

BIHAR

Sales Tax was first introduced in Bihar in October, 1944. The original legislation has been replaced by a series of legislations. At present sales tax in Bihar, unlike several other states, is administered basically by two enactments namely, the Central Sales Tax Act, 1956 and the Bihar Finance Act, 1981 (effective from 1.4.1981).

1. Structure

Every dealer having a turnover exceeding Rs.1 lakh a year in the State (exceeding Rs.25,000 in the case of contractors) manufacturers, importers, dealers engaged in delivery and supply of goods for right to use the same on whom no turnover limit is fixed are liable to pay tax.

Point of Levy: In the State, basically single-point taxation system exists, the tax being levied either at the point of first sale or at the point of last sale which is done by the Government through notifications.

Where the point of levy in respect of any commodity is unspecified, tax is levied at the last point of sale i.e. sale by a registered dealer to a person other than a registered dealer. However, in such cases, the first liable, registered purchasing dealer issues a declaration in Form IX to the first liable and registered selling dealer taking the responsibility for payment of the tax (Section 11).

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Rate Structure: Commodities are covered by 17 specified rates of tax ranging from 2 to 25 per cent. Except in the case of foreign liquor imported or manufactured in India and aviation spirit including Aviation Turbine Fuel, the rate of tax is 25 per cent. Cotton yarn and sewing thread and thread balls are taxed at the rate of two per cent (last point). Cereals and pulses are taxed at the rate of four per cent whereas luxury goods are taxed at rates ranging from 10 to 16 per cent.

The general rate of sales tax applicable to non-notified goods is 8 per cent (Section 12).

Surcharge and Additional Tax: Every dealer whose gross turnover exceeds rupees ten lakh per annum is liable to pay surcharge at the rate of 10 per cent, if the turnover is between Rs.5 lakh and Rs.10 lakh and at the rate of 10 per cent of the tax if the turnover exceeds Rs.10 lakh (Section 5).

Additional tax is levied at the rate of 1 per cent on the turnover of goods sold by every registered dealer. In case of liquor it is levied at 2 per cent (Section 6).

Purchase Tax: Under Section 4 of the Bihar Finance Act, every dealer liable to pay tax under Section 3, who purchases goods under the circumstances in which no sales tax is payable or has been paid on the sale price of such goods and either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the state, or sale in the course of inter-state trade or commerce, is

liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods.

Works Contracts, Hire Purchase, Leasing: The Bihar Finance Act, 1981 has already been amended in 1984 to provide for taxation of works contract/hire purchase and transfer of right to use goods with effect from 1.4.1984 to suitably amend the definition of 'sale', 'goods' etc.

Works Contract: In respect of works contract, the turnover for taxation is specified at Rs.25,000 in a year. Labour charges are to be deducted from the gross turnover.

Deduction at Source:

- i. In respect of works contract executed to any person, there is a provision of deduction of tax at source at the rates specified by the Government from out of the amounts payable to the works contractor.
- ii. In respect of sales and supplies to Government Departments, undertakings, companies controlled by Government, of taxable goods, tax as specified could be deducted from out of the amounts by them to the dealers and remit it to the Treasury.

Leasing: Leasing has been defined under section 2(t)(IV) of the Act. The turnover for taxation of Lease has no limit. (Section 3(1). Neither the taxable turnover nor the rate of tax nor the taxable event have been specified. Tax on leases has not been promulgated as yet.

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Exemptions: As in other states, exemption is provided for a number of commodities on social and economic grounds. Goods such as eggs, meat, fish (uncooked), agricultural implements, certain specified articles made by artisans, mica etc. do not attract sales tax.

Besides, certain organisations and institutions including government departments enjoy exemption in respect of goods purchased or sold by them i.e. sale by or to military canteens, sale of khadi cloth duly certified by the Akhil Bhartiya Charkha Sangh etc.

Taxation of Inputs: Under section 13 of the Bihar Finance Act, 1981, registered manufacturers, dealers are entitled to purchase inputs on payment of sales tax at the concessional rate of 3 per cent for use in the manufacture or processing of goods for sale or for packing material.

