

THE KERALA FINANCE BILL, 2011

A BILL

to give effect to certain financial proposals of the Government of Kerala for the Financial Year 2011-2012.

Preamble.- WHEREAS, it is expedient to give effect to certain financial proposals of the Government of Kerala for the Financial Year 2011 – 2012;

BE it enacted in the Sixty-second Year of the Republic of India as follows:-

1. *Short title.-* This Act may be called the Kerala Finance Act, 2011.

2. *Amendment of Act 11 of 1957.-* In the Kerala Surcharge on Taxes Act, 1957 (11 of 1957),-

(1) in section 3A,-

(i) in sub-section (3), for the words and figures “31st December, 2010”, the words and figures “30th September, 2011” shall be substituted;

(ii) in sub-section (4), for the words and figures “31st December, 2010”, the words and figures “30th September, 2011” shall be substituted;

(2) in section 3B,-

(i) in sub-section (2), for the words and figures “31st December, 2010”, the words and figures “30th September, 2011” shall be substituted;

(ii) in sub-section (3), for the words and figures “31st December, 2010”, the words and figures “30th September, 2011” shall be substituted.

3. *Amendment of Act 35 of 1958-* In the Kerala Money Lenders Act, 1958, after section 11A, the following section shall be inserted, namely:-

“11B. *Electronic filing and payment.-* The Government may require the licensees to file forms and other statements etc., to be submitted by him under this Act and make the payment of fee or other amounts due under this Act, electronically through the official website of the Commercial Taxes Department, in the manner as may be prescribed.”.

4. *Amendment of Act 17 of 1959.*- In the Kerala Stamp Act, 1959 (17 of 1959), in the SCHEDULE,-

(1) in serial number 31, for clause (i) and the entries against it in columns (2) and (3), the following clause and entries shall, respectively, be substituted, namely:-

“(i) where the gift is in favour of father, mother, husband, wife, son, daughter, brother, sister or grand children of a person. Two rupees for every rupees 100 or part thereof of the fair value of the land or the value set forth in the instrument, whichever is higher, subject to a maximum of rupees 1000.”;

(2) in serial number 42,-

(i) in clause (i) for the entries in column (3), the following entries shall be substituted, namely:-

“One rupee for every rupees 100 or part thereof of the amount of the value or fair value of the separated share or shares of the property, whichever is higher, subject to a maximum of rupees 1000.”;

(ii) for the existing Explanation, the following Explanation shall be substituted, namely:-

“*Explanation*:- Family means father, mother, husband, wife, son, daughter, grand children, brother, sister and legal heirs of the deceased children, if any, as the case may be.”;

(3) in serial number 48, in clause (a), for the words “brother or sister of a person”, the words “brother, sister or legal heirs of the deceased children of a person” shall be substituted;

(4) in serial number 51, in clause (a), for sub-clause (i), and the entries against it in columns (2) and (3), the following sub-clause and entries shall, respectively, be substituted, namely:-

- “ (i) where the settlement is in favour of father, mother, husband, wife, son, daughter, brother, sister or grand children of a person. Two rupees for every rupees 100 or part thereof of the fair value of the land or the value set forth in such instrument, whichever is higher, subject to a maximum of rupees 1000.”.

5. *Amendment of Act 15 of 1963.*- In the Kerala General Sales Tax Act, 1963 (15 of 1963),-

(1) to section 7, the following proviso shall be added, namely:-

“Provided that the rate of tax mentioned under clause (b) of item (i) above shall be one hundred and ten per cent for those bar hotels who have paid compounded tax under this Act continuously for the last five years and one hundred and twelve per cent for those who have paid compounded tax continuously for the last three years.”;

(2) in section 17,-

(i) in sub-section (6), for the fourth proviso, the following proviso shall be substituted, namely:-

“Provided also that the assessment relating to the years up to and including the year 2005-06 pending as on 31st March, 2011 shall be completed on or before 31st March, 2012.”;

(ii) in sub-section (8),-

(a) for the first proviso, the following proviso shall be substituted, namely:-

“Provided that all such assessments or reassessments pending as on 31st March, 2011 shall be completed on or before 31st March, 2012.”;

