

In pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of Notification No. 1068 / 2009/17(120)/XXVII(8)/Vanijya kar(L.T)/2009, dated 8 December, 2009 for general information.

Uttarakhand Shashan

VITTA ANUBHAG-8

NO. 1068 /2009/17(120)/XXVII(8)/(L.T)/2009

Dehradun :: Dated: : 08 December, 2009

Notification

In exercise of the powers conferred under sub-section (1) of Section 13 of The Uttarakhand(The Uttar Pradesh Taxation and Land Revenue Laws Act, 1975) Adaptation and Modification Order, 2002 and in supersession of the Uttar Pradesh Luxuries (in Hotels) Tax rules, 1975 in its application to the State of Uttarakhand, the Governor is pleased to promulgate the following rules-

THE UTTARAKHAND LUXURIES (IN HOTELS) TAX RULES, 2009

1- Short title and commencement :

(1) These rules may be called The Uttarakhand luxuries (In Hotels) Tax Rules, 2009.

(2) They shall come into force at once.

2-

Definitions :

In these rules, unless the context otherwise requires-

(a) "Act" means the Uttarakhand(The Uttar Pradesh Taxation and Land Revenue Laws Act, 1975) Adaptation and Modification Order, 2002,

(b) "Assessing Authority" means any person appointed by the State Government or the Commissioner, Commercial Tax (hereinafter referred to as the Commissioner in these rules) to perform all or any of the functions, duties and exercise the powers of an assessing authority under the Uttarakhand Value Added Tax Act, 2005 or the Uttarakhand Value Added Tax Rules, and includes:

(i) a Joint Commissioner (Assessment) of a region appointed by the State Government to perform the duties and exercise the powers of an Assessing Authority in such region;

(ii) a Deputy Commissioner (Assessment) of a circle appointed by the State Government to perform the duties and exercise the powers of an Assessing Authority in such circle;

(iii) it also includes an Assistant Commissioner posted by or a Commercial Tax Officer appointed or posted by the Commissioner, Commercial Tax to such circle to perform the duties and exercise the powers of an Assessing Authority in such circle.

(c) "Commissioner, Commercial Tax includes an officer, not below the rank of Additional Commissioner, Commercial Tax duly authorised by him to perform any function under these rules on his behalf.

(d) "Form" means a form appended to these rules.

(e) Words and expressions used but not defined in these rules shall have the same meaning as assigned to them in the Act.

3- Period within which and the manner in which the tax be paid :

The amount of tax payable by a proprietor under sub-section (1) of section 5 of the Act shall be paid into a Government Treasury or the State Bank of India by a challan in L.T. Form I within five days after the end of the month to which the tax collected by the proprietor relates.

4- Returns :

(1) Every proprietor liable to pay tax under sub-section (1) of section 5 of the Act shall submit return in L.T. Form II, L.T. Form III and L.T. Form IV, maintained by him under Rule 16, within seven days after the end of the month to which the returns relate.

(2) Every proprietor signing the return shall subscribe on solemn affirmation that the facts mentioned in that return are true to the best of his information and belief.

(3) The Assessing Authority may verify the returns from the bound registers maintained under rule 16.

5- Proprietor to issue bill or cash memorandum :

(1) Every proprietor liable to pay tax under sub-section (1) of section 5 of the Act, shall issue a bill or cash memo in respect of the rent recovered by him from a person and shall specify in such bill or cash memo, the full name of the hotel and the amount of tax recovered.

(2) Where any person makes payment of rent in foreign currency the proprietor shall give full details of such currency.

6- Assessing Authority –Procedure for Assessment of Tax :

(1) The authority specified in clause(b) of rule 2 under section 6(2) of this Act, shall be the assessing authority for the purpose of this Act.

(2) The assessment shall be made half yearly and it shall be for a period of six months ending March and September or such other period as the State Government may fix.

