

The Kerala Tax on Luxuries Rules, 1976

KERALA

India

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Rule THE-KERALA-TAX-ON-LUXURIES-RULES-1976 of 1976

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The Kerala Tax on Luxuries Rules, 1976 Published vide Notification SRO No. 1273/76 SRO No. 1273/76. - In exercise of the powers conferred by section 20 Kerala Tax on Luxury Act 1976 (32 of 1976) the Government of Kerala hereby make the following Rules namely: -

1. Short title and commencement.

(1) These Rules may be called the Kerala Tax on Luxuries Rules, 1976. (2) They shall come into force at once.

2. Definitions.

- In these rules, unless the context otherwise requires. (a) the "Act" means the Kerala Tax on Luxuries Act, 1976; (b) "Assessee" means a person by whom luxury tax or any other sum of money is payable under the Act and includes every person in respect of whom any proceedings under this Act have been taken for the assessment of luxury tax payable by him; (c) "Form" means a form appended to these Rules; (d) "month" means a calendar month; (e) "section" means a section of the Act;

3. Filing of return.

(1) The return referred to in section 5 shall be: - (a) in Form 1 in the case of a proprietor of a hotel, convention centre, hall, kalyanamandapam auditorium; (b) in form 1A in the case of a cable TV operator; (c) in Form 1AA in the case of a proprietor of a house boat; and (d) in Form 1AAA in the case of a proprietor of a club; (2) In the case of a proprietor having more than one place of business the return in FORM 1 shall be submitted separately in respect of each such place of business to the assessing authority having jurisdiction over each such place of business and each such place shall be assessed separately. (3) Omitted (SRO 598/2007 dated 02.07.2007) (4) Every proprietor registered under the Act and every proprietor liable to get himself registered under the Act and every proprietor who is required to do so by the assessing authority, irrespective of the quantum of his

total income, shall, on or before the 10th day of every month, submit to the assessing authority a return as prescribed in sub-rule (1) showing the details of total income, expenses, income on which exemption is claimed and taxable income relating to the preceding month, together with a receipt of a treasury challan, crossed cheque or crossed demand draft in favour of the assessing authority for the amount of tax due;(i)In the case of Hose boat rented for accommodation or residence leisurely cruising the proprietor shall file the return in Form 1AA before the assessing authority having the jurisdiction over the area where the House boat is used.(ii)in the case of proprietor of house boat having more than one place of business, the return in Form 1AA shall be submitted to the assessing authority having jurisdiction over the area where the Head office or Registered office or Administrative office is situated.(5)Every proprietor of a hotel or a stockist or a proprietor of a house boat liable to pay tax under this Act shall submit monthly return prescribed in sub-rules (1) on or before 10th day of every month to the assessing authority referred to in sub-rule (2) or sub-rule (3), as the case may be, showing the transactions relating to the preceding month, together with a receipt of a treasury chalan, crossed cheques or crossed demand draft in favour of the assessing authority for the amount of tax due.(6)The return (s) so submitted shall, subject to the provision of sub-rule (7) be provisionally accepted.(7)If the return (s) submitted appears to be incorrect or incomplete, or if no return is submitted by the proprietor or proprietor of a house boat, the assessing authority may, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it and after issuing a notice to the proprietor calling upon him to produce his accounts to prove the correctness or completeness of his return and after scrutiny of the accounts, if any, produced by the proprietor, assess the tax or taxes payable for the month according to the best of its judgement, after giving such proprietor a reasonable opportunity of being heard and also to prove the correctness or completeness of the return submitted by him and serve upon such proprietor a notice in Form No. II(8)If the return is submitted without a treasury receipt, crossed cheques or crossed demand draft for the full amount of the tax payable in favour of the assessing authority, he shall serve upon the proprietor of the hotel/stockist or proprietor of a house boat, a demand notice in Form No.IIA and the assessee shall pay the sum demanded within the time and in the manner specified therein.

3A.

(1)Every proprietor other than those covered by Rule 3B having not less than five rooms to be rented out for accommodation for residence or otherwise and of every house boat, hall, auditorium, Kalyanamanapam/Cable Operator/Club or place of the like nature, as the case may be, is situated shall make an application in FORM IB to the assessing authority having jurisdiction over the area where the hotel, hall, auditorium, Kalyanamanapam/Cable Operator/Club or place of the like nature, as the case may be, is situated for registering his hotel under the Act on or before the May 31st of every year or within 30 days from the date of commencement of the business, whichever is earlier. The application shall be accompanied by the fee specified in Section 4B of the Act.(2)On receipt of the application, the assessing authority shall conduct such enquiry as he may deem fit and may obtain any additional information as he may consider necessary and pass orders granting the registration.(3)The certificate of registration shall be in FORM IC.

