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1984, No. 11

An Act to impose welfare taxes and to provide for assessment levy and collection
(28 September 1984)

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

1. Short Title and commencement - This Act may be cited as the Welfare Tax Act 1984 and shall come into force on the 1st day of October 1984.
2. Interpretation - In this Act, unless the context otherwise requires:

"Collector" has the same meaning as in section 6 of the Income Tax Act 1972; and includes any person for the time being authorised to exercise or perform any of the powers or functions of the Collector;

"Goods" means all kinds of personal movable property;

"Minister" means the Minister responsible for Finance;

"Officer" means any person employed in the Inland Revenue Department;

"Prescribed" means prescribed by the Collector;

"Records" means all papers, books, registers, discs, films, tapes, sound tracks or other devices or things in or on which information is recorded or stored;

"Retailer" means a taxpayer who is engaged either wholly or partially in the trade or business of selling goods or services otherwise than to a person acquiring them solely for the purposes of resale or re-supply;

"Sale" includes barter; and also includes the disposal of goods and provision of services for valuable consideration, and the delivery of goods or provision of services under any condition as to future payment and also includes the use of goods and services by a retailer which belong to that retailer; and "to sell" and "seller" have corresponding meanings;

"Services" includes all activities engaged in for other persons for valuable consideration which involve the rendering of a service as distinguished from the sale of goods;

"Taxable goods and services" means goods and services of a class or kind not for the time being exempted from welfare tax;

"Taxpayer" means a person chargeable with welfare tax either, on his own account or as the agent or trustee of any other person and includes the executor or administrator of a deceased taxpayer;

"Welfare tax" means any tax imposed by this Act.

PART I

ADMINISTRATION

3. Act to be administered by Inland Revenue Department - This Act shall be administered by the Inland Revenue Department.

4. Extension of powers and authorities - The powers and authorities of the Collector under the Income Tax Act 1972 shall with all necessary modifications, apply in the same manner to the collection of welfare tax under this Act as they apply to the collection of income tax under that Act.

PART II

IMPOSITION OF WELFARE TAX

5. Welfare tax on retail sales - (1) Except for goods and services of the classes of kinds for the time being exempted from the operation of this Act, welfare tax at a rate of 2% shall be levied collected and paid by a retailer on the retail sale value of taxable goods and services.

(2) Except in cases as may be approved by the Collector, every retailer who sells any taxable goods or provides any taxable services, shall state separately in every invoice delivered or sent by him to the purchaser in respect of the transaction the price for which the goods are sold or the services provided and the welfare tax payable thereon.

(3) The amount of welfare tax so payable shall if stated in any such invoice, be recoverable by the seller from the purchaser in addition to the price and any other amount due by the purchaser in respect of the goods and services.

(4) Unless provision to the contrary is made in any contract for the sale by a retailer to the Crown of any taxable goods, or services the amount of any welfare tax paid or payable by the retailer in respect of those goods or services shall be recoverable by him in addition to the price and any other amount due by the Crown in respect of the goods or services.

(5) In any case to which subsection (4) of this section is not applicable, the contract price of any taxable goods or services provided to the Crown may be recovered and payment of such price may be made notwithstanding that the invoice or account rendered in respect of the goods may include, as part of the contract price, any amount paid or payable by the seller in respect of welfare tax.

6. When retail sale deemed to have been made - For the purposes of this Act a retail sale shall be deemed to have been made-

- (a) in the case of goods, when the purchaser takes possession of those goods;
- (b) in the case of services, as and when those services are performed.

7. Goods the property of the Crown - If the Minister so determines, welfare tax in accordance with this Act shall be levied, collected and paid on any taxable goods or services being the property of the Crown in respect of the Government of the Cook Islands and in respect of which there is a sale at retail.

8. Exemptions from welfare tax - (1) The Queen's Representative may from time to time, by Order in Council, exempt from welfare tax any specified class or kind of goods, or services and may in like manner revoke any such exemption.

(2) Any exemption created pursuant to this section may be absolute or conditional.

(3) Every Order in Council under this section shall come into force on such date as may be specified therein.

(4) If any dispute arises as to whether any goods are exempt from welfare tax or not, such dispute shall be determined by way of Objection pursuant to Part V of this Act.

9. Sale value of goods deemed to have been sold - The retail sale value of any taxable goods and services that are deemed to have been sold pursuant to section 6 of this Act shall be the fair market value of those goods and services.

