

# Bihar Taxation on Luxuries in Hotels Act, 1988

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### Act 5 of 1988

- Published on 3 August 2018
- Commenced on 3 August 2018
- [This is the version of this document from 3 August 2018.]
- [Note: The original publication document is not available and this content could not be verified.]

Bihar Taxation on Luxuries in Hotels Act, 1988(Bihar Act 5 of 1988))[Dated 29.2.1988]An act to levy tax on luxuries in hotels in BiharBe it enacted by the Legislature of the State of Bihar n the Thirty-eighth Year of the Republic of India as follows-

#### 1. Short title, extend and commencement.

(1)This Act may be called the Bihar Taxation of Luxuries in Hotels Act, 1988.(2)It extends to the whole of the State of Bihar.(3)It shall come into force at once.

#### 2. Definitions.

- In this Act unless there is anything repugnant to the subject or context.-(a)Assistant Commissioner" means an [Deputy Commissioner State Tax] [Substituted 'Assistant Commissioner of Commercial Taxes' by Bihar Act No. 11 of 2018, dated 3.8.2018.] appointed under sub-section (1) of section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981) and includes Additional Assistant Commissioner;(b)"Commissioner" means the [Commissioner State Tax] [Substituted 'Commissioner of Commercial Taxes' by Bihar Act No. 11 of 2018, dated 3.8.2018.] appointed under sub-section (1) of section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981) and includes Additional [Commissioner State Tax] [Substituted 'Commissioner of Commercial Taxes' by Bihar Act No. 11 of 2018, dated 3.8.2018.] and also any other officer upon whom the State Government may, by notification, confer all or any of the powers or duties of the [Commissioner State Tax] [Substituted 'Commissioner of Commercial Taxes' by Bihar Act No. 11 of 2018, dated 3.8.2018.];(c)"[Assistant Commissioner State Tax] [Substituted 'Commercial Taxes Officer' by Bihar Act No. 11 of 2018, dated 3.8.2018.]" means a [Assistant Commissioner State Tax] [Substituted 'Commercial Taxes Officer' by Bihar Act No. 11 of 2018, dated 3.8.2018.] appointed under sub-section (1) of section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981);(d)Deputy Commissioner" means a [Joint Commissioner State Tax] [Substituted 'Depty Commissioner of Commercial Taxes' by Bihar Act No. 11 of 2018, dated 3.8.2018.] appointed under sub-section (1) of

section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981);(e)'Hotel' includes a boarding house, a lodging house and a restaurant where any room is provided therein to a customer on rent;(f)'Joint Commissioner' means a [Additional Commissioner State Tax] [Substituted 'Joint Commissioner of Commercial Taxes' by Bihar Act No. 11 of 2018, dated 3.8.2018.] appointed under sub-section (1) of section 9 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981);(g)'Authority' means an Authority defined in the rules made under this Act;(h)[ "Luxuries" means such amenities as are provided in a Hotel to occupants of such rooms or suits of rooms therein as carry a rent of rupees five hundred or more per day.] [Substituted by Finance Act 2007 (8 of 2007).](i)"Month" means a calendar month;(j)"Prescribed" means prescribed by rules made under this Act;(k)"Proprietor" in relation to a hotel includes a person who for the time being is incharge of its management;(l)"Quarter" means the quarter ending on the 30th June, 30th September, 31st December and 31st March;(m)"Rent" means the aggregate of all charges, by whatever name called, realised from the occupier of a room in a hotel and includes lodging , boarding or service charges or any sum charged by the proprietor on account of tips payable to servants of the hotel, or all or any of them;Explanation 1. - Where the rate of rent of a room is not charged for occupation alone, and boarding and service charged are Included therein then the actual sum realised for each day, or part thereof (excluding any sum paid for food, or drinks) and charges for service and any entertainment and like shall be aggregated and the total shall to be deemed to be the rent.Explanation 2. - Where charges are levied otherwise than on daily basis, then the charges shall be computed as for a day based on the period of occupation of the room for which charges are made.(n)"Room" includes a suite of rooms which is ordinarily hired out as one unit;(o)"Tax" means the tax levied under this Act;(p)"Tribunal" means the Tribunal constituted under section 8 of the Bihar Finance Act, 1981 (Bihar Act 5, 1981);(q)"Year" means a financial year.