(b) for the third proviso, the following proviso shall be substituted, namely:-

“Provided also that all such modified assessments or modified reassessments or remanded assessments pending as on 31st March, 2011 shall be completed on or before 31st March, 2012.”;

(3) in section 23B,-

(i) in sub-section (3), for the words and figures “31st December, 2010”, the words and figures “30th September, 2011” shall be substituted;

(ii) in sub-section (4), for the words and figures “31st December, 2010”, the words and figures “30th September, 2011” shall be substituted;

(4) in section 23BA,-

(i) in sub-section (2), for the words and figures “31st December, 2010”, the words and figures “30th September, 2011” shall be substituted;

(ii) in sub-section (3), for the words and figures “31st December, 2010”, the words and figures “30th September, 2011” shall be substituted.

6. *Amendment of Act 32 of 1976.*- In the Kerala Tax on Luxuries Act, 1976 (32 of 1976),-

(1) in section 2,-

(i) clause (ca) shall be omitted;

(ii) clause (fa) shall be omitted;

(2) in section 4,-

(i) in sub-section (1),-

(a) in item (ii), the words “by cable operators and” shall be omitted;

(b) for the first proviso, the following proviso shall be substituted, namely:-

“Provided that this sub-section shall not apply to,-

(i) halls and auditoriums located within the premises of places of worship owned by religious institutions;

(ii) to the retiring rooms in the railway stations, managed by Indian Railways; and

(iii) to dormitories.”;

(c) the second proviso shall be omitted;

(ii) in sub-section (2),-

(a) clause (d) shall be omitted;

(b) for the words “and shall be collectable from the person enjoying the luxury:” the words “and shall be collectable from the person enjoying the luxury and the luxury tax, if any, collected shall be paid over to the Government:” shall be substituted;

(c) the provisos after clause (f) shall be omitted;

(3) in section 4D,-

(i) in the marginal heading, the words “cable operators and” shall be omitted;

(ii) in the first sentence, the words “cable operators and” shall be omitted;

(4) in section 5A, in sub-section (1), for the existing items (i) to (iv) and the entries against it, the following items and entries shall be substituted, namely:-

“(i)	Non air-conditioned house-boat with one bed room	Eight thousand rupees
(ii)	Non air-conditioned house-boat with two bed rooms	Twelve thousand rupees

(iii)	Additional compounded tax payable for each additional room in a non air-conditioned house-boat with more than two bed rooms	Four thousand rupees
(iv)	Air-conditioned house-boat with one bed room	Fifteen thousand rupees
(v)	Air-conditioned house-boat with two bed rooms	Twenty two thousand rupees
(vi)	Additional compounded tax payable for each additional room in an air-conditioned house-boat with more than two bed rooms	Seven thousand rupees
(vii)	Non air-conditioned house boats primarily used for conferences	Thirty thousand rupees
(viii)	Air-conditioned house boats primarily used for conferences	Fifty thousand rupees”;

(5) after section 5A, the following section shall be inserted, namely:-

“5B. *Electronic filing and payment.*- The Government may require the assesseees to file returns, forms, and other statements etc., to be submitted by him under this Act and make the payment of tax, fee or other amounts due under this Act, electronically through the official website of the Commercial Taxes Department, in the manner as may be prescribed.”;

(6) in section 6, in sub-section (4), for the existing proviso, the following proviso shall be substituted, namely:-

“Provided that all assessments relating to the years, up to and including the year 2006-2007, pending as on 31st day of March, 2011, shall be completed on or before the 31st day of March, 2012.”.

7. *Amendment of Act 15 of 1991.*- In the Kerala Agricultural Income Tax Act, 1991 (15 of 1991), after section 35, the following section shall be inserted, namely:-

“35A. *Electronic filing and payment.*- Government may require the assesseees to file returns, forms, and other statements etc. to be submitted by him under this Act and make the payment of tax, fee or other amounts due under this Act, electronically through the official website of the Commercial Taxes Department, in the manner as may be prescribed.”.