PART III

PAYMENT AND COLLECTION OF WELFARE TAX

10. Welfare tax a Crown debt - (1) The welfare tax payable on taxable goods, and services shall constitute a debt owing to the Crown by the retailer by whom the sale is made or the service provided.

(2) Every such debt shall become payable in accordance with the provisions of this Act.

(3) Such debt shall be recoverable by action at the suit of the Collector on behalf of the Crown.

(4) The right to recover welfare tax as a Crown debt shall not be affected by the fact that no proper assessment of welfare tax has been made in due course under this Act, or that a deficient assessment of welfare tax has been made.

11. Monthly returns by retailers - (1) Every retailer shall, within 20 days after the end of each month, deliver to the Collector a return in the prescribed form setting forth the aggregate amount of the sale value of all taxable goods sold and taxable services provided by him during that month, the amount of welfare tax payable on those goods or services which amount shall accompany the return, and such other particulars as the form may require.

(2) Notwithstanding sub-section (1) the Collector may, for good cause, permit a taxpayer to file a return and make payments thereon on a quarterly basis, such return and payment to be made on or before the 20th day after the months of March, June, September and December provided that the Collector is satisfied that the grant of such permit will not jeopardize the collection of the taxes due thereon and that the taxpayer's total tax liability for the year will not exceed \$200. The Collector may also for good cause, permit a taxpayer to make monthly payments based on his estimated quarterly liability.

(3) The Collector may in his discretion revoke any permit granted under subsection (2) in which case the taxpayer shall file returns and make payments thereon in accordance with subsection (1) of this section.

(4) Every retailer who fails to deliver to the Collector any return required under this section within the time limited by this section commits an offence against this Act, and in addition to any penalty imposed, the Court may order the considered person to furnish to the Collector that required return.

(5) Notwithstanding subsection (4) of this section every retailer who fails to deliver to the Collector any return required under this section within the time limited by the section shall be liable to a late lodgement penalty which shall be 5% of the welfare tax due in respect of that return for every month or part thereof it remains outstanding but not exceeding 25% in the aggregate.

12. Assessment of tax - (1) The returns required by section 11 of this Act may be accepted by the Collector as sufficient proof of the matters therein contained, and welfare tax may be assessed by the Collector accordingly.

(2) If the Collector has reason to believe or suspects that the amount of welfare tax shown in any return as payable on any taxable goods or services is less than the amount payable under this Act, he may assess the welfare tax at such greater amount as he thinks proper.

(3) If the Collector has reason to believe or suspect that the welfare tax is payable on any taxable goods or services by any person who has not made a return in respect thereof, he may assess the tax at such amount as he thinks proper.

13. Assessment presumed to be correct - Every assessment made by the Collector under this Part of this Act shall be taken to be correct and welfare tax shall be payable accordingly unless on objection proceedings taken under this Act a different amount is proved to be the welfare tax payable or it is proved that no welfare tax is payable.

14. Minimum welfare tax collectable - There may be prescribed the minimum amount of welfare tax that need be collected on any taxable goods or services and any welfare tax which if assessed under this Act, would be less than the minimum so prescribed may, if the Collector thinks fit, be remitted.

15. Additional tax on default in payment - (1) Where any welfare tax remains unpaid 10 percent of the amount of the welfare tax unpaid shall be added thereto by way of additional welfare tax and shall be payable accordingly.

(2) Notwithstanding subsection (1) of this section, the Collector may, for reasons which, in his discretion, he thinks sufficient, remit or refund the whole or any part of any additional welfare tax imposed by that subsection.

(3) Where for any reason the amount of any welfare tax in respect of which additional welfare tax has been imposed under subsection (1) of this section is amended, the additional welfare tax shall, where necessary, be adjusted accordingly.

16. Taxpayer leaving Cook Islands - If the Collector has reason to believe that a taxpayer is about to leave the Cook Islands before any welfare tax owing by him becomes payable in accordance with the foregoing provisions of this Act, the welfare tax shall, if the Collector thinks fit, be payable on such earlier date as the Collector determines and gives notice to the taxpayer accordingly.

