

# **The West Bengal Entertainments And Luxuries (Hotels And Restaurants) Tax Act, 1972**

WEST BENGAL

India

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### **Act 21 of 1972**

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The West Bengal Entertainments And Luxuries (Hotels And Restaurants) Tax Act, 1972 West Bengal Act 21 of 1972 [25th July, 1972.] Assent of the Governor was published in the Calcutta Gazette, Extraordinary, dated the 25th July, 1972. An Act to provide for the imposition of taxes on entertainments and luxuries in hotels and restaurants. Whereas it is expedient to provide for the imposition of taxes on entertainments and luxuries in hotels and restaurants and for matters connected therewith ; It is hereby enacted as follows :-

### **1. Short title, extent and application. -**

(1) This Act may be called the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972. (2) It extends to the whole of West Bengal. (3) It shall apply in the first instance only to Calcutta but the State Government may, by notification in the Official Gazette, apply the provisions of this Act to any other area specified in such notification.

### **2. Definitions. -**

In this Act, unless the context otherwise requires, -(a) [ "Calcutta" means the area described in Schedule I to the Calcutta Municipal Corporation Act, 1980; ] [ Clause (a) substituted by W.B. Act 8 of 1990. ] (aa) [ "Commissioner" means the Commissioner of Agricultural Income-tax appointed under sub-section (2) of section 21 of the Bengal Agricultural Income-tax Act, 1944 ; ] [ Clause (aa) inserted by W.B. Act 3 of 1999. ] (b) "entertainment" means any exhibition, performance, amusement, game, sport, cabaret, dance or floor show [\*\*\*\*\*] [ Words 'and includes performance by any singer, musician or bandsman' omitted by W.B. Act 16 of 1994. ] provided in any hotel or restaurant ; (c) "entertainment tax" means tax payable under section 3 of this Act ; (ca) [ "hotel" means a building or part of a building or any place where any activity or business is carried on in providing lodging or

boarding or any kind of accommodation, with or without supply of food, drinks or refreshments, to the members of the public on payment or for any consideration with the object of making profit ;] [Clause (ca) inserted by W.B. Act 10 of 1974.](d)[ "luxury" means provision for-] [Clause (d) substituted by W.B. Act 16 of 1994.](i)air-conditioning through air-conditioner or central air-conditioning or any other mechanical means, or(ii)air-cooling through air-cooler,provided in any of the rooms, or any part of a building, constituting a hotel or restaurant;(e)"luxury tax" means tax levied under section 4 of this Act;(f)"prescribed" means prescribed by rules made under this Act;(g)"proprietor" in relation to a hotel [or restaurant ] [Words inserted by W.B. Act 10 of 1974.] includes the person who for the time being is in charge of management of a hotel [or restaurant] [Words inserted by W.B. Act 10 of 1974.];(h)"restaurant" includes an eating-house.

### **3. Liability for entertainment tax. -**

[(1) An entertainment tax shall be payable by every person who is admitted into or enters any place, within either a hotel or restaurant, which is provided with luxury, where an entertainment is provided, and such tax shall be calculated] [Section 3 renumbered as sub-section (1) of that section by W.B. Act 8 of 1990.] [at the rate of 30 per centum] [Words and figures '15 per centum' first substituted for the words and figures '10 per centum' by W.B. Act 10 of 1974. Thereafter the present words and figures substituted for the words and figures 'at the rate of 15 per centum' by W.B. Act 3 of 1979.] of the total sum paid or payable by such person for all the services including food and drink supplied to him and also including any fee for admission into such place of entertainment:Provided that where payment is charged for admission to the place of entertainment, the entertainment tax under this section shall in no case be less than [60 per centum] [Words and figures '30 per centum' first substituted for the words and figures '25 per centum' by W.B. Act 10 of 1974 . Thereafter, the present words and figures substituted for the words and figures '30 per centum' by W.B. Act 3 of 1979.] of such payment for admission to the place of entertainment ;[Provided further that the State Government may, by notification published in the Official Gazette, direct that entertainment tax shall be payable] [Second and third provisos first inserted by W.B. Act 23 of 1997, then third proviso substituted by W.B. Act 3 of 2000, w.e.f. 1.4.1999.]- (a) by such class of persons, or (b) in respect of entertainment provided in such class of hotels or restaurants, at such rate lower than that fixed under this section, and subject to such restrictions and conditions, as may be specified in the said notification ;[Provided also that the State Government may, by notification published in the Official Gazette, direct that subject to such conditions and restrictions as may be specified therein, no entertainment tax shall be payable-] [Second and third provisos first inserted by W.B. Act 23 of 1997, then third proviso substituted by W.B. Act 3 of 2000, w.e.f. 1.4.1999.](a) by such class of persons, or (b) in respect of entertainment provided in such class of hotels or restaurants and in such area or areas as may be specified therein. (2) [The entertainment tax shall be recoverable from the proprietor.] [Sub-section (2) inserted by W.B. Act 8 of 1990.]

