



## The Maharashtra Tax on Luxuries Act, 1987

Act 41 of 1987

**Keyword(s):**

Business, Commissioner, Eligibility Certificate, Hotelier, Luxury Provided in a Hotel, Person, Place of Business, Tax

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THE MAHARASHTRA TAX ON LUXURIES ACT, 1987

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Amended by Mah.	11 of 1992 (1-5-1992)†
.. .. .	17 of 1993 (1-5-1993)†
.. .. .	32 of 1994 (7-5-1994)†
.. .. .	47 of 1994 (8-12-1994)†
.. .. .	16 of 1995 (1-10-1995)†
.. .. .	19 of 1996 (29-6-1996)†
.. .. .	9 of 1997 (4-9-1996)†
.. .. .	30 of 1997 (15-5-1997)†

**An Act to consolidate and amend the law relating to the levy of tax on luxuries<sup>1</sup> \* \* \* in the State of Maharashtra.**

WHEREAS it is expedient to consolidate and amend the law relating to the levy and collection of tax on luxuries<sup>2</sup> \* \* \* and to provide for matters connected therewith and incidental thereto; It is hereby enacted in the Thirty-eight Year of the Republic of India as follows :—

1. (1) This Act may be called the Maharashtra Tax on Luxuries<sup>3</sup> \* \* \* Act, 1987.

Short title, extent and commencement.

(2) It extends to the whole of the State of Maharashtra.

(3) It shall come into force on such date<sup>4</sup> as the State Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless the context requires otherwise,—

Definitions.

(a) “appointed day” means the day appointed by the State Government under sub-section (3) of section 1;

<sup>5</sup>[(b) “business” includes—

(i) the activity of providing residential accommodation and any other service in connection with or incidental or ancillary to, such activity of providing residential accommodation, by a hotelier for monetary<sup>6</sup>[consideration];

(ii) any supply in a club whether or not incorporated, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given for cash, deferred payment or other valuable consideration;

<sup>7</sup>[(iii) the activity of supplying tobacco;]

whether or not such activity, other services or supply is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such activity, other services or supply;]

<sup>8</sup>[(b-1) “club” includes both an incorporated and unincorporated association of persons, by whatever name called;]

† This indicates the date of commencement of Act.

<sup>1</sup> The words “provided in hotels and lodging houses” were deleted by Mah. 17 of 1993, s. 12.

<sup>2</sup> The words “provided in hotels and lodging houses” were deleted, *ibid.*, s. 13.

<sup>3</sup> The brackets and words “(in Hotels and Lodging Houses)” were deleted, *ibid.*, s. 14.

<sup>4</sup> 1st day of January 1988 *vide* G. N., F. D., No. LTR. 1087/238-N, Taxation-1, dated the 28th December 1987.

<sup>5</sup> Clause (b) was substituted by Mah. 11 of 1992, s. 37(1).

<sup>6</sup> These words were substituted for the words “Considerations and” by Mah. 16 of 1995, s. 54(1)(a).

<sup>7</sup> Sub-clause (iii) was inserted, *ibid.*, s. 54 (1) (b).

<sup>8</sup> Clause (b-1) was substituted by Mah. 17 of 1993, s. 15(2).

(c) "Commissioner" means the person appointed to be the Commissioner of Luxury Tax for the purposes of this Act and includes an Additional Commissioner of Luxury Tax, if any, appointed under section 7;

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<sup>2</sup>[(d-1) "Eligibility Certificate" means a certificate issued by the Maharashtra Tourism Development Corporation under the Package Scheme of Incentives for Tourism, 1993;

(d-2) "Eligible unit" means the unit in respect of which an Eligibility Certificate is issued;]

<sup>3</sup>[(e) "hotel" includes—

(i) a residential accommodation, a club, a lodging house, an inn, a public house or a building or part of a building, where a residential accommodation is provided by way of business; and

(ii) a club where supply is made or given of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) by way of or as part of any service or in any other manner whatsoever, for cash, deferred payment or other valuable consideration by way of business;]

(f) "hotelier" means the owner of the hotel and includes the persons who for the time being is in charge of the management of the hotel;

<sup>4</sup>[(g) "luxury provided in a hotel" means—

(i) accommodation and other services provided in a hotel, the rate or charges for which including the charges for air-conditioning, telephone, television, radio, music, entertainment, extra beds and the like, <sup>5</sup>[exceeds rupees two hundred or more] per person or per member per day; and

(ii) any supply in a club by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration;]

(h) "person" includes any <sup>6</sup>[company, club] or association or body of individuals whether incorporated or not and also a Hindu undivided family, a firm, a local authority, a State Government and the Central Government;

(i) "place of business" includes an office, or any other place which <sup>7</sup>[is used by a persons] for the purposes of his business or where he keeps his books of accounts;

(j) "prescribed" means prescribed by rules made under this Act;

<sup>8</sup>[(k) "receipt",—

(i) in relation to a hotelier means the amount of valuable consideration received or receivable by a hotelier or by his agent for any luxury provided in a hotel; and

(ii) in relation to a tobacconist means,—

(A) in respect of supply of tobacco made by him by way of sale, the amount of valuable consideration received or receivable by him for such sale including any sum charged for anything done by him in respect of the

<sup>1</sup> Clause (d) was deleted by Mah. 24 of 1990, s. 21.

