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THE ELGEYO/MARAKWET COUNTY REVENUE ADMINISTRATION BILL, 2016

ARRANGEMENT OF CLAUSES

Clause

THE ELGEYO/MARAKWET COUNTY REVENUE ADMINISTRATION BILL, 2016

A Bill for

AN ACT of the County Assembly of Elgeyo/Marakwet to provide for the general administration of taxation laws and other revenue raising laws, and for related purposes

ENACTED by the County Assembly of Elgeyo/Marakwet as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Elgeyo/Marakwet, County Revenue Administration Act, 2016.

Interpretation

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

"county public officer" has the same meaning assigned under the County Governments Act, 2012;

"collector" means a person authorized or required by or pursuant to a revenue law or by agreement to collect a tax;

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

"receiver of county government revenue" means the person holding or acting in the office of the receiver of county government revenue established by this Act and includes any county public officer authorized by the receiver of county government revenue to perform any function on behalf of the receiver of the county government revenue;

"inspector" means an inspector provided for under this Act.

"person" includes a company, association or other bodies of persons whether incorporated or unincorporated.

"premises" includes—

(i) any part of a building or structure; and

(ii) any part of a vehicle or vessel; and

(iii) an area of land;

"prescribed" means prescribed by the rules made under this Act;

"revenue law" means—

(i) the County Valuation and Rating Act; or

(ii) the County Trade License Act;

(iii) the Act providing for annual county finances;

(iv) any other Act imposing an entertainment tax or any other tax that is payable to the county government;

(v) any Act or other law providing for the payment to the county government of fees or charges for services provided; or

(vi) any other prescribed law;

"tax" means a tax or license fees imposed pursuant to a revenue law, whether before or after the coming into force of this Act, and includes all penalties and interest that are, may be or may have been added to a tax pursuant to this Act or a revenue law, and all deposits made or required to be made on account of tax liability under a revenue law.

"taxpayer" means a person required to pay a tax.

PART II—ADMINISTRATION

Administration of Act

3. The County Executive Member shall be responsible for the administration of this Act.

Receiver of county government revenue

4. There is established the Office of the Receiver of County Government Revenue, which shall—

(a) consist of persons designated in writing by the County Executive Committee Member to be responsible for collecting, receiving and accounting for such county government revenue as the executive committee member may specify in their letters of designation and as may be stipulated by any other enactment that confers functions upon the receiver of county government revenue; and

(b) be organised and administered in the manner prescribed.

Functions of the receiver of county government revenue

5. The receiver of county government revenue shall—

(a) be responsible to the county executive committee member for the administration and enforcement of revenue laws and for that purpose to assess, collect and account for all rates, taxes, fees and charges payable by or under any of those laws; and

(b) advise the county government on all matters relating to the administration and enforcement of county revenue laws, and the assessment and collection of rates, taxes, fees and charges under this Act or a revenue law.

Powers of the receiver of county government revenue

6. The receiver of county government revenue has such powers and may perform such functions as are provided for under this Act, a revenue law or any Act or other law that confers functions and powers upon the receiver of county government revenue as are necessary for the proper administration of this Act or a revenue law.

PART III—LIABILITY AND ASSESSMENT

Assessment of tax

7. The receiver of county government revenue may from time to time and at such intervals as he may consider reasonable, determine and assess and reassess any tax payable under a revenue law by any tax payer and thereupon the tax so assessed or reassessed becomes due and payable by the tax payer.

Estimate of tax

8. Where a taxpayer fails to—

(a) pay tax; or

(b) substantiate his payment by his records, the receiver of county government revenue may estimate the unpaid tax and such estimated amount shall thereupon be deemed to be the amount of the tax due and payable by the tax payer.

Assessment Notice

9. The receiver of county government revenue shall serve personally or send by registered mail to the taxpayer at his last known address a notice of assessment setting out the amount assessed under section (7) or estimated under section (8), and in the case of a tax payer having more than one address, one of which is within the county, the notice of assessment may be sent to the address in the county.

Incorrect assessment

10. Liability to assessment is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made.

Validity of assessment

11. Any assessment made is, subject to being varied or vacated on reconsideration, objection or appeal, and subject to reassessment, valid and binding notwithstanding any error, defect, or omission therein or any proceeding under this Act or a revenue law relating thereto.

