

# The U. P. Sales Of Motor Spirit, Diesel Oil And Alcohol Taxation Act, 1939

UTTAR PRADESH

India

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### Act 1 of 1939

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The U. P. Sales Of Motor Spirit, Diesel Oil And Alcohol Taxation Act, 1939 U. P. Act No. 1 of 1939 Received the assent of the Governor on 6th June, 1939 by Government of India Act, 1935, vide Notification No. 3543-R/12-C, dated 7th June, 1939 and published in Gazette, Part I, on 10th June, 1939, and came into force on 10th June, 1939. An Act to provide for the levy of a tax on retail sales of motor spirit, diesel oil and alcohol Preamble.-Whereas it is expedient to provide for the levy of tax on the [sales of motor spirit, diesel oil and alcohol] [Substituted by Section 4 of U.P. Act No. XII of 1974.]; It is hereby enacted as follows :

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

(1) This Act may be cited as the U. P. Sales of Motor Spirit, [Diesel Oil and Alcohol] [Substituted by Section 4 of U.P. Act No. XII of 1974.] Taxation Act, 1939. (2) It extends to the whole of [Uttar Pradesh] [Substituted by the A. O. 1950 for the words 'United Provinces']. (3) It shall come into force on such date as the [State Government] [Substituted by the A. O. 1950s for the words 'Provincial Government'.] may, by notification, direct. This Act has been extended to the areas mentioned in Column 1 of this table under the Act or Order mentioned in column 2 and enforced in such areas under notification, if any, mentioned in column 3 with effect from the date mentioned in Column 4 against each such area :

Areas	Act or order under which extended	Notification, under which enforced	Date from which enforced
1	2	3	4
1. Rampur District	Rampur (Application of Laws) Act, 1950	No. 1685/XVII, dated June 27, 1950.	1st July, 1990.

2. Banaras District	Banaras (Application of Laws) Order, 1949	No. 1826/XVII-Merge, dated June 27, 1950.	Ditto.
3. Tehri-Garhwal District	Tehri-Garhwal (Application of Laws) Order, 1949.	Ditto.	Ditto.

## 2. Definitions.

- In this Act, unless there is anything repugnant in the subject or context, -(a) "motor spirit" means any inflammable hydrocarbon (including any mixture of hydrocarbons of any liquid containing hydrocarbons) with a flash point of or below [130° F] [Substituted by U. P. Act No. XI of 1961.] which is ordinarily used for providing reasonable efficient motive-power for any form of motor vehicle or for internal combustion engines but does not include kerosene; (aa) [ "diesel oil" means any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbon) with a flash point above 130° F but not exceeding 175° F which is ordinarily used for providing reasonable efficient motive-power for any form of motor vehicle or for internal combustion engines;] [Inserted by U. P. Act No. XI of 1961.] (aaa) "kerosene" means any inflammable hydrocarbon (including any mixture of hydrocarbons or any liquid containing hydrocarbon) with a flash point below 95° F and not above 110° F which is generally used for purposes other than for providing motive-powers for any form of motor vehicle or for internal combustion engines; (aaaa) [ "alcohol" means Ethyl alcohol not being alcoholic liquor for human consumption, and includes [rectified spirit, denatured spirit and absolute alcohol] [Inserted by U. P. Act No. XII of 1970.];] (b) "prescribed" means prescribed by rules made under this Act; (c) [ "dealer" means any person or association of persons carrying on the business of buying, selling, supplying or distributing motor spirit or diesel oil or alcohol or two or more of them, whether for commission, remuneration or otherwise and includes any firm of Hindu undivided family and any society or club or any other association of persons, which sells motor spirit, diesel oil or alcohol to its members, and also includes any department of the State Government or the Central Government which carries on such business; [Substituted by U. P. Act No. XII of 1974.]] (d) "sale" with its grammatical variations and cognate expressions means transfer of motor spirit or diesel oil or alcohol or all the three by a dealer for cash or deferred payment, or for other valuable consideration, and includes transfer of motor spirit or diesel oil or alcohol or two or more of them by a society or club or any other association of persons to its members, but does not include a mortgage, hypothecation, charge or pledge.] Explanation.-A sale of [motor spirit or diesel oil and alcohol] [Substituted by U. P. Act No. XII of 1974.] by a cooperative society, a club, a firm or any association to one of its members for consumption is a retail sale within the meaning of this clause.

