

**Madras Tobacco (Taxation Of Sales And Registration) Act,
1953**

04 of 1953

[20 April 1953]

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PREAMBLE

An Act for the levy of a tax on the sale of tobacco and the registration of dealers therein in the State of Madras.

Whereas it is expedient to provide for the levy of a tax on the sale of tobacco and the registration, of persons doing business in tobacco in the State of Madras; It is hereby enacted as follows: --

1 For Statement of Objects and Reasons, see Fort St. George Gazette (Extraordinary), dated the 4th April 1953, Part IV-A, pages 63-64.

This Act, as amended by Madras Act XXXII of 1956, was extended to the Kanyakumari district and the Shencottah taluk of the Tirunelveli district by section 12 of the Madras General Sales Tax, Sales of Motor Spirit Taxation and Entertainments Tax (Amendment) Act, 1957 (Madras Act I of 1957).

This Act was repealed by section 6 of the Madras General Sales Tax (Emergency Provisions) Ordinance, 1957 (Madras Ordinance IV of 1957). But by section 2 of the Madras Tobacco (Taxation of Sales and Registration) (Special Provisions) Ordinance, 1957 (Madras Ordinance V of 1957), the aforesaid section 6 of Madras Ordinance IV of 1957 has been repealed, and the repeal of this Act made by that section shall be deemed never to have taken effect and the said Act shall be deemed always to have continued in force. See also section 6 of the Madras General Sales Tax (Emergency Provisions) Act, 1958 (Madras Act II of 1958). Section 9 of Madras Act II of 1958 has repealed Madras Act IV of 1953.

1. Short title and extent :-

(1) This Act may be called the Madras Tobacco (Taxation, of Sales and Registration) Act, 1953.

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

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context --

(1) "broker" means any person who in the ordinary course of his business negotiates and makes contracts on behalf of others for the sale or purchase of tobacco but neither stocks tobacco for delivery on such sale nor takes possession of tobacco on such purchase;

(2) "certificate holder" means any person to whom a certificate of registration is issued under this Act;

(3) "commission agent" means any person who in the ordinary course of his business negotiates and makes contracts on behalf of others for the sale or purchase of tobacco and also stocks tobacco for delivery on such sale or takes possession of tobacco on such purchase;

(4) "Commissioner" means a Member of the Board of Revenue or other officer appointed by the State Government to exercise the powers and perform the duties of the Commissioner under this Act;

(5) "Deputy Commissioner" means the Deputy Commissioner of Commercial Taxes of the division and includes any person appointed by the State Government to exercise all or any of the powers or to perform all or any of the duties of a Deputy

Commissioner under this Act;

(6) "dealer" means a person who carries on the business of buying or selling tobacco;

(7) "grower" means a person who grows tobacco in the State of Madras but does not include a firm or association registered under the Indian¹ Companies Act, 1913, which grows tobacco;

(8) "Magistrate" means a Presidency Magistrate, or a Magistrate of the First or Second class;

(9) "manufactured tobacco" means cigars, cheroots, cigarettes, cigarette tobacco, pipe-tobacco, beedies and snuff, but does not include any preparation or mixture of tobacco intended for a further process of manufacture;

(10) "prescribed" means prescribed by rules under this Act;

(11) "retail dealer" means a person who sells tobacco for the purpose of consumption by the person by whom or on whose behalf it is or may be purchased;

(12) "sale" with its grammatical variations and cognate expressions, denotes any transfer otherwise than by way of gift;

Explanation.--A sale by a co-operative society or a club, a firm, or any association to its members is a sale within the meaning of this clause.

(13) "taxed tobacco" means manufactured tobacco liable to tax under this Act, ²[];

(14) "tobacco" includes every form of tobacco, that is to say, manufactured, cured or uncured tobacco, any preparation or mixture of tobacco and the leaf of the tobacco plant;

(15) "A person doing business in tobacco" means a wholesale dealer, a retail dealer, a wholesale-cum-retail dealer, a commission agent or a broker, but does not include a grower; and the words "do business in tobacco" shall be construed accordingly;

(16) "Tobacco Officer" means any person appointed under section 10;

(17) "turnover" means the aggregate amount for which taxed tobacco is sold whether for cash or for deferred payment or other valuable consideration;

(18) "wholesale dealer" means a person who buys or sells tobacco for the purpose of trade or manufacture;

(19) "year" means the financial year.

1 See now the Companies Act, 1956 (Central Act I of 1956).

2. The words "namely, cigars, cheroots, cigarettes, cigarette-tobacco and pipe-tobacco", were omitted by section 3 (i) of the

Madras General Sales Tax and the Madras Tobacco (Taxation of Sales and Registration (Amendment) Act, 1955 (Madras Act XIII of 1955), deemed to have come into force on the 1st April 1955.

3. Registration of dealers :-

(1) Every Tobacco Officer shall maintain a register in the prescribed form of all persons within his area doing business in tobacco.

(2) Every person doing business in tobacco (taxed or untaxed) shall apply for registration in the prescribed form to the Tobacco Officer having jurisdiction over the principal place of such persons business.

