

The Jammu and Kashmir Profession, Trades, Callings and Employment Tax Act, 2005

JAMMU & KASHMIR

India

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Act 9 of 2005

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The Jammu and Kashmir Profession, Trades, Callings and Employment Tax Act, 2005(Act No. 9 of 2005)[Dated 10th May, 2005]The following Act as passed by the Jammu and Kashmir State Legislature received the assent of the Governor on 9th May, 2005 and is hereby published for general informationAn Act to provide for the levy and collection of tax on professions, trades, callings and employment to raise resources for the establishment of a Self Employment Promotion Fund.Be it enacted by the Jammu and Kashmir State Legislature in the Fifty-sixth Year of the Republic of India as follows

1. Short title, extent and commencement.

(1)This Act may be called the Jammu and Kashmir Professions, Trades, Calling and Employment Tax Act, 2005.(2)It extends to the whole of the State of Jammu and Kashmir.(3)It shall come into force from the date of its publication in the Government Gazette.

2. Definition.

- An this Act, unless the context otherwise requires,-(a)"Act" means the Jammu and Kashmir Professions, Trades, Calling and Employment Tax Act, 2005;(b)"Assessee" means a person by whom tax or any other sum or money is payable under the Act and includes -(i)every person who is liable to pay tax on behalf of any other person or who is entitled to a refund on his own behalf or on behalf of any other person;(ii)every person who is deemed to be an assessee under any provision of the Act; and(iii)every person against whom any proceeding have been initiated or taken under the Act;(c)"Appellate Authority" means a person appointed as appellate authority under section 4;(d)"Assessing Authority" means a person appointed as an assessing authority under section 4;(e)"Commissioner" means a person appointed as Commissioner under section 4;(f)"Employee"

means a person employed on salary or wages and includes-(i)a Government servant receiving salary from the revenues of the Central Government or any State Government;(ii)a person in the service of a body, whether incorporated or not, which is owned or controlled by the Central Government or any State Government, where the body operates in any part of the State even though its headquarters may be outside the State; and(iii)a person engaged in any employment of an employer, not covered by items (i) and (ii) above.(g)"Employer" in relation to an employee means the person who is responsible for disbursement of salary and includes the head of the office or of the establishment as well as the Manager or agent of the employer. In case of Ministers, Presiding Officers of the two houses of the State Legislature and members of the State Legislature, the State shall be deemed to be employer;(h)"Financial Year" means the year commencing on first day of April and ending on next following 31st day of March;(i)"Fund" means the Self Employment Promotion Fund formed under section 18;(j)"Government" means the Government of Jammu and Kashmir;(k)"Person" includes a Hindu undivided family, firm, society, company, corporation, or any other association of persons or body of individuals, whether incorporated or not, but does not include any person who is a daily wager or casual labourer or a pensioner;(l)"Prescribed" means prescribed by the rules made under the Act;(m)"Salary" includes wages and any other allowances by whatever name called;(n)"Schedule" means the schedule appended to the Act;(o)"Section" means a section of the Act;(p)"State" means the State of Jammu and Kashmir;(q)"Tax" means the tax levied under the Act; and(r)"Tribunal" means the Appellate Tribunal constituted under the Jammu and Kashmir General Sales Tax Act, 1962.

3. Levy of tax.

(1)Subject to the provisions of sub-section (2), every person who carries on trade, either by himself or through an agent or representative, or who follows a profession or calling, or who is employed for a consideration, monetary or otherwise, wholly or partly, within the State, shall be liable to pay for each financial year or part thereof, a tax in respect of such profession, trade, calling or employment at the rate specified in the Schedule:Provided that the tax payable by any one person under the Act shall not exceed two hundred and fifty rupees in a year.(2)Nothing in the Act shall apply to-(i)any person whose annual income on account of any profession, calling, trade and employment does not exceed rupees one lakh;(ii)the members of Defence Forces, Army, Navy and Air Force, personnel and members of para-military security forces deployed in the State; and(iii)pensioners receiving pension whether from the State or Central Government or from any other organization.(3)The Government may, subject to such restrictions and condition as may be prescribed and when it is expedient to do so in the public interest, by order, exempt any class or classes of assesseees from payment of tax.

4. Taxation authorities and their jurisdiction.

(1)Every authority appointed under the Jammu and Kashmir General Sales Tax Act, 1962 shall be the authority for carrying out the purposes of the Act and such authority shall have the like powers and perform like functions under the Act as it has , and performs, under the Jammu and Kashmir General Sales Tax Act, 1962.(2)Subject to the control of Commissioner-(a)the appellate authorities shall perform the functions in respect of such areas, or of such persons or classes of persons, as the

Government may direct; and (b) the assessing authorities shall perform their functions in respect of such areas, or of such persons or classes of persons, as the Commissioner may direct. (3) Notwithstanding anything contained in sub-section (1), the Government may, if it considers necessary, confer the powers of Assessing Authority and Appellate Authority on persons other than those appointed under the said section.

5. Employer's liability to deduct and pay tax on behalf of employees.

(1) Every employer shall deduct tax from the salary of his employees liable to tax and deposit the same with the Government. (2) Every employer shall, within three months from the expiry of each financial year, furnish to the Assessing Authority a return containing the names, designation, salary paid, amount of tax deducted and deposited and such other particulars as may be prescribed.