3B.

(1) Every proprietor of the house boat who rented the house boat for accommodation for residence or leisurely cruising shall submit an application in Form 1AB to the assessing authority having jurisdiction over the area where the proprietor in whose jurisdiction the house boat is using for business purpose for registering this house boat under the Act on or before 31st May every year or within 30 days from the commencement of business whichever is earlier. The application shall be accompanied by a fee of one thousand rupees per boat. (2) On receipt of the application the assessing authority shall conduct such enquiry as he may think fit and obtains additional information as he may consider necessary and pass orders granting registration certificate in form No: 1AC. (3) The certificate issued under sub-rule (2) shall be valid for a year and shall be renewed from year to year on payment of the fee specified under sub-section (2) of section 4C and continues to be valid on such renewal.

3C. Procedure for computation of rent or other charges realized for hall, auditorium, Kalyanamandapam and place of the like nature where such rent or other charges are not separately ascertainable.

- Where the bills issued or the accounts maintained by the proprietor do not show the rent or other charges realized for the hall, auditorium, Kalyanamandapam or place of the like nature separately and the rent and other charges are merged with the charges realised for food, drink, and telephone, twenty five percent of the total charges realised shall be treated as the rent and other charges to which [the provisions of clause (c) of sub-section (2) of section 4 applies] [Substituted by S.R.O No.93/2016 dated 22-01-2016 w.e.f 28-07-2006].

4. Annual return and final assessment.

(1) Every proprietor or proprietor of a house boat, liable to pay luxury tax under the Act, shall on or before the first day of May in every year, submit to the assessing authority referred to in sub-rule (2) or (3) respectively of rule 3, a return in Form 1 or IA or 1AA, as the case may be, containing the particulars referred to in sub-section (2) of Section 5 relating to the preceding year. (2) Every proprietor or proprietor of a house boat, who discontinues his business during the course of a year shall submit to the assessing authority concerned a return in Form 1, for the period upto and inclusive of the date of discontinuance of the business within thirty days from the date of such discontinuance. (3) On receipt of the return the assessing authority shall, if it is satisfied after such scrutiny of the accounts and such enquiry as it considers necessary that the return is correct and complete, finally assess on the basis of the return the tax or taxes payable under Section 4 or Section 4A for the year to which the return relates. (4) If no return is submitted or if the return submitted appears to the assessing authority to be incorrect or incomplete, the assessing authority may, after making such enquiry as it may consider necessary and after taking into account all relevant materials gathered by it and after issuing a notice to the proprietor / stockist or proprietor of a house boat calling upon him to produce his accounts to prove the correctness or completeness of his return at a time and place to be specified in the notice and after scrutiny of the accounts, if any,

produced by the proprietor / stockist or proprietor of a house boat, finally assess the tax payable under section 4 or section 4A according to the best of its judgement after giving the assessee a reasonable opportunity of being heard and also to prove the correctness or completeness of the return submitted by him and serve upon the assessee a notice of assessment and demand in Form No. II.(5)In the case of a proprietor /stockist who have filed monthly returns for the period prior to 1-4-1996, and assessments in respect of whom are pending as on the date of coming into force of this sub-rule such assessments shall be completed on annual basis as per this rule notwithstanding that no annual return has been filed under sub-rule (1).

4A. Payment of penalty.

(a)The assessing authority shall impose a penalty as provided under sub-section (3) of section 6 and serve upon the assessee a demand notice in Form IIA.(b)The penalty shall be remitted into the Government treasury or paid by means of crossed cheques or demand draft in favour of the assessing authority concerned.

4B. Mode of Payment of Interest.

(1)The interest payable under subsection (1) of section 10 shall be remitted in to the Government Treasury or paid by means of crossed cheque or crossed demand draft in favour of the assessing authority concerned drawn on a bank within jurisdiction of the assessing authority and having treasury transactions, either separately or along with the tax.(2)the assessing authority concerned may calculate the interest payable under sub-section (1) of section 10 from time to time and may issue a notice in form II. On receipt of the notice, the dealer shall pay the interest due in the manner specified in sub-rule(1).Explanation. - The dealer or other person concerned shall however be liable to pay the interest under sub-section (1) of section 10 whether he receives a notice under this sub-rule or not.