<sup>2</sup> Clause (d-1) and (d-2) were inserted by Mah. 16 of 1995, s. 54 (2), and shall be deemed to have been inserted with effect from the 1st October 1993.

<sup>3</sup> Clause (e) was substituted by Mah. 11 of 1992, s. 37(3).

<sup>4</sup> Clause (g) was substituted *ibid.*, s. 37 (4).

<sup>5</sup> These words were substituted for the words "is rupees five hundred or more" by Mah. 30 of 1997, s. 35, with effect from 15th May 1997.

<sup>6</sup> These words were substituted for the word "Company" *ibid.*, s. 37 (5).

<sup>7</sup> These words were substituted for the words "a hotelier uses" by Mah. 17 of 1993, s. 15 (3).

<sup>8</sup> Clause (k) was substituted by Mah. 16 of 1995, s. 54 (4).

tobacco so sold at the time or before the delivery thereof and the price, if charged separately of any primary or secondary packing, other than the cost of insurance for transit when such cost is separately charged; and

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(B) in respect of supply of tobacco made by him otherwise than by way of sale, the normal price at which such tobacco is sold and the term "normal price" shall have the same meaning as assigned to it in section 4 of the Central Excise and Salt Act, 1944;]

<sup>1</sup>[(I) "registered hotelier" or "registered tobacconist" means a hotelier or, as the case may be, tobacconist, registered under section 8 of this Act;]

(m) "rules" means rules made under this Act;

(n) "State" means the State of Maharashtra;

(o) "tax" means the tax levied on luxuries<sup>2</sup> \* \* \* \*  
under this Act;

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<sup>3</sup>[(O-1) "tobacco" means unmanufactured and manufactured tobacco as described in the Notes and in table in Chapter 24 of the Central Excise Tariff Act, 1985.

*Explanation.*—For the purposes of this clause—

(a) unmanufactured tobacco means unmanufactured tobacco having brand name;

(b) manufactured tobacco does not include Biris;

<sup>4</sup>[(c) unmanufactured and manufactured tobacco does not include *jarda* sold at a price not exceeding Rs. 150 per kilogram and snuff].

(O-2) "tobacconist" means,—

(i) a manufacturer who supplies tobacco whether by way of sale or otherwise, and includes any person who for the purpose of business gets the manufacturing done from any other person, whether or not on job work basis; but does not include any person who manufactures tobacco only on job work basis without obtaining any proprietary right over it at any stage;

(ii) any person who for the purposes of business brings or causes to be brought tobacco in the State or to whom any tobacco is despatched from any place outside the State and who supplies such tobacco whether by way of sale or otherwise;

(iii) any person who supplies tobacco from a place within the State to any place outside the State, whether by way of sale or otherwise;

(iv) any person who does not buy or otherwise obtain unmanufactured tobacco under a brand name but supplies whether by way of sale or otherwise such unmanufactured tobacco in a sealed container under a brand name.

*Explanation.*—For the removal of doubts, it is hereby declared, that,—

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(I) an agriculturist, as defined in the Bombay Sales Tax Act, 1959 who exclusively supplies unmanufactured tobacco grown on land cultivated by him personally whether or not in a sealed container but not under a brand name;

<sup>1</sup> Cause (I) was substituted by Mah. 16 of 1995, s. 54 (5).

<sup>2</sup> The words "provided in a hotel payable" were deleted by Mah. 17 of 1993, s. 15(6).

<sup>3</sup> Clauses (O-1) and (O-2) were inserted by Mah. 16 of 1995, s. 54 (6).

<sup>4</sup> Clause (c) was added by Mah. 9 of 1997, s. 46 with effect from 4-9-1996.

(2) a person who exclusively supplies unmanufactured tobacco whether or not in a sealed container but not under a brand name; and

(3) a person, not being a person referred to in sub-clause (iii), who exclusively obtains tobacco whether by way of purchase or otherwise from a registered tobacconist,

shall not be deemed to be a tobacconist for the purposes of this clause;]

<sup>1</sup>[(p) "turnover of receipts"

(i) in the case of a hotelier means the aggregate of the amounts of valuable consideration received or receivable by a hotelier or by this agent in respect of the luxuries provided in a hotel during a given period; and

(ii) in the case of a tobacconist means the aggregate of the amount of receipts of a tobacconist during a given period in respect of the supply of tobacco whether such supply is by way of sale or otherwise;]

(q) "Year" means—

(i) the financial year; or

(ii) in relation to any particular <sup>2</sup>[registered hotelier or, as the case may be, registered tobacconists] for the purposes of this Act means the year by reference to which the accounts of the <sup>3</sup>[hotelier or tobacconist are ordinarily maintained in his books of accounts.]

Incidence and levy of tax. 3. (1) Subject to the provisions of this Act and the rules made thereunder there shall be levied a tax on the turnover of receipts of a hotelier.

(2) There shall be levied a tax on the turnover of receipts <sup>4</sup>[in respect of luxuries covered by sub-clause (i) of clause (g) of section 2] at the following rates, namely :—

<sup>5</sup>[(a) Where the charge for luxury provided in a hotel is less than <sup>6</sup>[two hundred rupees] per day per person. Nil.