## 3. Levy of tax.

- [(1) (a) There shall be levied on the first sale of Motor Spirit in the State, a tax at the rate of [fourteen per cent] [Substituted by U. P. Act No. VIII of 1978 (w.e.f. 1-2-1978).] ad valorem, and such tax shall be payable to the State Government in the prescribed manner by the dealer effecting such sale; (b) there shall be levied on the first sale of Diesel Oil in the State, a tax at the rate of [sixteen per cent] [Substituted by U. P. Act No. XI of 1994.], and from the date notified by the State Government for the purpose, at the rate of twelve per cent ad valorem and such tax shall be payable

to the State Government in the prescribed manner by the dealer effecting such sale;(c)there shall be levied at the point of first purchase of alcohol in the State, a tax at the rate of [80 paise] [Substituted by Act No. VII of 1993, for 'forty paise'.] per litre for the first million litres and at the rate of [40 paise] [Substituted by Act No. VII of 1993, for 'twenty paise'.] per litre for the remainder payable by the purchaser, and such tax shall be collected and paid in the prescribed manner to the State Government.](2)If any tax payable under sub-section (1) is not paid within the time prescribed, the prescribed authority may, in lieu thereof, recover any sum not exceeding double the amount of the tax so unpaid, or any smaller sum above the amount of the tax, which such authority may think it reasonable to recover.[Explanation.-In this sub-section, the expression 'first sale' shall mean,-(a)in case of dealers registered as Messrs Indian Oil Coorporation Limited, Messrs Bharat Petroleum Corporation Limited, Messrs Hindustan Petroleum Corporation Limited and Messrs Indo-Burma Petroleum Corporation Limited, the sale at the stage when such dealers make sale of motor spirit or diesel oil to a dealer other than the said dealers for the first time in the State of Uttar Pradesh, and(b)in case of any other dealer who has not purchased the said goods from any of the dealers referred to by name in clause (a) of this explanation the sale at the stage at which such dealer sells motor spirit or diesel oil for the first time in the State of Uttar Pradesh.]

#### **4. Recovery of sum as arrears of land revenue.**

- Any sum recoverable under Section 3 may be recovered as an arrear of land revenue and shall be recoverable in addition to and not in substitution for any other penalty incurred under this Act.

#### **5. Registration of retail dealers and registration certificate.**

- [(1) Every dealer shall, within three months of the commencement of the Uttar Pradesh Sales of Motor Spirit and Diesel Oil Taxation (Amendment) Ordinance, 1974 or where he starts business at any place after the commencement of the said Ordinance, then before starting business as a dealer, register himself as a dealer by making an application in the prescribed manner to the prescribed authority, and on such registration he shall be granted a registration certificate in such form and subject to such conditions as may be prescribed :Provided that the State Government or any officer empowered by it under Section 9 may refuse to grant a registration certificate to a dealer if it or he has already cancelled or refused to renew a registration certificate previously granted to such dealer :Provided further that any registration certificate granted to a dealer under this Act before the commencement of the said Ordinance shall, notwithstanding anything hereinbefore contained, continue to remain in force and be valid for the period for which it was granted] [Substituted by U. P. Act No. XII of 1974.](2)Every registration certificate granted under-sub-section (1) shall expire on the 31st day of March following the date of the grant and may be renewed annually.(3)[ Every registration certificate shall be granted or renewed for year or part thereof on payment of such fee not exceeding five hundred rupees as may be prescribed, and until fee is prescribed, the following fee shall be charged :

	Rs.
1. For sale of motor spirit or diesel oil or both in depots byoil companies	.. 500

- |   |        |
|---|--------|
| 2. For sale of motor spirit or diesel oil or both through pumps   | .. 250 |
| 3. For sale of motor spirit or diesel oil or both in drums or tins by dealers other than those mentioned in 1 and 2 above | .. 50  |
| 4. For sale of alcohol  | .. 50] |
- [Substituted by U. P. Act No. XXXII of 1979 (w.e.f. 23-4-1974).]

## **6. Prohibition of sale without registration certificate.**

- No person shall carry on business as a [dealer] [Substituted by U. P. Act No. VIII of 1975.] in any district without holding a registration certificate under Section 5.

## **7.**

[\* \* \*] [Omitted by U. P. Act No. XII of 1973.]

## **8. Suspension or cancellation of registration certificate.**

(1) Subject to such conditions as may be prescribed, the prescribed authority may suspend or cancel a registration certificate-(a) if any tax payable under Section 3 is not duly paid by the holder of such certificate; or (b) if there is any breach of any of the conditions subject to which a registration certificate is granted. (2) The holder of a registration certificate shall not be entitled to any compensation for its suspension or cancellation under sub-section (1).

## **9. Delegation of powers and duties.**

- The [State Government] [Substituted by U. P. Act No. VIII of 1978 (w.e.f. 1-2-1978).] may invest any officer or person with such powers and impose upon him such duties under this Act, as the [State Government] [Substituted by U. P. Act No. VIII of 1975.] may deem fit and any such officer or person shall thereupon exercise the said powers and discharge the said duties.