### **3. [ Levy of Tax. [Substituted by Finance Act 2007 (8 of 2007).]**

(1)The tax on luxuries shall be levied and paid by the proprietor at the rate specified in sub-section (2) on the rent of such room or suits of rooms provided with luxuries as carry a rent of rupees five hundred or more per day.(2)The rate of tax shall be 5 percent of the rent of such room or suit of rooms provided with luxuries as carry a. rent of rupees five hundred or more per day but less than rupees one thousand per day and 10 percent of the rent of such room or suit of rooms provided with luxuries as carry a rent of rupees one thousand or more per day.]

### **3A. [ Exemption from Tax. [Inserted by Arndt, Act 30 of 2006.]**

- Notwithstanding anything contained in section-3 of the said Act, the State Government may by notification and subject to such conditions and restrictions as may be specified in the notification, exempt any proprietor or class of proprietors from the levy of tax.]

### **3AA. [ Compounding of Tax. [Inserted by Finance Act, 2007 (8 of 2007).]**

- Notwithstanding anything to the contrary contained in this Act, the State Government may. subject to such conditions and restrictions as it may prescribe by a notification, permit a proprietor of a hotel or class or description of hotels to pay a fixed amount in lieu of the tax payable under this act.]

#### **4. Collection of tax by the proprietor.**

- Every proprietor liable to pay tax under section 3 shall collect alongwith rent, the amount of tax payable under the said section from the person to whom a room along with luxuries is provided by him.

#### **5. Registration.**

- Every proprietor, who is liable to pay tax under section 3 shall apply for a certificate of registration in the prescribed manner within a month of coming into effect of this Act or within one month from the date he starts providing room along with luxuries in the hotel.

#### **6. Returns.**

- Every proprietor liable to pay tax under this Act, shall submit a return for every quarter by the last day of the month following in the manner prescribed.

#### **7. Payment of Tax.**

(1)The amount of tax payable under section 3 shall be paid by the proprietor to the State Government by the 25th day of the month following for every quarter in the prescribed manner.

#### **8. Assessment of Tax.**

(1)Assessment of the tax payable by a proprietor shall be made after examining the accounts or registers and other evidences as the prescribed authority may require.(2)In case a proprietor does not furnish any return or fails to produce accounts for assessment as required under sub-section (1), the prescribed authority may, after giving the proprietor a reasonable opportunity of being heard, assess the amount of tax payable by such proprietor, to the best of his judgment.(3)If the prescribed authority, upon information which has come into his possession is satisfied that the proprietor has been liable to pay tax under this Act in respect of any period, and has nevertheless failed to apply for registration under section 5 or having so applied failed to comply with any requirement for registration within a reasonable time and for which his application for registration has been rejected such prescribed authority shall, after giving the proprietor an opportunity of being heard, assess the amount of tax to the best of his judgment in respect of such period and shall also impose a penalty which shall be equal to the amount of tax assessed.

#### **9. Extension of period.**

- The prescribed authority may for the reasons to be recorded in writing extend the date for either filing the return under section 6 or payment of tax under section 7 or for payment of the assessed tax for a period not exceeding thirty days from the due date.

## **10. Liability in case of default.**

- In case any proprietor fails either to file return under section 6 or to pay the tax under section 7 or the amount of tax assessed or penalty imposed under section 8 within the due or extended date he shall be liable to pay, by way of penalty a sum calculated at the rate of rupees fifty for every day of default or an interest at the rate of two and half per-centum of the amount of tax due for every month or part thereof whichever is higher.

## **11. Recovery of Tax.**

- The amount of tax due and the penalty if any payable under this Act shall be recoverable from the proprietor as an arrear of land revenue. [Notes.- Recovery as "an arrear of land revenue" means recovery as "a public demand" under Bihar & Orissa Public Demands Recovery Act. 1914.]

