

Bihar Finance Act, 2007

[Bihar Act 8, 2007]¹

To Amend the Bihar Value Added Tax Act, 2005 (Act 27 of 2005), The Bihar Taxation of Luxuries in Hotel Act, 1988 (Act 5 of 1988) and the Bihar Electricity Duty Act, 1948 (Act 36 of 1948), The Bihar Entertainment Tax Act, 1948 (Bihar Act XXXV of 1948), Amendment of the Bihar Motor Vehicle Taxation Act, 1994 And to Enact the Bihar Tax on Advertisements Act, 2007

Be it enacted by the Legislature of the State of Bihar in the fifty-eight year of the Republic of India as follows:—

1. Short title, extent and commencement—(1) This Act may be called the Bihar Finance Act, 2007.

(2) It shall extend to the whole of the State of Bihar.

(3) It shall come into force at once.

Part V

Enactment of the Bihar Tax on Advertisements Act, 2007

26. Enactment of the Bihar Tax on Advertisements Act, 2007—The Bihar Tax on Advertisements Act, 2007 shall be enacted in the following way, namely:—

"The Bihar Tax on Advertisements Act, 2007

An

Act

To provide for levy of tax on advertisements other than advertisements published in newspapers in broadcast by radio or on television.

27. Definitions.—In this Act unless there is anything repugnant in the subject or context:—

- (a) "advertisement" includes any erection, fixation, announcement, display, exhibition, publication or communication of an object, matter or thing, whether made temporarily or retained in any manner with a view to attract public attention, for furtherance of any trade, commerce or service, offered, but excludes advertisements published in a newspaper or broadcast by radio or television and any advertisements exhibited or broadcast by any political party;
- (b) "advertising agent" means a person who carries on the business of making advertisement on behalf of other persons for cash or deferred payment or other valuable consideration and includes a society, a club, an association, an undivided Hindu family, a firm, company or a corporation any department of Government carrying on such business of advertisement;

Explanation.—The proprietor of a cinema house or any other place of entertainment who exhibits advertisement by means of cinema slides, film trailers or films on behalf of other persons for cash or deferred payment or other valuable consideration who makes an advertisement to promote his own business shall be deemed to be an

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advertisement agent for the purpose of this Act.

- (c) "newspapers" includes any printed periodical work containing public news or comments on public news;
- (d) "month" means a month of the Gregorian Calendar;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "registered advertiser" means an advertiser or advertising agent in possession of a valid certificate of registration granted under the provisions of this Act;
- (g) "value of advertisement" means cash or deferred payment or any other valuable consideration received or receivable by any advertising agent in respect of advertisements made by him.

28. Charge of Tax—Subject to the other provisions of the Act, every advertising agent shall pay on every advertisement made by him, a tax at such rate, not exceeding twelve per centum of the value of advertisements made by him, as the State Government may specify by a notification published in the Official Gazette.

Provided that different rates may be specified in respect of different categories of advertisements:

Provided further that no such tax shall be levied on any advertisement which is not a sky-sign and which-

- (a) is exhibited within the window of any building; or
- (b) relates to the trade or business carried on within the land or building upon or over which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein or to any sale or lease to be held upon or in the same; or
- (c) relates to the name of the land or building upon or over which such advertisement is exhibited, or to the name of owner or occupier of such land or building.

Explanation.—The expression "sky-sign" in this section means an advertisement, supported on or attached to any post, pole, standard framework or other support wholly or in part upon any land, building, wall or structure including any moveable board on which, or any part of which is visible against the sky from some point of any public place and includes all and every part of any such post, pole, standard framework or other similar device employed wholly or in part for the purpose of any advertisement upon or over any land, building or structure upon or over any public place, which is open to the use of the public whether actually used or enjoyed or not as such by the public but shall not include—

- (a) any flagstaff, pole, vane or weathercock unless adopted, or used wholly or in part for the purpose of any advertisement, or
- (b) any advertisement relating to the name of the land or building upon or over which the advertisement is exhibited or to the name of the owner or occupier of such land or building; or
- (c) any notice of land or building to be sold, or let, placed upon such land or building.

29. Exemption.—The State Government may, by notification and subject to such conditions or restrictions, if any, as it may think fit to impose, exempt, from the levy of tax payable under section 3, any person or class of persons or any advertisement or class of advertisements.

30. Collection of tax by a person liable to pay tax under this Act.—A person, who is liable to pay tax under this Act for any advertisement done on behalf of other person for payment or for any other valuable consideration, may recover the amount of tax payable by him from such other person in respect of advertisement done on his behalf.

31. Registration.—(1) No person liable to pay tax under section 3 of this Act shall make an advertisement unless he has obtained and is in possession of a valid certificate of registration.

(2) Every person, referred to in sub-section (1), shall apply for the grant of certificate of registration to the prescribed authority in the prescribed manner and the prescribed authority, shall, after verifying that the application has been duly filled in, grant certificate of registration in the manner as may be prescribed.