(b) Where the charge for luxury provided in a hotel exceeds <sup>7</sup>[two hundred rupees] per day per person but does not exceed twelve hundred rupees per day per person. 4 per centum of such turnover of receipts.

(c) Where the charge for luxury provided in a hotel exceeds twelve hundred rupees per day per person. 10 per centum of such turnover of receipts.]

Provided that, where the charges are levied otherwise than on daily basis or per person then the charges for determining the tax liability under this section shall be computed proportionately for a day and per person based on the total period of

<sup>1</sup> Clause (p) was substituted, by Mah. 16 of 1995, s. 54(7).

<sup>2</sup> These words were substituted for the words "registered hotelier" by Mah. 16 of 1995 s. 54 (8)(i).

<sup>3</sup> These words were substituted for the words "hotelier are" *ibid.* s. 54 (8)(ii).

<sup>4</sup> These words, brackets, letter and figures were inserted by Mah. 11 of 1992 s. 38(1).

<sup>5</sup> Clauses (a), (b) and (c) were substituted for the clauses (a), (b), (c) and (d) by Mah. 16 of 1995 s. 55.

<sup>6</sup> These words were substituted for the words "less than five hundred rupees" by Mah. 30 of 1997 s. 36 with effect from 15th May 1997.

<sup>7</sup> These words were substituted for the words "five hundred rupees" *ibid.* s. 36 with effect from 15th May 1997.

occupation of the accommodation for which the charges are made and the number of person actually occupying or permitted to occupy according to the rules or practice of the hotel.

<sup>1</sup>[(2A) There shall be levied a tax at the rate of twelve per cent. on the turnover of receipts in respect of luxuries covered by sub-clause (ii) of clause (g) of section 2.]

(3) Where, in addition to the charges for luxury provided in a hotel service charges are levied and appropriated by the hotelier and not paid to the staff, then such charges shall be deemed to be part of the charges for luxury provided in the hotel.

<sup>2</sup>[\* \* \* \* \*]

(5) Where luxury provided in a hotel for a specified number of persons is shared by more than the number specified, then, unless the additional person is a child occupying the room along with his parent or guardian and no separate charges is recovered for the child, in addition to the tax levied for luxury provided to the specified number of persons, there shall be levied and recovered separately the tax in respect of the charges made for the extra persons accommodated.

*Explanation.*—For the purpose of this sub-section, “child” means a person who has not completed twelve years of age.

(6) The tax shall not be levied and payable in respect of the turnover of receipts for supply of food and drinks, on the sale of which the hotelier <sup>3</sup>[has already paid the] tax under the Bombay Sales Tax Act, 1959.

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(7) For the purpose of this Act, tax collected separately by the hotelier shall not be considered to be part of the receipt of the turnover of receipts of the hotelier.

Mah. XVI of 1995. <sup>4</sup>[3A. (1) On or after the commencement of the Maharashtra Tax Laws (Levy Incidence of and Amendment) Act, 1995 (hereinafter referred to as the “commencement date”), tax on every tobacconist whose turnover of receipts made during,— tobacconists.

(i) the year ending on the 31st March 1995; or

(ii) the year commencing on the 1st April 1995, has exceeded Rs. 50,000 during such year, shall, until such liability ceases under sub-section (3), be liable to pay tax on his turnover of receipts :

Provided that, a tobacconist to whom sub-clause (i) does not apply but sub-clause (ii) applies and whose turnover of receipts first exceeds Rs. 50,000 after the commencement date shall not be liable to pay tax in respect of receipts upto the time when his turnover of receipts as computed from the 1st day of April 1995 does not exceed Rs. 50,000.

(2) Every tobacconist whose turnover of receipts during any year commencing on the 1st April, being a year subsequent to the years mentioned in sub-section (1), first exceeds Rs. 50,000, shall until such liability ceases under sub-section (3), be liable to pay tax under this Act with effect from the said date :

Provided that, a tobacconist shall not be liable to pay tax in respect of the turnover of receipts during the period commencing on the 1st April of the said year upon the time when his turnover of receipts as computed from the 1st April of the said year does not exceed Rs. 50,000.

<sup>1</sup> Sub-section (2A) was inserted by Mah. 11 of 1992 s. 38(2).

<sup>2</sup> Sub-section (4) was deleted by Mah. 24 of 1990 s. 22(b).

<sup>3</sup> These words were substituted for the words “is liable to pay sales” by Mah.

<sup>4</sup> Sections 3A, 3B, and 3C were inserted by Mah. 16 of 1995, s. 56.



(3) Every tobacconist who has become liable to pay tax under this Act shall continue to be so liable until his registration is duly cancelled; and upon such cancellation, his liability to pay tax, other than tax already levied or leviable shall, until his turnover of receipts against first exceeds Rs. 50,000, cease :

Provided that, where the tobacconist becomes liable to pay tax again in the same year in which he ceased to be liable as aforesaid, then in respect of the turnover of receipts during the period commencing on the date of cessation of liability to tax and ending on the date on which his turnover of receipts does not exceed Rs. 50,000 no tax shall be payable.

