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NOTIFICATION

No. H. 12018/150/05-LJD/4, the 8th April, 2005. The following Act of the Mizoram Legislative Assembly which received the assent of the Governor of Mizoram is hereby published for general information.

The Mizoram Passengers and Goods (Taxation) Act, 2005 (Act No. 10 of 2005).

Received the assent of the Governor of Mizoram on 1st April, 2005.

AN
ACT

to provide for the levy of a Tax on Passengers and Goods carried by road in motor vehicles or on inland water-ways by boats.

Whereas it is expedient to provide for the levy of a Tax on Passengers and Goods carried by road or an inland water-ways and to repeal the Mizoram Passengers and Goods (Taxation) Act, 1988

It is enacted by the Legislative Assembly of Mizoram in the Fifty sixth year of the Republic of India as follows.

1. Short title, extend and Commencement.

- (1) This Bill may be called the Mizoram Passengers & Goods (Taxation) Act, 2005.
- (2) It extends to the whole of Mizoram.
- (3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.

2. Definitions.

In this Act, unless the context otherwise requires -

- (a) "boat" means a vessel or water-craft propelled or pulled or towed by hand or steam or other mechanical power or any other device used or adopted to be used for the carriage of passengers or goods for hire or reward;
- (b) "business" mean the business of carrying passengers or goods in taxable vehicle;
- (c) "Director" means the Director of Transport, Mizoram.
- (d) "fare" means and includes freight and any sum payable for a season ticket or for the hire of a taxable vehicle;

- (e) "goods" means and includes livestock and anything carried in taxable vehicle but does not include:-
- (i) living persons;
 - (ii) personal luggage of passengers traveling in such vehicles when it is not charged;
 - (iii) equipment's ordinarily used with such vehicle;
 - (iv) mineral or mineral ores; and
 - (v) petroleum products.
- (f) "Government" means the Government of Mizoram,
- (g) "motor vehicle" means a public service vehicle or a transport vehicle owned by a public carrier, including trailer when attached to any such vehicle within the meaning of Motor Vehicle Act, 1988 (Act 59 of 1988)
- (h) "owner" means the owner of a taxable vehicle and includes:-
- (i) The holder of a permit, if any, granted under the provision of the law for the time being in force to ply such vehicle within the territorial limits of the state; or
 - (ii) Any person for the time being in charge of such vehicles; or
 - (iii) Any person responsible for the management of the business of owner; or
 - (iv) Any State Transport undertaking as defined in section 97 of the Motor Vehicle Act, 1988 (Act 59 of 1988).
- (i) "passenger" means any person travelling in a taxable vehicle, but does not include an employee of the owner traveling in the bonafide discharge of his duties in connection with such vehicle, or a public servant traveling for the performance of his duties under this Act;
- (j) "prescribed" means prescribed by rules made under this Act;
- (k) "secretary" means Secretary to the Government of Mizoram, Transport Department.

- (i) "state" means the State of Mizoram;
- (m) "taxable vehicle" means either a boat or motor vehicle or both liable to be assessed for payment of tax under this Act.

5 LEVY OF TAX:

- (1) There shall be levied, charged and paid to the Government a tax on all fares in respect of all passengers and goods carried in a taxable vehicle at the rate of ten paise per rupee value of the fare subject to the minimum of five paise in any one case.

EXPLANATION:

- (i) When passengers or goods are carried in a taxable vehicle and no fare has been charged, the tax shall be levied and paid as if such passengers or goods were carried at the normal rate prevalent on the route.
 - (ii) Where any fare is charged or paid in lump sum on account of a season ticket or as subscription or contribution for any privilege right or facility which is combined with the right of a passenger or goods being carried in a taxable vehicle without any further payment or at a reduced charge, the tax shall be levied on the amount as appears to the prescribed authority to be fare and equitable.
- (2) Where passengers or goods are carried in a taxable vehicle from any place outside the State to any place within the State, or from any place within the State to any place outside the State, the tax shall be payable in respect of the distance covered within the State at the rate laid down in the sub-section:
 - (i) and shall be calculated on such amount as distance covered in the State bears to the total distance of the journey.