Incentives to Industries: As an incentive to accelerate the pace of industrial development, the new industrial units have been allowed the deferment of sales tax for a period of five to seven years, if they are located in the areas of 'no industry districts'.

2. Registration

Every dealer liable to tax under the conditions laid down in the charging section 3 is required to get himself registered.

There are special provisions for manufacturers, processors, works contractors, mining businesses, electricity generating/distributing authorities for registration under Section 13(1) b(i), 13(1) b(ii), 13(1) b(iii) respectively.

3. Assessment

Returns: Every registered dealer is required to furnish a quarterly return in the prescribed form in respect of all his transactions for each completed quarter on or before the end of the month following the end of the quarter. An annual return has to be filed in Form XII on or before 31st July of the following year. The extension of time for filing any prescribed return may be allowed by the prescribed authority only once for not more than 30 days only after an application is filed by the dealer praying for extension. The Commissioner may grant further extension for 30 days for filing quarterly/annual return.

In case the dealer has a tax liability of more than Rupees two thousand five hundred in a month he has to deposit tax amount and furnish the monthly abstract of sales and purchases by the 25th day of the following month.

Payment of Tax: Every registered dealer whose tax liability in a month is below Rs.2,500, has to deposit admitted tax on or before the 25th day of the following month following the end of the quarter whereas in the case of monthly tax liability exceeding Rs.2,500, the liable dealer has to pay

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monthly admitted tax by the 25th day of the following month. The extension of the due date of payment of tax is granted in the same manner as laid down in regard to the extension of time for filing return (Section 16).

Rebate of Tax: Every registered dealer is eligible for rebate at the rate of half per cent of admitted tax subject to a maximum of Rs.50,000 in a year provided the dealer furnishes the complete and true return within the due date and makes payment of admitted and due tax within the prescribed date (Section 16).

Mode of Assessment: Under Section 17(1) of the Act, if the prescribed authority is satisfied that the return filed is correct and complete he shall complete the assessment of the registered dealer without requiring him to produce accounts and other evidences. Otherwise, the authority is empowered to call for the accounts and other evidences. Non-production of accounts, incorrect, incomplete, unreliable accounts, evidences, etc. may result in the assessment of tax to the best judgment of the prescribed authority. Even liable dealers escaping registration or failing to comply with the requirements of registration can be subjected to best judgment assessment.

Ordinarily, assessment proceedings shall be initiated and completed within eight years of the expiry of the period (not specified) to which it relates. There are, however, exceptions in the case of best judgement assessment proceedings (Section 17(5)), assessment proceedings of importers (Section 18), assessment of certain turnover (Section 19(1)). Any re-assessment

proceeding resulting from an order on appeal, revision, reference or review has to be initiated and completed within two years from the date of communication of such order.

The Act does not provide for provisional assessment.

4. Penalty and Prosecution

Penalty: Every registered dealer is required to furnish return and make payment of tax within the due date. Failure to file quarterly or annual return attracts the levy of penalty not exceeding Rs.50 for each day of default after the due date/extended date. Failure to pay tax after the due date/extended date attracts penalty at the rate ranging from 2.5 per cent to 5 per cent for each of the first three months of default and ranging from 5 per cent to 10 per cent for each subsequent month. But the prescribed authority can impose the penalties only after giving the registered dealer a reasonable opportunity of being heard (Section 16).

Prosecution: Section 49 contains provisions relating to prosecution for various offences. The offences have been grouped under three categories according to the extent of seriousness, the first group of offences punishable with imprisonment ranging from three to six months and a fine not exceeding Rs.1,000 being sale or purchase of goods without obtaining 'Registration Certificate', failure to surrender registration certificate in a certain circumstance, non-furnishing of security, failure to submit return, failure to pay tax as under the relevant

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provisions, illegal collection of tax, non-maintenance of accounts, non-compliance by clearing and forwarding agents, owners of warehouses and godowns, failure in regard to production for inspection, of accounts, documents and related failures etc.

The second group of offences include false claim of purchase by a registered dealer of certain goods even though not specified in his registration certificate, misutilisation of goods sold, purchased on the basis of declaration, exempted goods misutilisation, unregistered dealer falsely claiming to be registered, closure of place of business to prevent inspection, seizure of accounts/goods, violation of provisions on movement of goods, misuse of statutory forms, a registered dealer submitting a false return, aiding or abatement in the commission of such offences etc. are offences punishable with imprisonment ranging from 6 months to one year and fine not exceeding Rs.1,500.

