

## THE KARNATAKA ELECTRICITY (TAXATION ON CONSUMPTION) ACT, 1959.

### ARRANGEMENT OF SECTIONS.

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### STATEMENT OF OBJECTS AND REASONS

#### I

**Act 14 of 1959.**—Different rates of taxation on consumption of electricity have been in force since the Reorganisation of States in the several areas of the State and it has been considered necessary to have a uniform tax structure all over the State. This uniform structure could not however be introduced until the tariff structure was made uniform. The State Electricity Board has introduced a uniform tariff structure all over the State with effect from 1st July 1959. As it was necessary to introduce the uniform tax structure simultaneously with the introduction of uniform rates, an Ordinance was promulgated on 23rd June 1959. This Ordinance is generally on the lines of the Mysore Electricity (Taxation on Consumption) Act, 1950 as amended by the Mysore Electricity (Taxation on Consumption) Amendment Act, 1957.

The present Bill is intended to replace the Ordinance.

(Published in Karnataka Gazette (Extraordinary) Part IV-2A dated 4th August 1959, as No. 65 at page. 8.)

#### II

**Amending Act 10 of 1970.**—Section 3 of the Mysore Electricity (Taxation on Consumption) Act, 1959 provides for the levy of a tax on units of electrical energy consumed every month calculated at a rate not exceeding three paise per unit of energy as may, by notification be specified by Government in respect of different classes of consumers. It is now proposed to enhance the tax on consumption of electricity leviable by Government. The total rate including tax charged to the different classes of

consumers at present is lower than the rates in other States and it is also necessary to raise resources to meet the Government's share of expenditure for the Fourth Plan. In order to give effect to this proposal, it is necessary to amend section 3 of the Act.

Hence this Bill.

(Published in Karnataka Gazette (Extraordinary) Part IV-2A dated 28th March 1970 as No. 110 at page 3.)

### III

**Amending Act 10 of 1979.**—The rate of interest on belated payment of electricity tax was not exceeding 12% per annum.

The rate of interest on belated payment of electricity charges due to Karnataka Electricity Board was raised from 12% to 15% in 1972. The difference in the two rates of interest has given rise to some confusion in raising the demand and maintaining accounts by the Karnataka Electricity Board. In order to overcome this difficulty, pointed out by Karnataka Electricity Board, it was proposed to enhance the rate of interest on belated payment of electricity tax also from 12% to 15%.

As the Karnataka Legislative Assembly was not in session, an Ordinance was promulgated for the said purpose.

This Bill seeks to replace the said Ordinance.

(Published in Karnataka Gazette (Extraordinary) Part IV-2A, dated 24th January 1978, as No. 81, at page. 3.)

### IV

**Amending Act 5 of 1982.**—Liability to collect and pay the tax under the Karnataka Electricity (Taxation on Consumption) Act, 1959 is on the licensee who is now required to keep separate entries relating to each consumer. In order to simplify the accounting procedure the licensee may show in his accounts only the total units of energy consumed and supplied by him to the consumers and the tax payable thereon. It is also proposed to increase the maximum rate of interest chargeable on arrears of tax from 15% to 24%.

Hence the Bill.

(Published in Karnataka Gazette (Extraordinary) Part IV-2A dated 3rd February 1982 as No. 73 at page 4.)

### V

**Amending Act 25 of 1984.**— The total rate including tax charged to the different classes of consumers in this State is lower than those in some neighbouring States and it is necessary to raise additional resources to meet the Government share of expenditure for the sixth plan.

It is therefore proposed to amend section 3 of the Karnataka Electricity (Taxation on Consumption) Act, 1959 to enhance the upper limit of tax on consumption of electricity leviable by Government from six paise to eight paise per unit of energy.

Hence the Bill.

(Obtained from L.A. Bill No. 6 of 1984.)

## VI

**Amending Act 15 of 1985.**—The Government of India have abolished the Central Excise Duty on electricity with effect from 1st October 1984. The proceeds of the excise duty were being transferred entirely to the State Government by the Government of India. In order to compensate the loss to the State Government on account of abolition of Excise Duty on electricity, the electricity tax has been enhanced with effect from 1st October 1984 to commensurate with the loss caused thereof.

As the matter was urgent and since the Legislative Assembly was not in session an Ordinance was promulgated providing for enhancement of electricity tax from 8 paise to 12 paise.

This Bill seeks to replace the said Ordinance.