**3B.** (1) Subject to the provisions of this Act and the rules made thereunder, there shall be levied a tax on the turnover of receipts of a tobacconist.

Levy of  
Luxury Tax  
on a  
tobacconist.

(2) There shall be levied a tax on the turnover of receipts of a tobacconist at the rate of five *paise* in the rupee, but after deducting from such turnover, receipts in respect of which the tobacconist proves to the satisfaction of the Commissioner that,—

(a) tax on the very tobacco supplied by him whether by way of sale or otherwise has already been paid by any other person and in support hereof produces a proof of such payment;

(b) the tobacco has been supplied by way of inter-State consignment to another State, whether the consignment is to himself or to any other person and further in support of such claim, produces on demand a certificate as may be prescribed; and

(c) the tobacco has been supplied by way of sale in the course of inter-State trade or commerce or in the course of export outside the territory of India and in support thereof produces a proof of such sale or export.

(3) For the purposes of sub-section (2), a sale shall be deemed to have taken place—

(a) in the course of inter-State trade, if such sale has occasioned the movement of tobacco from Maharashtra to any other State; and

(b) in the course of export outside the territory of India if the sale occasions such export.

**3C.** The provisions contained in sub-section (7) of section 3 and sections 8, 9 Application of certain sections to tobacconist.  
21, 23, 24, 26 to 30, 32 to 34, 36, 37 and 43 shall *mutatis mutandis* apply to a tobacconist as they apply to a hotelier.]

**4.** (1) Subject to the provisions of this Act and the rules made thereunder, there shall be paid by every hotelier <sup>2</sup>[and every tobacconist] who is liable to pay tax under this Act, tax or taxes leviable in accordance with the provisions of this Act.

liability of  
hotelier <sup>2</sup>[and  
tobacconist]  
pay tax.

(2) If a person other than the owner (including part-owner) is for the time being in charge of the <sup>2</sup>[business], then such person and the owner (including part-owner) shall jointly and severally be liable to pay the tax.

**5.** Where a <sup>4</sup>[business] is owned, managed or run by a firm, then the firm and each of the partners of the firm shall be jointly and severally liable for payment of tax :

Liability of  
Firms as  
hoteliers  
<sup>3</sup>[and  
tobacconist]

<sup>1</sup> These words were inserted by Mah. 16 of 1995, s. 57 (1).

<sup>2</sup> This word was substituted for the word " hotel " by Mah. 17 of 1993, s. 17 (1)(b).

<sup>3</sup> These words were inserted by Mah. 16 of 1995, s. 57 (2).

<sup>4</sup> This words was substituted for the word " hotel " by Mah. 17 of 1993, s. 18(1).

<sup>5</sup> The words " and tobacconist " were inserted by Mah. 16 of 1995, s. 58.

Provided that, where any partner retires from the firm, he shall be liable to pay the tax, penalty and the interest, if any, remaining unpaid at the time of his retirement and any tax due upto the date of his retirement, even if assessment of tax or levy of penalty and interest (if any) is made at a later date.

Special provisions regarding liability to pay tax including any penalty or interest in certain cases.

6. (1) Where a hotelier, liable to pay tax under this Act, dies, then—

(a) If the business carried on by the hotelier is continued after his death by his legal representative or any other person, such legal representative or other person shall be liable to pay the tax including any penalty or interest due from such hotelier under this Act in the like manner and to the same extent as the deceased hotelier; or

(b) if the business carried on by the hotelier is discontinued whether before or after his death, his legal representative shall be liable to pay out of the estate of the deceased in the like manner and to the same extent as the deceased hotelier would have been liable to pay if he had not died, the tax (including any penalty or interest) due from such hotelier under this Act whether such tax (including any penalty or interest) has been assessed before his death but has remained unpaid or is assessed after his death.

*Explanation.*—For the purpose of this sub-section, the expression “legal representative” has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908.

(2) Where a hotelier liable to pay tax under this Act is a Hindu undivided family and the joint family property is partitioned amongst the various members or group of members, then each member or group of members shall be jointly and severally liable to pay the tax (including any penalty or interest) due from the hotelier under this Act upto the time of partition whether such tax (including any penalty or interest) has been assessed before partition but has remained unpaid or is assessed after partition.

(3) Where a hotelier, liable to pay tax under this Act is a firm and the firm is dissolved, then every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable under section 5, the tax (including any penalty or interest) due from the firm under this Act upto the time of dissolution, whether such tax (including any penalty or interest) has been assessed before such dissolution but has remained unpaid or is assessed after dissolution.

(4) Where a hotelier, liable to pay tax under this Act, transfers or otherwise, disposes of his business in whole or in part or effects any change in the ownership thereof, in consequence of which he is succeeded in the business or part thereof by any other person, then the hotelier and the person succeeding shall jointly and severally be liable to pay the tax (including any penalty or interest) due from the hotelier under this Act upto the time of such transfer, disposal or change, whether such tax (including any penalty or interest) has been assessed before such transfer, disposal or change but has remained unpaid, or is assessed thereafter.

(5) Where a hotelier, liable to pay tax under this Act,—

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian, or

(b) is a trustee who carries on the business under a trust for a beneficiary, then, if the guardianship or trust is terminated, the ward or, as the case may be, the beneficiary shall be liable to pay the tax (including any penalty or interest) due from the hotelier upto the time of termination of the guardianship or trust, whether such tax (including any penalty or interest) has been assessed before the termination of the guardianship or trust, but has remained unpaid, or is assessed thereafter.

