



LAWS OF KENYA

THE HOTEL ACCOMMODATION TAX ACT

CHAPTER 478

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CHAPTER 478

THE HOTEL ACCOMMODATION TAX ACT

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CHAPTER 478

THE HOTEL ACCOMMODATION TAX ACT

Commencement: 1st November, 1971

An Act of Parliament to impose a tax in respect of the hire and occupation of accommodation in hotels and similar establishments; and for matters incidental to and connected with the foregoing

23 of 1971,
L.N. 234/1971,
14 of 1973,
13 of 1979,
10 of 1980,
12 of 1980,
14 of 1982,
16 of 1982,
8 of 1983,
10 of 1987,
10 of 1988.

1. (1) This Act may be cited as the Hotel Accommodation Tax Act.

Short title and application.

(2) This Act shall not apply to—

14 of 1973, ss. 2 and 6,
10 of 1980, s. 6.

(a) any premises run by a charitable or religious organization or an educational or medical institution; or

(b) *(Deleted by 10 of 1980, s. 6).*

(c) any premises or class of premises which the Minister may, by notice in the Gazette, declare not to be a hotel for the purposes of this Act.

(3) Sections 4, 5 and 7, and so much of section 8 as relates to the liability of a proprietor to pay any penalty, shall not apply in relation to any hotel run by the Government or a local authority, and the Minister may, by regulations, prescribe the persons by whom, and the manner in which, tax shall be collected and remitted to the Controller in respect of any such hotel or class thereof.

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

Interpretation.
14 of 1973, s. 3,
16 of 1982, s. 3.

“Controller” means the Controller of Inland Revenue, and includes any officer authorized by him in writing to exercise his functions under this Act;

“hotel” means premises on which accommodation is supplied or available for supply, with or without food or services, to five or more adult persons at one time in exchange for money or money’s worth, and includes premises known as “service flats”, “service apartments”, “beach cottages”, “holiday cottages”, “game lodges” and “bandas”, but does not include premises on which the only accommodation supplied or available for supply is under a lease or licence of not less than one month, unless by prior arrangement the occupier may, without penalty, terminate that lease or licence on less than one month’s notice;

“proprietor”, in relation to a hotel, means the person who is entitled to receive any immediate profits which may accrue in respect of the business of supplying accommodation in that hotel;

“tax” means hotel accommodation tax payable under this Act.

Imposition of tax.
13 of 1979, s. 7,
10 of 1980, s. 6,
12 of 1980, s. 4,
14 of 1982, s. 25,
10 of 1987, s. 40,
10 of 1988, s. 39.

3. (1) Subject to this Act, every person who hires or occupies any accommodation in a hotel shall pay a tax, to be known as hotel accommodation tax;

Provided that where the hirer and the occupier are not the same person they shall each be liable to pay the tax but the payment thereof by one shall operate so as to discharge the liability of the other.

(2) The tax payable under subsection (1) shall—

(a) in any case where the charge for the hiring or occupation includes only the accommodation, or the accommodation and breakfast, be equal to seventeen-and-one-half per centum of that charge;

(b) in any other case, be equal to twelve-and-one-half per centum of the charge for the hiring or occupation,

but in calculating any tax, any charge for drink or for service shall be disregarded.

(3) The amount of tax payable under this section shall be paid to the hotel by or on behalf of the hirer not later than twenty-one days after the last day of the month in which the hirer, or where the hirer and the occupier are not the same person, the occupier, vacates the hotel.

(4) Any person who fails to pay tax in accordance with the provisions of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding one year or to both.

Responsibility of proprietor.
14 of 1973, s. 5,
14 of 1982, s. 25,
10 of 1988, s. 39.

4. Any proprietor who, whether knowingly or by neglect—

(a) permits the commission of an offence under section 3; or

(b) fails to charge the amount of any tax payable under that section; or

(c) fails to keep a visitors register showing the name, nationality and address of every guest who stays in the hotel,

shall be guilty of an offence and liable to a fine not exceeding six thousand shillings or to imprisonment for a term not exceeding six months or to both.

5. (1) A sum equal to the total amount of tax payable under section 3 in each month shall be paid by or on behalf of the proprietor of the hotel to the Controller within thirty days of the last day of that month.

Recovery of tax.
14 of 1973, s. 5,
10 of 1980, s. 6,
12 of 1980, s. 4,
14 of 1982, s. 25,
10 of 1988, s. 39.