The third group of offences, of rather serious nature, include wilful, deliberate maintenance/production of incorrect accounts, furnishing of incorrect information, obstruction to inspection/search, obstruction to officers following provisions on movement of goods, wilful tax evasion etc. are offences punishable with rigorous imprisonment ranging from one year to three years and fine upto Rs.2,000.

5. Administrative Organisation

The Finance (Commercial Taxes) Department is at present administering the following taxes.

- a. Bihar Sales Tax
- b. Central Sales Tax
- c. Bihar Entertainment Tax
- d. Bihar Electricity Duty
- e. Tax on Advertisements
- f. Taxation on Luxuries in Hotels

The department is headed by the Commissioner of Commercial Taxes who is an IAS Officer of supertime scale and who is also an ex-officio special Secretary to the Finance Department and in the headquarters, he is assisted by an Additional Commissioner (Establishment) a Senior Joint Commissioner (Policy), a number of Joint Commissioners, Deputy Commissioners, Assistant Commissioners.

However, a full fledged Bureau of Investigation also at the headquarters itself is headed by a Joint Commissioner of Commercial Taxes with Deputy/Assistant Commissioners of Commercial Taxes and Commercial Tax Officers in adequate number to assist the Commissioner in anti-tax evasion works.

The field organisation of the department comprises 11 divisions consisting of 74 circles in the State and one camp circle at Calcutta meant for non-resident dealers. A Division is headed by a Joint Commissioner of Commercial

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Taxes who is responsible for the proper administration of taxes and supervision of assessment and collection work in circles.

The main work of assessment and collection of taxes is entrusted to the circle offices of the department. The circle office whose annual collection is Rs.3 crore or more is usually headed by a Deputy Commissioner of Commercial Taxes while those having annual collection below Rs.3 crore are headed by an Assistant Commissioner. The number of Assistant Commissioners of Commercial Taxes and Commercial Tax Officers assigned to a circle depends on its workload.

There is a Joint Commissioner of Commercial Taxes (Appeals), posted at the divisional level to consider and dispose of appeals arising out of assessment/penalties and other orders.

Each division has a unit of the Bureau of Investigation. A Joint Commissioner (Admn) is in-charge of anti-tax evasion operations. He is assisted by Deputy Commissioner in-charge or Assistant Commissioner and adequate number of other officers.

A separate unit of the Directorate of Vigilance and Monitoring exists in a division. A Deputy Commissioner, Commercial Taxes monitors the quality of assessment orders, gets internal audit done with the help of auditors and looks after vigilance cases.

6. Appeal/Revision (Remedial Measures)

The Commercial Taxes Tribunal at Patna is the apex authority on questions of fact involved in the order, as the Revisional Authority. Revisions against the orders passed by the Joint Commissioner (Appeals) and Commissioner lie before the Tribunal (Section 8 & 46).

It is headed by a Chairman-Member who happens to be a retired judge of the High Court. A departmental member of the rank of Additional Commissioner/not below the rank of Joint Commissioner assists him. A third member, the accounts member, of the rank of Accountant General/not below the rank of Senior Deputy Accountant General also helps in the quasi-judicial work (Rule 33). Reference only on questions of Law lie to the High Court.

The Commissioner of Commercial Taxes has been vested with the power of suo moto revision. The first appellate authority to consider and dispose of appeals against orders passed by an assessing authority is the Joint Commissioner (Appeals) in each division (Section 46(4)).

There is also provision for review of mistakes apparent from the record (Section 47).

7. Checkposts

Section 34 of the Act empowers the State government to set up checkposts and barriers at any place in the state with a view to preventing evasion of tax. This section also provides that every person transporting certain notified

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goods must file a correct and complete declaration in the prescribed form before the authorised officer while crossing the checkpost/barrier. The officers have enforcement powers vested in them to intercept, and search all road vehicles and river-crafts. However, there are no sales tax checkposts in Bihar since 1986.