

Jharkhand Taxation on Luxuries in Hotels Act, 2011

(Jharkhand Act No. 21, 2011)

[30th September, 2011]

BE it enacted by the Legislature of the State of Jharkhand, In the Sixty Two year of the Republic of India as follows:-

1. Short title, extent and commencement. – (1) This Act may be called the Jharkhand Taxation on Luxuries in Hotel Act, 2011.

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

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

2. Definitions. – In this Act unless there is anything repugnant to the subject or context. –

(a) ‘Assistant Commissioner’ means an Assistant Commissioner of Commercial Taxes appointed under sub-section (2) of section 4 of the Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 05, 2006).

(b) ‘Authority’ means an Authority referred in the rules made under this Act;

(c) ‘Commissioner’ means the Commissioner of Commercial Taxes appointed under sub-section (2) of section 4 of the Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 05, 2006) and includes Additional Commissioner of Commercial Taxes.

(d) ‘Commercial Taxes Officer’ means a Commercial Taxes Officer appointed under sub-section (2) of section 4 of the Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 05, 2006);

(e) ‘Deputy Commissioner’ means a Deputy Commissioner of Commercial Taxes appointed under sub-section (2) of section 4 of the Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 05, 2006);

(f) ‘Hotel’ includes a boarding house, a lodging house, a banquet hall, a marriage hall or a house or a restaurant or any other hall or club or societies or building including any such premises / field / courtyard attached or annexed to; whether open or otherwise, where any room(s) or such place is provided with luxuries therein, to any person on rent or otherwise;

(g) ‘Joint Commissioner’ means a Joint Commissioner of Commercial Taxes appointed under sub-section (2) of section 4 of the Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 05, 2006);

(h) 'Luxuries' means such amenities as are provided in a Hotel to the occupants or hirer of such rooms or suite of rooms or otherwise therein as to carry a rent of rupees two hundred or more per day or part thereof;

(i) 'Month' means a calendar month or part thereof;

(j) "Person" includes:-

- (i) an Individual;
- (ii) a Joint Family;
- (iii) a Company;
- (iv) a Firm;
- (v) an association of persons or a body of individuals; whether incorporated or not and includes persons incharge of a club or society or co-operative societies;
- (vi) the Central Government or the Government of Jharkhand or the Government of any other State or Union Territory in India;
- (vii) a local Authority or any Authority established under any law;

(k) 'Prescribed' means prescribed by rules made under this Act ;

(l) 'Proprietor' in relation to a hotel includes a person who is the owner or for the time being is incharge of its management; whether by any agreement or otherwise.

(m) 'Quarter' means the quarter ending on the 30th June, 30th September, 31st December and 31st March;

(n) 'Rent' means the aggregate of all charges, by whatever name called, realized from the occupier / hirer of a room in a hotel and includes lodging, boarding or service charges or any other sum charged by the proprietor or all or any of them;

Explanation 1- Where the rate of rent of a room is not charged for occupation alone, and boarding and service charged are included therein then the actual sum realized for each day, or part thereof (excluding any sum paid for food or drinks) and charges for service and any entertainment and like shall be aggregated and the total shall be deemed to be the rent.

Explanation 2 – Where charges are levied otherwise than on daily basis, then the charges shall be computed as for a day based on the period of occupation of the room for which charges are made.

(o) 'Room' includes a suite of rooms, a banquet hall, a marriage hall or house or any other hall or building including any such premises whether open or otherwise or as defined in clause (f) of this section, which is ordinarily hired out as one unit or otherwise;

(p) 'Tax' means the tax levied under this Act ;

(q) 'Tribunal' means the Tribunal constituted under section 3 of the Jharkhand Value Added Tax Act, 2005 (Jharkhand Act 05, 2006);

(r) 'Year' means a financial year.

3. **Levy of Tax.** – (1) There shall be levied and paid to the State Government a tax on Hotels by the proprietor (s) on the rent, exceeding Rs. 200 per day or part thereof, for a room or suite of rooms provided with luxuries in a hotel at the rate(s), as specified in the schedule appended to this Act.

(2) Notwithstanding anything contained in sub-section (1), the State Government by a notification may amend, alter, add, increase or decrease any rate(s) as specified in the schedule.

Explanation – ‘Day’ for the purpose of this Act shall mean a calendar day, beginning at midnight and part thereof.

