

# **Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003**

TAMILNADU

India

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### **Act 12 of 2003**

- Published on 1 January 2003
- Commenced on 1 January 2003
- [This is the version of this document from 1 January 2003.]
- [Note: The original publication document is not available and this content could not be verified.]

Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003(Tamil Nadu Act 12 of 2003)An Act to consolidate and rationalise the laws relating to the levy of tax on consumption or sale of electricity in the State of Tamil Nadu.Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Fifty-fourth Year of the Republic of India as follows: -

### **1. Short title and commencement.**

(1)This Act may be called the Tamil Nadu Tax on Consumption or Sale of Electricity Act, 2003.(2)It shall come into force on such date as the State Government may, by notification, appoint.

### **2. Definitions.**

- In this Act, unless the context otherwise requires:(1)"actual user of power" means one who is not a consumer but uses power out of captive generating plant;(2)"captive generating plant" means a power plant set up by any person or association of persons or any Co-operative society to generate electricity primarily for his own use or for the use of members, and includes the power plants that are permitted to sell the surplus power so generated.(3)"Director" means the Director of Electricity Tax appointed by the State Government;(4)"company" means a company registered under the Companies Act, 1956 (Central Act 1 of 1956) and includes anybody Corporate under a Central, State or Provincial Act.(5)"consumer" with its grammatical variations and cognate expression means any person who is supplied with electricity on payment of charges, or free of cost or otherwise by a licensee or by the Government or by any other person engaged in the business of supplying electricity to the public under the Indian Electricity Act, 1910 (Central Act 10 of 1910) or any other law for the time being in force and includes:(i)a licensee who consumes electricity whether generated by himself or supplied to him by any other licensee; and(ii)actual user of power or any other person who consumes electricity generated by himself;Explanation I. - Where a licensee

consumes electricity, whether generated by himself or supplied to him, such licensee shall be deemed to be a consumer only in respect of the electricity so consumed. Explanation II. - Where a licensee or other person consumes energy for purposes connected with the construction, maintenance and operation of the generating transmitting and distributing system, such licensee or person shall not be deemed to be a consumer in respect of the energy so consumed; (6) "electricity" means electrical energy; (7) "energy charge" means the amount charged (whether as energy charge or other charge) by a licensee for the supply of electricity to a consumer before deduction of rebate, if any, allowed by the licensee for payment on or before such date as may be specified by the licensee, but does not include - (i) meter charges; (ii) interest on delayed payment; (iii) fuel surcharge; or (iv) fuse off call charges and reconnection charges. Explanation-I. - If electricity is supplied to any person free of charge or at a concessional rate (other than tariff concession), the energy charge would mean the tariff fixed by the Tamil Nadu Electricity Regulatory Commission in its Tariff Order to similar consumer. Explanation-II. - "other charge" shall include demand charge and power factor surcharge. (8) "gross charge" means the aggregate amount of energy charge, fuel surcharge and other charges, if any, made by the licensee for the supply of electricity; (9) "generating company" means any company or body corporate or association or body of individuals, whether incorporated or not or artificial juridical person, which owns or operates or maintains a generating station. (10) "licensee" means any person licensed under part II of the Indian Electricity Act, 1910, (Central Act 10 of 1910) to supply electricity and includes any person who has obtained the sanction of the State Government under section 28 of that Act, the State Government when it is engaged in the business of supplying electricity, the generating company as defined in clause (4-A) of section 2 of the Electricity (Supply) Act, 1948 (Central Act 54 of 1948), the Electricity Board and the captive generating plant; (11) "local authority" means: (i) any Municipal Corporation established under any law for the time being in force; or (ii) any Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920 (5 of 1920); or (iii) any District Panchayat or any Panchayat Union Council or any Village Panchayat constituted under the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994); (12) "net charge" means the amount of gross charge that remains after deduction therefrom of any rebate referred to in clause (7) of this section or refund of fuel surcharge or other charges, if any. (13) "supply" in relation to electricity means the sale of electricity to a licensee or consumer. (14) "tariff" means a rate of tariff leviable upon the consumption of electricity in the State supplied by the licensee and as fixed by the Tamil Nadu Electricity Regulatory Commission; (15) "unit" means one kilowatt hours of energy. (16) words and expressions used but not defined in this Act shall have the meaning assigned to them in the Indian Electricity Act, 1910, (Central Act 10 of 1910) Electricity (Supply) Act, 1948 (Central Act 54 of 1948) and the Electricity Regulatory Commission Act, 1998 (Central Act 14 of 1998).