5. Maintenance and preservation of accounts.

- (i) Every proprietor registered under the Act, every proprietor liable to get himself registered under the Act and every other proprietor who is so required by an assessing authority, shall keep and maintain the books of accounts disclosing true and complete accounts of his daily transactions including daily account of occupancy, in the case of hotels, convention centre, halls, kalyanamandapam, and collection of tax in together with the vouchers and bills";(ii)in the proviso to sub rule (2), for the words "in the case of hotels and lodging houses which issue computerized bills" the words "where computerized bills are issued" shall be substituted.,(iii)in sub rule (3), for the words " occupants for the amounts realized showing separately the charges for accommodation, food drink and telephone calls" the words "occupants specifying charges under each item separately" shall be substituted;(4)The proprietor shall keep a stock register for each month showing the number of bills got sealed by the assessing authority and the number of bills issued during the month.(5)Every stockist shall keep and maintain the following registers, namely:-(i)books of accounts disclosing true and complete accounts of his daily transactions in Malayalam or English showing the commodity produced, manufactured, bought, sold, despatched

or supplied by him and the value thereof separately together with the vouchers and bills;(ii)a daily cash book;(iii)a journal, where the accounts are maintained, according to mercantile system of accounting;(iv)a ledger; and(v)a stock register.(6)Every stockist shall keep the current books of accounts at the place of business, building, godown or any other place where the commodity is stored for transaction. Every purchase, sale or supply shall be brought to account then and there as soon as the purchase or sale is effected.(7)Every stockist shall maintain day-to-day stock account of the commodities dealt by him. The stock account shall contain particulars of purchase or receipt, sales or deliveries and balance stock.(8)Every stockist shall issue a sale bill or cash memorandum, in respect of every sale. Where the supply is not in pursuance of a sale, the stockist shall issue a delivery chalan. The sale bill or cash memorandum or delivery chalan shall bear the name and address of the stockist with his trade name, if any, quantity and value of the commodity sold or supplied and the full name and address of the purchaser. It shall be signed and dated by the stockist or his authorized agent. The serial numbers assigned to the bills or cash memorandum or delivery chalan shall run consecutively for the whole year.(9)Every stockist while delivering, any commodity to another stockist in pursuance of a sale where no sale bill is issued or every person who consigns goods by any vehicle or vessel or any other means in pursuance of a sale where a sale bill is not issued or consigns goods through the said means from one godown to another or from one of his business place to another for the purpose of storage, sale or supply shall issue a delivery note as specified in sub-rule (3) of Rule 5A.(10)Accounts maintained by a stockist together with all vouchers, bills, declarations, delivery chalans and delivery notes relating to stocks, deliveries, supplies, purchases, output and sales shall be preserved by him for a period of two years from the date of completion of the final assessment of the year to which they relate or from the date of disposal of the appeal or revision arising out of such assessment or from the date of completion of any other proceedings under the Act connected with such assessment or appeal or revision, whichever is later and shall be kept at the place of business.

5A.

- Omitted (SRO 598/2007 dated 02.07.2008)

5B.

- Omitted (SRO 598/2007 dated 02.07.2008)

5C. Search and seizure.

(1)The authorization under the proviso to subsection (3) and clause (b) of sub-section (7) of section 13 shall be in Form IIB and shall be in writing under the signature of the authority issuing it and shall bear the seal of such authority.(2)Any person in charge of any building, place, godown, vessel, vehicle, other conveyance, box or receptacle shall, on demand by an assessing authority and any person in charge of any residential accommodation shall on demand by an assessing authority authorised under sub-section (3) of Section 13 and on production of authorization, allow such authority free ingress thereto and access to the contents of any box or receptacle and afford all reasonable facilities for a search therein.(3)If ingress to such building, place, godown, vehicle,

