the parties a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, by order in writing transfer any proceeding or class of proceedings under any provision of this Act, from himself to any other officer and he may like wise transfer any such proceedings (including a proceeding pending with any officer or already transferred under this section) from any officer to any other officer or to himself: Provided that, nothing in this section shall be deemed to require any such opportunity to be given where the transfer is from any officer to any other officer and the offices of both officers are situated in the same city, locality or place. Explanation.-- In this section, the word "proceedings" in relation to any hotelier whose name is specified in any order issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced and includes also all proceedings under this Act which may be commenced after the date of such order in respect of any year in relation to such hotelier.

34. Investigation of offences :-

(1) The Commissioner may authorise either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of offences punishable under this Act. (2) Every officer so authorised shall, in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1973 upon an officer of a police station for the investigation of a cognizable offence.

35. Power to collect statistics :-

If the Commissioner considers that, for the purposes of better administration of this Act, it is necessary that statistics be collected relating to any matter dealt with by or under this Act, he may by notification in the Official Gazette or by notice in any newspaper or in such other manner as he deems proper, call upon all hoteliers or any class of hoteliers to furnish such information or returns as may be stated therein relating to any matter in respect of which statistics are to be collected.

36. Disclosure of information relating to any hotelier :-

Where a person makes an application to the Commissioner with reasons for getting any information relating to any hotelier, the Commissioner may after he is satisfied that there are no considerations justifying its refusal, furnish or cause to be furnished the information asked for.

37. Power to take evidence on oath and production of documents :-

All the authorities exercising any power under this Act, shall have the same powers as are vested in a Court under the Code of Civil Procedure, 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) compelling the production of documents; and (c) issuing commission for examination of witnesses.

38. Refund of excess tax including the amount of penalty and interest :-

(1) The Luxury Tax Officer shall refund to an hotelier the amount of tax including the amount of penalty and interest paid by him in excess of the amount due from him under this Act and such refund may be made either by way of refund order or by way of adjustment order: Provided that refund can be claimed only by the person who has actually suffered the incidence of tax and the burden of proving the incidence of tax so suffered, shall be on him.

(2) An amount refundable to a hotelier or other person under this Act shall carry interest at the rate of 12 percent per annum with effect from the date of deposit of that amount.

(3) Notwithstanding anything contained in sub-section (1) where an order giving rise to refund is the subject matter of an appeal or any further proceedings and the Luxury Tax Officer is of the opinion that the grant of the refund is likely to adversely affect the State revenue, the said officer may, with the previous approval of the

Commissioner, withhold the refund till such time as the Commissioner may determine.

39. Indemnity :-

No suit, prosecution or other legal proceedings shall lie against any officer or other employee of the State Government for anything which is in good faith, done or intended to be done under this Act or the rules made thereunder.

40. Bar to certain proceedings :-

Save as is provided elsewhere in this Act, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any officer or person subordinate to him shall be called in question in any court.

41. Powers of the Authorities under the Act :-

(1) The superintendence and control for the proper execution of the provisions of this Act and the rules made thereunder relating to the levy and collection of the tax shall vest in the Commissioner. (2) All the officers appointed or posted under this Act shall, within the limits of such areas as the State Government may determine by notification in the Official Gazette, exercise such powers and perform such duties as may be specified in such notification.

42. Persons appointed under section 41 to be public servants :-

The Commissioner and all the officers and persons appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

43. Removal of difficulties in the implementation of the Act :-

If any kind of difficulty in the implementation of this Act arises for which no specific provision is there in the Act or in the rules made there under, the matter may be referred by the Commissioner to the State Government and the decision of the State Government with regard to it shall be final.

44. Power to make rules :-

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) The rules made under this section shall be subject to the condition of previous publication: Provided that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action it may dispense with the previous publication of

any rules to be made under this Act. (3) All rules made under this Act shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the sessions in which they are so laid or of the session immediately following, the House of the State Legislature makes any modifications in any of such rules or resolve that any such rules should not be made, such 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 amendment shall be without prejudice to the validity of anything previously done thereunder. (4) All rules made under this section shall be published in the Official Gazette, and upon publication shall have effect, as if enacted in this Act.