32. Returns—(1) Every registered advertiser shall furnish to the prescribed authority, a true and complete return in respect of all his transactions relating to advertisements made by him or on his behalf during each quarter, on or before the end of the month following the end of the quarter.

(2) If a registered advertiser fails to furnish the return within the time specified under sub section (1), the prescribed authority shall, after giving such a registered advertiser an opportunity of being heard in the manner prescribed, impose a penalty at the rate of three hundred rupees for every month of such failure.

(3) Any penalty levied under this section shall be without prejudice to any action, which is, or may be, taken under section 9.

33. Payment of Tax.—(1) Every person liable to pay tax under this Act shall, deposit the tax payable in respect of every month on or before the fifteenth day of the following month in such manner as may be prescribed and shall furnish the proof of payment in the form and manner prescribed.

(2) If a person liable to pay tax under this Act fails to pay the amount of tax payable according to the provisions of sub-section (1), such person shall be liable to pay interest, in respect of tax payable under sub-section (1), at the rate of one and a-half per cent per month of the amount due from the date the tax so payable had become due to the date of its payment.

Explanation:—For the purpose of this sub-section—

(a) Where the period of default in payment of tax covers a period less than a month, the interest payable on such tax in respect of such period shall be computed proportionately;

(b) "Month" shall mean thirty days.

(3) Any interest levied under this section shall be without prejudice to any action, which is, or may be, taken under section 9.

34. Offences.—(1) Whoever—

- (a) while being liable to pay tax under section 3 contravenes the provisions of section 6; or
- (b) fails to furnish a return required under section 7; or
- (c) collects tax in excess of the amount to which he is entitled under section 5; or
- (d) fails to make payment of tax as required under section 8; or
- (e) obstructs any officer making inspection search or seizure; or
- (f) aids or abets any person in the commission of any offence specified in clause (a) or clause (b) or clause (c) or clause (d) or clause (e)

shall, on conviction, be punished with imprisonment, or either description of punishment, for a term which shall not be less than one month but which may extend to six months and with fine not exceeding one thousand rupees.

35. Compounding of offences.—(1) The Commissioner may, either before or after institution of proceedings under section 9, accept from a person charged with an offence under section 9 or under any rule made under this Act by way of compounding of the offence, a sum not exceeding ten thousand rupees and where the offence charged was likely to cause or caused evasion of any amount payable under this Act, a sum not exceeding three times of such amount, whichever is higher.

(2) On payment of such sum as may be determined by the Commissioner, no further proceeding shall be taken against the person in respect of such offence.

36. Applicability of the provisions of the Bihar Value Added Tax Act, 2005 (Act 27 of 2005) and Rules made thereunder.—Subject to other provisions of this Act and Rules framed thereunder the authority empowered to assess, reassess, collect and enforce payment of tax, interest and penalty payable by a dealer under the Bihar Value Added Tax Act, 2005 (Act 27 of 2005) shall also be empowered to assess, reassess, collect and enforce payment of tax, interest and penalty payable by a dealer under this Act and for this purpose they may exercise all or any of the powers assigned to them under the said Act and Rules made thereunder for the time being in force, including the provisions relating to returns, assessment, escaped assessment, recovery of tax, interest and penalty, special mode of recovery, maintenance of accounts, inspection, search and seizure, liability in representative character, refund, appeal, revision and reviews, compounding offences and other miscellaneous matters and the provisions of the said Act shall *mutatis mutandis* apply accordingly.

37. Power to make rules.—(1) The State Government may make rules for carrying out the purposes of this Act, provided that such rules shall not be inconsistent with the provisions of this Act for—

- (i) All matters expressly required or allowed by this Act to be prescribed, and all matters generally for carrying out the purposes of this Act and regulating the procedure to be followed, forms to be adopted and fees to be payable in connection with proceeding under this Act and all other matters ancillary or incidental thereto;
- (ii) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary.

State Government necessary for giving effect to the purposes of this Act.

(2) Any rule made under this section may provide that the contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is continuing one, with a further fine which may extend to one hundred rupees per day for every day during which such contravention continues.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of 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 laid or the session immediately following both the Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have 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 under that rule.

38. Repeal and Savings.—All provisions relating to levy of tax on advertisement other than advertisements published in newspapers under the Bihar Finance Act, 1981 (Act 5 of 1981) or any other enactment in force, at the time of commencement of this Act shall stand repealed:

Provided that nothing in this repeal shall affect or be deemed to affect—

- (i) any right, title, obligation or liability already required, accrued or incurred for anything done or suffered, in respect of the period immediately preceding this repeal;
- (ii) any legal proceeding or remedy whether initiated or availed of before or after this repeal, in respect of any such right, title, obligation or liability;
- (iii) the levy, assessment or recovery of any tax or the imposition or recovery of any penalty, in respect of such period, under the provisions of such enactments and all proceedings under them in respect of all matters aforesaid shall be initiated and disposed of, or continued and disposed of, as the case may be, as if this Act had not been enforced."