vessel, other conveyance or residential accommodation or access to the contents of any box or receptacle cannot be so obtained, under sub-rule (2) it shall be lawful for such authority with such assistance of the police or other officers of the State Government as may be required, to enter such building, place, godown, vehicle, vessel, other conveyance or residential accommodation or to have access to the contents of any box or receptacle and search therein and in order to effect such entrance or access, to break open any box or receptacle or any outer or inner door or window of any building, place, vehicle, vessel, other conveyance or residential accommodation, whether that of the person, to be searched or of any other person if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance or access. Provided that, if any such vehicle, vessel, building, place or residential accommodation is occupied by a female (not the person to be arrested) who, according to custom, does not appear in public, the authority shall, before entering such vehicle, vessel, building, place or residential accommodation, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing and may then break open such vehicles. (4) The assessing authority may, if the owner or any other person in occupation or in immediate possession or control of any box or receptacle, godown, building or residential accommodation in which any goods, accounts, registers, records or other documents or are reasonably believed to be kept, leaves the premises or refuses to open the box or receptacle, godown, building or residential accommodation or is not available and such officer considers it not practicable to exercise the power of breaking open immediately, seal such box or receptacle, godown, building or residential accommodation and serve, an order on the owner of the person who is in immediate possession or control thereof that he shall not open, remove, part with or otherwise deal with such box, receptacle, godown, building or residential accommodation. (5) Where any person has got out of or is about to get into or is in any place referred to in Section 13 and the assessing authority has reason to suspect that such person has secreted about his person any goods or accounts, registers, records or other documents, such person may be searched by such authority with such assistance as he may consider necessary. If such person is a woman the search shall be made by another woman with strict regard to decency. (6) Where any assessing authority conducts a search of any person, office, shop, place of business, residential accommodation, godown, vessel, receptacle, vehicle or any premises or place where any books of accounts, or are reasonably suspected to be kept, he shall, as far as may follow the procedure prescribed in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974). (7) If on search, the assessing authority finds any accounts, registers or other documents which he has reason to suspect that the proprietor is maintaining with a view to evading the payment of any tax or fee due from him under the Act, he shall, for reasons to be recorded in writing, seize such accounts registers and documents of the proprietor as may be necessary and shall give the proprietor a receipt for the same. The accounts and registers so seized shall be returned to the proprietor within thirty days and in cases where permission of the next higher authority under section 13 has been obtained, within sixty days from the date of seizure, unless they are required for a prosecution. (8) When any accounts, registers or documents of a proprietor seized by any assessing authority have to be returned to the proprietor, such return may be made after taking such extracts there from as may be considered necessary. The authority making the return shall affix his signature or official seal or both on such accounts, registers or documents and the proprietor shall give a receipt in acknowledgement, which shall mention the details of the records returned and the number and particulars of the places where the signature or the seal, or both have been affixed on the accounts, registers or documents returned

to him.(9)When any accounts, registers or documents are inspected or examined by any authority empowered in this behalf such authority shall affix his signature, or official seal or both at one or more places therein.(10)If any assessing authority while inspecting or searching any place finds therein any commodity not accounted for by the stockist in his accounts and other records such authority shall prepare a list of such commodity and get it signed by two respectable witnesses. One copy of such list shall be given or tendered to the stockist or the person in charge of the place.(11)The authority directing payment of penalty under sub-section (8) of section 13 shall serve a notice of demand on the stockist in FORM IIA on receipt of the notice, the stockist shall remit the amount of penalty specified in the notice into a Government treasury or pay the same by means of crossed cheques or crossed demand draft in favour of the assessing authority on whose rolls he is an assessee and intimate the fact to the authority directing payment of penalty.

6. Filing of appeal to the appellate authority.

(1)Appeals under section 7 shall be in Form III.(2)Every appeal shall be in duplicate and shall be accompanied by the original or a certified copy of the order appealed against.(3)Every appeal shall be accompanied by the fee specified under sub-section (2) of section 7.

6A. Filing of appeal to the Appellate Tribunal.

(1)(a)Every appeal under sub- section (1) of section 7A shall be in Form No. IIIA and shall be verified in the manner specified therein.(b)It shall be in quadruplicate and accompanied by four copies (one of which shall be the original or authenticated copy) of the order appealed against and also three copies of the order of the assessing authority.(2)The procedures prescribed under the Kerala Sales Tax Appellate Tribunal Regulations 1966 shall apply, with necessary changes apply to an appeal filed under these rules.(3)After the final hearing of the appeal, the Appellate Tribunal shall notify a date, which shall not be later than thirty days from the date of such final hearing, for the pronouncement of the orders in such appeal, and on such notified date the Appellate Tribunal shall pronounce the order.(4)The order in appeal, shall be communicated to the appellant and respondents within sixty days of the pronouncement of such order.