(2) Where a proprietor has not submitted to the Controller, in respect of a period, a record or return required under this Act to be submitted, the Controller may, if he considers that the proprietor is liable to ensure the payment of tax, estimate the amount payable for the period according to the best of his judgment and notify the proprietor in writing.

(3) Where the Controller has, in accordance with subsection (2), estimated an amount payable, the proprietor shall pay that amount to the Controller within thirty days after the date of notification of the estimate, unless the proprietor has submitted a record or return for the relevant period.

(4) The moneys payable by the proprietor under subsections (1) and (2) or under section 8 shall be a civil debt recoverable summarily.

(5) A proprietor who, without reasonable cause, fails to ensure the payment of a sum equal to the total amount of tax in accordance with the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

6. (1) The Controller may at all reasonable times —

Power to enter and
inspect premises.
10 of 1988, s. 39.

(a) enter without warrant any premises on which he has reasonable ground for believing that a hotel business is being carried on, to see whether this Act is being complied with, and —

(i) examine and take copies of any register, book, account or document found on the premises relating to or appearing to relate to any hotel;

(ii) take possession of any register, book, account or document found on those premises which he has reasonable ground for suspecting to be, or to contain, evidence of an offence under this Act;

- (b) require any person who appears to be carrying on or employed in any hotel business on those premises to render such explanation and give such information relating to that business as he may reasonably require in the performance of his duties;
- (c) require any person who appears to be carrying on any hotel business on those premises by notice in writing to that person to produce to him, at a particular time and place, all or any of the registers, books, accounts and documents relating to or appearing to relate to that business:

Provided that nothing in this subsection shall authorize entry into any bedroom in a hotel without the prior permission of its current occupier.

(2) Any person who—

- (a) resists, hinders or obstructs any person acting in pursuance of subsection (1); or
- (b) fails to comply fully and truthfully with a requirement made of him under that subsection,

shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

Liability of proprietor for acts of agents and servants.
14 of 1973, s. 5.

7. Any proprietor who employs any agent, clerk, servant or other person shall be answerable for the acts and omissions of such agent, clerk, servant or other person in so far as such acts or omissions concern anything required to be done under this Act and regulations made thereunder; and if the agent, clerk, servant or other person commits any act or makes any omission which is an offence under this Act or the regulations, or which would be an offence if committed or made by the proprietor, the proprietor and the agent, clerk, servant or other person shall be jointly and severally guilty of the offence and liable to the penalties provided by this Act and the regulations:

Provided that it shall be a defence for the proprietor to prove that he did not know and could not reasonably be expected to know that the act or omission was taking or was to take place and that he took all reasonable steps to ensure that the relevant provisions of this Act and the regulations were being complied with.

Penalties.
14 of 1973, s. 5.

8. Notwithstanding the prosecution of any person for an offence under this Act, any person who fails to pay the whole amount of tax due

from him and any proprietor who fails to ensure payment in accordance with subsection (1) of section 5 shall be liable to pay in addition a penalty of such amount as may be prescribed by the Minister, by notice in the Gazette, not exceeding twice the amount of tax in respect of which he is in default.

9. (1) Notwithstanding section 5 (4), where the proprietor fails to ensure payment under section 5 (1) or to pay the penalty under section 8, the Controller may recover the amount of money payable by him by distress, and for that purpose may by order under his hand authorize any person to execute distress upon the goods and chattels of the proprietor, and that person may, at the cost of the proprietor, employ such servants and agents as he may think necessary to assist him in the execution of the distress:

Recovery of tax by
distress.
8 of 1983, s. 19.

Provided that—

- (i) where the full amount of money payable by the proprietor is not recovered by distress, the Controller may recover the deficiency in the manner provided by section 5 (4);
- (ii) where the full amount of money payable by the proprietor has been paid after the issue of an order under this section and before the execution of distress, any costs and expenses incurred by the Controller prior to the payment of that amount shall be deemed to be a debt due and payable to the Government by the proprietor in respect of whom the order was issued and may be recovered by the Controller as tax under this Act.

(2) For the purposes of executing distress the person authorized by the Controller under the order may, in addition to employing such servants or agents as he may consider necessary, require a police officer to be present while distress is levied and a police officer so required shall comply with that requirement.

(3) A distress levied under this section shall be kept for ten days, either at the premises at which the distress was levied or at such other place as the Controller may consider appropriate, at the cost of the proprietor from whom the amount of money is recoverable.