(Published in Karnataka Gazette (Extraordinary) dated 25th March 1985, as No. 164 at page 3.)

## VII

**Amending Act 13 of 1990.**—For attracting industries to our State by rendering the products competitive, special agreements were entered into. They provided for very low concessional tariff rates and occasionally for reimbursement of the part of the tax collected from the consumer.

For quite sometime past our State has experienced acute shortage of power, necessitating import of energy from other States at very high rates. The cost of generation, transmission and also overhead charges have steeply increased.

It has been noticed that instead of ploughing the concessions availed of for the purpose of rendering the products competitive the industries have desisted from passing on the benefits to the consumers of the products. This has contributed to their unjust enrichment at the cost of the consumer of the products and in a manner detrimental to public interest.

In Order to remedy the situation the Electricity Supply (Karnataka Amendment) Bill, 1981 was enacted for the purpose of amending section 49 of the Electricity Supply Act, 1948.

It was understood that this enactment, apart from granting power to impose an uniform tariff rate would also absolve the State Government from the burden imposed by the contract to reimburse the tax collected above at certain rates.

The validity of the Act was unsuccessfully challenged by the Indian Aluminium Company Ltd., before the High Court and the appeal preferred by it is pending before the Supreme Court. However, in Writ Petition Nos. 27361 and 27362 of 1981, the High Court held that the above amendment touched only the tariff under the Taxation Act and did not govern the contractual terms for reimbursement or indemnification towards the hike in the rate of tax on consumption. It has also held that the reimbursement or indemnification cannot be refused on the grounds other than statutory.

The proposed law is intended to provide a statutory ground to absolve the State Government from the liability to make reimbursement and indemnification, with a view to prevent the unjust enrichment of the industry at the expense of the consumer of the goods and with a view to conserve the resources of the State for promoting the interests of the public at large.

Hence the Bill.

(Published in Karnataka Gazette (Extraordinary) Part IV-2A dated 29th March 1990 as No. 157 at page 66 and 67.)

### VIII

**Act 7 of 1998.**—Section 4 of the Karnataka Electricity (Taxation on Consumption) Act, 1959 requires every Licensee to collect and pay to the State Government the Electricity tax payable under the Act. But, this requirement is not applicable to consumption of energy generated by means of generators not exceeding 5 kilowatts in capacity.

Rule 47A was inserted in the Indian Electricity Rules, 1956 in the year 1995 which requires that every consumer or occupier shall obtain approval in writing of the Inspector before commissioning a generating plant of a capacity exceeding 10 kilowatts.

In view of the aforesaid amendment to the Indian Electricity Rules, it was considered necessary to enhance the existing limit of 5 Kw to 10 Kw by amending Section 4 of the Karnataka Electricity (Taxation on Consumption) Act, 1959.

As the matter was urgent and the Karnataka Legislative Council was not in session, the Karnataka Electricity (Taxation on Consumption) (Amendment) Ordinance, 1997 was promulgated to achieve the above object.

This Bill seeks to replace the said ordinance.

(Published in Karnataka Gazette (Extraordinary) Part IV-2A dated 25th August 1998 as No. 339 at page 2.)

### IX

**Act 27 of 2001.**- It is considered necessary to amend the Karnataka Electricity Board (Recovery of Dues) Act, 1976 and the Karnataka Electricity (Taxation on Consumption) Act, 1959 to incorporate the consequential changes necessitated on account of the enactment of the Karnataka Electricity Reform Act, 1999.

Hence the Bill.

(Vide L.A. Bill No. 16 of 2001 File No. SAMVYASHAE 19 SHASANA 2001)

### X

**Act 7 of 2003.**- To give effect to the proposals made in the Budget Speech, it is considered necessary to amend the Karnataka Agricultural Income Tax Act, 1957, the Karnataka Sales Tax Act, 1957, the Karnataka Entertainments Tax Act, 1958, the Karnataka Tax on Professions, Trades, Callings and Employment Act, 1976, the Karnataka Tax on Luxuries Act, 1979, the Karnataka Tax on Entry of Goods Act, 1979 and the Karnataka Electricity (Taxation on Consumption) Act, 1959.

Hence the Bill.

(L.A. Bill No. 9 of 2003)

**<sup>1</sup>[KARNATAKA]<sup>1</sup> ACT No. 14 OF 1959.**

(First published in the <sup>1</sup>[Karnataka Gazette]<sup>1</sup> on the Tenth day of September, 1959.)