4. **Compounding of Tax** – Notwithstanding anything contained in Section 3 of this Act, the State Government may, subject to such conditions and restrictions as it may specify, by a notification, permit the proprietor of a hotel or class or description of hotels to pay in lieu of tax payable under Section 3, a lump sum amount by way of compounding of tax.

5. **Collection of tax by the proprietor.** – Every proprietor liable to pay tax under Section 3 shall collect along with rent, the amount of tax payable under the said section, from the person to whom a room along with luxuries is provided by him.

6. **Registration.** – Every proprietor, who is liable to pay tax under section 3 shall apply for a certificate of registration in the prescribed manner within a month of coming into effect of this Act or within one month from the date he starts providing room along with luxuries in the hotel,

7. **Returns.** – (1) Every proprietor liable to pay tax under this Act, shall submit a return for every quarter by the twenty fifth day of the month following the quarter in the manner prescribed.

(2) If any proprietor having furnished, returns, under sub-section (1) discovers any omission or error in the returns so filed, he may furnish a revised return without prejudice to Section 12 and 13 before the expiry of the year.

8. **Payment of Tax.** – (1) The amount of tax payable under Section 3 and Section 4 for which return or revised return has been furnished under section 7 shall be paid by the proprietor to the State Government by the 15th day of the month following for every month and differential amount as per revised return furnished by the end of the related year into the Government Treasury in such manner as may be prescribed.

9. **Assessment of Tax** – (1) Assessment of the tax payable by a proprietor shall be made after examining the accounts or registers and other evidences as the prescribed authority may require.

(2) In case a proprietor does not furnish any return or fails to produce accounts for assessment as required under sub-section (1), the prescribed authority may, after giving the proprietor a reasonable opportunity of being heard, assess the amount of tax payable by such proprietor, to the best of his judgment.

- (3) If the prescribed authority, upon information which has come into his possession, is satisfied that the proprietor has been liable to pay tax under this Act in respect of any period, and has nevertheless failed to apply for registration under section 6 or having so applied failed to comply with any requirement for registration within a reasonable time and for which his application for registration has been rejected such prescribed authority shall, after giving the proprietor an opportunity of being heard, assess the amount of tax to the best of his judgment in respect of such period and shall also impose a penalty which shall be equal to the amount of tax so assessed.
- 10. Extension of period** – The prescribed authority may for the reasons to be recorded in writing extend the date for either filing the return under Section 7 or payment of tax under section 8 or for payment of the assessed tax for a period not exceeding twenty days from the due date.
- 11. Liability in case of default.** – In the circumstance if any proprietor either fails to file return under section 7 or to pay the tax under section 8 or pay the amount of tax assessed or penalty imposed under section 9 within the due or extended date he shall be liable to pay, by way of penalty a sum calculated at the rate not exceeding Rs. twenty for every day of default or an interest at the rate of two and half percentum of the amount of tax due for every month or part thereof whichever is higher.
- 12. Escaped amount of rent detected before assessment:-** (1) If the prescribed authority, in course of any proceeding or otherwise is satisfied that any proprietor:-
- (a) has concealed any amount of rent or particulars thereof with a view to reduce amount of tax payable by him under this Act ; or
 - (b) has furnished incorrect statement of rent in the return furnished under sub-section (1) and (2) of section 7;
- the prescribed authority shall, after giving such proprietor an opportunity of being heard, by an order in writing, direct that he shall in addition to any tax which is or may be assessed under section 9, pay by way of penalty, a sum not exceeding two times but not less than equal to amount of tax on concealed particulars of rent.
- (2). the penalty under sub-section (1) may be imposed before completion of assessment and for determining the amount of penalty the prescribed authority may determine the amount of tax provisionally.
- 13. Amount of Rent escaping assessment: -** (1) If upon information or otherwise the prescribed authority is satisfied that reasonable grounds exist to believe that any amount of rent of a proprietor escaped assessment or amount of rent has been under assessed or assessed at a lower rate than that which was correctly applicable, the prescribed authority, after giving the proprietor a reasonable opportunity of being heard, re-assess the proprietor for such escaped amount of rent. The provisions of section 9 shall, so far as may be, apply accordingly as if the notice under this section is served under section 9.

(2) The prescribed authority, if he has reason to believe that proprietor has concealed the amount of rent shall direct the proprietor to pay in addition to any tax which is or may be assessed under sub-section (1), by way of penalty sum not exceeding three times but not less than an amount equivalent to amount of tax which is or may be assessed on the escaped amount of rent.