(4) If the proprietor from whom the amount of money payable by him to the Controller is recoverable by distress does not pay that amount together with the costs of the distress within the period of ten days referred to in subsection (3), the goods and chattels distrained upon shall be sold by public auction for payment of the amount of money due and payable and costs; and the proceeds of the sale shall be applied first

toward the cost of taking, keeping and selling the goods and chattels distrained upon and then towards the amount of money due and payable and any remainder of those proceeds shall be restored to the owner of the property distrained.

Regulations.

10. (1) The Minister may make regulations generally for the better carrying out of the provisions and purposes of this Act.

(2) Without prejudice to the generality of subsection (1), regulations made under this section may—

- (a) prescribe the procedure to be followed and the forms to be used in respect of things to be done under this Act or the regulations;
- (b) make provision for the keeping of records and accounts of sums received under this Act by hotels;
- (c) provide for returns to be submitted by hotels to the Controller;
- (d) make provision for the audit of records and accounts in such manner and by such persons as may be prescribed;
- (e) prescribe the procedure to be followed by the Controller in the performance of his functions under this Act;
- (f) make provision for requiring persons to supply information relevant to the provisions of this Act or the regulations.



[Subsidiary]

SUBSIDIARY LEGISLATION**Exemptions under section 1 (2)**

Any hotel at which the maximum rate is charged in respect of the hire or occupation of accommodation per night is less than twenty shillings per room or fifteen shillings per person, with or without meals. L.N. 257/1971.

All premises operated by the Kenya Armed Forces Old Comrades Association. L.N. 375/1988.

Penalty under section 8

A sum equal to one half of the amount of the tax in respect of which any person is in default. L.N. 156/1972.

Regulations under section 10**THE HOTEL ACCOMMODATION TAX (ACCOUNTS)
REGULATIONS**L.N.256/1971,
L.N.303/1979,
L.N.177/1980.

1. These Regulations may be cited as the Hotel Accommodation Tax (Accounts) Regulations.

2. (1) The proprietor of an hotel shall cause to be maintained in triplicate a record in the form in the Schedule containing the following particulars—

(a) in respect of each day of the current month, the number of the first and of the last receipt issued, the total amount received in payment for the hire or occupation of accommodation and the tax received;

(b) in respect of each month—

(i) the total amount received in respect of hire or occupation of accommodation during that month but paid after the end of the month and the tax received;

(ii) the amounts due in respect of hire of accommodation during that month but not paid, the tax payable thereon, details of the date on which the occupier vacated the hotel and his name and address or, where the occupier and the hirer are not the same person, the name and address of the hirer.

(2) Receipts in respect of moneys received under paragraph (1) (b) (i) shall be numbered consecutively.

(3) The Controller may, in writing, approve of some other form of record in the case of any individual hotel.

3. Within thirty days after the last day of each month one copy of the record kept under regulation 2 for that month shall be sent by or on behalf of

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the proprietor—

- (a) to the Controller, together with the sum required by section 5 (1) of the Act; and
- (b) to the District Revenue Officer at the office of the District Commissioner in whose district the hotel is situated.

4. A proprietor who, without reasonable cause, fails to ensure that the provisions of any of these Regulations are complied with shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a period not exceeding six months or to both

SCHEDULE

(r.2)

HOTEL TAX RECORD

SERIAL NO.....

.....HOTEL, P.O. BOX

MONTH, 19.....

1. Received during the month:

Date	First Receipt No.	Last Receipt No.	Received for Accommodation		Tax Received	
			Sh.	cts.	Sh.	cts.
1st						
2 nd						
3 rd						
4 th						
5 th						
6 th						
7 th						
8 th						
9 th						
10 th						
11th						
12 th						
13 th						
14 th						
15 th						
16 th						
17 th						
18 th						
19 th						
20 th						
21st						

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22 nd					
23 rd					
24 th					
25 th					
26 th					
27 th					
28th					
29 th					
30 th					
31 st					
TOTAL Sh					

2. Due in respect of the month and received after the end thereof:

First Receipt No.	Last Receipt No.	Received for Accommodation	Tax Received

3. Due in respect of the month and not received *:

Date of Vacation	Name of Hirer/Occupier	Address	Amount due in respect of Accommodation		Tax due	
			sh.	cts.	sh.	cts.
TOTAL Sh						

*Continue on separate sheet as necessary.