(6) Where a hotelier, liable to pay tax under this Act, is succeeded in the business by any person in the manner described in clause (a) of sub-section (1) or in sub-section (4), then such person, unless he already holds a certificate of registration, shall, within 30 days thereof, apply for registration.

7. (1) (a) For carrying out the purposes of this Act, the State Government shall appoint an officer to be the Commissioner of Luxury Tax for the whole of the State of Maharashtra. Authorities under the Act.

(b) The State Government may appoint,—

(i) one or more officers to be the Additional Commissioner of Luxury Tax, and

(ii) such number of Deputy Commissioner of Luxury Tax, Assistant Commissioners of Luxury Tax and Luxury Tax Officers and other officers and persons (with such designations) as it thinks necessary.

(2) An officer appointed under sub-clause (i) or (ii) of clause (b) of sub-section (1) shall, within the limits of such areas as the State Government may specify, by notification in the *Official Gazette*, to be within his jurisdiction, exercise such powers and perform such duties of the Commissioner as the State Government may specify in such notification.

(3) The superintendence and control for the proper execution of the provisions of this Act and the rules made thereunder relating to the levy and collection of the tax shall vest in the Commissioner.

8. <sup>1</sup>(1) No hotelier or tobacconist liable to pay tax under this Act shall conduct or cause to be conducted business unless he possesses a valid certificate of registration as provided by this Act : Registration.

Provided that, it shall be lawful for the hotelier or, as the case may be, tobacconist to conduct or cause to conduct business if the hotelier or the tobacconist has applied for registration as provided by this Act.

(2) Every hotelier and every tobacconist required to possess a certificate of registration shall apply to the Commissioner within thirty days from the date on which the hotelier or, as the case may be, tobacconist first becomes liable to pay tax.]

(3) If the Commissioner after such inquiry as he deems fit, is satisfied that an application for registration is in order, he shall register the applicant and issue to him a certificate of registration in the prescribed form.

(4) The Commissioner may, after considering any information furnished or otherwise called for or received under any provisions of this Act, amend from time to time the certificate of registration.

(5) Where a registered hotelier <sup>2</sup>[or tobacconist] discontinues, transfers or otherwise disposes of his activity of providing accommodation by way of business or where he ceases to be liable to pay the tax and he applies in the prescribed form to the Commissioner shall, after making such inquiry as may be necessary, cancel the certificate of registration with effect from such date as he may fix in accordance with the rules.

<sup>1</sup> Sub-sections (1) and (2) were substituted by Mah. 16 of 1995, s. 59 (1).

<sup>2</sup> The words " or tobacconist " were inserted, *ibid.*, s. 59 (2).

[(6) Where the Commissioner is satisfied that any registered hotelier or, as the case may be, registered tobacconist has discontinued, transferred or otherwise disposed of his business and has failed to apply under sub-section (5) for cancellation of certificate of registration, the Commissioner may, after giving such hotelier or tobacconist a reasonable opportunity of being heard, cancel the certificate or registration with effect from such date as he may fix to be the date from which the said activity has been discontinued, transferred or otherwise disposed of :

Provided that, the cancellation of certificate of registration whether on an application of the hotelier or tobacconist or otherwise shall not affect the liability of such hotelier or tobacconist to pay the tax (including any penalty or interest) due for any period upto the date of cancellation whether such tax (including any penalty or interest) is assessed before or after the date of cancellation.]

**Non-transferability of registration certificate.** 9. Save as otherwise provided in section 11, a certificate of registration shall be personal to the hotelier to whom it is granted and shall not be transferable.

**Information to be furnished regarding changes in business, etc.**

10. (1) If a hotelier liable to pay tax under this Act,—

(a) sell or otherwise disposes of his business or any part thereof, or effects or makes any other change to his knowledge in the ownership of the business, or

(b) discontinues his business, or changes the place thereof or opens a new place of business, or

(c) changes the name or nature of his business, or

(d) enters into a partnership or other association in regard to his business he shall, within the prescribed time, inform the prescribed authority accordingly.

(2) Where any such hotelier dies his executor, administrator or other legal representative or where any such hotelier is a firm and there is a change in the constitution of the firm or the firm is dissolved, every person who was a partner thereof, shall, in like manner, inform the said authority of such death, change in the constitution or, as the case may be, dissolution.

**Certificate of registration to continue in certain circumstances.**

11. Where a registered hotelier—

(a) effects change in the name of his business, or

(b) is a firm, and there is a change in the constitution of the firm without dissolution thereof, or

(c) is a trustee of a trust, and there is change in the trustees thereof, or

(d) is a guardian of a ward, and there is change in the guardian, then merely by reason of any of the circumstances aforesaid, it shall not be necessary for the hotelier, or the firm with the changed constitution, or the new trustees, or new guardian, to apply for a fresh certificate of registration and on information being furnished in the manner required by section 10, the certificate or registration shall be amended.