No proceeding under this section shall be initiated except before the expiry of eight years from the date of order of the original assessment.

14. Recovery of tax :- (1) The tax payable under this Act shall be paid in the manner herein provided –

(a) the tax due according to the returns filed by a proprietor where full payment of such tax has not been made; or

(b) tax assessed or reassessed under section 9 or 12 or 13 in pursuance of or as a result of an order on appeal, revision, reference or review, less the sum, if any, already paid by the proprietor; or

(c) penalty and interest, if any, imposed under any of the provision of this Act, shall be paid by the proprietor into a Government Treasury, or in such other manner, as may be prescribed by such date as may be specified in a notice issued by the prescribed authority for this purpose and the date to be so specified shall, ordinarily, not be less than forty five days from the date of service of such notice.

Provided that the prescribed authority, in respect of any particular proprietor and for reasons to be recorded in writing, extend the date of such payment, or allow such proprietor to pay the tax or interest or both due and penalty imposed, if any, by installments.

Provided further, that where the prescribed authority considers it expedient in the interest of State revenue it may, for the reasons to be recorded in writing, require any proprietor to make payment forthwith.

(2) If a proprietor has failed, without reasonable cause, to make payment of any tax or interest or both by the date specified in the notice issued under sub-section (1) or forthwith as required by the second proviso thereto, or in the like manner has failed to make payment of tax or interest or both by the date extended under the first proviso of the said sub-section or has defaulted in payment of instalment the prescribed authority may direct that the proprietor, shall pay, in the prescribed manner by way of penalty for such failure, an amount which may extend to five percentum of the amount of tax or interest or both, for each of the first three months following the expiry of such date and to ten percentum for each subsequent month or part thereof.

(3) Any tax or interest or both or penalty imposed under the Act, which remains unpaid after the date specified in the notice issued under sub-section (1) or penalty imposed under sub-section (2) and remaining unpaid shall without prejudice to any other mode of recovery be recoverable as if it were an arrear of land revenue.

15. Special mode of recovery:- (1) Notwithstanding anything contained in the Act or any law or contract to the contrary, the authority prescribed for assessment and recovery of tax or interest or both and penalty imposed may, at any time by notice in writing (a copy of which shall also be given to the proprietor) direct –

- (a) any person who holds or may subsequently hold any money for or on account of the proprietor, or
 - (b) any person from whom any money is due or may become due to the proprietor who has failed to pay upto the date fixed in the notice of demand the amount of tax or interest or both or penalty payable according to the said notice of demand served upon such proprietor or in respect of which the date of payment has not been extended by any competent authority, to pay into the Government treasury, in the same manner as have been prescribed for payment of tax or interest or both either forthwith or upon the money becoming due so much of the money as is sufficient to pay the amount due from the proprietor.
- (2) The authority issuing a notice under sub-section (1) may, at any time, amend or revoke any such notice or extend the time for making payment in pursuance of the notice.
 - (3) Any person making any payment in compliance with a notice issued under sub-section (1) shall be deemed to have made the payment under the authority of the proprietor and the receipt from the Government treasury shall constitute a good and sufficient discharge of the liability of that person to the proprietor to the extent of amount specified in the receipt.
 - (4) Any person if not discharging the liability after service of notice under sub-section (1) on him, shall be personally liable to the State Government for the amount of tax and interest or penalty.
 - (5) If amount, for which any person becomes liable personally to the State Government under sub-section (4), remains unpaid, it shall be recoverable as an arrear of land revenue from him.
 - (6) If any person contravenes any of the provisions of sub-section (4) of this section the prescribed authority shall after giving an opportunity of being heard by an order in writing direct that such person shall pay by way of penalty a sum not exceeding twice the amount payable under sub-section (1).

16. Liability to pay tax in case of transfer of business :- (1)When the ownership of the business of a proprietor, is entirely transferred, both the transferor and the transferee shall jointly and severally be liable to pay any tax, interest and penalty, if any, payable in respect of such business and remaining unpaid at the time of the transfer and the transferee shall also be liable to pay tax on and from the date of such transfer and shall forthwith apply for grant of registration certificate unless such certificate is already possessed by him.