8. *Amendment of Act 30 of 2004.*- In the Kerala Value Added Tax Act, 2003 (30 of 2004),-

(1) in section 4, in sub-section (6), the following sentence shall be added at the end, namely:-

“The Bench or Benches shall ordinarily sit at such places as the Government may, by notification, specify.”;

(2) in section 6,-

(i) in sub-section (1),-

(a) for clause (a), the following clause shall be substituted, namely:-

“(a) in the case of goods specified in the Second and Third Schedules at the rates specified therein and at all points of sale of such goods within the State and in the case of goods specified below, at the rate of twenty per cent, at all points of sale of such goods within the State, namely:-

<i>Sl. No.</i>	<i>Description of goods</i>	<i>HSN. Code</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
(1)	Pan masala	2106.90.20
(2)	Churna for pan	2106.90.70
(3)	Pan chutney	xxx
(4)	Other manufactured tobacco and manufactured tobacco substitutes homogenized or reconstituted tobacco; tobacco extracts and essences	2403
(5)	aerated branded soft drinks, excluding soda	xxx

Explanation:- The ‘Rules of Interpretation of the Schedules’ appended to the Schedules of this Act shall apply to the interpretation of the HSN codes mentioned in this clause.”;

(b) in the fifth proviso, in item (b), after the words “Canteen Stores Department”, the words “Indian Naval Canteen Stores or Air Force Canteen, as the case may be,” shall be inserted;

(c) in the eleventh proviso, the words “with effect on and from the 1st day of April, 2005” shall be added at the end;

(d) after the eleventh proviso, the following provisos shall be inserted, namely:-

“Provided also that cooked food and beverages served in a houseboat paying compounded tax under the Kerala Tax on Luxuries Act, 1976 (32 of 1976) shall be exempted from tax:

Provided also that the tax payable on ayurvedic cosmetic products manufactured under a drug license granted under the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940) containing added medicaments having subsidiary therapeutic or prophylactic uses and those notified under clause (d) of sub-section (1) of section 6, for the period on and from the 1st day of April, 2005 to the 12th day of November, 2009 shall be at four per cent.”;

(ii) in sub-section (1A), in clause (a), the words “and he shall be eligible for input tax credit” shall be added at the end;

(iii) in sub-section (5),-

(a) for the words “fifty lakh rupees”, the words “sixty lakh rupees” shall be substituted;

(b) in the third proviso, for the words “fifty lakh rupees”, the words “sixty lakh rupees” shall be substituted;

(c) in the fifth proviso, for the words “rupees three thousand”, the words “rupees two thousand” shall be substituted;

(d) after the fifth proviso, the following proviso shall be added, namely:-

“Provided also that notwithstanding anything contained in the Act or rules made thereunder, if the turnover of a dealer, who opted for payment of tax under this sub-section, has exceeded the turnover limit during the

course of an year, he shall be eligible for input tax credit on the turnover in excess of sixty lakh rupees.”;

(3) in section 8,-

(i) in clause (e), in the Explanation, the following sentence shall be added at the end, namely:-

“This Explanation shall have effect on and from the 1st day of April, 2005.”;

(ii) in clause (f),-

(a) in sub-clause (i),-

(i) in Explanation 6, for the figures “2009-10” and “2010-11”, wherever they occur, the figures “2010-11” and “2011-12” shall, respectively, be substituted;

(ii) after Explanation 8, the following Explanation shall be inserted, namely:-

“*Explanation 9*:- For the removal of doubts, it is clarified that for the purpose of this clause, “articles of gold, silver or platinum group metals” shall also include bullion.”;

(iii) the proviso to clause (f) shall be omitted;

(b) after sub-clause (i), the following sub-clause shall be inserted, namely:-

“(ia) Notwithstanding anything contained in this clause, a dealer shall not be allowed to opt for the payment of tax under this clause unless he has conducted business up to a full year as on the first day of April of the year to which the option relates.”;

(c) in sub-clause (ii), the words “holding of stock exceeding double the quantity held in the previous year” shall be omitted;

(d) for sub-clause (v), the following sub-clause shall be substituted, namely:-

“(v) where a dealer had paid tax under this clause for the previous year, the tax payable for the succeeding year under this clause shall be calculated at the rates mentioned in item (i) or (ii) below, whichever is higher,-