17. Power to collect tax from person owing money to taxpayer -

(1) Where any sum is due and payable by a taxpayer for welfare tax under this Act, the Collector may, by notice in writing (a copy of which shall be forwarded the taxpayer at his last place of address known to the Collector), require-

- (a) Any person by whom any money is due or accruing on may become due to the taxpayer; or
- (b) Any person who holds or may subsequently hold money for or on account of the taxpayer; or
- (c) Any person who holds or may subsequently hold money on account of some other person for payment to the taxpayer; or
- (d) Any person having authority from some other person to pay money to the taxpayer-

to pay to him forthwith, or within such time as the Collector allows, such money (not being salary or wages due or accruing due to the taxpayer) or so much thereof as is sufficient to pay the sum due and payable by the taxpayer as aforesaid.

(2) Every person who fails or refuses to comply with a notice under this section commits an offence and shall be liable to a fine not exceeding \$200.

(3) All payments made pursuant to a notice under this section shall be deemed to be made on behalf of the taxpayer and with the authority of the taxpayer and of all other persons concerned.

18. Collector may waive payment of penalty in certain cases -

Where the Collector is satisfied that the payment of any penalty by a taxpayer would entail or has entailed serious hardship the Collector may, in whole or in part-

- (a) Release the taxpayer from his liability to pay that penalty; or
- (b) Refund that penalty.

PART IV

AGENTS, LIQUIDATORS, AND DECEASED TAXPAYERS

19. Liability of principal for acts of agent - (1) Every declaration made or other act done by an agent in the course of his agency in relation to the sale of taxable goods and services or otherwise in relation to this Act, shall be deemed to have been made or done by his principal also, and the principal shall be liable accordingly to all welfare tax 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.

20. Liability of agents - When any person acts or assumes to act as the agent of any other person in relation to the sale of taxable goods and services or otherwise in relation to this Act, he shall be liable to the same welfare tax or penalties as if he were the principal for whom he so acts or assumes to act.

21. 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 Collector of his intention to do so, and shall set aside such sum out of the assets of the principal as appears to the Collector to be sufficient to provide for any welfare tax that is or will become payable in respect of the business of the principal.

(2) Every agent who fails to give notice to the Collector or fails to provide for payment of welfare tax as required by this section commits an offence against this Act.

22. Liquidator of company to give notice of winding up and to provide for payment of tax - (1) Where an effective resolution is passed or an order is made for the winding up of a company which is a retailer, the liquidator of the company shall, within 14 days thereafter give notice thereof to the Collector and shall, before disposing of any of the assets of the company, set aside such sum out of the assets as appears to the Collector to be sufficient to provide for any welfare tax that is or will become payable in respect of the company and the liquidator may convert any of the assets of the company to cash where this is necessary for the sole purpose of enabling him to set aside that sum.

(2) The liquidator of any such company shall be liable for the payment out of the assets of the company of any welfare tax that is or becomes payable in respect of the company and if he fails to comply with any of the provisions of subsection (1) of this section shall also be personally liable for the payment of such welfare tax.

(3) Where 2 or more persons are appointed liquidators or are required by law to carry out the winding up of any such company the obligations and liabilities attaching to a liquidator under this section shall attach to all such persons jointly and severally, subject to a right of contribution between themselves as in cases of contract.

(4) Nothing in this section shall restrict Section 308 of the Companies Act 1971, and the Collector may, where necessary, refund to the liquidator any welfare tax paid by him out of the assets of the company in accordance with subsection (2) of this section.

23. Appointment of receiver to be notified to Collector and receiver to provide for payment of tax - (1) Where a receiver is appointed of the property of a retailer (such retailer herein-after in this section referred to as the taxpayer), the receiver shall, within 14 days after his appointment, give notice thereof to the Collector and shall, before disposing of any of the assets of the taxpayer, set aside out of the assets such sum as appears to the Collector to be sufficient to provide for any welfare tax that is payable by the taxpayer and any welfare tax that will become payable in respect of taxable goods and services that have been sold by the taxpayer before the appointment of the receiver, and the receiver may convert any of the assets of the taxpayer to cash where this is necessary for the sole purpose of enabling him to set aside that sum.

(2) The person appointed as receiver shall be liable for the payment out of the assets of the taxpayer of any welfare tax that is or thereafter becomes payable and, if he fails to comply with any of the provisions of subsection (1) of this section, shall also be personally liable for the payment of such welfare tax.

(3) Where 2 or more persons are appointed receivers of the property of any taxpayer as aforesaid, the obligations and liabilities attaching to a receiver under this section shall attach to all such persons jointly and severally, subject to a right of contribution between themselves as in cases of contract.

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

(2) The amount of welfare tax owing by the taxpayer shall until payment be a charge on all the taxpayer'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 taxpayer, and such other returns and information as the Collector may require.