4. PAYMENT OF TAX:

The tax shall be paid by the owner to the Government in the prescribed manner; provided that in case of any taxable vehicle, the Government may accept a lump sum in lieu of the tax chargeable on fare in the manner prescribed.

5. EVIDENCE OF PAYMENT OF TAX.

Save as otherwise provided by this Act, no owner shall allow a passenger to travel or goods to be carried in a taxable vehicle unless a ticket or receipt, as the case may be, is issued by him in the prescribed form to denote that the tax has been paid.

EXPLANATION:

If a journey begins outside the State, the tax shall become chargeable on entry into the State in the prescribed manner.

6. KEEPING OF ACCOUNTS AND SUBMISSION OF RETURNS.

- (i) An owner may be required to keep such accounts and to submit such returns at such intervals and to such authority as may be prescribed.
- (ii) If any owner fails, without reasonable cause, to submit any returns or pay the tax due according to such return within 15 days of the due date, the assessing authority may direct that such owner shall, by way of penalty, pay in addition to the amount of tax payable by him, a sum not exceeding five rupees for each day of the period during which the default continues.
- (iii) Any penalty imposed under sub-section (2) shall be without prejudice to any punishment that may be imposed under the provision of section 23.

- (iv) If the prescribed authority is satisfied that the tax has not been correctly levied, charged and paid, he may, after giving the owner a reasonable opportunity of being heard, proceed to levy the amount of tax due and recover the same.

7. TAXING AUTHORITY.

- (1) The Government may, for carrying out the purpose of this Act, appoint a Director and such other persons to assist him as it may think fit.

- (2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred, and performed such duties as may be required by or under this Act.

8. TAXING AUTHORITY IS A PUBLIC SERVANT

All persons appointed under Section 7 shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code, 1860. (Act XLV of 1860).

9. PENALTY FOR NON-PAYMENT OF TAX.

If the prescribed authority is satisfied that any owner is liable to pay tax under the provision of the Act in respect of any period but has failed to pay the tax or any owner has allowed any passenger to travel without a ticket or goods to be carried in a taxable vehicle without issuing a receipt as required under Section 5 of the Act, the said authority may, after giving the owner a reasonable opportunity of being heard, assess the amount of tax, if any due from the owner, and also direct that the owner shall pay, by way of penalty in addition to the tax payable by him, a sum, not exceeding one thousand rupees:

Provided that no penalty under this section shall be imposed in respect of the same facts on which prosecution under this Act has been instituted.

10. EXEMPTION

The Government may, by general or special order and subject to specific conditions, if any, exempt, in the public interest, any owner or class of owners from the operation of all or any of the provisions of this Act.

11. SUPPLY OF TIME TABLE AND TABLE OF FARES

An owner shall, in the prescribed manner, furnish to the prescribed authority a table of fares and a table regulating timings of arrival and departure of taxable vehicles and such other particulars as the prescribed authority may by order, from time to time, require.

12. RECOVERY OF ARREAR OF TAX

Any arrear of tax or penalty imposed under this Act shall be recoverable as an arrear of land revenue.

13. TAX OF DECEASED PAYABLE BY REPRESENTATIVE

Where an owner dies before payment of the tax due under this Act, his executor, administrator or other legal representative shall be liable to pay, out of the estate of the deceased to the extent to which it is capable of meeting the charge.

14. LIABILITY IN CASE OF DISCONTINUED FIRM OR ASSOCIATION

Where the business carried on by a firm or an association of person, other than company as defined in the Companies Act, 1956 in respect of which tax is due under this Act, is discontinued or the association of persons is dissolved, the tax shall be levied upon and recovered from, jointly and severally, every person who, at the time of such discontinuance or dissolution, was a partner of such firm or member of such association, and all the provisions of this Act shall apply accordingly. (Act I of 1956)

15. **POWER OF ENTRY AND INSPECTION.**

The prescribed authority may enter and inspect any place ordinarily used by the owner for anchoring a boat or garaging a motor vehicle or keeping accounts of his business for the purpose of seeing or verifying whether the provisions of this Act or the rules framed there-under are being complied with, and countersign any documents during the course of such inspection.