(i) (a) at the same amount of tax paid during the previous year, in case their turnover for the above goods for the preceding year was rupees ten lakh or below;

(b) at one hundred and five per cent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year was above rupees ten lakh and up to rupees forty lakh;

(c) at one hundred and fifteen per cent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year was above rupees forty lakh and up to rupees one crore; and

(d) at one hundred and twenty five per cent of such tax paid during the previous year, in case their turnover for the above goods for the preceding year exceeded rupees one crore:

Provided that the tax payable under this sub-clause by the dealers covered under Explanation 6 of this clause shall be at the appropriate percentage of tax mentioned in (a), (b), (c) or (d) above, of the tax re-determined under the said Explanation.

(ii) 1.25% of the turnover of sales of the goods covered under this clause, for the previous year.”;

(e) sub-clause (vi) shall be omitted;

(4) in section 10,-

(i) after sub-section (1), the following sub-section shall be inserted, namely:-

“(1A) Every person making any payment or discharging any liability to any person liable to pay tax under section 6 on account of any amount purporting to be the full or part payment of consideration for the transfer of the right to use any goods for any purpose shall deduct at source an amount calculated

at the rate of four per cent from such sum towards full satisfaction of the tax payable under this Act in respect of the transfer of the right to use such goods and remit it to Government, in the prescribed manner, on or before the fifth day of the month succeeding the month in which such deduction is made. Every such person shall also file such return as may be prescribed.”;

(ii) in sub-section (3),-

(a) for the word “awarder”, wherever it occurs, the words “awarder or the person” shall be substituted;

(b) for the words, figure and bracket “under sub-section (1)”, the words, letter, figures and brackets “under sub-section (1) or (1A)” shall be substituted;

(5) in section 24, in sub-section (1), for the fourth proviso, the following proviso shall be substituted, namely:-

“Provided also that the time limit for the completion of assessments for the years 2005-06 and 2006-07 under this section shall be extended upto 31st March, 2012.”;

(6) in section 25, in sub-section (1), for the third proviso, the following proviso shall be substituted, namely:-

“Provided also that the time limit for the completion of assessments for the years 2005-06 and 2006-07 under this section shall be extended up to 31st March, 2012.”;

(7) in section 30, in sub-section (2), for the words, letter, figure and bracket “and clause (d) of section 8”, the words, letters, figure and brackets “clause (d) and clause (f) of section 8” shall be substituted;

(8) in section 40A, sub-section (3) shall be omitted;

(9) in section 52, after the words “railway authorities,”, the words “operators of leased railway wagons,” shall be inserted;

(10) in section 74, in sub-section (1), for the words “four lakh” wherever they occur, the words “eight lakh” shall be substituted;

(11) in section 86, in the Explanation, for the words “Centre for Taxation Studies”, the words “Gulati Institute of Finance and Taxation” shall be substituted;

(12) in section 94,-

(i) in sub-section (2), after the words “hearing the parties”, the words “pass orders within three months or within such time as may be extended by the Commissioner” shall be inserted;

(ii) after sub-section (2), the following sub-section shall be inserted, namely:-

“(2A) Notwithstanding anything contained in this Act, where a clarification has been issued under this section clarifying the rate of tax of any goods and the registered dealers were paying tax at lower rates on the sale of those goods before the issuance of such clarification, then if the manufacturer or first seller of the goods within the State, who shall also be a registered dealer, pays the entire tax due on the turnover of such goods sold by him at the Maximum Retail Price, then subsequent registered dealers who had purchased those goods and has sold the same shall not be assessed or penalized for the differential tax payable:

Provided that such payment of tax under this sub-section shall be subject to the conditions and restrictions as may be prescribed.

