

KARNATAKA ACT NO. 3 OF 2004
THE KARNATAKA TAXATION LAWS (AMENDMENT) ACT, 2004

Arrangement of Sections

Sections:

1. Short title and commencement
2. Amendment of Karnataka Act 25 of 1957
3. Amendment of Karnataka Act 30 of 1958
4. Amendment of Karnataka Act 22 of 1979
5. Validation of assessments etc.,

STATEMENT OF OBJECTS AND REASONS

The Hon'ble High Court of Karnataka in S.T.R.P. numbers 46 to 57/2003 has held that tax cannot be levied on civil works like asphaltting and repairing of roads under the existing provisions of the Karnataka Sales Tax Act, 1957. However, taxes have been levied and collected on such civil works from 1st April 1986 relying on the existing entries. In view of the decision of the Hon'ble High Court, it is considered necessary to incorporate an enabling provision to levy such tax by amending the Karnataka Sales Tax Act, 1957 with retrospective effect.

Similarly, the Hon'ble High Court of Karnataka in W. P. Nos. 8607-8608/2003 has held that the tax cannot be levied on works contract of processing and supplying of photographs, photo prints and photo negatives under the existing provisions of the Karnataka Sales Tax Act, 1957. The Hon'ble High court has held that though the State Legislature has the power to levy tax on such works contracts, in view of the relevant entry having been struck down by the Hon'ble Supreme Court, in September 1999, tax cannot be levied and collected on such works contracts till the relevant entry is re-introduced in the Karnataka Sales Tax Act, 1957. Taxes have been levied and collected on such works contracts from 1st July 1989. In view of the decision of the Hon'ble Supreme Court and the High Court, it is considered necessary to amend the Karnataka Sales Tax Act, 1957 with retrospective effect.

It is also considered necessary that there should be a provision under the Karnataka Sales Tax Act, 1957 to constitute a Settlement Commission to reduce long pending disputes and recover tax arrears expeditiously.

The rate of sales tax being levied at present on Camphor is 5%. Whereas the Empowered Committee of State Finance Ministers has appealed to all the States / UTs to adopt the floor rates on all items. Hence, the rate of sales tax on Camphor is being increased to the floor rate of 8% by amending the Karnataka Sales Tax Act, 1957.

It is also considered necessary to amend the Karnataka Tax on Luxuries Act, 1979, to give tax relief to clubs situated within areas outside municipal corporations and to give tax relief to senior citizens and members of a youth club registered or recognised by the Department of Youth Services.

It is also considered necessary to omit the provisions under the Karnataka Entertainments Tax Act, 1958 relating to collection of service charges by the owners of theatres.

Hence the Bill.

[L.A. BILL No. 6 OF 2004]

(Entries 54 and 62 of List II of the Seventh Schedule to the Constitution of India)

KARNATAKA ACT NO. 3 OF 2004

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THE KARNATAKA TAXATION LAWS (AMENDMENT) ACT, 2004

(Received the assent of the Governor on the twenty ninth day of January, 2004)

An Act further to amend certain taxation laws as in force in the State of Karnataka.

Whereas it is expedient to amend certain taxation laws for the purpose hereinafter appearing:

Be it enacted by the Karnataka State Legislature in Fifty-fourth year of the Republic of India, as follows:-

1. Short title and commencement.- (1) This Act may be called the Karnataka Taxation Laws (Amendment) Act, 2004.

(2) It shall come into force at once.