16. **SEIZURE OF BOOKS OF ACCOUNTS.**

If the prescribed authority has reason to suspect that any owner is attempting to evade payment of any tax under the Act, he may, for reason to be recorded in writing, seize such accounts registers, ticket books, receipt books or documents of the owner as may be necessary and retain the same only for so long as may be necessary for the purpose of this Act and shall grant a receipt to the owner of the same.

17. **ERECTION OF CHECK POST**

(1) If the Government considers it necessary that with a view to prevent or check evasion of tax under this Act it is necessary so to do, it may, by notification in the official Gazette, direct the setting up of a check post or the erection of a barrier or both at such place as may be notified.

(2) At every check post or barrier mentioned in sub-section (1), or at any other place when required by the prescribed authority, the owner shall cause a taxable vehicle to stop and remain stationery in order to enable the said authority to carry out any duty imposed by or under this Act and the said authority may for doing so enter and travel in such vehicle.

18. **RESTRICTION ON THE USE OF TAXABLE VEHICLES IN CERTAIN CASES.**

No taxable vehicle shall be plied in the State:-

- (a) in case any tax or penalty in respect thereof remains unpaid for more than 15 days, until such tax or penalty is paid, or
- (b) in case the returns required by Section 6 have not been submitted, until the returns are submitted

Provided that the prescribed authority may, if the owner proves to its satisfaction that the failure to submit the returns referred in the clause (b) was not deliberate, exempt such vehicle from the operation of this section.

19. **APPEAL TO THE PRESCRIBED AUTHORITY.**

- (1) Any owner aggrieved with an order passed under this Act may, within 30 days from the date of the service of such order, appeal to the prescribed authority against such order, provided that this period may be extended by the prescribed authority for good and sufficient reasons to be recorded in writing:

Provided also that no appeal shall be entertained by such authority unless it is satisfied that the amount of tax assessed or penalty imposed has been paid.

Provided further that such authority, if satisfied that the owner is unable to pay the tax assessed, may, for reasons to be recorded in writing entertain an appeal without such tax having been paid.

- (2) In disposing of an appeal under sub-section (1) the appellate authority may:-
 - (a) confirm, reduce, enhance or annul the assessment, or
 - (b) set aside the assessment and direct a fresh assessment after such inquiry as may be ordered, or
 - (c) confirm, reduce or annul the order of penalty.

- (3) The order of the appellate authority shall be final except as provided in section 20 and section 21.

20. **REVISION BY DIRECTOR.**

- (1) The Director may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by any authority other than that appointed under sub-section (2) of Section 7, is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the owner an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such orders thereon as the circumstances justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

- (2) In the case of any order other than an order to which sub-section (1) applies passed by any authority other than the Director, he may, either of his own motion or on a petition by the owner for revision call for the record of any proceeding under this Act in which any such order has been passed and may make such enquiry or cause such enquiry to be made, and subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the owner, as he thinks fit.

- (3) In the case of a petition for revision under sub-section (2) by an owner, the petition shall be made within ninety days from the date on which he otherwise came to know of it, which ever is earlier.

Provided that the Director before whom the petition is filed may admit it after the expiration of the period of ninety days if he satisfied that for reasons beyond the control of the petitioner or for any other sufficient cause, it could not be filed within time.

(4) The Director shall not revise any order under this section in the following case:-

- (a) Where an appeal against the order lies under section 19 or 21 but has not been made and the time within which such appeal may be made has not expired, or in the case of an appeal to the Secretary, the owner has waived his right of appeal; or
- (b) Where the order is pending on appeal under section 19; or
- (c) Where the order has been made the subject of an appeal to the Secretary.