### **3. Tax on consumption or sale of electricity.**

(1) Save as otherwise provided in this Act, every licensee and every person other than a licensee shall pay every month to the Government in the prescribed manner, a tax on the electricity sold or consumed during the previous month at the rates specified hereunder: (a) In the case of licensees other than captive generating plants, the rate shall be not less than 5% and not more than 10% of the net charge, as may be notified by the Government: Provided that no tax shall be paid on sale of electricity for agricultural purposes and hut service connections; (b) In the case of licensees who are

captive generating plants, the rate shall be not less than 10 paise and not more than 20 paise per unit of electricity on the consumption for own use; and shall be not less than 5% and not more than 10% on the net charge on the sale of surplus electricity as may be notified by the Government: Provided that no tax shall be paid on the sale of electricity to the Board. (c) In the case of a person other than a licensee, the rate shall be not less than 10 paise and not more than 20 paise per unit of electricity on the consumption for own use as may be notified by the Government; (2) The Government may pay such amount as may be prescribed as collection charge to every person collecting electricity tax under this section: Provided that such amount shall not exceed 1% of the electricity tax collected by such person.

#### **4. Electricity sold for consumption to Government local authority or Railway Company not liable to tax.**

- Notwithstanding anything contained in this Act, no electricity tax shall be payable under section 3, on the sale of electricity, by a licensee to: (a) any Government for consumption by that Government, save in respect of premises used for residential purposes; (b) (i) any local authority, save in respect of premises used for residential purposes; (ii) Railway administration as defined in the Railways Act, 1989 (Central Act 24 of 1989), save in respect of premises used for residential purposes.

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

(1) Every person, other than a licensee or the State Government, who has installed or proposes to install a generating plant for generation of electricity for his own consumption, shall register his name with such officer as the Government may appoint in this behalf. (2) The application for registration shall be made in such manner and in such form and on payment of such fee as may be prescribed. (3) The officer appointed in this behalf may, on receipt of an application and after such enquiry as he considers necessary, grant to the applicant a certificate of registration for such plant, for such period and on such conditions as may be prescribed.

#### **6. Licensee to reimburse himself from consumer in certain cases.**

(1) Any licensee may with the previous sanction of the Government and subject to such conditions as they may impose, recover from any person or class of persons to whom electricity is sold, the electricity tax which falls to be paid by the licensee in respect of the electricity so sold, or any part of it as may be determined by the Government. Explanation. - Save as provided in section 4 of this Act, the electricity tax recoverable from any person under this section shall not be deemed to be part of the electricity charges charged by the licensee. (2) Licensee may for the purpose of sub-section (1) exercise the powers conferred on a licensee by sub-section (1) of section 24 of Indian Electricity Act, 1910 for the recovery of any charge or sum due in respect of energy supplied by him.

## **7. Recovery of Electricity Tax.**

- Any electricity tax due under this Act which remains unpaid:(a)shall be deemed to be in arrears and thereupon interest at the rate prescribed by the Government, from time to time, shall be payable on such electricity tax; and(b)shall, together with any interest payable under clause (a) be recoverable either as an arrear of land revenue or by deduction from any amount payable by the Government to the licensee.

## **8. Obligation of licensees to keep books of account and to submit return** **Every licensee and every person other than a licensee.**

(a)keep books of account in the prescribed form; and(b)submit returns showing the units of electricity supplied and the amount of the electricity tax payable in respect thereof, to the Director in such form and within such time as may be prescribed:Provided that every person other than a licensee, who has registered his name under section 5 shall quote the registration number in all books of accounts and returns submitted to the Director.

## **9. Assessment.**

(1)If no return in respect of any period is submitted by a licensee or a person required to submit return under section 8 or if the return submitted by such licensee or person appears to the Director to be incorrect or incomplete the Director shall, after giving such licensee or person as the case may be, a reasonable opportunity of being heard, proceed in such manner as may be prescribed to assess to the best of his judgment the amount of electricity tax payable under this Act by such licensee or person.(2)The amount of electricity tax assessed under sub-section (1) for a period less the sum, if any, already paid in respect of the said period, shall be paid by the licensee or the person by such date as maybe specified in a notice issued by the Director in this behalf and the date to be specified shall be ordinarily not less than 30 days from the date of service of such notice.(3)No assessment under this section shall be made after the expiry of four years.Explanation. - For the purpose of this section, "year" means the year commencing on the first day of April and ending on the last day of March.

## **10. Appeal.**

(1)Any person may in the prescribed manner appeal to the Government against any order of assessment of Electricity Tax within sixty days or such further period as may be allowed by the Government for reasons shown to their satisfaction from the date of receipt of a notice of demand issued after such order of assessment.Provided that no appeal against an assessment of electricity tax shall be entertained by the Government unless they are satisfied that such amount of electricity tax as the appellant may admit to be due from him has been paid.(2)The Government in disposing of any appeal under sub-section (1) may:(a)confirm, modify or annul the assessment of electricity tax; or(b)set aside the assessment of electricity tax and direct the Director to make a fresh assessment after such further inquiry as may be directed.

## **11. Interest payable by Government.**

- The Government shall in the prescribed manner, pay a simple interest at the rate not exceeding four per cent per annum as may be prescribed in this behalf, for each calendar month of delay in making refund to a licensee the amount of electricity tax paid in excess which arises from an order passed on appeal under section 10.