**Returns.** 12. (1) Every registered hotelier shall furnish returns for such period, by such dates, and to such authority, as may be prescribed:

Provided that, the Commissioner may, subject to such terms and conditions as may be prescribed, exempt any such hotelier from furnishing such returns or permit any such hotelier,—

(a) to furnish them for such different period, or

<sup>1</sup> Sub-section (6) was substituted, by Mah. 16 of 1995 s. 59 (3).

(b) to furnish a consolidated return relating to all or any of the places of business of the hotelier in the State for the said period, or for such different period to such authority, as he may direct.

(2) If any hotelier, having furnished return under sub-section (1), discovers any omission or incorrect statement therein, he may furnish a revised return before the expiry of three months next following the last date prescribed for furnishing the original return.

13. (1) The amount of tax due from a hotelier liable to pay tax shall be assessed separately for each year during which he is so liable : Assessment  
of tax.

Provided that the Commissioner may, subject to such conditions as may be prescribed, assess the tax due from any hotelier during a part of a year.

(2) If the Commissioner is satisfied that the returns furnished by a registered hotelier in respect of any period are correct and complete he shall assess the amount of tax due from the hotelier on the basis of such returns.

(3) If the Commissioner is not satisfied that the returns furnished by a registered hotelier in respect of any period are correct and complete, and he thinks it necessary to require the presence of the hotelier or the production of further evidence, he shall serve on such hotelier a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all evidence on which such hotelier relies in support of his returns, or to produce such evidence as is specified in the notice. On the date specified in the notice, or as soon as may be.

Provided that, the amount of tax or penalty or interest of all of them due from, and payable by, the hotelier on the date of such adjustment shall first be deducted from such refund before making adjustment.

[23A. The State Government may by rules provide for refund of tax to a Refund of tax. tobaccoist when any tobacco has been exported out of India, or sold in the course of inter-State trade or, as the case may be, consigned by a tobaccoist by way of inter-State consignment to any place outside the State, whether such consignment is to himself or to any other person.]

24. (1) Where an amount required to be refunded by the Commissioner to any person by virtue of an order issued under this Act is not so refunded to him within ninety days of the date of the order, the State Government shall pay such person simple interest at nine per cent per annum on the said amount from the date immediately following the expiry of the period of ninety days to the date of the refund. Interest on delayed refunds.

*Explanation.*—If the delay in granting the refund within the period of ninety days aforesaid is attributable to the hotelier, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

(2) Where any question arises as to the period to be excluded for the purpose of calculation of interest under the provisions of this section, such question shall be determined by the Commissioner, whose decision shall be final.

25. (1) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the authority competent to grant such refund is of the opinion that the grant of the refund is likely to adversely affect the revenue, such authority may, with the previous approval of the Commissioner, withhold the refund till such time as the Commissioner may determine. Powers to withhold refund in certain cases.

(2) Where a refund is withheld under sub-section (1), the State Government shall pay interest in accordance with the provisions of section 24 on the amount of refund ultimately determined to be due to the person as a result of the appeal or further proceeding, for the period from the date immediately following the expiry of ninety days from the date of the order referred to in sub-section (1) to the date of refund.

26. The Commissioner may, in such circumstances and subject to such condition as may be prescribed, remit the whole or any part of the tax payable, in respect of any period, by any hotelier : Remission of tax.

Provided that, if the amount to be remitted exceeds two thousand rupees, the remission of the excess shall not be made without the previous sanction of the State Government.

27. (1) No person shall collect any sum by way of tax in respect of his business to the extent that he is not liable to pay it under the Act. Prohibition against collection of tax in certain cases.

(2) No person, who is not a registered [hotelier or tobaccoist and liable to pay tax in respect of his business shall collect any sum by way of tax from any other person and no registered hotelier or tobaccoist] shall collect any amount by way of tax in excess of the amount of tax payable by him under the provisions of this Act :

<sup>1</sup> Section 23A was inserted by Mah. 16 of 1995, s. 60.

<sup>2</sup> These words were substituted for the words "hotelier and liable to pay tax in respect of luxury provided in any hotel shall collect any sum by way of tax from any other person and no registered hotelier", *ibid.*, s. 61.

Provided that, this sub-section shall not apply where a person is required to collect such amount of the tax separately in order to comply with the conditions and restrictions imposed on him under the provisions of any law for the time being in force.

**Bill or cash memorandum to be issued to customer.** 28. A registered hotelier shall issue to the customer or customers a bill or cash memorandum serially numbered, signed and dated by him or his servant manager or agent and showing therein such other particulars as may be prescribed. He shall keep a counterfoil or duplicate of such bill or cash memorandum duly signed and dated, and preserve it for a period of not less than five years from the date of the transaction.

**Accounts.** 29. (1) Every hotelier liable to pay tax under this Act, and every hotelier who is required so to do by the Commissioner by notice served on him in the prescribed manner, shall keep a true account of the luxury provided by him in the hotel.

(2) If the Commissioner considers that the accounts kept are not sufficiently clear or intelligible to enable him to determine whether or not a hotelier is liable to tax during any period, or are so kept as not to enable a proper scrutiny of the returns or the statement furnished, the Commissioner may require such hotelier by notice in writing to keep such accounts in such form or manner as in his opinion is necessary for the purpose of proper assessment and as he may, subject to anything that may be prescribed in that behalf, in writing direct.