PURSUANT to section 5 (1) of the Hotel Accommodation Tax Act, I enclose the sum of Shs. being the total received and payable under items 1 to 3 above (in cash) (by money order No) (by cheque

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No dated) in respect of the month of
..... 19..... according to this return.

.....
Proprietor

Date.....

NOTE: The original of this document must accompany the full amount of tax payable and must be sent within thirty days after the last day of the month in respect to which the tax relates to the Controller of Inland Revenue, P. O. Box 30410, Nairobi.

The duplicate copy must be sent to the District Revenue Officer at the office of the District Commissioner in whose District the hotel is situated.

L.N. 42/1984.

THE HOTEL ACCOMMODATION TAX (DISTRRAINT) REGULATIONS

1. These Regulations may be cited as the Hotel Accommodation Tax (Distraint) Regulations.

2. In these Regulations, unless the context otherwise requires—

“distrainee” means the debtor named in an order;

“distrain agent” means any person appointed as a distraint agent under regulation 3;

“distress” means distress levied pursuant to an order;

“distress debt” means the amount of money payable by a proprietor, and interest charged thereon, specified in an order;

“distrainor” means an officer in the service of the Inland Revenue Department who is authorized to levy distress;

“goods” means movable property of a distrainee (other than growing crops and goods which are liable to perish within ten days of attachment) which is liable under the law to attachment and sale in execution of a decree of a court;

“order” means an order issued by the Controller of Inland Revenue under section 9 of the Act.

3. The Controller may appoint a distraint agent to assist a distrainor in the execution of an order, but no person shall be appointed as a distraint agent unless he satisfies the Controller—

(a) that he is of good repute and financial standing;

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(b) that he is qualified under the law relation thereto to levy distress by way of attachment of movable property in execution of a decree of a court; and

(c) that he has contracted a policy of insurance in an adequate sum against theft, damage or destruction by fire of any goods which may be placed in his custody by reason of the performance by him of his duties as a distraint agent.

4. (1) Every distraint agent shall, on appointment, furnish the Controller with security, by means of a deposit or in such other manner as the Controller may approve, in the sum of twenty thousand shillings, and the security shall be refunded or cancelled on the termination of the appointment of the agent unless it is forfeited under this regulation.

(2) If a distraint agent is convicted of an offence involving fraud or dishonesty in connection with functions performed by him as an agent, the court by which he is convicted may make an order as to the forfeiture of the security furnished by him under paragraph (1), or any part of that security, and the provisions of the Criminal Procedure Code, in so far as they relate to forfeiture of recognizances, shall apply *mutatis mutandis* to the forfeiture of any security under this regulation.

Cap.75.

5. (1) An order may be executed at any time after it has been duly served on the distrainee in the manner provided by regulation 6.

(2) An order shall be executed by attachment of such goods of the distrainee as, in the opinion of the distrainor, are of value which, on sale by public auction, would realize a sum sufficient to meet the distress debt and the costs and expenses of the distress incurred by distrainor.

6. (1) Every order shall be issued by the Controller in duplicate and service thereof shall be effected by service by the distrainor of a copy of the order on the distrainee in person or, if after using all due and reasonable diligence the distrainee cannot be found, by service of a copy on any agent of the distrainee empowered to accept service, or on any adult member of the family of the distrainee who is residing with him.

(2) A person served with a copy of an order under this regulation shall endorse on the order an acknowledgement of service, and if that person refuses to make the endorsement the distrainor shall leave the copy of the order with that person after stating in writing thereon that the person upon whom he served the order refused to sign the acknowledgement and that he left, at the time, date and place stated therein, a copy of the order with that person and the name and address of the person (if any) by whom the person on whom the order was served was identified, and thereupon the order shall be deemed to have been duly served.

7. (1) In executing distress no outer door of a dwelling-house shall be broken open unless that dwelling-house is in the occupancy of the distrainee and he refuses or in any way prevents access thereto, but when the distrainor

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executing distress has duly gained access to a dwelling-house he may break open the door of any room in which he has reason to believe good of the distrainee to be.

(2) Where a room in a dwelling-house is in actual occupancy of a woman who, according to her religion or local custom does not appear in public, the distrainor shall give notice to that woman that she is at liberty to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing he may enter that room for the purpose of attaching any goods therein, using at the same time every precaution consistent with these provisions to prevent their clandestine removal.