**THE <sup>1</sup>[KARNATAKA]<sup>1</sup> ELECTRICITY (TAXATION ON CONSUMPTION) ACT, 1959.**

(Received the assent of the Governor on the Twenty-fifth day of August, 1959.)

(As Amended by Karnataka Acts 10 of 1970, 10 of 1979, 5 of 1982, 25 of 1984, 15 of 1985, 13 of 1990 and 7 of 1998.)

An Act to provide for the levy of tax on the consumption of electrical energy in the <sup>1</sup>[State of Karnataka]<sup>1</sup>.

WHEREAS it is expedient to provide for the levy of tax on consumption of electrical energy in the <sup>1</sup>[State of Karnataka]<sup>1</sup>;

BE it enacted by the <sup>1</sup>[Karnataka]<sup>1</sup> State Legislature in the Tenth Year of the Republic of India as follows:—

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

**1. Short title, extent and commencement.-** (1) This Act may be called the <sup>1</sup>[Karnataka]<sup>1</sup> Electricity (Taxation on Consumption) Act, 1959.

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

(2) It extends to the whole of the <sup>1</sup>[State of Karnataka]<sup>1</sup>.

(3) The provisions of this Act, except section 13, shall be deemed to have come into force on the first day of July, 1959.

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

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

(1) “consumer” includes a local authority, company or other person to whom energy is supplied by a licensee on payment of charges or otherwise, and a licensee or other person who consumes energy generated by himself, but does not include a licensee to whom energy is supplied by the <sup>1</sup>[Karnataka Power Transmission Corporation]<sup>1</sup> for supply to others; and the word “consume” with its grammatical variations shall be construed accordingly;

**Explanation.**—Where a licensee to whom energy is supplied by the <sup>1</sup>[Karnataka Power Transmission Corporation]<sup>1</sup> for supply to others, himself consumes any part of the energy, he shall be deemed to be a consumer in respect of energy so consumed.

1. Substituted by Act 27 of 2001 w.e.f.

(2) “energy” means electrical energy;

(3) “licensee” means,—

(a) <sup>1</sup>[Karnataka Power Transmission Corporation]<sup>1</sup> incorporated as a transmission company under the Companies Act, 1956 which expression shall be deemed to include the Karnataka Electricity Board in respect of energy supplied prior to the date of effective date of transfer of property, any interest in property and any rights and liabilities of the Karnataka Electricity Board to Karnataka Power Transmission Corporation in accordance with section 14 of the Karnataka Electricity Reform Act, 1999.]<sup>1</sup>

1. Substituted by Act 27 of 2001 w.e.f.

(b) any person licensed under Part II of the Indian Electricity Act, 1910 (Central Act IX of 1910), to supply energy and includes any person who has obtained the sanction of the State Government under section 28 of the said Act; and

(c) the State Government when it is engaged in the business of supplying energy;

(4) "notification" means a notification published in the Official Gazette;

(5) "prescribed" means prescribed by rules made under this Act.

1. Substituted by Act 27 of 2001 w.e.f. 10.1.2002

**<sup>1</sup>[3. Levy of tax on electricity charges.-** Subject to the provisions of this Act, there shall be levied and paid to the State Government, ad valorem tax (hereinafter referred to as "electricity tax") at five percent on the electricity charges payable (excluding arrears) by all the consumers except consumers under agricultural (irrigation pump sets upto and inclusive of Ten Horse Power), Bhagya jyothi and Kutira jyothi categories]<sup>1</sup>

1. Substituted by Act 7 of 2003 w.e.f. 1.4.2003.

**4. Payment of electricity tax.-** (1) Every licensee shall collect and pay to the State Government at the time and in the manner prescribed, the electricity tax payable under this Act <sup>1</sup>[on the electricity charges included in the bill issued by him to the consumer]<sup>1</sup>. The tax so payable shall be a first charge on the amounts recoverable by the supplier for the energy supplied by him and shall be a debt due by him to the State Government:

Provided that where the licensee has been unable to recover the amounts due to him for the energy supplied by him he shall not be liable to pay the tax in respect of the energy so supplied.

(2) A licensee may be granted a rebate of such amount, as may from time to time be determined by the State Government regard being had to the cost of collection of the electricity tax incurred by such licensee:

Provided that the amount of rebate shall not exceed two per cent of the electricity tax collected by the licensee.