(2) Where a proprietor liable to pay tax under the Act , transfers the ownership of a part of his business, the transferor shall be liable to pay tax in respect of that part of transferred business only.

17. Liability of dissolved firm or association of persons liable to pay tax under section 3 and 4:- Where the proprietor liable to pay tax under section 3 or 4 is a firm or association of persons is dissolved or disrupted, as the case may be,

- (a) The tax or interest or both and penalty payable under this Act by such firm or association of persons for the period upto the date of such dissolution or disruption

may be assessed, as if no dissolution or disruption had taken place and all the provisions of this Act shall apply accordingly, and

- (b) Every person who was at the time of such dissolution or disruption a member or partner of firm or association of persons shall notwithstanding such dissolution or disruption, be liable severally and jointly for the payment of the tax including interest and penalty, if any, payable under this Act by such firm or association of persons, whether assessment is made prior to or after such dissolution or disruption.

18. Maintenance of books of Accounts – Every proprietor liable to pay tax under section 3 and 4 of this Act shall keep a true and complete account in respect of rent received, other charges collected, registers of customers bill or cash memo issued and receipt granted to customer as prescribed.

19. Inspection, search and seizure. – The assessing authority or any other authority prescribed for this purpose may, with a view to satisfying itself that the provisions of this Act or Rules made thereunder are being complied with;-

- (a) enter any hotel at any time;
- (b) require any proprietor of a hotel to produce before him any books of accounts or other documents and inspect them;
- (c) inspect any room to ascertain their occupancy; and
- (d) seize any books, accounts and documents for detailed examination and such seized accounts, documents and other evidences shall be retained for so long as may be reasonably necessary for examination thereof.

Provided that a receipt shall be given to the proprietor in respect of the books of account and documents seized.

20. Exemption - Subject of such conditions and restrictions, the State Government may specify, by notification, exempt any person or class of persons from payment of tax payable under section 3 or section 4 of this Act .

21. Appeal – (1) Any proprietor aggrieved by an order of assessment or reassessment and penalty under section 9, 11 and 12 may, within sixty days from the date of order or service of the notice of demand, appeal to the Joint Commissioner (Appeal) or any other authority specially authorized in this behalf in the manner prescribed .

Provided that the appellate authority may condone the delay in preferring the appeal if the appellant satisfies that he was prevented by any sufficient cause from preferring the appeal within time.;

Provided further that no appeal shall be entertained by such authority unless it is satisfied that twenty percentum of the tax assessed or such amount of tax as the appellant may admit to be due from him, whichever is greater, has been paid.

- (2) Subject to such rule as may be prescribed the authority mentioned in sub- section (1) may, in disposing of an appeal –

- (a) Confirm, reduce, enhance or annul the order of assessment, interest or penalty or all;
or
- (b) Set aside the order of assessment interest or penalty, or all, and direct the assessing authority to make a fresh assessment after making such further inquiry as may be directed by the appellate authority
- 22. Revision** – Subject to such rules as may prescribed an order passed on appeal under section 21 may, on application, be revised by the Tribunal:
- Provided that such an application shall be entertained only if made within 90 days from the date of communication of the order sought to be revised:
- Provided further that where the Tribunal is satisfied that the appellant had sufficient reason for not filing the application for revision in time, it may condone the delay.
- 23. Power to call for records.** - The Commissioner may on his own motion, call for and examine the records of any proceeding where an order has been passed by any authority under this Act, other than that mentioned in section 22, for the purposes of satisfying himself as to the legality or propriety of such order and may after making or causing to be made such inquiry as he may deem necessary revise any order passed by any such authority
- 24. Review** – Subject to such rules as may prescribed, any authority appointed order sub-section (2) of Section 4 of Jharkhand Value Added Tax Act, 2005 (Act 05, 2006) or the Tribunal may review any order passed by it.
- Provided that no such review if it has effect of enhancing the tax or penalty or both, shall be made without giving the proprietor a reasonable opportunity of being heard.
- 25. Refund** – Any amount paid by the proprietor in excess of amount finally determined either on assessment under section 9 or on an order in appeal, revision or review shall be refunded to him in the manner prescribed.
- 26. Offences and Penalties.** – (1) If a proprietor, which shall for the purpose of this section, include an employee, the manager or every person who was incharge or responsible for the management of the hotel at the time of commission of the offence -
- (a) fails or neglects to maintain accounts and registers, issues bill or cash memos as provided in this Act and rules framed thereunder; or
 - (b) fails or neglects to furnish any information or produce books of account, registers and documents in course of inspection; or
 - (c) fails to submit returns or pay tax and penalty required under sections 7 and 8; or
 - (d) obstructs any authority in the performance of duty under this Act shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