(3) For the purpose of assessing the tax under sub-section (1) of section 6 of the Act, the Assessing Authority shall serve on the proprietor a notice requiring him on a date not less than seven days from the date of receipt of the notice and at a place specified therein, to attend in person or through an agent authorised in writing to produce or cause to be produced the bound registers, maintained under sub-rule (2) of rule 16, such other documents as may be specified in the notice and any other evidence, on which such proprietor may rely in support of such return as he may have furnished, and to furnish such information relating to the working of the hotel as may be specified in the notice:

Provided that such notice shall be served on the proprietor before the expiry of one year from the last date prescribed for filing the six monthly return relating to the assessment or the actual date when the return has been filed, whichever is later, and after the notice has been served the case may be disposed of within three years from the close of the six monthly to which the assessment relates

(4) On the day, specified in the notice, or as soon as may be thereafter, the Assessing Authority shall, after examining the registers, other documents and information, if any, furnished by the proprietor, and after examining such evidence as the proprietor may produce and such other evidence as the Assessing Authority may require on specified points, assess the amount of the tax.

(5) If the proprietor fails to submit the returns within the period mentioned in sub-rule (1) of rule 4, the Assessing Authority shall assess to the best of his judgment the amount of the tax payable under section 5 of the Act in accordance with the provisions of section 4 of the Act.

(6) After the tax has been assessed under sub-rule (4) or (5), the Assessing Authority shall issue an assessment order in L.T. Form V.

7- Appeal :

Any person aggrieved by the order of assessment made under sub-section (2) of section 6 of the Act may, within three months from the date of the order or his knowledge thereof, apply to the appellate authority prescribed in rule 8 for the annulment or modification of the assessment and, on such application, the appellate authority may confirm, annul or modify the assessment and order the refund to such person the whole or part, as the case may be, of any amount paid by him towards assessment.

8- Appellate Authority :

For the purpose of Rule 7 under sub-section (2) of section 6 of the Act-

(a) the Additional Commissioner (Appeal) in case the order appealed against has been passed by a Joint commissioner (Assessment); and

(b) in all other cases, the Joint Commissioner (Appeal)

shall be the Appellate Authority..

9- Form and contents of Memorandum of Appeal :

(1) Under sub-section (2) of section 6 of the Act, every Appeal shall-

(a) be in writing;

(b) specify the name and address of the appellant;

(c) specify the date of the order appealed against;

(d) contain a clear statement of facts;

(e) state precisely the relief prayed for;

(f) be affixed with court fees stamps of the value of fifteen rupees;

(g) be signed and verified by the appellant or an agent duly authorised by him in writing in this behalf on the following form, namely:-

“I.....appellant do hereby declare that the contents of the memorandum of appeal are true to the best of my knowledge and belief.

signature”

(2) The memorandum of appeal shall be accompanied by a certified copy of the order appealed against and a certificate of payment of the amount made in accordance with the order appealed against.

(3) The memorandum of appeal shall either be presented in person to the appellate authority by the appellant or his agent or sent to him by registered post.

10- Procedure in Appeals :

In an appeal under rule 7 against an order of the Assessing Authority passed under sub-section (2) of section 6 of the Act, the appellate authority shall, as far as may be, follow the procedure for appeals from original decrees to a District Court prescribed by the Code of Civil Procedure, 1908.

11- Certified copies of documents and orders :

(1) Any proprietor of a hotel who is liable to pay the tax under sub-section (2) of section 6 of the Act, may apply to the Assessing Authority for a certified copy of any document produced or filed by him or of an order passed by the Assessing Authority.

(2) An application made under sub-rule (1) shall be accompanied with a copying fee at the rate of rupees two for the first page or part thereof and at the same rate for every subsequent page, less than half such subsequent page being ignored. For the purpose of this sub-rule, a page will be deemed to be of 260 words.

12- Composition of tax :

(1) Under section 7 of the Act, the assessing authority may, with the prior approval of the Commissioner, Commercial Tax accept every month, subject to final adjustment, a reasonable amount in cash in advance by way of composition under section 7 of the Act from the proprietor of a hotel to cover the amount which would ordinarily be payable by the proprietor as luxury tax in that particular month.

(2) The basis of composition shall ordinarily be the estimated receipts from rent of the preceding month.

(3) The assessing authority shall specify the period for which permission for composition is granted but, except for special reasons to be approved by the Commissioner, Commercial Tax such period shall not in any case exceed one year.

(4) The Commissioner, Commercial Tax may at any time, for reasonable cause, withdraw the permission for composition after due notice to the proprietor of a hotel.