Affidavit

12. An affidavit or statutory declaration by a person serving or mailing a notice pursuant to section (9) stating that he has mailed or served the notice is proof that the amount stated in the notice is due and owing and the onus of proving otherwise rests with the taxpayer.

Application

13. This part applies notwithstanding any provision in a revenue law.

PART IV—COLLECTION

Tax deemed to be held in trust

14. (1) Every collector who collects any tax is deemed to hold the same in trust for the payment over the same in the manner and at the time provided under this Act, and the amount, until paid, forms a lien and charge on his entire estate or on the assets of his estate in the hands of any trustee, and such lien or charge has priority over all other claims of any person.

(2) The amount of tax collected by a collector shall be deemed to be held separate from and form no part of the estate or assets of the collector, whether or not the amount of the tax has been kept separate and apart from the estate or assets of the collector.

Remittance of tax

15. All taxes collected by and deposits made with a collector under a revenue law shall be remitted to the receiver of county government revenue at such time and manner as may be prescribed by regulations.

Failure notice

16. In the event of failure on the part of a collector to collect a tax, he shall immediately notify the receiver of county government revenue.

17. A collector shall be paid such allowance or commission for his services in collecting and remitting a tax, and in receiving and remitting deposits to the receiver of county government revenue as the regulations may prescribe. Commission

18. Every collector shall make such returns to the receiver of county government revenue and shall keep such records in such form and containing such information as may be prescribed by regulations. Records and returns

19. (1) When a collector fails to make a return or remittance under this Act, or collect tax under a revenue law, or his returns are not substantiated by his records, the receiver of county government revenue may make an estimate of the amount of the tax collected by, or the tax that should have been collected by, and the deposits made with such collector which he has not remitted, and the estimated amount shall thereupon be deemed to be the amount of the tax collected by and the deposits made with the collector that has not been remitted. Estimate of tax due from collector

(2) The receiver of county government revenue shall serve personally or send by registered mail a notice in writing to the collector, his heirs, executors, or assigns or to the custodian or trustee in bankruptcy of the assets of his estate, setting out the amount estimated pursuant to subsection (1) and requiring that the estimated amount be paid over to the receiver of county government revenue within seven days of the day on which the notice was served or sent by mail.

(3) An affidavit or statutory declaration by a person serving or mailing a notice pursuant to subsection (2) stating that he has mailed or served the notice is proof that the amount stated in the notice is due and owing and the onus of proving otherwise rests on the collector.

PART V—OBJECTION AND APPEAL

20. Where a person considers that he is not liable to taxation under a revenue law or disputes liability for the amount assessed against him, he may, within sixty days of the date of service or mailing of the notice of assessment serve on the receiver of county government revenue a notice of objection setting out the reasons for the objection and all the relevant facts. Notice of Objection

21. A notice of objection is sufficiently served if it is delivered to the office of the receiver of county government revenue or sent by registered mail addressed to the receiver of county government revenue. Service of notice

22. The receiver of county government revenue shall, within sixty days of receipt of the notice of objection, reconsider the assessment or estimate and vacate, confirm or vary it, and he shall thereupon notify the objector of his decision by registered mail. Reconsideration

23. For greater certainty, section 20 applies in respect of the tax payable under the Land Registration Act, 2012 and a reference in this section to— Land Registration Act, 2012

(a) an "amount assessed" or an "assessment or estimate" shall be construed to include tax payable under the Land Registration Act 2012; and

(b) the "date of service or mailing of the notice of assessment" shall be construed to include the date on which a deed to real property is tendered for registration at a registry office.

24. If the taxpayer or collector is dissatisfied with the decision of the receiver of county government revenue, under section 22, he may, within thirty days from the date of mailing of the decision, appeal to the High Court. Appeal to High Court

25. Neither the giving of a notice of objection or a notice of appeal by any person nor any delay in the hearing of an appeal shall in any way affect the due date, the interest or penalties, or any liability for payment provided under this Act or a revenue Act, in respect of any moneys due and payable to the county government that are the subject matter of the objection or appeal, but in the event of the estimate of the receiver of county government revenue being set aside or reduced on appeal, the county executive member shall refund the amount or excess amount which has been paid to the county government and any additional interest or penalty paid thereon. Payment of tax not postponed by appeal