**4. [ Liability for luxury tax. - There shall be charged, levied and paid to the State Government a luxury tax by the proprietor of every hotel and restaurant in which there is provision for luxury and such tax shall be calculated-] [Section 4 substituted by W.B. Act 5 of 1985 after a change by W.B. Act 7 of**

## **1975.]**

(a)in the case of a restaurant at the rate of an annual sum of rupees three hundred for every ten square metres or part thereof in respect of so much of the floor area of restaurant which is provided with luxury, and(b)in the case of a hotel at such rate not exceeding [twenty-five per centum of the daily charges realised or realisable, as the case may be, for an occupied room] [Words 'twenty-five per centum of the daily charges realised or realisable for an occupied room' first substituted for the words 'fifteen per centum of the daily charges of a room' by W.B. Act 1 of 1992. Thereafter the present words substituted for the words 'twenty-five per centum of the daily charges realised or realisable for an occupied room' by W.B. Act 16 of 1994.] provided with the luxury as may be notified by the State Government in the Official Gazette:[Provided that subject to such restrictions and conditions as may be prescribed, no luxury tax shall be charged, levied and paid under clause (b) in respect of daily charges realised or realisable for any occupied room provided with luxury from such class of persons as may be prescribed] [Proviso inserted by W.B. Act 23 of 1997.].

**4A. [ Payment of entertainment tax, luxury tax and returns. - The entertainment tax under section 3 recoverable from, and the luxury tax under section 4 payable by, a proprietor, shall be deposited into a Government Treasury or the Reserve Bank of India, and returns shall be furnished by him to such authority, in such form, in such manner, and within such time, as may be prescribed.] [Sections 4A and 4B inserted by W.B. Act 8 of 1990.]**

**4B. [ Interest payable by the proprietor. - (1) If the amount of entertainment tax payable under section 3 or the luxury tax under section 4 is not paid within the time prescribed under section 4A, the proprietor shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of such month next following the prescribed date up to the month prior to the month in which such tax is fully paid or up to the month prior to the month of assessment under section 5 in respect of such period, whichever is earlier, upon so much of the amount of tax payable by him according to returns where returns are furnished, or according to such assessment where returns are not furnished, as remains unpaid at the end of each month of default.**

(2)Where a proprietor fails to make a payment of any tax payable after assessment by the date specified in the notice issued under subsection (6) of section 5 for payment thereof, he shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of such month next following the date specified in the demand notice up to the month preceding the month of full payment of such tax or up to the month preceding the month of commencement of proceeding under section 7, whichever is earlier, upon so much of the amount of tax payable by him according to such notice as remains unpaid at the end of each such month of

default.(3)Where as result of an order under section 5A, [section 5B or section 5C,] [Sections 4A and 4B inserted by W.B. Act 8 of 1990.] the amount on which interest as payable under this section has been modified, the interest shall be payable on the modified amount.(4)A proprietor liable to pay interest under sub-section (1) or subsection (2), shall pay such interest in such manner and by such date or dates as may be prescribed.(5)Notwithstanding anything contained in sub-section (1) or subsection (2), no interest shall be payable in such cases or under such circumstances and subject to such conditions, if any, as may be prescribed.

**4C. [ Interest payable by the State Government. - The State Government shall, in the prescribed manner, pay a simple interest at the rate of two per centum for each English calendar month of delay in making refund of tax paid in excess which arises out of an order passed under section 5A,] [Sections 4C and 4D inserted by W.B. Act 8 of 1990.] [section 5B or section 5C,] [Words, figures and letters inserted by W.B. Act 3 of 1999.] from the first day of such month next following the expiry of three months from the date of passing of such order up to the month preceding the month in which the refund is made upon the amount of tax refundable to him according to such order.**

**4D. [ Rounding off of the amount of tax payable for calculating interest. - In calculating the interest payable under section 4B or section 4C, the amount of tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple of one hundred rupees and for this purpose where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and, if such part is less than fifty rupees, it shall be ignored.] [Sections 4C and 4D inserted by W.B. Act 8 of 1990.]**