## **12. Electricity Tax Inspecting Officer.**

(1)The Government may, by notification, appoint the Electricity Tax Inspecting Officers to inspect the prescribed books of account kept under section 8.(2)Every Inspecting Officer appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

## **13. Powers of Electricity Tax Inspecting Officer.**

(1)Subject to the provisions of any rules made by the State Government in this behalf, an Inspector may:(i)require production for inspection of such books and records as may be necessary for ascertaining or verifying the amount of electricity tax leviable under the Act.(ii)enter and search any premises where electricity is, or is believed to be supplied, for the purpose of:(a)verifying the statements made in the books of account kept, and returns submitted, under section 5,(b)testing the reading of meters,(c)verifying the particulars required in connection with the levy of electricity tax.(iii)exercise such powers and perform such other functions as may be necessary for carrying out the purposes of this Act or the rules made there under.(2)All searches made under sub-section (1) shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

## **14. Exemption and reduction of tax.**

- The Government may, by notification, make an exemption or reduction in rate in respect of the electricity tax payable under this Act on energy sold for consumption by or in respect of any:(i)institution or class of persons;(ii)place of public worship, public burial or burning ground or other place for the disposal of the dead;(iii)premises declared by the State Government to be used exclusively for purposes of public charity;(iv)vessel whether seagoing or inland.(2)[ The Government may, by notification, make an exemption or reduction in rate in respect of the electricity for own use by any captive generating plant.(3)The Government may, by notification, cancel any notification issued under sub-section (2)] [Inserted by Act 5 of 2008 (w.e.f. 18.02.2008).]

## **15. Power to make rules.**

(1)The 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)the time and manner of payment of the electricity tax under section 3;(b)the form of the books of accounts to

be kept and the times at which, the form in which and officers to whom the returns under section 8 shall be submitted;(c)the powers and duties of Inspecting Officers;(3)All rules made under this Act shall be published in the Tamil Nadu Government Gazette and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.(4)Every rule or order made under this Act shall, as soon as possible, after it is made, be placed on the table of the Legislative Assembly, and if, before the expiry of the session in which it is so placed or the next session, the Legislative Assembly agrees in making any modification in any such rule or order or the Legislative Assembly agrees that the rule or order should not be made, the rule or order shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or order.

## **16. Power to remove difficulties.**

- If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order published in the Tamil Nadu Government Gazette, make such provisions, not inconsistent with the provisions of this Act as appears to them necessary or expedient for removing the difficulty.

## **17. Offences by companies.**

(1)Where an offence punishable under this Act has been committed by a company, every person, who, at the time the offence was committed, was in-charge of, and 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 guilty of the offence and shall be liable to be proceeded against and punished accordingly:Provided that nothing contained in this subsection shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.(2)Notwithstanding anything contained in sub-section (1), where any offence 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 guilty of that offence and shall be liable to be proceeded against and punished accordingly.Explanation. - For the purpose of this section:(a)"company" means any body corporate and includes a firm, society, trust or other association of individuals; and(b)"director" in relation to:(i)a firm means a partner in the firm(ii)a society, trust or other association of individuals means the person who is entrusted under the Rules of the society, trust or other association with the management of the affairs of the society, trust or other association, as the case may be.

## **18. Protection of Action taken in good faith.**

- No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

## **19. Penalties.**

- If any person:(a)liable under section 8 to keep books of account or to submit returns, fails to keep or submit the same in the manner prescribed; or(b)intentionally obstructs an inspecting officer appointed under section 12 in the exercise of his powers or the performance of his duties under this Act or the rules made thereunder; or(c)contravenes any rule made under this Act;he shall be punished with fine which may extend to ten thousand rupees.

## **20. Repeal and saving.**

(1)The Tamil Nadu Electricity Duty Act, 1939 and the Tamil Nadu Electricity (Taxation on Consumption) Act, 1962 is hereby repealed.Provided that such repeal shall not affect:(a)the previous operation of the said Acts or anything duly done or suffered thereunder;(b)any right, privilege, obligation or liability, acquired, accrued or incurred under the said Acts;(c)any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Act;(d)any investigation, legal proceeding (including assessment proceeding) or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed;(2)Notwithstanding such repeal:(a)anything done or any action taken or purported to have been done or taken including any rule, notification, inspection order or notice made or issued or any direction given under the repealed laws, shall so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.(b)any duty levied under the repealed Tamil Nadu Electricity Duty Act, 1939 (Tamil Nadu Act 5 of 1939) and the rules made thereunder during the period prior to the commencement of this Act, but not collected, may be recovered in the manner provided under the repealed Act and rules made thereunder.(c)any tax levied under the repealed Tamil Nadu Electricity (Taxation on Consumption) Act, 1962 (Tamil Nadu Act 4 of 1962) and the rules made thereunder during the period prior to the commencement of this Act, but not collected, may be recovered in the manner provided under the repealed Act and the rules made thereunder.(3)For the removal of doubts it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person from claiming refund of any tax or duty paid by him in excess of the amount due from him under the repealed Acts and the rules made thereunder.

## **21. Act to be subject to Article 288.**

- This Act shall have effect subject to the provisions of Article 288 of the Constitution.