(3) On such application being made and the fee prescribed therefor in sub-section (4) being paid, the Tobacco Officer shall issue a certificate in the prescribed form.

(4) The fee shall be rupee one for any retail dealer in tobacco and rupees ten for a wholesale dealer, wholesale-cum-retail dealer, broker or commission agent.

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

(6) Without such, registration certificate as aforesaid no person shall do business in tobacco after the expiry of two months from the commencement of this Act or such other period as may be prescribed.

(7) A certificate shall be valid for a year and shall be renewed from year to year on payment of the fee specified in sub-section (4).

¹[(8) The State Government may, by rules made in that behalf, exempt from the operation of sub-sections (1) to (7), any class of persons who do business in tobacco other than taxed tobacco.]

1 This sub-section was substituted for the original sub-section (8) by section 3 (ii) of the Madras Tobacco (Taxation of Sales and Registration) (Amendment) Act, 1955 (Madras Act XIII of 1955), deemed to have come into force on the 1st April 1955.

4. Tax on Turnover :-

(1) The first sale of taxed tobacco made in the State of Madras shall be liable to pay a tax at the rates specified in sub-section (3) herein:

Provided that in the case of taxed tobacco imported into the State of Madras either from outside the territory of India or from any other State in India, the tax shall be levied on the first sale effected in the State of Madras after the import of the said taxed tobacco into the State of Madras.

(2) The tax payable under sub-section (1) shall be paid by the seller:

Provided that where the sale is effected through an agent or a commission agent, the tax may be collected either from the seller or the agent or the commission agent.

¹[(3) The rates of tax payable under sub-section (1) shall be as follows:--

(i) On cigarettes which are sold by the person taxed at less than 2[two naye paise] per cigarette and are to be sold at the retail point to the consumer at not more than 2[two naye paise] per cigarette.	Three and one-eighth per cent of the turnover.
(ii) On cigarettes which are sold by the person taxed at less than 2[three naye paise] but not less than 2[two naye paise] per cigarette and are to be sold at the retail point to the consumer at not more than 2[three naye paise] per cigarette.	Ten per cent of the turnover.
(iii) On cigarettes which are sold by the person taxed at less than 2[five naye paise] but not less than 2[three naye paise] per cigarette and are to be sold at the retail point to the consumer at not more than 2[five naye paise] per cigarette.	Twenty per cent of the turnover.
(iv) On cigarettes not falling under any of the items specified above.	Thirty per cent of the turnover.
(v) On cigars and cheroots which are sold by the person taxed at not less than 2[twelve naye paise] per cigar or cheroot.	Thirty per cent of the turnover.
(vi) On pipe tobacco or cigarette tobacco.	Thirty per cent of the turnover.]

1 This sub-section was substituted for the original sub-section (3) by section 3 (iii) of the Madras Tobacco (Taxation of Sales and Registration) (Amendment) Act, 1955 (Madras Act XIII of 1955), deemed to have come into force on the 1st April 1955.

2 For the words " three pies ", "six pies", "nine pies" and "two annas", the words "two naye paise", "three naye paise", "five naye paise " and " twelve naye paise" were respectively substituted by section 2 (a) of the Madras Tobacco (Taxation of Sales and Registration) Amendment Act, 1956 (Madras Act XXXII of 1956), which came into force on the 1st April 1957.

4A. Tax to be collected to the nearest naya paisa :-

¹[In the determination of the amount of tax payable under this Act, fraction of a naya paisa less than half a naya paisa shall be disregarded and fractions of a naya paisa equal to or exceeding half a naya paisa shall be regarded as one naya paisa.]

1. This section was inserted by section 2 (b), *ibid*.

5. Power to cancel registration :-

The Deputy Commissioner may cancel or suspend any registration certificate issued to a person dealing in taxed tobacco under this Act (a) in the case of a person liable to pay any tax, if any tax or other sum payable by such person be not duly paid or (b) if such person fails to maintain true and proper accounts as prescribed, or fails to submit true and proper returns as prescribed or (c) if the holder of such certificate is fined for any offence punishable under this Act or the rules framed thereunder.

6. Recovery of taxes :-

All taxes, fines and other sums payable to the State Government under any of the provisions of this Act may be recovered as if they were arrears of land revenue.

7. Obligations of certain dealers, and purchasers :-

(1) Every person doing business in taxed tobacco as wholesale dealer, importer, manufacturer or commission agent, and every dealer purchasing taxed tobacco from such wholesale dealer, importer, manufacturer or commission agent shall keep such true and proper books of account in such form as may be prescribed and submit such returns as may be prescribed.

(2) The accounts or returns referred to in sub-section (1) shall be maintained separately for each separate place of business.

(3) Any person referred to in sub-section (1) shall produce his books of account and other records relating to his business whenever called upon to do so by the Deputy Commissioner or such other officer as may be prescribed.

(4) Any such person shall make, whenever called upon to do so, full and true disclosure of all his dealings in tobacco to the Deputy

Commissioner and such other officer as prescribed and give them such other information relating to his business as may be required.