Explanation:- For the purpose of this section, Maximum Retail Price in respect of the goods mentioned means the maximum price printed on the package of any goods at which such goods may be sold to the ultimate consumer and where such price is not so printed on the package, the price charged on the sale to the ultimate consumer.”;

(13) in the SCHEDULES,-

(i) in the First Schedule,-

(a) after serial number 4A and the entries against it in columns (2) and (3), the following serial number and entries shall, respectively, be inserted, namely:-

“(4B) Bio-fertilizers and bio-insecticides of all types ****”;

(b) in serial number 18, after item (3) and the entries against it in columns (2) and (3), the following items and entries shall, respectively, be inserted, namely:-

“(4) Nylon Rope 5607.50.40

(5) Polyester Rope, Polyester twine 5607.50.90”;

(c) after serial number 28 and the entries against it in columns (2) and (3), the following serial number and entries shall, respectively, be inserted, namely:-

“(28A) Laterite stones of all types ****”;

(d) after serial number 30 and the entries against it in columns (2) and (3), the following serial numbers and entries shall, respectively, be inserted, namely:-

“(30A) Machines for milking animals ****

(30B) Machines for coconut tree climbing ****”;

(e) in serial number 34, in item (1), after sub-item (g) and the entries against it in columns (2) and (3), the following sub-items and entries shall, respectively, be inserted, namely:-

“(ga) Bone meal including crushed bones

(1) Bone meal 0506.90

(2) Bones including horn cores,
crushed of wild animals 0506.10.11

	(3) Others	0506.10.19
(gb)	Organic meal and leather meal	****”;

(f) after serial number 60 and the entries against it in columns (2) and (3), the following serial number and entries against it shall, respectively, be inserted, namely:-

“(60A)	Goods sold inside the places of worship to devotees, to be used as offerings.	****”;
--------	--	--------

(ii) in the Third Schedule,-

(a) serial number 17 and the entries against it in columns (2) and (3) shall be omitted;

(b) in serial number 44,-

(i) in the heading, for the words “bio-fertilizers, micronutrients and similar products”, the words “micronutrients and similar products other than those specified in the First Schedule” shall be substituted;

(ii) sub-item (i) and the entries against it in columns (2) and (3) shall be omitted;

(iii) in sub-item (4), in column (2), the word “bio-fertilisers,” shall be omitted;

(c) after serial number 82 and the entries against it in columns (2) and (3), the following serial number and entries shall, respectively, be inserted, namely:-

“82A	Manufactured sand	****”;
------	-------------------	--------

(d) in serial number 90, after item (4) and the entries against it in columns (2) and (3), the following item and entries shall, respectively, be inserted, namely:-

“(4A)	Soil	****”;
-------	------	--------

(e) serial number 92A and the entries against it in columns (2) and (3) shall be omitted;

(f) serial number 99A and the entries against it in columns (2) and (3) shall be omitted;

(g) in serial number 137, for the entry against item (13) in column (2), the following entry shall be substituted, namely:-

“Choodarapetties of all kinds”.

9. *Amendment of Act 21 of 2008.*- In the Kerala Finance Act, 2008 (21 of 2008), in section 6, to sub-section (1), the following proviso shall be added, namely:-

“Provided that the rate of cess payable under this section shall be six per cent on the tax payable under section 5(1)(b) of the Kerala General Sales Tax Act, 1963 (15 of 1963).”.

10. *Levy and collection of cess on luxury cars.*- (1) There shall be levied and collected, in accordance with the provisions of this section, for the purpose of the State, a cess to be called the *Essential Necessities Cess*, at the rate of two per cent on the output tax due under section 6 of the Kerala Value Added Tax Act, 2003 on the sale of cars, the sale price of which exceeds rupees twenty lakh, to fulfil the commitment of the Government to provide and finance a comprehensive scheme for the essential necessities to the general public.

(2) The State Government may, after due appropriation made by the Legislature by law in this behalf, utilise such sums of money of the *Essential Necessities Cess* levied for the purposes specified in sub-section (1) as it may consider necessary.

(3) The provisions regarding the assessment and recovery in the Kerala Value Added Tax Act, 2003 shall *mutatis mutandis* apply to cess under this section.

(4) The provisions of section 30 of the Kerala Value Added Tax Act, 2003 (30 of 2004) shall *mutatis mutandis* apply for the collection of cess under sub-section (1).

11. *Levy and collection of cess on residential buildings.*- (1) There shall be levied and collected, in accordance with the provisions of this section, for the purpose of the State, a cess to be called the *Housing Projects Cess*, at the rate of two per cent on the building tax for residential buildings having a plinth area of 4000 sq.ft. and above, to fulfil the commitment of the Government to provide and finance the housing projects for the weaker sections, taken up by the Panchayaths.