7. Filing of Revision.

(1)Application for revision under Section 8 shall be in Form IV.(2)Every application for revision shall be in duplicate and shall be accompanied by the original or certified copy of the order against which application for revision is filed.(3)Every application for revision shall be accompanied by the fee specified under sub-section (4) of section 8.

7A. Procedure in case of death of appellant or revision petitioner pending proceedings.

(1)If a person who has filed an appeal or revision or against whom any appeal or revision is pending before any authority under the Act, dies before the conclusion of the final hearing of the same, the

authorized representative appearing for the party or any of the legal representatives, shall, as soon as he comes to know of the death, inform the appellate or revisional authority, as the case may be, about it. The authority concerned shall, thereupon, adjourn further proceedings to enable the impleading of the legal representatives of the deceased. The application for impleading may be filed either by the party interested in getting final orders passed on the proceedings or by any legal representative of the deceased, even though not so interested. The Application shall be in Form No. III B.(2)If the application for impleading is not made within sixty days of the date of death of the party, the proceedings shall abate as regards the deceased.(3)The proceedings referred to in sub-rule (1) shall not abate by reason of the death of any party between the conclusion of the final hearing, and the passing of the order, but the order may, in such case, be passed notwithstanding the death of the party and shall have the same force and effect as if it had been passed before the death took place.(4)If a question arises in any such proceedings as to whether a person is or is not the legal representative of a deceased party, the appellate or revisional authority, as the case may be, may determine the question summarily after taking such evidences as it deems necessary or direct the person asserting to be the legal representative, to produce an order of a competent court to establish his assertion and adjourn the proceedings for the purpose.(5)Where a pending proceedings referred to in sub-rule (1) abates, no fresh proceedings shall be started on the same cause of action.(6)If during the pendency of any proceedings referred to in sub-rule (1) before any appellate or revisional authority specified in the said sub-rule, the business of any party thereto is assigned to or devolves upon some other person, either wholly or in part, the appellate or revisional authority may, on the application of such assignee or other person, add him as a party to the proceedings.(7)If a party to a proceedings referred to in sub-rule (1) becomes insolvent and his estate becomes vested in a Receiver, the latter may, at the instance of the assessing authority, be made, by leave of the appellate or revisional authority, a party to the proceedings.

7B. Setting aside of abatement.

(1)(a)Any person bound to apply for impleading legal representatives of a deceased party may apply, within sixty days from the date of abatement, for an order to set aside the abatement, and if it is proved that he was prevented by sufficient cause from continuing the proceedings, the appellate or revisional authority, as the case may be, may set aside the abatement.(b)The provisions of section 5 of the Limitation Act, 1963 shall apply to an application made under clause (i).(2)The application shall be in Form No. IIIC and shall be verified in the manner specified therein.

8. Payment of fees on interlocutory applications.

(1)Fees at the rates mentioned in section 9 shall be paid on the following interlocutory applications.(a)application for staying the collection of any tax or other amount which is disputed in appeal, revision or other proceedings, as the case may be;(b)application for advancing the hearing of any appeal, revision or other proceedings, as the case may be;(c)application for condonation of delay in filing any appeal, revision or other application, as the case may be.(2)The interlocutory applications mentioned in sub-rule(1) shall be in Form IVA.

8A. Production of authorisation.

- The authorisation referred to in subsection (2) of section 9 shall be in Form II C and it shall bear Court Fee stamp worth Rs. 25 (Rupees twenty five only)

9. Service of Notice.

- If none of the modes for service of notice specified in section 11 is practicable, notice may be served by affixing it in some conspicuous part of the last known place of business or residence of the person.

10. Refund payment order.

- Where refund is to be made, the assessing authority shall issue a refund order in Form V to the party concerned and simultaneously give due intimation to the Treasury Officer concerned regarding the issue of refund order.

11. Set off and Refund.

- On receipt of a claim for refund, the assessing authority shall set off such amount as may be outstanding towards luxury tax or penalty against the claimant and shall effect a refund of the balance amount to the applicant.

12. Proprietor to declare name of Manager.

- Where a Manager is appointed for the management of the Hotel, house boat, hall, auditorium, Kalyanamandapam or place of the like nature, the proprietor shall file a declaration in Form IV.