## **10. [Substituted by U. P. Act No. XII of 1973.]**

(1) Any officer empowered by the State Government in this behalf may-(a) enter and search any building, vessel, vehicle or place in or at which, he has reason to believe, any [motor spirit or diesel oil or alcohol] is sold or is kept for sale or search any person whom he has reason to believe to have committed an offence punishable under this Act; (b) seize and remove or detain any [motor spirit or diesel oil or alcohol] [Substituted by U. P. Act No. VIII of 1978 (w.e.f. 1-2-1978).] and any container thereof in respect of which he has reason to believe that an offence punishable under Section 6 or any other provision of this Act has been committed; (c) arrest without warrant any person whom he has reason to believe to have committed any offence punishable under this Act; (d) arrest without warrant any person accused or reasonably suspected of committing an offence punishable under this Act, who, on demand, refuses to give his name and residence, or who gives a name or residence which such officer has reason to believe to be false, in order that his name and residence may be

ascertained.(2)any search made under clause (a) and any arrest made under clause (c) or clause (d) of sub-section (1) shall be carried out in accordance with the provisions of the [Code of Criminal Procedure, 1898] [Now see the Code of Criminal Procedure, 1973 (Act No. II of 1974).], relating respectively to searches and arrests made under that Code.] [Inserted by U.P. Act No. No. VI of 1989, published in the U.P. Gazette, Extraordinary, Part 1, Section (ka), dated 16th March, 1989, pages 2-3.]

#### **10A. [ Procedure for arrest. [Inserted by U. P. Act No. XII of 1973.]**

- Every person arrested under this Act shall be forwarded without delay to the officer incharge of the nearest police station or to an Excise Officer empowered under Section 10-B, who shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.

#### **10B. Power of investigation.**

(1)A police officer not below the rank of an officer in charge of a police station or an Excise Officer not below such rank as the State Government may by general or special order direct may investigate into any offence punishable under this Act committed within the limits of his jurisdiction.(2)Any such officer may exercise the same power and shall be subject to the same provision as the officer incharge of a police station may exercise and is subject to under the [Code of Criminal Procedure, 1898] [Now see the Code of Criminal Procedure, 1973 (Act No. II of 1974).], when investigating a cognizable case.Explanation. - The expression 'Excise Officer' has the meaning assigned to it in the U. P. Excise Act, 1910.

#### **10C. Vexatious search, seizure, etc.**

(1)Any excise or other officer exercising powers under this Act, who-(a)without reasonable grounds of suspicion searches or causes to be searched any building, vessel, vehicle or place; or(b)vexatiously and unnecessarily detains, searches or arrests any person; or(c)vexatiously and unnecessarily seizes the movable property of any person, on pretence of seizing or searching for any article in respect of which an offence has been committed under this Act; or(d)commits, as such officer, any other act to the injury of any person, without having to believe that such act is required for the execution of his duty; shall, for every such offence, be punishable with fine which may extend to two thousand rupees.(2)Any person wilfully and maliciously giving false information and so causing an arrest or search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.]

#### **11. [ Power of Courts to order forfeiture. [Substituted by U. P. Act No. XII of 1974.]**

- Any Court trying an offence under this Act may order the forfeiture to Government of any [motor spirit or diesel oil or alcohol] in respect of which the Court is satisfied that an offence under this Act

has been committed, and may also order the forfeiture of any receptacles, or packages or coverings in which it is contained and the animals, vehicles, vessels or other conveyance used in carrying it].

## **12. [ Offences and penalties. [Substituted by U. P. Act No. XII of 1973.]**

- Whoever commits any of the following offences, namely, -(a) contravenes the provisions of Section 6; or (b) evades the payment of any tax payable under this Act; or (c) fails to supply any information which he is required by rules made under this Act, or (unless with the reasonable belief the burden of providing of which shall be upon him, that the information supplied by him is true), supplies false information; or (d) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) and (b), shall, for every such offence, be punishable with imprisonment for a term which may extend to six months, or with fine (which may extend to two thousand rupees or to a sum double the amount of the tax payable under this Act in respect of any sales conducted by such person in contravention of the provisions of Section 6, or as the case may be, double the amount of the tax evaded, whichever is greater) or with both.]

## **13. Power to compound offence.**

(1) The District Magistrate may accept from any person who has committed an offence punishable under this Act [or rules made thereunder] [Inserted by U. P. Act No. VIII of 1978 (w.e.f. 1-2-1978).], by way of composition of such offence, a sum of money not exceeding one thousand rupees or a sum double the amount of the tax payable under Section 3 in respect of any sale conducted by such person, whichever is greater. (2) On the payment of such sum of money to the District Magistrate, the accused person shall be discharged, the property seized, if any, shall be released and no further proceedings shall be taken against such person or property in respect of such offence.