2. Amendment of Karnataka Act 25 of 1957.- In the Karnataka Sales Tax, 1957 (Karnataka Act 25 of 1957),-

(1) after Chapter II and section 4, the following chapter and sections shall be inserted, namely:-

"CHAPTER IIA**SETTLEMENT OF CASES**

4A. Definitions.- In this chapter, unless the context otherwise requires,-

(a) "case" means any proceeding under this Act by way of appeal or revision in connection with such assessment, reassessment, levy of penalty or interest payable which may be pending before a Sales Tax authority or Appellate Tribunal on the date on which an application is made under sub-section (1) of section 4E;

Provided that where an appeal has been preferred after the expiry of the period specified for the filing of such appeal under this Act and which has not been admitted, such appeal shall not be deemed to be a proceeding pending within the meaning of this clause;

Provided further that any ex-parte proceeding under this Act for assessment or re-assessment of tax, levy of penalty or interest on any person for any year, where no appeal has been preferred or where an appeal filed has been rejected, shall be deemed to be pending before the Sales Tax Authority for a limited purpose of this chapter.

(b) "Chairman" means the Chairman of the Settlement Commission;

(c) "Member" means a Member of the Settlement Commission and includes the Chairman;

(d) "Settlement Commission" means the Sales Tax Settlement Commission constituted under section 4B;

(e) "Sales Tax Authority" means a Sales Tax authority specified in sub-section (1) of section 3.

4B. Constitution of Sales Tax Settlement Commission.- (1) The State Government may by notification constitute a "Sales tax Settlement Commission" for settlement of cases under this Act;

(2) The Settlement Commission shall consist of a Chairman and two other Members.

(3) The Chairman of the Settlement Commission shall be appointed by the State Government from amongst the retired Judges of the High Court of Karnataka;

(4) The State Government shall appoint officers not below the rank of Additional Commissioners to be the members of the Settlement Commission.

(5) Terms and conditions of service of, and salary and allowances payable to the chairman and other members shall be as may be prescribed.

4C. Place of sitting of Settlement Commission.- The Settlement Commission shall ordinarily sit at Bangalore and at such other places as it deems fit.

4D. Decision to be by majority.- The decision of the Settlement Commission shall be according to the opinion of the majority.

4E. Application for settlement of cases.- (1) An assessee or an aggrieved person may at any stage of a case relating to him, make an application to the Settlement Commission in such form and in such manner as may be prescribed in respect of each assessment year, to have the case settled and any such application shall be disposed of in the manner hereinafter provided;

Provided that no such application shall be made unless, the tax payable on the turnover or the penalty or interest sought to be settled in the application exceeds twenty five thousand rupees.

(2) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) An application made under sub-section (1) shall not be withdrawn by the applicant, except with the permission of the Settlement Commission and the Settlement Commission shall make an order thereof.

(4) A copy of the application made under sub-section (1) shall be sent by the Settlement Commission to the Sales Tax Authority or the Appellate Tribunal, as the case may be. The Sales Tax Authority or the Appellate Tribunal shall keep the case pending up to the date of order under sub-section (3), if the application is permitted to be withdrawn or up to the date of order under sub-section (1) of section 4F, if the application is rejected, or up to ninety days from the date of order of the Settlement Commission, if the application is disposed of under sub-section (4) of section 4F.

4F. Procedure on receipt of an application.- (1) On receipt of an application under sub-section (1) of section 4E, the Settlement Commission shall call for a factual report from the Sales Tax Authority in respect of matters pending before such Authority and from the Commissioner in respect of matters pending before the Appellate Tribunal and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission shall, by an order within thirty days of the application, admit the application to be proceeded with or reject the application:

Provided that an application shall not be rejected under this sub-section unless an opportunity of being heard has been given to the applicant:

Provided further that the Sales Tax Authority or the Commissioner shall furnish the report within a period of fifteen days of the receipt of communication from the Settlement Commission and if the report is not furnished within the said period, the Settlement Commission may make an order of admission or rejection of application without such report.

(2) A copy of every order under sub-section (1) shall be sent to the applicant and to the Sales Tax Authority or the Tribunal, as the case may be.

(3) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Sales Tax Authority or the records of the Sales Tax Authority available with the Appellate Tribunal and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Sales Tax Authority to make or cause

to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matters relating to the case.