25. Recovery of welfare tax where there are no executors or administrators - (1) Where administration of the estate of any deceased taxpayer has not been granted within 6 months of his death, the Collector may assess the welfare tax owing by the deceased at the date of his death at such sum as he thinks proper.

(2) The Collector shall give notice of the assessment by advertisement published at least twice in such newspaper or newspapers as he thinks fit.

(3) Any person claiming an interest in the estate of any deceased taxpayer may, within 42 days after the first publication of the notice of the assessment, post to or lodge with the Collector an objection in writing against the assessment, stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and refunds of welfare tax shall, with all necessary modifications, apply in relation to that objection as if that person were the taxpayer.

(4) Subject to any amendment of the assessment by the Collector or by a Court, the assessment so made shall be conclusive evidence of the indebtedness of the deceased taxpayer to the Crown.

(5) Notwithstanding anything in any other provision of this section, if at any time administration of the estate of the deceased is granted to any person, that person may, within 42 days after the date of the grant, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies, and the provisions of this Act relating to objections and refunds of welfare tax shall, with all necessary modifications apply in relation to the objection as if that person were the taxpayer.

(6) In this section the term "administration" has the same meaning as in the Administration Act 1969, (an enactment of the Parliament of New Zealand).

PART V

OBJECTIONS

26. Objections - Any person who has been assessed for welfare tax may object to that assessment in the same manner as is provided in respect of income tax objections pursuant to Part IV of the Income Tax Act 1972.

PART VIREFUNDS

27. Recovery of tax paid in error - At any time within 1 year after the payment of any sum by way of welfare tax the person by whom payment was so made may institute proceedings against the Crown for a refund of such welfare tax, or of any part thereof, on the ground that the welfare tax was not lawfully chargeable or was charged in excess, and whether the error alleged is one of fact or of law.

28. Refund of tax paid in error - If the Collector is satisfied that any welfare tax has been paid in error, whether of law or fact, he may refund it-

- (a) At any time within 3 years after it has been paid;
or
- (b) At any later time, on an application made within such 3 years.

29. Recovery of tax refunded in error - All money refunded in error, whether of fact or of law, by the Collector shall be recoverable by action at the suit of the Crown at any time within 3 years after the payment thereof, or without limit of time if the refund has been obtained by fraud.

PART VIIPOWERS OF OFFICERS

30. Power to question persons and require production of records - (1) The Collector may question any person as to the particulars shown in any return delivered to him by a taxpayer in accordance with this Act, and may, if he thinks fit, require from the taxpayer proof by declaration or by the production of records (in addition to any declaration or records otherwise required by this Act) of the correctness of the return.

(2) If any taxpayer refuses or fails without reasonable causes to make any such declaration or to produce such records he shall be liable to a fine not exceeding \$100 or the amount of the sale value of the goods or services in respect of which the return is made, whichever sum is the greater.

31. Requisition to produce records - (1) Where any question has arisen under this Act, the Collector may, by order under his hand require any person (including any officer employed in or in connection with any Government department)-

- (a) To furnish in writing any information and produce for inspection any records to the Collector or any specified officer, being information or records which the Collector considers necessary or relevant to the administration or enforcement of this Act; or
 - (b) To allow the Collector or any specified officer to make copies of or extracts from those records; or
 - (c) To appear before the Collector or other specified officer and to answer all questions put to him concerning those records.
- (2) An order under this section may be directed to any corporation or public authority, or to any member, officer, or servant of any corporation or public authority.

(3) Any person who fails or refuses to comply with any order made under this section or, on being so questioned, fails or refuses to answer any question put to him, or to answer any such question in writing if so required by the Collector, or answers any such question incorrectly, commits an offence and shall be liable to a fine not exceeding \$400.

32. Power to impound records - The Collector may impound or retain any records presented in connection with any return or required to be produced under this Act; but the person otherwise entitled to the records shall, where practicable, be entitled in its place to a copy certified as correct by the Collector and the copy so certified shall be received in all Courts as evidence in place of the original.

PART VIII

OFFENCES

33. Defrauding the revenue - Every person who contravenes any provisions of this Act, or does any other act, with intent to defraud the revenue -

- (a) By evading or enabling any other person to evade payment of the welfare tax or any part of the welfare tax on any goods or services or;
- (b) By obtaining or enabling any other person to obtain any money by way of refund of welfare tax on any goods or services; or
- (c) In any other manner whatsoever in relation to any goods or services.