## **13A. [ [Inserted by U.P. Act No. XVI of 1987, published in the U.P. Gazette, Extraordinary, Part 1, Section (ka), dated 29th July, 1987, page 2.]**

The State Government may, by notification and subject to such conditions as it may think fit to prescribe, exempt any Government, person or body or association of persons, whether incorporated or not, wholly or partly from the operation of all or any of the provisions of this Act or all or any of the rules made thereunder].

## **14. Cognizance of offence.**

- No Magistrate shall take cognizance of any offence punishable under this Act or rules made thereunder except-(i) when the case is instituted within six months of the date when the offence is alleged to have been committed; and (ii) upon the complaint or report of the District Magistrate or upon the knowledge or suspicion of the Magistrate himself :[Provided that a case may be instituted after the expiry of the said period of six months with the special sanction of the State Government.] [Inserted by U. P. Act No. VIII of 1978 (w.e.f. 1-2-1978).]

## **14A. [ Conferment of certain powers on Excise Officers. [Inserted by U. P. Act No. XII of 1973.]**

- Where the State Government empowers any Excise Officer to exercise powers under Section 12 and clause (ii) of Section 14, the references in those provisions to the District Magistrate shall be construed as including references to such Excise Officer.

## **14B. Enhanced punishment after previous conviction.**

- If any person after having been previously convicted of an offence punishable under this Act, subsequently commits and is convicted of an offence punishable under this Act, he shall be punished with imprisonment for a term which may extend to one year but shall not be less than three months and with a fine of two thousand rupees :Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXI of the Code of Criminal Procedure, 1973, from being so tried.]

## **15. Protection of persons acting in good faith and limitation of suits and prosecutions.**

(1)No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under the Act or rules thereunder.(2)No suit shall be instituted against the [Government] [Substituted by A. O. 1950 for the word 'Crown'.] and no prosecution or suits shall be instituted against any person in respect of anything done or intended to be done, under this Act unless the suit or prosecution has been instituted within six months from the date of the act complained of.

## **16. Appeals and revisions.**

(1)An appeal shall lie from any order under this Act or the rules framed thereunder, save an order in a judicial proceeding, to such authority as the [State Government] [Substituted by the A. O. 1950 for the words 'Provincial Government'.] may prescribe and any such order of such authority may be revised by the [State Government] [Substituted by the A. O. 1950 for the words 'Provincial Government'.] or such authority as the [State Government] [Substituted by the A. O. 1950 for the words 'Provincial Government'.] may prescribe :Provided that no order in appeal or revision shall be passed having an effect more prejudicial to the person concerned than the order under appeal or revision without such person being given an opportunity of stating his case.(2)No appeal shall be admitted unless received by the appellate authority within three months of the date of the order appealed against.

## **17. Power to make rules.**

(1)The [State Government] [Substituted by the A. O. 1950 for the words 'Provincial Government'.] may make rules consistent with this Act to carry out all or any of its purposes.(2)In particular and

without prejudice to the generality of the foregoing power, the [State Government] [Substituted by the A. O. 1950 for the words 'Provincial Government'.] may make rules-(a)providing for all matters expressly required or allowed by this Act to be prescribed;(b)regulating the levy and the recovery of the tax payable under Section 3;(c)prescribing the powers and duties to be exercised or performed by officers or persons under Section 9;(d)[ prescribing the particulars and forms of returns to be maintained by the dealers in motor spirit or diesel oil or alcohol or two or more, of them, the manner in which they are to be verified, the time when, and authorities to whom the returns shall be submitted and such other conditions thereof as may be necessary; [Substituted by U. P. Act No. XII of 1974.](e)providing for the regulation of sale of motor spirit or diesel oil or alcohol, the assessment of tax and the issue of notices requiring payment and for the recovery of unpaid tax;](f)providing for the detention and disposal of any motor spirit or container thereof which has been seized or confiscated; and(g)authorizing and regulating the inspection or search of any building, vessel, vehicle or place in which, there is reason to believe, motor spirit or diesel oil or both are sold or kept for sale;(h)[ providing for refund or adjustment of excess fees, if any, realized.] [Inserted by U.P. Act No. XXXII of 1979.]:(3)[\* \* \*] [Omitted by U.P. Act No. XII of 1973.](4)In making any rule, the [State Government] [Substituted by the A. O. 1950 for the words 'Provincial Government'.] may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees and where the breach is a continuing one, with further fine which may extend to one hundred rupees for every day after the first day during which the breach has been persisted in.(5)[ Every rule made under this section shall be laid as soon as may be after it is made, before each House of State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in the successive sessions and if, during the said period both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the 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 annulment shall be without prejudice to the validity of anything previously done under that rule.] [Inserted by U.P. Act No. XII of 1973.]