

CHAPTER 86

RETAIL SALES TAX

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CHAPTER 86

RETAIL SALES TAX

An Act to provide for the imposition of a tax on the proceeds of the sale of goods by retail and for related purposes. 1974-41.

[1st December, 1974] Commence-
ment.

1. This Act may be cited as the Retail Sales Tax Act. Short title.

2. (1) For the purposes of this Act— Interpretation.

“ Commissioner ” means the Commissioner of Inland Revenue;

“ exempted goods ” means any goods exempted from the application of this Act by an order made under section 5 (1);

“ goods ” includes all chattels personal other than things in action and money;

“ retailer ” means a person who sells by retail;

“ sale ” includes—

(a) the transfer of possession of goods under a hire-purchase agreement within the meaning of section 2 of the Hire-Purchase Act,

Cap. 328.

(b) the sale of goods pursuant to an agreement under which the whole or part of the purchase price is payable by instalments, and

(c) any contract similar to a sale in other respects, but made for a consideration wholly or partly in money's worth and not, or not only, in money;

“ Minister ” means the Minister responsible for Finance;

“ selling by retail ” means selling goods by way of business otherwise than by wholesale;

“ selling by wholesale ” means selling goods to any person who carries on a business of selling those goods;

“ tax ” means the sales tax imposed by section 4;

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“taxable proceeds” in relation to a retailer means the proceeds of that retailer from the source mentioned in section 4 (1).

Administra-
tion.

3. (1) The Commissioner shall be responsible for the due administration of this Act and for the assessment, collection and recovery of tax.

(2) Any function conferred by this Act on the Commissioner may be exercised as may be necessary by any public officer authorised by the Commissioner for the purpose, and references in this Act to the Commissioner shall be construed accordingly.

Charge of
sales tax.

4. (1) Subject to this Act, there shall be charged, levied and collected on the proceeds of every retailer from the sale by retail of goods, other than exempted goods, sales tax at such rate thereof as the Minister prescribes by order.

(2) An order made under subsection (1)—

- (a) may prescribe different rates of tax in respect of different classes of goods; and
- (b) shall be subject to negative resolution.

(3) Tax is chargeable on the full amount of the taxable proceeds of a retailer without any other deduction or allowance than is authorised or allowed by this Act.

Exemption.

5. (1) The Minister may by order exempt from the application of this Act such classes of goods as may be specified in the order, subject to such conditions as may be so specified.

(2) An order made under subsection (1) shall be subject to negative resolution.

(3) A retailer who demands or receives tax from any person in respect of the sale of any exempted goods is guilty of an offence and liable on summary conviction to a fine of five hundred dollars or to imprisonment for three months or both.

Waiver,
remission and
refund of tax.

6. The Minister may, in any case in which he thinks it just and equitable so to do, waive, remit or refund any amount payable or paid by any person as a tax to a retailer.

Payment.

7. (1) Subject to this Act, tax shall be charged upon the

taxable proceeds of a retailer as they become due and payable to him and shall be payable by him.

(2) In computing the taxable proceeds of a retailer for the purposes of this Act—

- (a) no account shall be taken of tax recovered by him under section 8 (4);
- (b) there shall be allowed bad debts, incurred in transactions relating to those proceeds that are proved to the satisfaction of the Commissioner to have become bad during the period to which the return delivered to the Commissioner in accordance with subsection (4) relates, even if those debts were due and payable before that period commenced; but all sums recovered at any time on account of amounts previously written off or allowed in respect of bad debts shall be treated as part of the taxable proceeds of the retailer brought into account.

(3) Where after the commencement of this Act tax becomes chargeable, the retailer concerned shall—

- (a) account therefor by means of the return referred to in subsection (4); and
- (b) at the same time as he delivers that return to the Commissioner, pay over to the Commissioner tax at the rate prescribed under section 4(1).

(4) Every retailer shall in respect of each month deliver to the Commissioner a return setting out—

- (a) the full amount of his taxable proceeds for that month;
- (b) the full amount of his proceeds for that month from the sale by retail of exempted goods; and
- (c) the amount of tax payable on such taxable proceeds, together with such additional information as the Commissioner requires, in a form approved by the Commissioner, on or before the 15th day of the month immediately following or within such further period as the Commissioner in writing allows on a written application made to him before the 15th day of such following month.