8. As soon as practicable after the attachment of goods under these Regulations, the distrainor shall—

- (a) issue a receipt in respect thereof to the distrainee;
- (b) forward to the Controller a report containing an inventory of all items attached, the value of each item as estimated by the distrainor, the address of the premises at which the goods are kept pending sale, the name and address of the distraint agent in whose custody the goods have been placed and the arrangements, if any, made or to be made for the sale by public auction of the goods on the expiration of ten days from the date of attachment.

9. On the sale by public auction of any goods attached under these Regulations the distrainor shall cause the sale to be stopped when the sale has realized a sum equal to or exceeding the distress debt and the costs and expenses incurred by the distrainor, and thereupon any of the goods remaining unsold shall, at the cost of the distrainee, be restored to the distrainee.

10. Immediately after the completion of a sale by public auction of goods attached under these Regulations, the distrainor shall make a return to the Controller specifying the items which have been sold, the amounts realized by the sale and the manner in which the proceeds of the sale were applied.

11. (1) Where a distrainee has, within ten days of attachment of his goods under these Regulations, paid or given security accepted by the Controller for the whole of the amount due from him together with the whole of the costs and expenses incurred by the distrainor in executing the distress, the distrainor shall at the cost of the distrainee forthwith restore the attached goods to the distrainee and return the order to the Controller who shall cancel it.

(2) A sum paid by a distrainee under this regulation shall be applied by the Controller first in settlement of the costs and expenses incurred by the distrainor and the balance, if any, in settlement of the distress debt or such part thereof as the Controller shall direct.

12. Where any goods attached under these Regulations include livestock, the distrainor may make appropriate arrangements for the transport, safe custody

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and feeding of the livestock and any costs and expenses incurred thereby shall be recoverable from the distrainee under regulation 9 or 11, as the case may be, as costs and expenses incurred by the distrainer.

13. In addition to a claim for any other costs and expenses which may be incurred by the Controller or the distrainer in levying distress under these Regulations there may be claimed by the distrainer and recovered under regulation 9 or 11, as the case may be, costs at the rates specified in the Schedule.

14. The maximum rates of remuneration which a distraint agent shall be entitled to demand from the distrainer for his assistance in executing distress under these Regulations, and which may be recovered by the distrainer under regulation 9 or 11, as the case may be, shall be those specified in the Schedule.

15. The maximum rate of commission to be paid to an auctioneer by the distrainer as remuneration for his services for the sale by public auction of any goods attached under these Regulations, and which may be recovered by the distrainer under regulation 9, shall be five per cent of the amount realized on the sale, and where an auctioneer has also rendered services as a distraint agent, he shall be entitled, in addition to any commission under this regulation, to remuneration for services provided under regulation 14.

16. The rates of remuneration specified in the Schedule shall be deemed to include all expenses of advertisements, inventories, catalogues, insurance and necessary charges for safe-guarding any goods attached under these Regulations.

SCHEDULE

(regs. 13 and 14)

1. DISTRAINER’S CHARGES

Where no distress is levied and the distress debt and any costs and expenses incurred by the distrainer are paid by the distrainee on demand or within thirty minutes thereafter the distrainee shall pay the distrainer the following costs—

	<i>Sh.</i>
(a) where the distress debt does not exceed Sh. 1,000	40
(b) where the distress debt exceeds Sh. 1,000	100

2. DISTRRAINT AGENT’S CHARGES

(a) Where no distress is levied and the distress debt and any costs and expenses incurred by the distrainer are paid by the distrainee on demand or within thirty minutes thereafter the distraint agent shall be entitled to remuneration of Sh. 40.

(b) For attaching goods or attaching and keeping possession thereof for ten days or part thereof, when the estimated value of the property, or the sum of the distress debt and costs and expenses, whichever is the less—

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(i) does not exceed Sh. 10,000	4 per cent thereof
(ii) exceeds Sh. 10,000— on the first Sh. 10,000	4 per cent thereof
on the excess over Sh. 10,000.....	3 per cent thereof

Provided that where the goods or any part thereof sold by public auction, the distraint agent's charges shall instead be calculated in the manner directed above by reference to the total amount realized on sale after deduction of the auctioneer's commission under regulation 15.

(c) For keeping possession of any attached goods after the expiration of ten days from the date of attachment—

for each day, or part thereof	¼ per cent of the goods to a maximum of Sh. 20
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(d) Reasonable expenses incurred by the distraint agent in transporting goods attached, and such travelling expenses by car, or a rateable proportion thereof, as the Controller may approve.