(3) The Commissioner may, subject to such conditions or restrictions as may be prescribed in this behalf, by notice in writing direct any hotelier, or by notification in the *Official Gazette*, direct any class of hoteliers to maintain accounts and records showing such particulars regarding their business in such form, and in such manner, as may be specified by him.

(4) Every registered hotelier shall ordinarily keep all his accounts, registers and documents relating to his business at the place or places of business specified in his certificate of registration or, with the previous approval of the Commissioner, at such other place as may be approved by the Commissioner.

**Production and inspection of accounts and documents and search of premises.** 30. (1) The Commissioner may, subject to such conditions as may be prescribed, require any hotelier to produce before him any accounts or documents, or to furnish any information, relating to his business, or any other information as may be necessary for the purposes of this Act.

(2) All accounts, registers and documents relating to the business of any hotelier and cash kept in any place of business of any hotelier, shall at all reasonable time be open to inspection by the Commissioner, and the Commissioner or any person authorised by him may take or cause to be taken such copies or extracts of the said accounts, registers or documents and such inventory of cash found as appear to him necessary for the purposes of this Act.

(3) If the Commissioner has reason to believe that any hotelier has evaded or is attempting to evade the payment of any tax due from him he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the hotelier as may be necessary, and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceeding under this Act or for prosecution.

(4) For the purposes of sub-section (2) or sub-section (3), the Commissioner may enter and search any place of business of any hotelier, or any other place where the Commissioner has reason to believe that the hotelier keeps or is for the time being keeping any account, registers or documents of his business.

(5) Where any books of accounts, other documents or money are found in the possession or control of any person in the course of search, it shall be presumed, unless the contrary is proved, that such books of accounts, other documents or money belong to such person.

31. Every hotelier <sup>1</sup>[and tobacconist] who is liable to pay tax, and who is a Hindu undivided family or an association or club or society or firm or company, or who <sup>2</sup> carries on business as the guardian or trustee or otherwise on behalf another person shall within the period prescribed, send to the authority prescribed, a declaration in the manner prescribed stating the name of the person or persons who is the owner or who are the owners of the hotel. Such declaration may be revised from time to time.

32. (1) If the State Government considers that for the purposes of the better administration of this Act, it is necessary so to do, it may, by notification in the *Official Gazette*, direct that statistics be collected relating to any matter dealt with by or under this Act.

(2) Upon such direction being made, the State Government or any person or persons authorised by it in this behalf may, by notification in the *Official Gazette*, and by notice in any newspaper or in such other manner as in its or his opinion is best calculated to bring the notice to the attention of hoteliers, call upon all hoteliers or any class of hoteliers to furnish such information or returns as may be stated therein relating to any matter in respect of which statistics are to be collected. The form in which, the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be such as may be prescribed.

33. (1) If any question arises, otherwise than in proceeding before a Court, or before the Commissioner has commenced assessment or reassessment of a hotelier under section 13 or 15 about, the interpretation or the scope of any provisions of this Act, the Commissioner shall make an order determining such question.

*Explanation.*—For the purposes of this sub-section, the Commissioner shall be deemed to have commenced assessment or reassessment of a hotelier, when the hotelier is served with a notice under section 13 or 15, as the case may be.

(2) The Commissioner may direct that the determination shall not effect the liability of any person under this Act, as respects the period prior to the determination.

(3) If any such question arises from any order already passed under this Act, no such question shall be entertained for determination under this section, but such question may be raised in appeal against or by way of revision of such order.

34. (1) In discharging his functions by or under this Act, the Commissioner shall have all the powers of a Civil Court for the purpose of—

- (a) proof of facts by affidavit;
- (b) summoning and enforcing the attendance of any person, and examining him on oath or affirmation;
- (c) compelling the production of documents; and
- (d) issuing commissions for the examination of witnesses.

(2) In the case of any affidavit to be made for the purposes of this Act, any officer appointed by the Commissioner may administer the oath to the deponent.

<sup>1</sup>The words " and tobacconist " were inserted by Mah. 16 of 1995, s. 62(1).

<sup>2</sup>The words " and tobacconist " were inserted, *ibid.*, s. 62(2).



(3) Without prejudice to the provisions of any other law for the time being in forc., where a person, to whom a summons is issued by the Commissioner either to attend to give evidence or produce books of accounts, registers or other documents at a certain place and time, intentionally omits to attend or produce the documents at the place and time, the Commissioner may impose on him such fine not exceeding five hundred rupees as he thinks fit; and the fine so levied may be recovered in the manner provided in this Act for recovery of arrears of tax :

Provided that, before imposing any such fine, the person concerned shall be given a reasonable opportunity of being heard.

(4) If any documents are produced by a person on whom a summons was issued by the Commissioner, and the Commissioner has reason to believe that any hotelier has evaded or is attempting to evade the payment of any tax due from him and the documents produced are necessary for establishing the case against such hotelier, the Commissioner may, for reasons to be recorded in writing, impound the documents and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with the proceeding under this Act, or for a prosecution.

**Bar to certain proceedings.** 35. Save as is provided elsewhere in this Act, no assessment made and no order passed under this Act or the rules made thereunder by the Commissioner or any officer or person subordinate to him shall be called in question in any Court, and save as is provided by section 36 no appeal shall lie against any such assessment or order.

