SPECIAL ISSUE

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THE BARINGO COUNTY AGRICULTURAL PRODUCE CESS BILL, 2015

A Bill for

AN ACT of the County Assembly of Baringo to provide for the imposition of Cess tax on any kind of agricultural crop or animal produce within the County, and for connected purposes

ENACTED by the County Assembly of Baringo County, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Baringo County Agricultural Produce Cess Bill, 2015. Short title and commencement.

2. In this Act – Interpretation.

"Agricultural producer" means a producer, a processor, of agricultural crop or animal product and includes any marketing organization acting on behalf of producers"

"Authorized Officer" means any person prescribed and/or authorized in writing by County Executive Committee Member for Finance, to act in a certain capacity as envisaged under this Act;

"Produce Cess" means all taxes and/or levies imposed under this Act and payable to the County Treasury;

"Company" means the body corporate registered under the Companies Act, CAP 486, of the Laws of Kenya owning an agricultural produce farm, factory, plant or industrial unit;

"County Executive Committee Member" means the executive committee member for the time being responsible for matters relating to Finance;

"Essential product" means crops declared as such under Section 5;

"Factory" means a building or groups of buildings where agricultural produce is processed chiefly by machines within the County and owned by a registered company whether or not registered under the Companies Act, CAP 486, Laws of Kenya;

"Scheduled product" means any crop, animal or product for the time being specified in the First Schedule;

Objects and purpose of the Act.

3. The object and purpose of this Act is to impose tax and/or levies on crop and animal produce grown in, and on transit within the county pursuant to the provisions of Article 209 (3) of the Constitution of Kenya, 2010.

PART II— TAX CHARGEABLE FOR AGRICULTURAL PRODUCE

Imposition of Cess.

4. (1) The County Executive Member for Finance shall with the approval of the County Assembly determine the Cess chargeable on Scheduled Products within the County.

(2) Agricultural Cess shall be levied on the category of crops or animal products as set out in the first schedule to this Act and on any such other crops or animal product declared as Scheduled product under this Act

(3) The County Executive Member for Finance may extend the application of this Act to such other category of crops or animal product not included in the First Schedule as he/ she deems necessary.

(4) Where the County Executive Committee Member extends the application of this Act to such other agricultural product not included in the First Schedule, the Member shall with the approval of the Assembly determine the Cess payable to that category of Scheduled products.

Cess not payable on essential crops or product.

5. (1) Agricultural Produce Cess shall not be levied or imposed on a crop or animal product that is declared to be an essential crop or product under this Act

(2) The County Executive Committee Member for Finance may, in every five years, review, declare and publish essential crops or animal product that in his/ her opinion are necessary to be essential crops or products for the purposes of this Act.

(3) In declaring a crop or product an essential crop or product under the provisions of this Act, the County Executive Committee Member shall take into account the best interests of the County, the immediate needs of the people of the County, prevailing food security situation of

the County and the County policy on agricultural production.

(4) In making a declaration under subsection (1) the County Executive Member may declare a particular variety only of a scheduled product to be an essential product.

PART III—PAYMENT

Payment to the County Government by Agricultural Producers.

6. (1) All payments to the County Government by Agricultural Producers made under this Act shall be deducted and paid by the company, factory, association or any such entity concerned where the agricultural produce is supplied to be processed.

(2) All payments not provided for under subsection 1 shall be collected by an authorized officer at County Exit points as determined by the County Executive Committee Member.

(3) The company or factory referred to in subsection (1) shall ensure that all the amounts deducted are remitted to the County Treasury within a period of 30 days from the date of deduction.

(4) An authorized officer referred to in subsection (2) shall ensure that all the Cess collected are accounted for and remitted to the County Revenue account on a daily basis.

(5) The company, factory, association or any such entity referred to in Subsection (1) shall keep an up to date record of agricultural produce supplied to it and cess deductions thereof.

(6) An authorized officer shall be allowed unlimited access to the records kept by the company or factory for purposes of determining Cess payable and collected by the entity.

(7) Any company, factory, person, association or entity which fails to comply with the requirements of this section shall be guilty of an offence under this Act and will be liable to a fine not exceeding 2,500,000 Kenyan Shillings

The principal officers of any such company, factory, association or entity shall be liable to imprisonment to a term not exceeding three years or a fine of 2,500,000 or both.

Collection of Cess at Exit points.

7. (1) An authorized officer shall ensure that Cess on agricultural produce on transit out of the County is collected at barriers set up at county exit/entry points.

(2) All Cess collected at the County exit/entry points shall be accounted for and remitted to the County Revenue account on a daily basis.

(3) An authorized officer shall maintain and keep records of all Cess collected at his or her County exit points.

(4) This Section shall not apply to crops not produced in the County that are on transit through the County on national trunk roads and to which Cess has already been paid in another County.