**5. [ Assessment of tax and determination of interest. - (1) If any proprietor, who is liable to pay tax under section 3, fails to furnish return in respect of any period or if the prescribed authority is not satisfied that the return furnished for any period is correct or complete, he shall assess to the best of his judgment the amount of entertainment tax due from such proprietor and, in making such assessment, shall give such proprietor a reasonable opportunity of being heard.**

(2)If any proprietor, who is liable to pay tax under section 4, fails to furnish return in respect of any period or if the prescribed authority is not satisfied that the return furnished for any period is correct or complete, he shall proceed to assess to the best of his judgment the amount of luxury tax due from such proprietor and, in making such assessment, shall give such proprietor a reasonable

opportunity of being heard.(3)Where the prescribed authority is satisfied that any proprietor is liable to pay interest under section 4B, he shall, in such manner as may be prescribed, determine the amount of interest payable by such proprietor.(4)No assessment under sub-section (1) or sub-section (2) shall be made after the expiry of two years from the end of the period in respect of which the assessment is made or from the commencement of section 7 of the West Bengal Taxation Laws (Second Amendment) Act, 1990, whichever is later.(5)In computing the time limited by sub-section (4) for making any assessment under sub-section (1) or sub-section (2), the period during which the prescribed authority is restrained from commencing or continuing any proceeding for such assessment by an order of any Court shall be excluded.(6)Where any tax is due in consequence of any assessment made under sub-section (1) or sub-section (2) or interest is due in consequence of any determination under sub-section (3), the prescribed authority shall serve upon the proprietor such notice as may be prescribed.(7)The amount of tax assessed under sub-section (1) or sub-section (2), less the sum, if any, already paid by the proprietor in respect of the said period, shall, together with any interest determined under subsection (3) that may be directed to be paid under the provisions of subsection (6), be paid in the manner and within the date as may be specified in a notice by the prescribed authority for this purpose, and the date to be so specified shall not be less than thirty days from the date of service of such notice.] [Section 5 substituted by W.B. Act 8 of 1990.]

**5A. [ Appeal and review. - (1) A proprietor aggrieved by an order made under this Act or the rules made thereunder may appeal to such authority and in manner as may be prescribed within sixty days from the date on which he receives an intimation of such order or within such further period as may be allowed by such authority for cause shown to his satisfaction.**

(2)The appellate authority shall dispose of the appeal in the manner prescribed.(3)Subject to such rules as may be prescribed, the prescribed authority may, of its own motion or upon application, review an assessment made or order passed under this Act or the rules made thereunder within two years from the date of making such assessment or passing such order :] [Section 5A first inserted by W.B. Act 10 of 1974, then substituted by W.B. Act 8 of 1990.]Provided that no assessment shall be [\* \* \* \* \*] [Words 'revised or' omitted by W.B. Act 3 of 1999.] reviewed without giving the proprietor a reasonable opportunity of being heard ;[Provided further that the prescribed authority may, on application or on its own motion, review, on or before the 31st day of March, 1996, any assessment made, on or before the 31st day of March, 1994. under sub-section (2) of section 5 of the tax payable by a proprietor under clause (b) of section 4] [Proviso inserted by W.B. Act 16 of 1994.].

**5B. [ Suo motu revision by the Commissioner. - Subject to such rules as may be made under this Act and for reasons to be recorded in writing, the Commissioner may, on his own motion, revise any assessment order or any other order, passed by any authority under section 5, or section 5A, and the rules made thereunder.] [Sections 5B and 5C inserted by W.B. Act 3 of 1999.]**

**5C. [ Revision by Commissioner upon application. - Subject to such rules as may be prescribed under this Act and for reasons to be recorded in writing, the Commissioner may, upon application, revise an appellate order passed by any authority under section 5A and the rules made thereunder :**

Provided that the provisions of this section shall not apply to any appellate order passed by an appellate authority under sub-section (2) of section 5A on any day before the date of coming into force of this section.] [Sections 5B and 5C inserted by W.B. Act 3 of 1999.]

## **6. Penalty. -**

(1) If any person fails to pay the entertainment tax or the luxury tax within the prescribed period he shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees and where the offence is a continuing one, with a further fine not exceeding five rupees for every day during which the offence continues. (2) A person who is convicted for an offence under sub-section (1) shall, in addition to the fine, be liable to pay the tax which was payable by him under section 3 or section 4 of this Act, as the case may be.

## **7. Recovery as an arrear of land revenue. -**

Any sum due on account of entertainment tax or luxury tax [or interest] [Words inserted by W.B. Act 8 of 1990.] shall be recoverable by the State Government as an arrear of land revenue under the Bengal Public Demands Recovery Act, 1913.