**Appeals.** 36. (1) An appeal from every original order, not being an order mentioned in section 37, passed under this Act or the rules made thereunder, shall lie—

(a) if the order is made by a Luxury Tax Officer, or any other officer subordinate to him, to the Assistant Commissioner;

(b) If the order is made by an Assistant Commissioner, to the Deputy Commissioner;

(c) if the order is made by a Deputy Commissioner, to the Additional Commissioner or Commissioner.

(2) In the case of an order passed in appeal by an Assistant Commissioner or by a Deputy Commissioner, a second appeal shall lie to the Commissioner.

(3) Every order passed in appeal under this section, shall, subject to the provisions of sections 38 and 41, be final.

(4) Subject to the provisions of section 40, no appeal shall be entertained unless it is filed within sixty days from the date of the communication of the order appealed against.

(5) No appeal against an order of assessment with or without interest or penalty, or against an order levying an interest or penalty or both or against an order directing the forfeiture of any tax collected by a hotelier, shall ordinarily be entertained by an appellate authority, unless such appeal is accompanied by satisfactory proof of the payment of the tax with or without interest or penalty or both or, as the case may be, of the payment of the interest or penalty or both and the amount forfeited, in respect of which the appeal has been preferred :

Provided that, an appellate authority may if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order—

(a) without payment of the tax with interest or penalty (if any), or as the case may be, of the interest or penalty or both and of the sum forfeited, on the appellant furnishing in the prescribed manner security for such amount as it may direct, or

(b) on proof of payment of such smaller sum, with or without security for such amount of tax, interest or penalty or sum forfeited which remains unpaid, as it may direct.

(6) Subject to such rules of procedure as may be prescribed, every appellate authority (both in the first appeal and the second appeal) shall have the following power :—

(a) in an appeal against an order of assessment, it may confirm, reduce, enhance or annul the assessment; or it may set aside the assessment and refer the case

(6) The Commissioner may, at any time *suo motu* or on an application made to him in this behalf, revoke any order made against any person under sub-section (2) and thereupon such person shall cease to be disqualified.

49. The Commissioner and all officers and persons appointed under section 7 Persons appointed under section 7 to be public servants.  
 XLV shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.  
 1860.

50. No suit, prosecution or other legal proceedings shall lie against any servant of the Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder. Indemnity.

51. [(1) The power to make rules under this Act shall be exercisable by the State Government by notification in the *Official Gazette*. Power to make rules.

(2) Without prejudice to any power to make rules contained elsewhere in this Act, the State Government may make rules generally to carry out the purposes of this Act; and such rules may include rules for levy of fees for any of the purposes of this Act.]

(3) In making any rules the State Government may direct that a breach thereof shall be punishable with fine not exceeding two thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the continuance of the offence.

(4) Rules made under this section shall be subject to the condition of previous publication :

Provided that, if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this section.

(5) Every rule made under this section shall be laid as soon as may be after it is made before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the *Official Gazette*, the rule shall, from the date of publication of such notification 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 or omitted to be done under that rule.

Mah. 52. The Maharashtra Tax on Luxuries (in Hotels and Lodging Houses) Act, Repeal of  
 XXI 1974 is hereby repealed. Mah. XXI  
 of of 1974.  
 1974.

53. (1) Notwithstanding the repeal by section 52, the law referred to therein and all rules, regulations, orders, notifications, forms and notices issued under that law and in force immediately before the appointed day shall continue to have effect for the purposes of the levy, assessment, collection, refund of any tax, or the imposition of any penalty, which levy, assessment, collection, refund or penalty relates to any period before the appointed day, or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid. Savings.

<sup>1</sup> Sub-sections (1) and (2) were substituted by Mah. 17 of 1993, s. 24.

(2) Without prejudice to the provisions contained in the foregoing sub-section Bom. and subject thereto, section 7 of the Bombay General Clauses Act, 1904, shall apply I of in relation to the repeal of the law referred to in section 52 as if the law so repealed 1904. had been an enactment within the meaning of section 7 of that Act.

4(3) Any reference in any provision of the repealed Maharashtra Tax on Luxuries Mah. (in Hotels and Lodging Houses) Act, 1974 to any officer, authority or tribunal, shall XXI for the purpose of carrying into effect the provisions contained in this section, be 1974. construed as a reference to the corresponding officer, authority or tribunal appointed or constituted by or under this Act, and if any question arises as to who such corresponding officer, authority or tribunal is, the decision of the State Government thereon shall be final. For the purpose of recovery of tax including penalty under the said repealed Act, the said officer, authority or tribunal may exercise all or any of the power relating to recovery and special mode of recovery under this Act as if the tax payable under the said repealed Act is the tax payable under this Act.]

54. If any difficulty arises in giving effect to the provisions of this Act, the State Removal of Government may, by order published in the *Official Gazette*, make such provision difficulties. or give such direction as appears to it to be necessary for removing the difficulty :

Provided that, no such order shall be made by the State Government after the expiry of a period of two years from the appointed day.

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<sup>1</sup> Sub-section (3) was substituted by Mah. 30 of 1997, s. 37.