8. (1) Every retailer shall keep in Barbados records and books of account in such form and containing such information as will enable the tax payable under this Act to be determined. Accounts and records.

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(2) Where a retailer has failed to keep adequate records and books of account for the purposes of this Act, the Commissioner may require him to keep such records and books of account as the Commissioner specifies, and such operator shall thereafter keep records and books of accounts as so required.

(3) Every person required by this section to keep records and books of account shall retain every such record and book of account and also every account, voucher or other record necessary to verify such record or book of account, until written permission for their disposal is obtained from the Commissioner.

(4) Every retailer—

(a) shall cause to be entered on every bill and on every receipt relating to his taxable proceeds—

(i) the full amount of the tax payable under this Act in respect of those proceeds, and

(ii) the rate of such tax that is chargeable;

(b) shall cause every such bill or receipt to be delivered to the person by whom the proceeds are payable; and

(c) is entitled to recover the amount of such tax from that person as if that amount were part of those proceeds.

(5) A duplicate of every such bill and the receipt therefor shall be kept by the retailer so that it is available at all times, and shall be produced for inspection on demand by the Commissioner.

Audit and
ancillary
powers.
Cap. 73.

9. For the purpose of enforcing this Act, the powers conferred by section 76 of the Income Tax Act on the Commissioner and any person authorised by him may be exercised by the Commissioner and any such person respectively in relation to a retailer and the premises used for the purposes of the business of that retailer, and accordingly that section of that Act shall, for the purposes of this Act, be construed—

(a) as if references therein to “premises or place where business is carried on” were references to “premises or place used for the purposes of the business of a retailer”;

(b) as if references therein to “the owner or manager of the property or business” were references to “the retailer”;

- (c) subject to such other adaptations and modifications as may be necessary for the purposes of this Act.

10. (1) Where—

- (a) a retailer has failed to deliver a return in respect of any month as required by section 7 (4); or

- (b) because of—

(i) the failure of a retailer to keep the records and books of account required by section 8 or to produce any records, books of account or other documents or information required to be produced pursuant to section 9, or

(ii) any information contained in any such records, books of account or other documents which the Commissioner may have obtained from any source,

the Commissioner is satisfied that a true account of the taxable proceeds of that retailer has not been given in a return in respect of any month delivered to him pursuant to section 7 (4), the Commissioner may, after consideration of any representation or information which the retailer may make or supply to him, assess the taxable proceeds of that retailer for that month and, subject to section 14, tax in relation to that month shall be paid on the amount so assessed.

(2) In making assessment under subsection (1), the Commissioner is not bound by the information contained in a return delivered by the retailer to whom the assessment relates or by other information supplied by or on behalf of or in respect of, that retailer.

11. (1) After an assessment has been made under section 10 of the taxable proceeds of a retailer for a month, the Commissioner may make a re-assessment of the taxable proceeds of that retailer for that month—

- (a) at any time, where the retailer has made any misrepresentation or has failed to disclose any material fact in making a return under section 7 (4) or in supplying information required to be supplied in accordance with this Act; or

- (b) within five years after the end of that month, in any other case.

Commissioner may assess taxable proceeds.

Re-assessments.

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(2) Where an assessment or re-assessment made under this section has been the subject of an appeal to the High Court, no re-assessment may be made of the taxable proceeds of that retailer for that month unless the retailer has made a misrepresentation or has failed to disclose any material fact in making a return under section 7 (4) in supplying information required to be supplied in accordance with this Act.

Notice of
assessment.

12. After making an assessment or re-assessment of the taxable proceeds of a retailer for a month, the Commissioner shall deliver a notice of assessment or re-assessment, as the case may be, to that retailer showing the amount of his proceeds for that month.

Objections
and appeals.

13. (1) A retailer who disputes an assessment of his taxable proceeds made by the Commissioner under section 10 may, subject to and in accordance with section 57 of the Income Tax Act, object to the assessment and the said section 57 shall *mutatis mutandis* apply to every such objection.

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- (2) A retailer who—
- (a) has objected to an assessment; and
 - (b) has received a notice of confirmation or notice of re-assessment,

may, subject to and in accordance with section 59 of the Income Tax Act, appeal to the Income Tax Appeals Board from the decision of the Commissioner, and that section of that Act shall *mutatis mutandis* apply to every such appeal.