(2) The State Government may, after due appropriation made by the Legislature by law in this behalf, utilise such sums of money of the *Housing Projects Cess* levied for the purposes specified in sub-section (1) as it may consider necessary.

(3) The provisions regarding assessment and recovery in the Kerala Building Tax Act, 1975 (7 of 1975) shall *mutatis mutandis* apply to the cess under this section.

(4) The provisions of sections 18 and 19 of the Kerala Building Tax Act, 1975 (Act 7 of 1975) shall *mutatis mutandis* apply for the collection of cess under sub-section (1).

DECLARATION UNDER THE KERALA PROVISIONAL COLLECTION OF REVENUES ACT, 1985 (10 OF 1985)

It is hereby declared that it is expedient in the public interest that all the provisions of this Bill shall have effect from the date of introduction of the Bill in the Kerala Legislative Assembly, under the Kerala Provisional Collection of Revenues Act, 1985 (10 of 1985).

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to amend the following enactments to give effect to the financial proposals of the Government of Kerala for the financial year 2011-2012 as announced in paras 355 to 363 and 370 to 374 of the Revised Budget Speech 2011 - 2012, namely:-

1. The Kerala Surcharge on Taxes Act, 1957 (11 of 1957);
2. The Kerala Money Lenders Act, 1958 (35 of 1958);
3. The Kerala Stamp Act, 1959 (17 of 1959);
4. The Kerala General Sales Tax Act, 1963 (15 of 1963);
5. The Kerala Tax on Luxuries Act, 1976 (32 of 1976);
6. Kerala Agricultural Income Tax Act, 1991 (15 of 1991);
7. The Kerala Value Added Tax Act, 2003 (30 of 2004);
8. The Kerala Finance Act, 2008 (21 of 2008).

The Bill proposes to impose a cess on the sale of luxury cars, the sale price of which exceeds rupees 20 lakh, at the rate of two per cent on the tax amount and also to impose a cess at the rate of two per cent on the building tax for residential buildings having a plinth area of 4000 sq.ft. and above.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill, which proposes to insert a new section 11A in the Kerala Money Lenders Act, 1958 (35 of 1958), seeks to empower the Government to prescribe the manner in which the payment of fee or other amounts due under the said Act may be made electronically through the official website of the Commercial Taxes Department.

2. Sub-clause (5) of clause 6 of the Bill, which proposes to insert a new section 5B in the Kerala Tax on Luxuries Act, 1976 (32 of 1976), seeks to empower the Government to prescribe the manner in which the payment of tax, fee or other amounts due under the said Act may be made electronically through the official website of the Commercial Taxes Department.

3. Clause 7 of the Bill, which proposes to insert a new section 35A in the Kerala Agricultural Income Tax Act, 1991 (15 of 1991), seeks to empower the Government to prescribe the manner in which the payment of tax, fee or other amounts due under the said Act may be made electronically through the official website of the Commercial Taxes Department.

4. Sub-clause (1) of clause 8 of the Bill, which proposes to amend subsection (6) of section 4 of the Kerala Value Added Tax Act, 2003 (30 of 2004), seeks to empower the Government to specify, by notification in the Gazette, the places where the Bench or Benches of the Appellate Tribunal is to be situated.

5. Sub-clause (4) of clause 8 of the Bill, which proposes to amend section 10 of the Kerala Value Added Tax Act, 2003, seeks to empower the Government to prescribe the manner in which the tax payable in respect of the transfer of the right to use any goods may be remitted and also to prescribe the returns to be filed.

6. Item (ii) of sub-clause (12) of clause 8 of the Bill, which proposes to amend section 94 of the Kerala Value Added Tax Act, 2003, seeks to empower the Government to prescribe the conditions and restrictions for the payment of tax by the manufacturer or the first seller who pays tax on the turnover of goods at the Maximum Retail Price.

7. The matters in respect of which rules are to be made or notifications may be issued are matters of procedure and are of routine or administrative nature. Further, the rules, after they are made, will be subject to the scrutiny of the Legislative Assembly. The delegation of legislative power is, thus, of a normal character.

K. M. MANI.