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1978-79, No. 23

An Act to provide for a levy to be made on accommodation

(11 June 1979)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Accommodation Levy Act 1978-79.

Price . . .

(2) This Act shall come into effect on the first day of August 1979.

2. Interpretation - In this Act, unless the context otherwise requires -

"Accommodation" includes any room, rooms, unit, lodgings or place of occupancy being licensed or required to be licensed used by tourists, visitors or the travelling public;

"Court" shall mean the High Court of the Cook Islands;

"General Manager" shall mean the General Manager of the Tourist Authority;

"Inspector" means an inspector appointed pursuant to section 11 of this Act;

"Levy" shall mean the accommodation levy imposed by section 4 of this Act;

"Manager" includes the owner, operator or any other person charged with the responsibility of the administration or management of any premises used for accommodation;

"Minister" means the Minister responsible for Tourism.

3. Administration - This Act shall be administered by the Tourist Authority.

PART I - IMPOSITION AND COLLECTION OF ACCOMMODATION LEVY

4. Accommodation levy - Subject to the provisions of this Act, accommodation levy shall be levied, collected and paid at a rate of five per cent on the value of accommodation provided to any person or persons and such shall form part of the revenue of Treasury. The General Manager shall make monthly returns of levies collected in the form required by Treasury.

5. Liability for payment of levy - The manager shall be liable for the payment of levy as provided for in this Act.

6. Value of accommodation for assessing levy - For the purposes of this Act the value for accommodation shall be deemed to be the charge made for a room, rooms, unit or other place of occupancy (whether shared with any other person or not) in any hotel, motel, guesthouse or other place of accommodation either licensed or required to be licensed under the provisions of the Tourist Authority Act 1968.

7. Payment of levy - (1) Subject to the provisions of this section levy shall be payable to the General Manager or some other person authorised by him.

(2) (a) Within seven clear working days from the end of each calendar month each person liable for the payment of the levy shall lodge with the General Manager or some other person authorised by him a return containing such details as the General Manager may require in regard to the value of accommodation paid in the preceding calendar month together with payment of the levy due.

(b) Each return made under this sub-section shall include therein a written declaration as to the correctness of the return and the details therein.

8. Minimum levy payable - Where any levy payable is less than five dollars then the amount payable shall be five dollars.

9. Late payment surcharge - (1) Where payment of the levy has not been made by the due date there shall be payable in addition to the levy a sum of ten percent of the amount of levy due provided that the levy and late payment surcharge of ten per cent shall be increased to twenty per cent where not paid within fourteen clear working days from the end of the preceding calendar month.

(2) For the purposes of this Act the late payment surcharges imposed by this section shall be deemed to be a levy and will be payable and recoverable as if they were levy payable under the Act.

(3) The final date for the payment of levy and any late payment surcharges shall be within 21 clear working days from the end of the preceding calendar month.

(4) (a) Every manager commits an offence against this Act who fails to furnish any return or fails to pay any levy as required of him under the provisions of this Act;

(b) Any person found guilty of an offence against this sub-section shall, on conviction, be liable to a fine of two hundred dollars or a fine of three times the amount of levy outstanding, whichever is the greater sum; and in addition shall be directed by the Court to pay to the General Manager forthwith the amount of levy due for payment.

10. Refunds of levy - Where the General Manager is satisfied that an error has been made in the payment of any levy he may refund the amount paid in error.

PART II - POWERS AND DUTIES

11. Appointment of inspectors - The General Manager may, from time to time, appoint from officers of the Tourist Authority such inspectors as are deemed necessary to ensure that the provisions of this Act are carried out.

12. Powers of inspectors - Every inspector appointed pursuant to section 11 of this Act shall have the following powers:

(a) Have access to any books, records or other documents held by any person which would assist in determining whether any levy payable under this Act has been properly assessed; and

(b) To take copies or extracts from any books, records or other documents held by any person which relates to accommodation charges; and

(c) To enter freely upon any accommodation premises at all reasonable hours to inspect any books, records or other documents; and

(d) To exercise such other powers and authorities as may be necessary for the carrying out the provisions of this Act.

13. General Manager may requisition books, records or other documents - The General Manager may by order in writing under his hand require any person liable to the levy payable under this Act to produce to him, or any person authorised by him in his requisition, any books, records, or other documents

which may have information in regard to ascertaining the value of accommodation.

14. General Manager to be advised of charges made for accommodation - Every person liable to payment of the levy prescribed by this Act shall within seven clear working days from the date of commencement of this Act provide the General Manager with a scale of charges made for accommodation in any premises used by him and shall further advise the General Manager within seven working days of the date that there is any alteration in the charges.

15. Records to be kept - Every person liable to the payment of levy under this Act shall cause to be kept such records as the General Manager deems necessary to ensure that charges made for any accommodation are readily available and such records shall be kept for a minimum period of seven years.

PART III - AGENTS, LIQUIDATORS AND DECEASED LEVYPAYERS

16. Liability of principal for acts of agent - (1) Every act done or declaration made by an agent in the course of his agency in relation to his operation of any accommodation premises subject to the payment of levy or otherwise in relation to this Act, shall be deemed to have been done or made by his principal also, and the principal shall be liable accordingly to all levies, fines, or penalties imposed by this Act.

(2) For the purposes of this section the knowledge and intent of the agent shall be imputed to the principal in addition to his own.

(3) For the purposes of this section the agent of an agent shall be deemed to be also the agent of the principal.

17. Liability of agents - Where any person acts or assumes to act as the agent of any other person in relation to the operation of accommodation premises subject to the payment of levy, or otherwise in relation to this Act, he shall be liable to the levy, fines, or penalties as if he were the principal for whom he so acts or assumes to act.