- (2) (a) No court shall take cognizance of any offence under this Act or the rule made thereunder except with the previous sanction of the Commissioner; and
- (b) No court inferior to that of Judicial Magistrate of the 1st Class shall try any offence under this Act ;
- (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act II of 1974), all offences punishable under sub-section (1) shall be cognizable and bailable.
- 27. Compounding of offences:-** (1) The prescribed authority may either before or after the institution of proceedings under section 25, accept from a proprietor charged with an offence under the said section or under any rules made under this Act , by way of composition of the offence, a sum not exceeding two thousand rupees.
- (2) On payment of such sum as may be determined by the prescribed authority under sub-section (1), no further proceeding shall be taken against the proprietor in respect of the same offence.
- 28. Bar to certain proceedings. –** No suit, prosecution or other legal proceeding shall lie against the State Government or any authority or officer of the State Government for anything done which is in good faith done or intended to be done in pursuance of the provisions of this Act and Rules made thereunder.
- 29. Power to make rules –** (1) The State Government by notification in the official Gazette, make rules consistent with the provisions of this Act for the purpose of carrying out the provisions of this Act.
- (2) Every rule made under this Act 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 fourteen days which may be comprised in one session or in two successive sessions, and if before expiry of the session in which it is so laid or the session immediately following both the Houses agree in making any modification in the rule or both the Houses agree that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect as the case may be, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- 30. Repeal and savings:-** (1) The Bihar Taxation on Luxuries and Hotel Act, 1988 (Bihar Act 5 of 1988) , Rules made thereunder and Notifications issued thereunder as adopted in the State of Jharkhand are hereby repealed from the date of commencement of this Act.
- (2) The repeal shall not;
- (a) Revive anything not in force or existing at the time of which the repeal takes effect; or
- (b) affect any right, title, obligation, or liability already acquired, accrued or incurred for anything done or suffered in the respect of the period immediately preceding this repeal; or

- (c) Affect any penalty, forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the repealed Act; or
- (d) Affect any investigation, inquiry, assessment, proceeding, any other legal proceeding or remedy instituted, continued or enforced under the repealed Act and any such penalty, forfeiture or punishment as aforesaid or any proceeding or remedy instituted, continued, or enforced under the repealed act shall be deemed to be instituted, continued or enforced under the corresponding provisions of this Act .
- (3) All rules, orders and appointments made and notifications published, certificates granted, powers conferred and other things done under the repealed Act and in force on the commencement of this Act , so far they are not inconsistent with or until they are not modified, superseded or cancelled under this Act be deemed to have been respectively made, published, granted, conferred or done under this Act .
- (4) Any reference to any Section of the repealed Act in any rule, notification, regulation or circular shall be deemed to refer to the relevant corresponding Section of this Act , so far as these are not in consistent with this Act until necessary amendments are made in such rule, notification, regulation or circular.
- (5) The limitations provided in this Act shall apply prospectively, and all events occurred and all issues arose prior to the date of commencement of this Act, shall be governed by the limitations provided or the provisions contained in the repealed Act.

31. Removal of difficulty :- If any difficulty arises in giving effect to the provisions of this Act , the State Government may, as occasion may require, by order not inconsistent with this Act and rules made thereunder, do anything which appears to it necessary for the purpose of removing the difficulty.

SCHEDULE

[See Section 3(1)]

Sl. No.	Description(s)	Rate(s) of Tax
(1)	(2)	(3)
1.	When the rent of a room of a hotel exceeds Rs. 200 per day, but does not exceed Rs. 800.	8%
2.	When the rent of a room of a hotel exceeds Rs. 800 per day, but does not exceed Rs. 3000.	12.5%
3.	When the rent of a room of a hotel exceeds Rs. 3000 per day.	8%
4.	In case the rent of a hotel exceeds Rs. 3000 a day, for a Banquet Hall, or a Marriage Hall or a House or a Restaurant or a Hall or for any Building/ premises including such premises/field/ courtyard attached or annexed to them; whether such premises are open or otherwise.	12.5%