## **12. Inspection, search and seizure.**

- The assessing authority or any other authority prescribed for this purpose may, with a view to satisfying itself that the provisions of this Act or Rules made thereunder are being complied with;-(a)enter any hotel at any time:(b)require any proprietor of a hotel to produce before him any books, accounts or other documents and inspect them:(c)inspect any room to ascertain their occupancy: and(d)seize any books, accounts and documents for detailed examination :Provided that a receipt shall be given to the proprietor in respect of the books of account and document seized.

## **13. Appeal.**

- Any proprietor aggrieved by an order of assessment under section 8 or imposition of penalty under section 10 may. within sixty days from the date of order or service of the notice of demand, appeal to the Joint Commissioner (Appeal) or any other authority specially authorised in this behalf in the manner prescribed, and. the Joint Commissioner (Appeal) or any other authority specially authorised in this behalf after hearing the appellant, may confirm, annul or modify the said order of assessment or penalty ;Provided that the appellate authority may condone the delay in preferring the appeal if the appellant satisfies that he was prevented by any sufficient cause from preferring the appeal within time,

## **14. Revision.**

- Subject to such rules as may be prescribed an order passed on appeal under section 13 may, on application, be revised by the Tribunal:Provided that such an application shall be entertained only if made within 90 days from the date of communication of the order sought to be revised :Provided further that where the Tribunal is satisfied that the appellant had sufficient reason for not filing the application for revision in time, it may condone the delay.

## **15. Power to call for records.**

- The Commissioner may on his own motion, call for and examine the records of any proceeding passed by any authority under this Act. other than mentioned in section 14. for the purpose of satisfying himself as to the legality or propriety of such order and may after making or causing to be made such inquiry as he may deem necessary revise any order passed by any authority.

## **16. Review.**

- Any order passed by an authority under this Act may be reviewed by the said authority :Provided that no such review shall be made after the expiry of one year from the date of such order without the previous sanction of the Commissioner:Provided further that no authority shall review an order passed by its predecessor in office without previous sanction, of the Commissioner.

## **17. Refund.**

- Any amount paid by the proprietor in excess of amount finally determined either on assessment under section 8 or on an order in appeal, revision or review shall be refunded to him in the manner prescribed.

## **18. Offences and Penalties.**

(1)If a proprietor, which shall for the purpose of this section, includes an employee, the manager or every person who was incharge or responsible for the management of the hotel at the time of commission of the offence-(a)fails or neglects to maintain accounts and registers, issue bill or cash memos as provided in this Act and rules framed thereunder; or(b)fails or neglects to furnish any information or produce books of account, registers and documents in course of inspection; or(c)fails to submit returns or pay tax and penalty required under sections 6 and 7; or(d)obstructs any authority in the performance of duty under this Act shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.(2)(a)No court shall take cognizance of any offence under this Act or the rule made thereunder except with the previous sanction of the Commissioner and(b)No court inferior to that of Judicial Magistrate of the 1st Class shall try any offence under this Act;(3)Notwithstanding anything contained in the Code of Criminal Procedure. 1973 (Act II of 1974). all offences punishable under sub-section (1) shall be cognizable and bailable.

## **19. Bar to certain proceedings.**

- No suit, prosecution or other legal proceeding shall lie against the State Government or any authority or officer of the State Government for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act and Rules made thereunder.

## **20. Power to make rules.**

(1)The State Government may by notification in the official Gazette, make rules consistent with the provisions of this Act for the purpose of carrying out the provision of this Act.(2)Every rule made under this Act shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for total period of fourteen days which may be comprised in one session or in two successive sessions, and if before expiry of the session in which it is so laid or the session immediately following both the Houses agree in making any modification in the rule or both the Houses agree that the rules should not be made the rules shall thereafter have effect only in such modified form or be of no effect as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## **21. Repeal and Savings.**

(1)The Bihar Luxuries in Hotels Ordinance 1987 (Bihar Ordinance no. 32. 1987) is hereby repealed.(2)Notwithstanding such repeal anything done or any action in exercise of any power conferred by or under the said Ordinance, shall be deemed to have been done or taken in the exercise of powers conferred by or under this Act as if this Act was in force on the day on which such thing or action was done or taken.