(3) Every person, who consumes energy generated by himself, or who supplies energy to any other person free of charge, shall pay, or collect and pay, as the case may be, to the State Government, at the time and in the manner prescribed, the electricity tax payable under section 3. <sup>2</sup>[ xxx]<sup>2</sup>

1. Substituted by Act 7 of 2003 w.e.f. 1.4.2003

2. Omitted by Act 7 of 2003 w.e.f. 1.4.2003

(4) When any consumer fails or neglects to pay at the time and in the manner prescribed, the amount of electricity tax due from him, the licensee or, as the case may be, the person supplying energy free of charge, may without prejudice to the right of the State Government to recover the amount under section 7, after giving not less than seven clear days' notice in writing to such person, cut off supply of energy to such person; and he may, for that purpose, exercise the power conferred on a licensee by sub-section (1) of section 24 of the Indian Electricity Act, 1910, for the recovery of any charge or sum due in respect of energy supplied by him.

(5) Nothing in this section shall apply,-

(i) to any person who generates energy for the purpose of supplying it for the use of vehicles or vessels;

(ii) to the consumption of energy generated by means of generators not exceeding <sup>1</sup>[ten kilowatts]<sup>1</sup> in capacity.

1. Substituted by Act 7 of 1998 w.e.f. 24.10.1997.

**5. Books of account, etc.-** Every licensee and every person not being a licensee referred to in sub-section (3) of section 4 shall keep books of account, in the prescribed form and submit to the State Government or to the prescribed officer, returns in such form and at such times as may be prescribed, <sup>1</sup>[showing the units of energy consumed by him and the total units of energy supplied by him to consumers, and the <sup>2</sup>[amount of tax payable thereon under section 3]<sup>2</sup> and such other particulars as may be prescribed]<sup>1</sup>.

1. Substituted by Act 5 of 1982 w.e.f. 29.12.1981.

2. Substituted by Act 7 of 2003 w.e.f. 1.4.2003

**6. Inspecting Officers.-** (1) The State Government may, by notification, appoint Inspecting Officers to inspect the prescribed books of account kept under section 5.

(2) The Inspecting Officers shall perform such duties and exercise such powers as may be prescribed for the purpose of carrying into effect the provisions of this Act and the rules made thereunder.

(3) Every Inspecting Officer appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860), and the Prevention of Corruption Act, 1947 (Central Act II of 1947).

**7. Recoveries.-** Any sum due on account of electricity tax, if not paid at the time and in the manner prescribed, shall be deemed to be in arrears, and thereupon such interest not exceeding <sup>1</sup>[twenty-four per cent]<sup>1</sup> per annum which the State Government may by general or special order fix shall be payable on such sum; and the sum, together with any interest thereon, shall be recoverable either through a civil court or as an arrear of land revenue,—

(i) if the sum was payable under sub-section (1) of section 4 either from the consumer or, subject to the proviso to the said sub-section from the licensee, at the option of the State Government;

(ii) if the sum was payable under sub-section (3) of section 4, either from the consumer or from the person supplying energy free of charge, at the option of the State Government, or from the person who generates energy for his own consumption.

1. Substituted by Act 5 of 1982 w.e.f. 29.12.1981.

**8. Power of State Government to notify exemptions and reductions of tax.-** The State Government may, by notification, make an exemption or reduction in rate in respect of the tax payable under this Act,-

(i) on energy supplied or consumed for any specified purpose; or

(ii) by any class of consumers.

<sup>1</sup>**8A. Dispensing with the performance of certain contracts.-** Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court or in any contract or instrument having force by virtue of any such law, but subject to section 8,-

(a) the performance of any contract by the State Government or the licensee in so far as it provides for reimbursement or indemnification in favour of the consumer, of or for any amount levied on or collected from him as tax under this Act shall be and shall

be deemed always to have been dispensed with and any amount due or payable by the State Government or the licensee to a consumer by way of such reimbursement or indemnification under the contract, including the amount of interest, if any, shall be deemed to be wholly discharged;

(b) no Civil Court shall entertain any suit or proceeding against the State Government or the licensee for the recovery of any amount by way of such reimbursement or indemnification including interest, if any;

(c) all suits and proceedings (including appeals, revisions, attachments or execution proceedings) pending on the said date against the State Government or the licensee for the recovery of any such amount shall abate;

Provided that nothing in this section shall entitle the State Government or the licensee for refund of any amount already paid by way of reimbursement or indemnification before the commencement of the Karnataka Electricity (Taxation on Consumption) (Amendment) Act, 1990.]<sup>1</sup>

1. Inserted by Act 13 of 1990 w.e.f. 21.11.1980.

**9. Penalties.-** (1) If any person liable under section 5 to keep books of account or submit returns fails to keep or submit the same in the manner prescribed or obstructs an Inspector in the exercise of his powers and duties under this Act, or contravenes any rule made under section 10, he shall, on conviction, be punished with fine which may extend to five hundred rupees.