(5) Any officer specially authorized in that behalf by the Deputy Commissioner may enter and search any place where any person referred to in sub-section (1) carries on business or keeps his accounts or stock of tobacco;

Provided that, if the place to be entered or searched is a place used for purposes of residence, the search or entry shall not be made except on the written authority of the Deputy Commissioner or a Tobacco Officer of gazetted rank; and such officer shall, before granting such authority, record his reasons therefor.

8. Duties of Commissioner :-

Subject to control and direction of the State Government, the Commissioner shall superintend the working of this Act and the collection of taxes and fees and other sums payable thereunder in the State of Madras.

9. Duties of Deputy Commissioners :-

Subject to control and direction of the State Government and of the Commissioner, Deputy Commissioners shall be responsible for the collection of taxes and fees and other sums payable under this Act and the carrying out of the provisions of this Act in all areas in their respective divisions.

10. Appointment of Tobacco Officers :-

The State Government, or subject to their general or special orders the Commissioner, may appoint any person, by name or by virtue of his office, to be a Tobacco Officer and assign to him such powers and duties under this Act as the State Government or the Commissioner may think fit.

11. Power of entry and search :-

The Deputy Commissioner or a Tobacco Officer specially empowered in this behalf (a) may enter and search any place which he has reason to believe is being used for the purpose of evading any of the provisions of this Act and (b) may seize any stocks of taxed tobacco and accounts found therein provided that where accounts or goods are seized, they should be produced before the Magistrate within twenty-four hours with a report of the circumstances relating

to the seizure:

Provided that, if the place to be entered or searched is a place used for purposes of residence, the search or entry shall not be made except on the written authority of the Deputy Commissioner or a Tobacco Officer of gazetted rank; and such officer shall, before granting such authority, record his reasons therefor.

12. Penalties :-

Any person who (a) in contravention of this Act or of any rule or order made thereunder does business in tobacco or (b) wilfully fails to maintain books of account as required by sub-section (1) of section 7 or (c) fails to submit any return as required by sub-section (1) of section 7 or submits an incorrect or incomplete return or (d) fails to pay within the time allowed any tax, fee or other sum due from him to the State Government or (e) contravenes any other provision of this Act or of any rule made thereunder shall, on conviction by a Magistrate, be liable to a fine which may extend to one thousand rupees provided that a conviction shall not discharge that person from his liability to pay any tax or other sum recoverable under this Act.

13. Cognizance of offence :-

No Magistrate shall take cognizance of any offence against this Act except upon the complaint or report of a Deputy Commissioner or a Tobacco Officer.

14. Sanction for suits and prosecutions :-

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

(2) No suit, prosecution or other proceedings shall lie against any officer or servant of the State Government for any act done or purporting to be done under this Act without the previous sanction of the State Government.

15. Limitation :-

No suit shall be instituted against the State and no suit, prosecution or other proceedings shall be instituted against any officer or servant of the State Government in respect of any act

done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of, the time taken to secure the sanction referred to in subsection (2) of section 14 being excluded in the computation of the six months period of limitation.

16. Power to make rules :-

(1) The State Government may make rules to carry out the purposes of this Act.

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

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

(b) the regulation of the sale, custody and transport of tobacco, or of any form of tobacco, for the purpose of enforcing the provisions of this Act;

(c) the cases or classes of cases in which and the authorities to whom appeals shall lie from orders (not being orders passed by any Court or Magistrate) whether original or appellate passed under this Act or under any rule made thereunder, the authorities by whom such orders may be revised, the time within which and the manner in which appeals may be presented and the procedure for dealing with such appeals;

(d) the powers and duties which may be exercised and performed by Tobacco Officers and the procedure to be followed by them;

(e) the delegation of powers conferred by this Act;

(f) the assessment to tax under this Act of businesses which have been discontinued or the ownership of which has changed;

(g) the assessment to tax under this Act of businesses owned by minors and other incapacitated persons or by persons residing outside the State of Madras;

(h) the assessment of a business owned by any person whose estate or any portion of whose estate is under the control of the Court of Wards, the Administrator-General, the Official Trustee, or any receiver or manager appointed by or under any order of a court;

(i) the assessment to tax under this Act of any turnover which has escaped assessment, and the period within which such assessment may be made, not exceeding three years;

(j) the rectification of mistakes apparent from the record of any assessment, appeal or revision and the period within which such

rectification may be made;

(k) the assessment to tax of any deceased person and the recovery of tax due from the legal representatives of the deceased; and

(l) the removal of any difficulty arising in giving effect to the provisions of this Act or the rules made thereunder and for facilitating the carrying out the purposes of this Act.

(3) All rules made under this section shall be placed on the table of the Legislative Assembly as soon as possible after the notification of the rules and shall be subject to such alterations or modifications as the Assembly may make during the session in which the rules are so placed.

17. Repeal Of Madras Act VIII of 1939 :-

The Madras Tobacco (Taxation of Sales and Licensing) Act, 1939 (Madras Act VIII of 1939), is hereby repealed.