EXPLANATION: An order by the Director declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to an owner.

21. **APPEAL TO THE SECRETARY.**

- (1) Any owner objecting to an order passed in appeal under section 19 or passed in revision under sub-section (1) of section 20 may appeal to the Secretary within 60 days of the date on which such order is communicated to him.
- (2) The Secretary may admit an appeal after expiration of the 60 days referred to in sub-section(1) if it is satisfied that for reasons beyond the control of the appellant or for other sufficient cause it could not be filed within time.
- (3) An appeal to the Secretary shall be in the prescribed form and shall be verified in the prescribed manner, and shall be accompanied by a fee of twenty-five rupees.
- (4) The Secretary may, after giving the owner an opportunity of being heard, pass such order thereon as it think fit, and shall communicate any such orders to the owner and to the Director.

22. REFERENCES

- (1) Within 60 days from the date of service of any order under section 21, the owner may, by petition in writing require the Secretary to refer to the High Court any question of law arising out of such order of the Secretary or the Secretary may make such reference out of its own motion, where the petition is made by an owner, it shall be accompanied by a fee of one hundred rupees.
- (2) Within 60 days of the receipt of the petition under sub-section (1) the Secretary shall, subject to the provisions in sub-section (3), draw up, after such hearing, an enquiry as may be considered necessary, a statement of the case and refer it with its opinion thereon to the High Court.
- (3) The Secretary may reject the application under sub-section (1) and refuse to state the case on the ground that it is time barred or otherwise in-competent, or that no question of law arises and the applicant may, within 30 days of such refusal withdraw the application and if he does so, the fee paid shall be refunded.
- (4) Where the application under sub-section (1) is rejected on the ground that no question of law arises and where no action is taken by the applicant under sub-section (3) he may within 90 days from the date of such rejection, apply to the High Court against the order rejecting the application, the High Court, if not satisfied with the correctness of the decision, it may require the Secretary to state the case and refer it and on receipt of any such requisition, the Secretary shall state and refer the case accordingly.

- (5) Where the application under sub-section (1) is rejected on the ground that it is time barred and where no action is taken by the applicant under sub-section (3) he may, within 90 days of the date of such rejection apply to the High Court against the order rejecting the application and if, upon receipt of such an application, the High Court if not satisfied with the correctness of the decision, it may require the Secretary to treat the application under sub-section (1) as made within time.
- (6) Where the High Court is not satisfied that the statement in a case referred under this section is sufficient to enable it to determine the question of law raised thereby, it may refer the case back to the Secretary to make such additions thereto or such alterations there in as may be directed and the Secretary shall there upon comply with the directions and re-submit the case accordingly.
- (7) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgement thereon containing the ground on which such decision is based and shall send to the Secretary a copy of such judgement under the seal of the High Court and signature of the Registrar, and the Secretary shall, on receipt of the copy of judgement, order disposal of the case accordingly.
- (8) Where a reference is made on the application of an owner, the costs shall be in the discretion of the High Court.
- (9) Notwithstanding that a reference has been made under this section to the High Court, payment of tax shall not be stayed pending disposal of such reference; but where the amount of tax is reduced as the result of the reference, the excess shall be refunded in accordance with the provisions of this Act.
- (10) Section 5 of the Indian Limited Act, 1963 as applicable in Mizoram shall apply to an application to the High Court by an owner under this section.
(Act 36 of 1963)

23. OFFENCES AND PENALTIES.

- (1) Whoever –
- (a) fails to pay the tax due from him within the prescribed period; or
 - (b) fraudulently or willfully evades the payment of any tax due under this Act; or
 - (c) allows any passengers to travel without a ticket or goods to be carried without issuing a receipt in a taxable vehicle as required under section 5; or
 - (d) obstructs any prescribed authority from making entry and inspection under section 15 or sub-section (2) of section 17; or
 - (e) uses any taxable vehicle in contravention of section 18; or
 - (f) contravenes any provision of this Act or the rules made thereunder shall be liable, to conviction and/or to a fine which may extend to one thousand rupees and when the offence is a continuing one on a subsequent conviction, to a fine not exceeding twenty five rupees for each day of the continuance of the offence.