(4) After examination of the report and the records of the Sales Tax Authority received under sub-section (1) and sub-section (3) and after giving an opportunity to the applicant and to the Sales Tax Authority or the State Representative authorised under section 3, to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may settle and pass such order as it thinks fit by re-determining the turnovers, taxes payable, penalties and interest on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Sales Tax Authority under sub-section (1) or sub-section (3). The order shall be pronounced in the open court on the date posted for orders and such pronouncement shall be deemed to be a communication. A copy of the order shall also be sent to the applicant and the Sales Tax Authority or the Appellate Tribunal.

(5) The Sales Tax Authority or the Appellate Tribunal shall dispose of the case before them after the expiry of ninety days from the date of order under sub-section (4). The quantum of turnover taxes, penalties or interest, etc. settled under this section shall be adopted as such by the Sales Tax Authorities or the Appellate Tribunal while disposing of the case before them, if the settlement does not get annulled as provided under sub-section (8) and the matters not covered in order of settlement under sub-section (1) shall be disposed of by the Sales Tax Authority or the Appellate Tribunal in accordance with law. The matters referred to in the application under sub-section (1) of section 4E shall be disposed, along with other matters by the Sales Tax Authority or the Appellate Tribunal, in accordance with law, in the event if the settlement gets annulled under sub-section (8).

(6) Every order passed under sub-section (4) shall provide for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective and shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(7) The settlement commission shall annul the settlement order passed under sub-section (4), after hearing the parties if the settlement has been obtained by fraud or misrepresentation of facts.

(8) Where any tax, penalty or interest etc payable in pursuance of an order under sub-section (4) is not paid by the applicant within ninety days of the pronouncement of order, the settlement stands annulled and the case shall be deemed to be restored to the stage as it stood immediately prior to the date on which an application under sub-section (1) of section 4E was made.

(9) Where a settlement has been annulled as provided under sub-section (7), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the Sales Tax Authority or Appellate Tribunal concerned, may, notwithstanding anything contained in any other provision of this Act, proceed and complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement has been annulled.

(10) Where an application under sub-section (1) of section 4E is rejected under sub-section (1) of section 4F or allowed to be withdrawn under sub-section (3) of section 4E by the Settlement Commission, the period of time elapsed between the date of filing the application under sub-section (1) of section 4E and the date of communication of the order of rejection or withdrawal, to the Sales Tax Authority or the Appellate Tribunal shall be excluded for the purpose of computing the period of time prescribed for completing any proceedings under the Act in relation to the case.

(11) Where a settlement gets annulled as provided under sub-section (8), the period of time elapsed between the date of filing the application under sub-section (1) of section 4E and up to ninety days from the date of order under sub-section (4) shall be excluded for the purpose of computing the limitation of time prescribed for initiating or completing any proceedings under the Act in relation to the case.

(12) An application for settlement of a case shall be disposed of by the Settlement Commission, within ninety days from the date of order of admission under sub-section (1).

4J. Powers and procedure of Settlement Commission.- (1) In the absence of any express direction to the contrary issued by the Settlement Commission, nothing contained in this Chapter shall affect the operation of any provision of this Act requiring the applicant to pay taxes or any amount due in relation to the matters before the Settlement Commission.

(2) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.

(3) The Settlement Commission shall, subject to the provisions of this chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions.

4K. Inspection, etc., of reports.- No person shall be entitled to inspect or obtain copies of any reports made by any Sales Tax Authority or the Commissioner, to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of the prescribed fee;

4L. Power of Settlement Commission to grant immunity from prosecution and penalty.- (1) If the Settlement Commission, is satisfied that any person who made the application for settlement under this section has co-operated with the Settlement Commission in the proceedings before it, the Settlement Commission may grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, and also (either wholly or in part) from the imposition of any penalty under this Act, with respect to the matters in the case covered by the settlement:

Provided that no such immunity shall be granted in cases where the proceedings for the prosecution for any such offence has been instituted before the date of receipt of the application under sub-section (1) of section 4E.