- (3) A retailer—
- (a) who has objected to an assessment and has received a notice of confirmation or notice of re-assessment; or
 - (b) who has appealed to the Income Tax Appeals Board and—
 - (i) who has received a notice of settled assessment, or
 - (ii) whose assessment or re-assessment has been confirmed by that Board,

may, subject to and in accordance with section 60 of the Income Tax Act, appeal to the High Court from the decision of the Commissioner or the decision of the Income Tax Board, as the

case may be, and sections 60 and 62 of that Act shall *mutatis mutandis* apply to every such appeal.

(4) An appeal lies on a point of law only to the Court of Appeal from a decision of the High Court under subsection (3), and every such appeal shall be made within the time and in the manner laid down by any enactment or rules of court for the purposes of appeal from the High Court to the Court of Appeal and shall be subject in all respects to the law relating to such appeals.

14. (1) A retailer who fails to deliver to the Commissioner a return for any month as required by section 7 (4) within the time limited by that section shall, in addition to the tax payable by him in relation to that month, pay to the Commissioner a penalty equal to ten per cent of the amount of tax which was unpaid at the time when the failure occurred. Penalties and interest.

(2) A retailer who fails to pay over to the Commissioner an amount of tax at the time required by section 7 (3) shall pay to the Commissioner—

- (a) in addition to the tax, a penalty equal to ten per cent of the amount of tax which was due and unpaid at that time, or ten dollars, whichever is the greater; and
- (b) in addition to the tax and the penalty imposed by paragraph (a), an amount of interest at the rate of one half per cent per month calculated for each month during which any amount of tax and penalty remained unpaid on the largest amount of tax and penalty that was due and unpaid at any time in that month.

15. Where the Commissioner suspects that a retailer is about to leave Barbados, the Commissioner may deliver to him a notice for immediate payment stating the amount that the Commissioner believes he is liable to pay as tax, penalties or interest under this Act or would be liable to pay if the time of payment had arrived, and such retailer shall forthwith pay to the Commissioner the amount specified in the notice for the immediate payment. Persons leaving Barbados.

16. Where—

- (a) the amount paid by a person as tax, penalty or interest Refund of overpayments.

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for a month exceeds the amount payable in accordance with this Act by that person for that month; and

- (b) that person applies to the Commissioner in writing for a refund of the excess within one year after the end of that month,

the Commissioner shall apply the amount of the excess to any outstanding liability of that person under this Act and cause the balance, if any, to be repaid to that person.

Manner and
refund of
payment.

17. Refunds under section 6 and repayments under section 16 shall be made by the Commissioner and are hereby charged on the Consolidated Fund.

Recovery of
tax.

18. All amounts payable under this Act as tax, penalties and interests are debts due to the Crown and recoverable as such in civil proceedings in the magistrate's court for District A, notwithstanding that the amount involved exceeds the normal monetary limit on the jurisdiction of a magistrate's court.

Offences.

19. (1) A person who—

- (a) fails to pay any tax payable by him;
- (b) in connection with any tax makes any statement which he knows to be false in a material particular;
- (c) in connection with any tax, wilfully, knowingly or negligently produces or makes use of any record, book of account, return or other document which is false in a material particular; or
- (d) is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of tax by himself or any other person,

is guilty of an offence and, in addition to any other penalty otherwise provided and recoverable in civil proceedings, is liable on summary conviction thereof to a fine not less than two hundred and fifty dollars and not more than five thousand dollars or to imprisonment for six months or both.

(2) A person who aids, abets, counsels, incites, conspires with or induces any other person to commit any offence described in subsection (1) is guilty of an offence and liable on summary conviction to a fine of five hundred dollars or to imprisonment for three months or both.

(3) A person who contravenes—

(a) any of the provisions of section 7 (3) or (4) or section 8;
or

(b) any of the provisions of section 76 of the Income Tax Act as applied by section 9 of this Act,

is guilty of an offence and liable on summary conviction to a fine of five hundred dollars or to imprisonment for three months or both.

(4) Notwithstanding any other enactment, an information for an offence under this section may be laid on or before a day three years after the offence was committed.

20. The Minister may make regulations generally for carry- Regulations.
ing out the provisions of this Act.

21. For the avoidance of doubt it is declared that in calculating the assessable income of a person for the purposes of the Income Tax Act no exclusion, deduction or allowance shall be made of, or on account of, tax. Saving.