18. Liability of agent winding up business of absentee principal - (1) Where an agent for a principal absent from the Cook Islands has been required by the principal to wind up the business of his principal he shall, before taking any steps to wind up the business, notify the General Manager of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the General Manager to be sufficient to provide for any levy that then is or will thereafter become payable in respect of the business of the principal.

(2) Every agent who fails to give notice to the General Manager, or fails to provide for payment of levy as required by this section shall on conviction be liable to a fine not exceeding two hundred dollars.

19. Payment of levy by executors or administrators - (1) Where at the time of a levypayer's death, he has not paid the whole of the levy theretofore owing by him, the General Manager shall have the same powers and remedies for the assessment and recovery of levy from the executors or administrators of the levypayer as he would have had against the levypayer if he were alive.

(2) The amount of levy owing by the levypayer as aforesaid shall until payment be a charge on all the levypayer's estate in the hands of the executors or administrators.

(3) The executors or administrators shall furnish such of the returns required by this Act as have not been made by the levypayer, and such other returns and information as the General Manager may require.

20. Recovery of levy where there are no executors or administrators - (1) Where administration of the estate of any deceased levypayer has not been granted within twelve months of his death, the General Manager may assess the levy owing by the deceased at the time of his death at such sum as he thinks proper.

(2) At any time after the making of an assessment under this section, the General Manager may issue a warrant of distress in the form in the Schedule to this Act authorising and requiring any constable or any other person named therein to levy the amount of levy owing by the deceased, and also the expenses of the execution, by distress and sale of the goods and chattels of the deceased.

(3) Upon the issue of any such warrant the person so authorised shall have power to levy such amount and expenses accordingly.

PART IV - OFFENCES AND PENALTIES

21. Aiding and abetting offences - Every person who aids, abets, counsels, or procures the commission of an offence against this Act shall be deemed to have committed that offence, and shall be liable accordingly.

22. Attempts - Every attempt to commit an offence against this Act shall be an offence punishable in a like manner as if the offence so attempted had actually been committed.

23. General penalty - Every person who commits an offence against this Act for which no other penalty is provided shall, on conviction, be liable to a fine not exceeding two hundred dollars.

24. Defrauding the revenue - Every person who commits any offence against this Act or does any other act, with intent, in either case to defraud the revenue by evading or enabling any other person to evade payment of any levy or who conspires with any other person (whether that other person is in the Cook Islands or not) so to defraud the revenue in relation to levy shall, on conviction, be liable to a fine of five hundred dollars or to a fine of ten times the amount of levy unpaid arising from defrauding the revenue, whichever is the greater sum.

25. Erroneous returns - Every person who for the purposes of this Act makes any return which is erroneous or defective in any particular shall, on conviction, be liable to a fine not exceeding two hundred dollars.

26. Erroneous declarations - Every person who makes any declaration under this Act which is erroneous in any particular shall, on conviction, be liable to a fine not exceeding two hundred dollars.

27. False declarations - Every person who knowingly makes any false declaration under this Act shall, on conviction, be guilty of an offence punishable by imprisonment for a term not exceeding two years.

28. Obstruction etc of inspectors - (1) Every person commits an offence against this Act who:

- (a) Without reasonable cause delays an inspector in the exercise of his functions under this Act; or

(b) Fails to produce any book, record or other document an inspector has requested

(2) Any person found guilty of an offence against this section shall be liable to a fine not exceeding five hundred dollars or may be sentenced to a term of imprisonment not exceeding six months.

29. Failure to produce books, records, or other documents - Every person who fails to produce to the General Manager or any other person authorised by him any books, records or other documents when such have been requisitioned by order in writing by the General Manager shall, on conviction, be liable to a fine not exceeding five hundred dollars or may be sentenced to a term of imprisonment for a period not exceeding six months.

30. Liability of officers of a company for offence by company - Where a person convicted of an offence against this Act is a company, every director and every officer concerned in the management of the company shall be guilty of the like offence unless he proves that the act constituting the offence took place without his knowledge or consent.

31. Offences presumed to have been committed with intent to defraud the revenue - When any offence has been committed against this Act it shall for all the purposes of this Act and in all proceedings thereunder be presumed to have been committed with intent to defraud the revenue, unless the contrary is proved; and this presumption shall not be excluded by the fact that evidence has been produced on behalf of Her Majesty or the prosecutor of the existence of such an intent.

PART V - MISCELLANEOUS

32. Persons liable to levy may add the levy to accounts - (1) Any person liable to a levy under this account may only add the amount of five per cent leviable under this Act to the account or other charge made for accommodation and not to any other charge.

(2) No late penalty surcharge may be added to any charge made for accommodation.

33. Delegation of powers of the General Manager - (1) The General Manager may, from time to time, delegate any or all of his powers under this Act, save the present power of delegation, to any officer of the Tourist Authority.

(2) The delegation of any powers under this section shall not prevent the exercise of those powers by the General Manager.

34. Regulations - (1) The High Commissioner may by Order in Executive Council make regulations under this Act with respect to which regulations are necessary or convenient for giving effect to this Act.

(2) Regulations made under this Act may prescribe for any breach thereof a fine not exceeding one hundred dollars and all the provisions of this Act relating to fines shall apply to fines imposed by any such regulations.

(3) Every Order in Executive Council made under this Act shall be laid before the Legislative Assembly within twenty eight days after the making thereof if the Legislative Assembly is then in session, and if not, then within fourteen days after the commencement of the next ensuing session.