- (2) No court shall take cognizance of any offence under this Act or the rules framed thereunder, except on a complaint in writing by the prescribed authority, and no court inferior to that of a Magistrate of the First Class shall try any such offence.

24. OFFENCE BY COMPANIES

- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, or 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 sub-section shall render any person liable to any punishment under this Act 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.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the constant 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 purpose of this section –

- (a) "Company" means any body corporate and includes a firm or other association of individuals and
- (b) "Director" in relation to a firm, means a partner in the firm.

25. POWER TO COMPOUND OFFENCES.

- (1) The prescribed authority may, at any time accept from any person who has committed an offence under sections 23 and 24 by way of composition of offence, a sum of money not exceeding one thousand rupees or double the amount of tax involved, whichever is greater, in addition to the tax to be recovered.
- (2) On payment of such sum of money as may be determined under sub-section (1), the prescribed authority shall, where necessary, report to the Court that the offence has been compounded and thereafter no further proceedings under sections 23 and 24 shall be taken against the offender in respect of the same offence and the said court shall discharge or acquit the accused, as the case may be.

26. BAR TO PROCEEDINGS.

No prosecution shall lie against any person authorised under this Act for anything done or purported to have been done in good faith under this Act or the rules made thereunder.

27. EXCLUSION OF JURISDICTION

No civil Court shall have jurisdiction in any matter which the Government or any prescribed authority is empowered by this Act or the rules made there under to dispose off or take cognizance of and regarding the manner in which the government or any prescribed authority may exercise any power vested in it by or under this Act or the rules made there under.

28. REFUNDS.

The prescribed authority shall, in the prescribed manner, refund to an owner applying in this behalf, any amount of tax paid by such owner in excess of the amount due from him under this Act.

29. DELEGATION OF POWERS.

The Director may, subject to such restrictions and conditions as may be prescribed, delegate, by notifications in the official Gazette, any of his powers under this Act to any person appointed under Section 7 to assist him.

30. POWER TO MAKE RULES

(1) The Government may make rules, consistent with, the provision of this Act, for securing the payment of tax and generally for the purposes of carrying in to effect the provisions of this Act.

(2) In particular and without prejudice to the generally of the foregoing powers, the Government may make rules –

(a) Prescribing the manner in which and the interval at which tax shall be paid under section 3 and section 4;

(b) Prescribing the authority or authorities for the purpose of carrying out any function under any of the provision of this Act;

(c) Prescribing the forms of tickets and receipts under section 5;

- (d) Prescribing the manner of payment of tax under section 4 and the penalty under section 9;
 - (e) Prescribing the manner of exhibiting the table of fares and the time table under section 11;
 - (f) Prescribing the manner in which an appeal petition may be filed under section 19 or section 21;
 - (g) Prescribing the manner which a revision application may be preferred under section 22;
 - (h) Prescribing the manner in which a reference petition may be made under section 22;
 - (i) Prescribing the manner in which refund under section 28 shall be made; and
 - (j) providing for any other matter for which rules can be or may be prescribed.
- (3) All rules under this section shall be laid for not less than 14 days before the Mizoram Legislative Assembly as soon as possible after they are made and shall be subject to such modification as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

31. **REPEAL AND SAVING**

- (1) On and from the commencement of this Act, the Mizoram Passengers and Goods (Taxation) Act, 1988 shall stand repealed.
- (2) Notwithstanding such repeal, any action taken or purported to be taken under the Act so repealed shall be taken into account as action taken or purported to be taken under this Act.

Sd/-
P. Chakraborty,
Secretary to the Govt. of Mizoram,
Law, Judl. & Par. Affairs,
Aizawl.