(5) The County Executive Member shall determine and publish all County Exit points from which Cess shall be collected.

PART IV— OFFENCES AND PENALTIES

Offence by an agricultural producer.

8. (1) An agricultural producer who contravenes the provisions of this Act shall be guilty of an offence and is liable to a fine not exceeding three hundred thousand Kenya shillings or imprisonment of two years or both

(2) Where the offence is a committed by a non natural person including a body corporate, organization or any such entity, the principal officers of such body, organization or entity shall be criminally liable

Offences by an authorized officer

9. An Authorized Officer of the County Government having a duty to perform under this Act who-

a) Interferes with any other process or person under this Act, so as to defeat the provisions, requirements or purposes of this Act;

b) Where required under this Act to do anything, or to give effect to the provisions of this Act, fails to do such thing;

c) Without reasonable cause omits to do something in breach of his or her duty under this Act;

d) wilfully contravenes the provisions of this Act to give undue advantage or favour to another person;

e) fails to prevent or report to the County Government or any other relevant authority, the commission of an offence committed under this Act.

Shall be guilty of an offence and is liable on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term of one year, or to both.

PART V—MISCELLANEOUS

Waiver of Cess

10. (1) The County Executive Member may waive the Cess payable under this Act to any agricultural producer, persons or group of persons to whom this Act apply.

(2) A waiver of Cess under this Act shall be for a determinate period not exceeding one year.

(2) Where such waiver is made, the County Executive Member shall give reasons for such waiver and table before the Assembly the list of persons to whom payment of Cess is waived and the reasons thereof

(3) The Assembly may overturn any such waiver if it is of view that no sufficient grounds exist for the waiver of Cess as made by the County Executive Member

Regulations

11. The County Executive Committee Member may make Regulations for the better carrying out of the purposes and provisions of this Act.

FIRST SCHEDULE

Section 4

Scheduled Produce

1. Banana
2. Beans
3. Building Stones
4. Carrots
5. Cassava
6. Cereals
7. Charcoal
8. Chicken
9. Coffee
10. Cotton
11. Cows
12. Cucumber
13. Eggs
14. Fish
15. Fruits
16. Goats/Sheep
17. Ground nuts
18. Hides and Skins
19. Honey
20. Horticulture
21. Lemon
22. Log
23. Macadamia nuts
24. Maize
25. Mangoes
26. Meat
27. Millet
28. Milk

29. Onions
30. Oranges
31. Pawpaw
32. Peas
33. Potatoes
34. Processed fresh milk
35. Pyrethrum
36. Rice
37. Sand
38. Sisal
39. Sugar cane
40. Sweet potatoes
41. Tea
42. Timber
43. Tobacco
44. Tomatoes
45. Vegetables
46. Water Mellon

BARINGO COUNTY GOVERNMENT

	CHARGE SHEET ENFORCEMENT CASE No: ……………………………..………. DATE OF COURT: …………………………... COURT No: …………………………………...
NAME OF ACCUSED	…………………………………………………
ID NUMBER …………………………	SEX ………… NATIONALITY ………………… APPARENT AGE ……………..….
ADDRESS…………………… ………………………………	
STATEMENT OF OFFENCE AND PARTICULARS OF OFFENCE	
IF ACCUSED ARRESTED	DATE OF ARREST ………………… BOND DATE AND AMOUNT ………… ……….
IF ACCUSED SUMMONED	DATE OF PLEA………DATE OF HEARING ………
WITNESSES	
LEAVE DUE	
SENTENCE	DATE …………………… IF FINE PAID …………...

MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to facilitate collection of Cess on agricultural produce in the County. The Bill is meant to provide a legal framework for the collection of Cess on agricultural produce, waiver of Cess collection from specified category of produce, and provide for offences against the collection of Cess.

This Bill is in line with the Article 209 of the Constitution. Imposition of tax must be supported by a legal framework before such tax can be levied and collected and as such this Bill seeks to provide the legal basis and framework for the levying and collection of Cess tax on agricultural produce in the County.

The Bill seeks to among other things—

(a) Contribute to increased revenue streams for the County through the Cess tax established herein;

(b) Provide a legal framework for determination of category of crops to whom Cess shall be payable;

(c) Promote a disciplined approach in the levying and collection of agricultural Cess tax within the County.

(d) Establish procedure to oversee law enforcement on issues regarding payment of Cess tax on agricultural produce.

The Bill proposes that authorized officers under the supervision of the executive committee member shall manage the collection and administration of Cess tax in the County.

The enactment of the Bill into law shall entail expenditure of public funds to be provided for in the county estimates.

Dated the 4th March 2015.

ZACHARIA KIPKUTO,
Chairman, Finance & Economic Planning Committee.