**7A. [ Special mode of recovery. - (1) Notwithstanding any proceeding being initiated under section 7 for recovery of entertainment tax or luxury tax or interest as an arrear of land revenue, the prescribed authority may, at any time or from time to time by notice in the prescribed form, require any person from whom money is due or may become due to the proprietor referred to in section 4A or section 4B or any person who holds or may subsequently hold money for or on account of such proprietor, to deposit into a Government Treasury or the Reserve Bank of India under the appropriate head of account, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held), so much of the money as is sufficient to pay the amount due by such proprietor in respect of the arrears of such tax or interest or the whole of the money when such money is equal to or less than the amount due.**

(2) A notice under this section may be issued to any person who holds or may subsequently hold any money for, or on account of, the proprietor jointly with any other person and. for the purposes of

this section, the shares of the joint-holder in such account shall be presumed, until the contrary is proved, to be equal.(3)A copy of the notice shall be forwarded to the proprietor at his last address known to the prescribed authority, and, in the case of a joint account, to all the joint-holders at their last addresses known to the prescribed authority.(4)Save as otherwise provided in this section, every person to whom a notice is issued under this section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, banking company or insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.(5)Any claim with respect to any property in relation to which a notice under this section has been issued, arising after the date of the notice, shall be void as against any demand contained in the notice.(6)Where a person to whom a notice under this section is sent proves to the satisfaction of the prescribed authority that the sum demanded or any part thereof is not due to the proprietor or that he does not hold any money for, or on account of, the proprietor or that the money demanded or any part thereof is not likely to be due to the proprietor or be held for, or on account of, the proprietor, then, nothing contained in this section shall be deemed to require such person to deposit any such sum or part thereof, as the case may be.(7)The prescribed authority may, at any time or from time to time, amend or revoke any notice issued under this section or extend the time for making any payment in pursuance of such notice.(8)The Treasury or the Bank shall grant a receipt for any amount paid in compliance with a notice issued under this section, and the person so paying the amount shall be fully discharged from his liability to the proprietor to the extent of the amount so paid.(9)Any person discharging any liability to the proprietor after receipt of a notice under this section shall be personally liable to the prescribed authority, to the extent of his own liability to the proprietor so discharged or to the extent of the liability of the proprietor for any sum due under this Act, whichever is less.(10)If the person to whom a notice under this section is sent fails to make payment in pursuance thereof, he shall be deemed to be a proprietor in default in respect of the amount specified in the notice, and further proceedings may be taken against him for the recovery of the amount as if it were an arrear due from him, and the notice shall have the same effect as attachment of a debt.(11)The prescribed authority may apply to the court in whose custody there is money belonging to the proprietor for payment to him of the entire amount of such money or, if it is more than the amount of tax or interest due, an amount sufficient to discharge the liability of the amount of tax or interest :Provided that any dues or property exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908, shall be exempt from any payment required to be made under this section.] [Section 7A inserted by W.B. Act 5 of 1997.]

## 8. Inspection. -

(1)[The Commissioner and such other officers as may be prescribed] [Words first substituted by W.B. Act 3 of 1979, then again substituted by W.B. Act 3 of 1988 and finally the present words substituted for the words 'Any officer not below the rank of Agricultural Income Tax Inspector appointed by the State Government to assist the Commissioner of Agricultural Income Tax in Calcutta and Sub-Deputy Collector in a district, authorised by the State Government for the purpose,' by W.B. Act 3 of 1999.] may enter any hotel or restaurant at any reasonable time with a view to seeing whether the provisions of this Act or the rules made thereunder are being complied

with.(2)If any person prevents or obstructs the entry of [any officer referred to in sub-section (1),] [Words, figure and brackets substituted for the words 'any officer so authorised,' by W.B. Act 3 of 1999.] he shall, in addition to any other punishment to which he is so liable under any law for the time being in force, be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.(3)[Every officer referred to in sub-section (1)] [Words, figure and brackets substituted for the words 'Every officer authorised under this section' by W.B. Act 3 of 1999.] shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

**8A. [ Indemnity. - No suit, prosecution or other legal proceeding shall lie against any officer of the State Government for anything which is in good faith done or intended to be done in the discharge of his duties under this Act or the rules made thereunder.] [Section 8A inserted by W.B. Act 8 of 1990.]**

## **9. Saving. -**

No entertainments tax, in relation to an entertainment in a hotel or restaurant, shall be leviable on any person under the provisions of section 3 of the Bengal Amusements Tax Act, 1922, if such person pays entertainment tax under the provisions of this Act.

## **10. Rules. -**

(1)The State Government may make rules for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the matters which, under any provision of this Act, are required to be or to be provided by rules.