(2) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (5) of section 4F, within the time specified or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(3) An immunity granted to a person under sub-section (1), may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars or material from the Settlement Commission or had given false evidence, and thereupon such person may be tried for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

4M. Power of Settlement Commission to send a case back if the applicant does not co-operate.- (1) If the Settlement Commission is of opinion that any person who made an application for settlement under sub-section (1) of section 4E has not co-operated with it in the proceedings before it, the Settlement Commission may by an order send the case, back to the Sales Tax Authority or the Appellate Tribunal which shall thereupon dispose of the case in accordance with provisions of this Act as if no application under sub-section (1) of section 4E had been made.

(2) For the purposes of sub-section (1), the Sales Tax Authority or the Appellate Tribunal shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before the Sales Tax Authority or the Appellate Tribunal or held or recorded by it in the course of the proceedings before it.

(3) Where a case is sent back to the Sales Tax Authority or the Appellate Tribunal under sub-section (1), the period of time elapsed between the date of filing the application under sub-section (1) of section 4E and the date of communication of the order under sub-section (1) to the Sales Tax Authority or the Appellate Tribunal, as the case may be, shall be excluded for the purpose of computing the period prescribed for initiating or completing any proceeding under the Act in relation to the case.

4N. Order of settlement to be conclusive.- Every order of settlement passed under sub-section (4) of section 4F shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

4 O. Proceedings before Settlement Commission to be judicial proceedings.- (1) Any proceeding under this chapter before the Settlement Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Penal Code (Central Act 45 of 1860)."

(2) in the second schedule, in Part "C", in the entries relating to serial number 1, in column 3, for the words "Five percent", the words "Eight percent" shall be substituted;

(3) in the sixth schedule,-

(i) as it existed prior to the first day of April, 1996 after the entries relating to serial number 24, the following shall be and shall be deemed to have been inserted with effect from the first day of July, 1989 and shall be and shall be deemed to have been omitted with effect from the first day of April, 1996, namely:-

"25. Processing and Supplying of Photographs, photoprints and photo negatives	Six percent"
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(ii) as it existed on the first day of April, 1996, after the entries relating to serial number 24, the following shall be and shall be deemed to have been inserted with effect from the first day of April, 1996 and shall be and shall be deemed to have been omitted with effect from the first day of April, 1997, namely:-

"25. Processing and supplying of photographs, photoprints and photo negatives	Eight percent Four percent"
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(iii) after the entries relating to serial number 24, as it existed prior to the first day of April 1997, the following shall be and shall be deemed to have been inserted with effect from the first day of April, 1997 and shall be and shall be deemed to have been omitted with effect from the first day of April, 1998, namely:-

"25. Processing and Supplying of Photographs, photoprints and photo negatives	Eight percent"
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(iv) after the entries relating to serial number 24, as it existed prior to the first day of April 1998, the following shall be and shall be deemed to have been inserted with effect from the first day of April, 1998 and shall be and shall be deemed to have been omitted with effect from the twentieth day of April, 2000, namely:-

"25. Processing and Supplying of Photographs, photoprints and photo negatives Ten percent"

(v) after the entries relating to serial number 24, the following shall be and shall be deemed to have been inserted with effect from the twenty fifth day of January, 2001 and shall be and shall be deemed to have been omitted with effect from the first day of April, 2002, namely:-

"25. Processing and Supplying of Photographs, photoprints and photo negatives Ten percent"

(vi) after the entries relating to serial number 24, the following shall be and shall be deemed to have been inserted with effect from the first day of April, 2002 and shall be and shall be deemed to have been omitted with effect from the first day of June, 2003, namely:-

"25. Processing and Supplying of Photographs, photoprints and photo Negatives Twelve percent"

(vii) after the entries relating to serial number 24, the following shall be and shall be deemed to have been inserted with effect from the first day of June, 2003, namely:-

"25. Processing and Supplying of Photographs, photoprints and photo Negatives Thirteen percent"

(viii) as it existed prior to the first day of April, 1996, the following explanation shall be and shall be deemed to have been inserted from the first day of April 1986, namely:-

"Explanation.- The works contract specified in any of the serial numbers in this Schedule shall include works contract for carrying out improvement, modification or repair."