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 any goods or services commits an offence and shall be liable to a fine not exceeding \$400 or 3 times the sale value of those goods or services whichever sum is greater.

34. Erroneous returns - (1) Every person who for the purposes of this Act makes any return which is erroneous or defective in any particular commits an offence and shall be liable to a fine not exceeding \$200 or 3 times the amount of any deficient welfare tax, whichever sum is the greater.

(2) For the purposes of this section -

- (a) The term "deficient welfare tax" means the full welfare tax payable on the goods or services which are included or ought to have been included in the return, less the amount of welfare tax (if any) payable on the goods if computed in accordance with the return actually made:

- (b) Every declaration or written statement delivered to the Collector in connection with any return made under this Act shall be deemed to form part of the return.

35. Erroneous refunds - Every person who obtains any refund, or remission of welfare tax by means of any erroneous or defective declaration or written statement, or by producing to any officer any declaration or any records which are not genuine or which are in any respect erroneous or defective, commits an offence and shall be liable to a fine not exceeding \$200 or 3 times the amount of that refund, or remission, whichever sum is the greater.

36. Erroneous declarations - Every person who makes any declaration under this Act which is erroneous in any particular commits an offence and shall be liable to a fine not exceeding \$200.

37. False declarations - Every person who knowingly makes any false declaration under this Act commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years.

38. Offences with respect to invoices - Every person commits an offence against this Act who, in respect of the sale of any goods or services, delivers or sends to any other person any invoice or statement which shows any amount as paid or payable by way of welfare tax (whether charged to the purchaser or not) -

- (a) Where no welfare tax is payable in respect of those goods; or
- (b) Where the amount shown is in excess of the welfare tax payable.

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

40. Liability of officers of body corporate - If a body corporate commits an offence against this Act, every director, manager, secretary, or other similar officers of the body corporate, and every person purporting to act in any such capacity, shall also be guilty of that offence if the act or omission constituting the offence occurred with his knowledge and consent.

41. Procedure - (1) Any information for an offence against this Act may be laid at any time within 10 years after the date of the offence.

(2) Every information for an offence against this Act shall be laid by the Collector.

42. General penalty - Every person who commits an offence against this Act for which no other penalty is provided shall be liable to a fine not exceeding \$200.

43. Arrest of offenders - Any member of the Police or any officer who has reasonable cause to suspect that any person has committed any offence against this Act with intent to defraud the revenue, and is about to leave the Cook Islands shall arrest that person without warrant.

PART IX

MISCELLANEOUS PROVISIONS

44. Burden of proof - (1) In any proceedings under this Act instituted by or on behalf of or against the Crown every allegation made on behalf of the Crown in any statement of claim, shall be presumed to be true unless the contrary is proved.

(2) The aforesaid presumption shall not be excluded by the fact that evidence is produced on behalf of the Crown in support of any such allegation.

(3) For the purposes of this section every proceeding instituted by or against the Crown in which any question arises as to the rights, powers, obligations, or liabilities of the Crown or any other person under this Act shall be deemed to be a proceeding under this Act.

(4) The provisions of this section shall extend and apply to proceedings in which the existence of an intent to defraud the revenue is in issue.

45. Keeping of business records - (1) Subject to subsection (2) of this section, every retailer shall keep sufficient records to enable his liability for welfare tax to be readily ascertained by the Collector, and shall retain all such records so kept after the commencement of this Act and all records relating to his business as a retailer in existence at that date for a period of at least 7 years after the completion of the transactions, acts, or operations to which they relate.

(2) This section shall not require the retention of any records-

- (a) In respect of which the Collector has given notice that retention is not required; OR
- (b) Of a company that has been wound up and finally dissolved.

46. Giving of notices - (1) Any notice required by this Act to be given by the Collector to any person may be-

- (a) Given to him personally; or
- (b) Sent to him by post addressed to him at his usual or last known place of abode or business; or
- (c) Given personally to any other person authorised to act on behalf of that person; or
- (d) Sent to that other person addressed to him at his usual or last known place of abode or business.

(2) Any notice sent by post to any person shall be deemed to have been received by him when in the normal course of post it would be delivered.

47. Regulations - The Queen's Representative in Executive Council may from time to time make such regulations as is deemed necessary or expedient for the purpose of giving full effect to this Act and for the due administration thereof, including the prescription of penalties not exceeding two hundred dollars for offences against any such regulations.

This Act is administered in the Inland Revenue Department