13- Recovery of taxes as arrears of land revenue :

Under section 9 of the Act, if, after the expiry of the period allowed under any order of assessment made under sub-rule (4) of rule 6 the whole or any part of the amount of the tax remains unpaid, the Assessing Authority shall take steps for the recovery of the amount of tax remaining unpaid as an arrears of land revenue under section 9 of the Act.

14- Certificate of payment of Luxury Tax :

Under section 4 and 10 of the Act, the Assessing Authority may on an application of any proprietor, who has paid the luxuries tax or penalty under the Act and on payment of a fee of ten rupees, issue a certificate regarding the payment of tax or penalty or both relating to any month to such proprietor in L.T. Form VI.

15- Service of Notice :

(1) A notice under the provisions of the Act may be served by registered post or by delivering or tendering it to the person to whom it is addressed or to his agent.

(2) If upon an attempt having been made to serve any notice in any of the manners laid down in sub-rule (1), the authority concerned is satisfied that the proprietor is evading the service of notice or that for any other reason to be recorded the notice cannot be served in any of the said manners, the said authority shall cause notice to be served by affixing a copy thereof at some conspicuous place of the hotel or at the place of business of the proprietor, liable to pay tax under the Act.

(3) The officer serving the notice under sub-rule (2) shall return the original to the authority which issued the notice with a report endorsed thereon stating that he has affixed the copy and mentioning the name and address of the person, if any, by whom the building, in which the proprietor's hotel or place of business is located, was identified and in whose presence the copy was affixed.

16- Maintenance of accounts:

(1) Every proprietor shall maintain-

- (a) information relating to rooms and rent therefor in his hotel in L.T. Form II;
- (b) daily account of occupation of rooms in his hotel and collection of luxury tax therefor in L.T. Form III; and
- (c) monthly abstract of collection and remittance of luxury tax in L.T. Form IV.

(2) The proprietor shall maintain a separate bound register for each of these forms, and shall get each of the pages of such registers numbered, sealed and certified by the Assessing Authority or by an officer/ official duly authorised by him in this behalf.

17- Refund of tax :

If the amount already paid as tax in respect of any month exceeds the amount assessed under rule 6 or fixed in an appeal, if any, under rule 7 the Assessing Authority shall after adjusting the excess amount towards the recovery of any amount of which a notice has been issued under rule 6, issue in favour of the proprietor an order in L.T. Form VII on the Government Treasury or the State Bank of India, as the case may be, for the refund of the balance, if any, of such excess amount.

18- Certificate of non-taxability :

(1) If any proprietor claims that the tax under the Act is not payable in respect of his hotel he may make an application in L.T. Form VIII to the Assessing Authority for a certificate of non-taxability.

(2) If the Assessing Authority after such inquiry as he may think fit, is satisfied that the applicant is not liable to pay the tax under the Act, he may issue a certificate of non-taxability in L.T. Form IX on payment of a fee of ten rupees only.

(3) A certificate issued under sub-rule (2) shall be valid for such period as the Assessing Authority, having regard to the charges recovered by such proprietor for rooms provided in that hotel, may specify therein.

19- Supervision by the Commissioner, Commercial Tax :

Consistent with the provisions of the Act and the rules made thereunder, the Commissioner, Commercial Tax shall have superintendence over all officers

and persons employed in the execution of the Act and rules made thereunder, and the Commissioner, Commercial Tax may from time to time issue such orders, instructions and directions as he may deem fit for the proper administration of the Act and for regulating the procedure to be followed in carrying out the provisions of the Act and the rules made thereunder:

Provided that no such instructions or directions shall be given so as to interfere with the discretion of the Appellate Authority in the exercise of his appellate functions.

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Transfer of Pending Matters :

The pending cases of assessment of tax, appeal, composition of tax, recovery of tax and other relevant matters under the Uttar Pradesh Luxuries (in Hotels) Tax Rules, 1975 just before the commencement of these rules shall be transferred with records to the concerned designated officers for further action under these rules immediately after the commencement of these rules.

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Power of State Government regarding interpretation of Rules :

If ever any question arises regarding the interpretation of any rule specified therein, the matter shall be referred to the State Government and the interpretation provided by the Government shall be acceptable and final.

(ALOK KUMAR JAIN)

PRINCIPAL SECRETARY, FINANCE.