(ix) as substituted from the first day of April, 1996, the following shall be deemed to have been inserted with effect from the first day of April 1996, namely:-

"Explanation.- The works contract specified in any of the serial numbers in this Schedule shall include works contract for carrying out improvement, modification or repair."

3. Amendment of Karnataka Act 30 of 1958.- In the Karnataka Entertainments Tax Act, 1958 (Karnataka Act 30 of 1958) ,-

(1) in section (2), in clause (i), for the Explanation, the following shall be substituted, namely:-

"Explanation.- "Payment for admission" shall not include any sponsorship fee or advertisement charges paid to the proprietor or any person connected with or conducting or organizing any event of sport."

(2) Section 4-AA shall be omitted.

4. Amendment of Karnataka Act 22 of 1979.- In the Karnataka Tax on Luxuries Act, 1979 (Karnataka Act 22 of 1979), for section 3-D, the following shall be deemed to have been substituted with effect from the first day of April, 2003, namely:-

"3-D. Levy and collection of tax on luxury provided in a club.- (1) There shall be levied and collected a tax on luxuries provided in a club to the members who are required to pay any amount as fee, deposit, donation or any other such charges by whatever name called, at the rate as specified in column (3) of the table below.

Sl. No.	Location of club	Rate of tax
(1)	(2)	(3)
1.	Corporation area	Six hundred rupees per member per annum
2.	Other areas	Three hundred rupees per member per annum

Provided that no tax shall be payable in respect of a member who has attained sixty five years of age and who is not a corporate member subject to such conditions as may be prescribed.

Provided further that no tax shall be payable in respect of a member of a Youth club registered or recognised as such by the Department of Youth Services.

(2) The tax levied under sub-section (1) shall be paid by every proprietor within such period and in such manner as may be prescribed.

Explanation I.- For the purpose of this Section, luxuries means more than one of the facilities like card room, bar, billiards room, snooker room, tennis court, swimming pool, sauna, jacuzzi and the like, gymnasium, golf course, internet facility, video, video compact disk, digital video disk and computer games.

Explanation II.- Where any corporate membership or similar membership allows use of luxuries provided in a club by more than one person (other than a person who is a dependent of the member), tax shall be levied and collected in respect of every such person."

5. Validation of assessments etc.,- Notwithstanding anything contained in any judgement, decree or order of any Court, Tribunal or other authority to the contrary, anything done or any action taken or purporting to have been done or taken (including any notices or orders issued and all proceedings held for the levy, assessment and collection of tax or amount purported to have been collected by way of tax in relation to such levy, assessment and collection) under the provisions of the Karnataka Sales Tax, 1957 (Karnataka Act 25 of 1957) (hereinafter referred to as the said Act) before the commencement of the Karnataka Taxation Laws (Amendment) Act, 2003 (hereinafter referred to as the Amendment Act) shall be and shall be deemed to be valid and effective as if such levy, assessment or collection or action or thing had been made, taken or done under the said Act, as amended by clause (3) of section 2 of the Amendment Act and accordingly,-

- (a) all acts, proceedings or things taken or done by any authority in connection with levy, assessment or collection of such tax shall, for all purposes be deemed to be, and to have always been taken or done in accordance with law;
- (b) no suit or other proceedings shall be maintained or continued in any Court or Tribunal or before any authority for the refund of any such tax; and
- (c) no Court shall enforce any decree or order directing the refund of any such tax.

By Order and in the name of the Governor of Karnataka

M.R. HEGDE

Secretary to Government

Department of Parliamentary Affairs and Legislation