(2) (a) Where an offence under sub-section (1) has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this clause shall render any such person liable to any punishment provided in the aforesaid sub-section if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(b) Notwithstanding anything contained in clause (a) where an offence under sub-section (1) has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Explanation.**—For the purposes of this sub-section,—

(a) “company” means a body corporate, and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner of the firm.

**10. Power to make rules.-** (1) The State Government may, by notification, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make rules,-

(a) prescribing the time and manner of payment of the electricity tax under sections 3 and 4;

(b) prescribing the form of the books of account to be kept and the times at which, the form in which and officers to whom the returns required by section 5 shall be submitted;

(c) prescribing the powers and duties of Inspecting Officers; and

(d) providing for any other matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the State Government, necessary for giving effect to the provisions of this Act.

**11. Rules and Notifications to be laid before State Legislature.-** Every rule made under section 10 and every notification issued under section 8 or 14 shall be laid as soon as may be after it is made or issued 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 or more sessions and if, before the expiry of the said period, either House of the State Legislature directs any modification in such rule or notification or directs that such rule or notification shall not have effect, and if the modification or direction is agreed to by the other House, the said rule or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be.

**12. Repeal and savings.-** The Mysore Electricity (Taxation on Consumption) Act, 1950 (Mysore Act XX of 1950), as in force in the Mysore Area, Part II of the Bombay Finance Act, 1932 (Bombay Act II of 1932) as in force in the <sup>1</sup>[Belgaum Area]<sup>1</sup> and the Madras Electricity Duty Act, 1939 (Madras Act V of 1939), as in force in the <sup>1</sup>[Mangalore and Kollegal Area,]<sup>1</sup> shall stand repealed:

Provided that such repeal shall not affect,-

(a) the previous operation of the said enactments or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability, acquired, accrued or incurred under the said enactments; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactments; or

(d) any investigation, legal proceeding (including assessment proceeding) or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid: and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

<sup>1</sup> Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

**13. Repeal of <sup>1</sup>[Karnataka]<sup>1</sup> Ordinance No. 2 of 1959 and savings.-**

The <sup>1</sup>[Karnataka]<sup>1</sup> Electricity (Taxation on Consumption) Ordinance, 1959, is hereby repealed;

Notwithstanding such repeal,-

(i) any right, privilege, obligation or liability acquired, accrued or incurred under the said Ordinance;

(ii) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Ordinance; and

(iii) any appointment, notification, order, rule or form, made or issued or anything done or any action whatsoever taken under the said Ordinance; shall be deemed to have been acquired, accrued or incurred, or made, issued, done or taken under this Act at the relevant time.

1. Adapted by the Karnataka Adaptations of Laws Order, 1973 w.e.f. 01.11.1973.

**14. Power to remove difficulties.-** (1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions from the provisions of the enactments repealed by section 12 the State Government may, by notification, make such provisions as appear to it to be necessary or expedient for removing the difficulty.

(2) If any difficulty arises in giving effect to the provisions of this Act (otherwise than in relation to the transition from the provisions of the enactments repealed by section 12), the State Government may, by notification, make such provisions, not inconsistent with the purposes of this Act as appear to it to be necessary or expedient for removing the difficulty.

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**NOTIFICATION**

**No. DE 61 PSR 2001, Bangalore**

**Dated 10<sup>th</sup> January, 2002.**

In exercise of the powers conferred by sub-section (2) of section 1 of the Karnataka Electricity Board (Recovery of Dues) and other Law (Amendment) Act, 2001 (Karnataka Act No. 27 of 2001) the Government of Karnataka hereby appoints the 10th day of January 2002 to be the date on which all the provisions of the said Act shall come into force.

By Order and in the name of the Governor of Karnataka,

B.K. Srinivasa Rao

Under Secretary to Government

Energy Department.

(Published in The Karnataka Gazette, Part IV-A Extraordinary No. 494 dated 4.4.2002.)