6. Deposit of tax.

(1) The tax or any other sum of money payable under the Act shall be deposited under the prescribed head of account in a Government Treasury (including Sub-Treasury) or such branches of Scheduled or Nationalised Banks as may be notified by the Government. (2) The tax payable by an employer under section 5 shall be deposited within fifteen days after the date the salary is paid to any employee or in such other manner as may be prescribed. (3) The amount of tax payable by a person, other than an employee or employer, shall be deposited on the dates specified below or in such other manner as may be prescribed (a) in the case of a person liable to tax before the 1st day of October, on any day in the month of October: and (b) in the case of a person liable to tax after the 30th day of September, on or before 15th day of March.

7. Registration.

(1) Every person, liable to tax under the Act shall obtain registration card in the prescribed form on an application made in the prescribed form to the Assessing Authority within three months from enforcement of the Act or within one month from the date he is liable to tax, whichever is later. (2) A person who ceases to be liable to tax under the Act shall send an intimation in writing to the Assessing Authority to that effect within one month from the date his liability ceases. (3) Notwithstanding anything contained in any other law to be contrary, a person who is liable to tax under the Act shall not be entitled to any incentive, concession, or the like from the government, corporation, Government Company including financial institutions unless he obtains registration card under sub-section (1). (4) Any person who executes any contract shall furnish a statement to the Assessing Authority in the prescribed form within 15 days of the expiry of the month of September and month of March every year containing, inter alia, particulars of the wages and other remuneration paid to any person.

8. Consequences of failure to deduct or to pay tax.

(1) If any assessee fails to deposit the tax within the prescribed period, the Assessing Authority shall

serve on him a notice of demand in the prescribed form requiring him to pay tax along with interest under sub-section (2) and sub-section (3) of this section within 30 days from the receipt of the said notice.(2)If an employer including an officer working under the State or the central Government or an undertaking owned or controlled by the State or the Central Government, charged with the responsibility of drawing and disbursing salaries to the employees, does not deduct the tax at the time of payment of salary or, after deducting, fails to pay as required by or under the Act, he shall, without prejudice to any other consequences and liabilities which he may incur, be liable to pay, in addition to the amount of tax, simple interest equivalent to the amount of 4% of the tax payable for each month of default.(3)If any person, other than the person specified in sub-section (2), fails to pay tax as required by or under the Act, he shall be liable to pay in addition to the amount of tax, simple interest at the rate and in the manner laid down in the said sub-section.

9. Penalties.

(1)Any person who fails to obtain registration card as required under section 7 shall be liable to pay, by way of penalty, a sum equal to the amount of tax due for each year of default.(2)Any employer (other than Government or Central Government) who fails to furnish a return as required by sub-section (2) of section 5, or fails to furnish it within the prescribed period, shall be, liable to pay by way of penalty a sum equal to the amount of tax that was payable for the return period.(3)No penalty under sub-section (1) or sub-section (2) shall be levied if the affected person on a show cause notice served on him proves to the satisfaction of the Assessing Authority that he was prevented by sufficient cause from obtaining the registration card or furnishing the return or furnishing it within the prescribed period, as the case may be.(4)Notice of demand in prescribed form shall be served requiring the assessee to deposit the penalty levied within a period of 15 days from the date of service of the said notice.

10. Recovery of arrears of tax and other sum.

- Any amount of tax, penalty, interest or any other sum payable under the Act which is not paid in accordance with the provisions of the Act, shall on the issue of certificate in the prescribed format to the Collector of the concerned District, be recoverable as arrears of land revenue. A copy of the said certificate shall also be forwarded to the defaulter on his last known address.

11. Power to enforce attendance.

- Every authority under the Act, shall, for carrying out the purposes of the Act, have the same powers as are vested in a court under the Code of Civil Procedure, Samvat 1977 while trying a suit in respect of enforcing the attendance of, and examining, any person on oath or affirmation or for compelling the production of any document.

12. Power to grant stay of demand.

- The Assessing Authority may on an application made by an assessee stay the recovery of demand

till disposal of review petition or appeal, as the case may be, subject to payment of interest under section 8 and such other conditions as he may specify.

13. Review.

- Any person who is aggrieved by a notice of demand issued under section 8, may, within thirty days from the date of receipt of such notice, make an application to the Assessing Authority who shall pass appropriate orders in writing including issue of revised demand notice, if necessary, within a period of thirty days (excluding the period given for hearing) after receipt of the application and after affording an opportunity of not less than ten days of being heard to the applicant.

14. Appeal review and revision etc.

- The provisions of the Jammu and Kashmir General Sales Tax Act, 1962 relating to appeal, review, revision, second appeal, power to withdraw and transfer cases shall, mutatis mutandis apply to all such proceedings under the Act.

15. Refunds.

(1) Any amount payable under the Act which has been paid by an assessee, but which was not due from him in consequence of order passed in review, appeal or revision, as the case may be, shall be refunded to the assessee in the prescribed manner. (2) Interest at the rate of 2% per month for each complete month shall be payable to the assessee on such amount from the date of deposit to the date of refund.

16. Bar on civil and criminal suits.

- No Civil Court shall entertain any suit or application made to obtain decision or order on the liability of any person to pay the tax and no prosecution, suit or other proceedings shall lie against any public servant for any thing done, or intended to be done, in good faith under the Act or any rule made thereunder.

17. Tax clearance certificate.

- Notwithstanding any other law to the contrary, a Government Department or any authority under the Government shall before - (a) sanctioning a contract for the supply of goods or executing any other contract; (b) issuing any registration certificate, permit or licence; (c) granting loan (with or without interest), subsidy or the like.