PART VI—RECOVERY OF TAX

Certificate of tax due

26. (1) Where—

(a) default has been made in the payment of any tax that has been assessed under this Act or a revenue law;

(b) default has been made by a collector in remitting any moneys collected or received, or that a collector is deemed to have collected or received on behalf of the county government;

(c) the receiver of county government revenue has sent a registered letter to the collector demanding payment of the amount due and payable; and

(d) 30 days have expired from the date that the registered letter was sent, the receiver of county government revenue may issue a certificate stating—

(i) the name of the person by whom the tax is payable;

(ii) the facts relied on in clause (a); and

(iii) the amount due and payable on the date of the certificate, including interest, if any, and penalty, if any.

(2) Notwithstanding anything to the contrary in subsection (1), the certificate referred to in that subsection may be issued forthwith where the receiver of county government revenue considers it necessary to do so.

Tax is debt due

27. The amount of any tax that has been assessed against a taxpayer and is due and payable under this Act or a revenue law, and the amount of any tax collected or deposit received or deemed to have been collected or received by a collector under this Act or a revenue law, constitute a debt due to the county government and may be recovered by action in any court of competent jurisdiction.

Third party payment of tax

28. When the receiver of county government revenue knows or suspects that a person is, or is about to become indebted or liable to make any payment to a person liable to make a payment or remittance under this Act or a revenue law, the receiver of county government revenue may by registered letter or by a letter served upon the first-named person personally require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part, to the receiver of county government revenue on account of the liability under this Act, or a revenue law, of the second-named person.

PART VII—INTEREST

Interest on overdue tax

29. Any amount due under this Act or a revenue law, shall bear interest at the prescribed rate, not exceeding two per cent per month, from the day on which that amount should have been remitted to the receiver of county government revenue.

Interest on tax refunded

30. Where as a result of an objection or appeal, tax is refunded to any person, interest is payable thereon at the prescribed rate, not exceeding two per cent per month.

PART VIII—AUDIT AND INSPECTION

Audit

31. (1) The receiver of county government revenue may audit the books of account, records, documents and papers of any collector.

(2) Each collector shall make his books of account, records, documents and papers available to the receiver of county government revenue for the purpose of an audit under subsection (1).

Entry for audit, inspection

32. (1) The receiver of county government revenue, an inspector or any person authorized by the executive committee member may, without warrant, during normal business hours or at any other reasonable time, enter upon any premises or place where any business is carried on, operated, conducted or managed, or where any property is kept or any other thing is done in connection with which tax may be collected or payable, or where records are kept with respect to transactions that may give rise to tax that is payable or to the collection of tax to—

(a) audit, inspect or examine any account, record, paper, document, invoice, record keeping device, voucher, letter, electronic mail, goods or property or any other document or thing that is related or may relate in any way to tax that may be required to be collected, paid or remitted under a revenue law;

(b) determine whether tax has been or is being paid, collected or remitted by any person;

(c) determine the amount of tax that may be payable, collected or remitted by any person;

(d) ascertain the quantities of goods on hand or sold by a collector; or

(e) make such inquiries and examinations and to conduct such searches of the premises as such person may consider necessary in relation to tax that may be required to be collected, paid or remitted under a revenue Act.

(2) The receiver of county government revenue, an inspector or any other person authorized by the county executive committee member may, upon entering any premises or place under subsection(1), require the owner or manager of the property or business or any other person on the premises to give him or her all reasonable assistance with the audit or examination either orally or, if he or she so requests, on oath or by statutory declaration, and for that purpose to require the owner or manager to attend at the premises or place with him or her.

(3) The collector or taxpayer and each of his or her officers, employees and agents shall answer all questions put to him or her relating to any of the matters concerning which authority to enter is given and shall produce for inspection such records, documents and other things as are required by such person entering the premises or place under subsection (1).

(4) The holder of a registration certificate or permit who carries on business in the county, but does not keep or maintain in the county all books of account, records, record keeping devices, papers or any other documents required for the purpose of audit, inspection, or examination, is liable for the expenses necessarily incurred by any officer appointed by the county executive member for the purpose of auditing, inspecting, or examining the books of account, records and documents at the place where they are kept or maintained.

(5) If during the course of an audit or inspection pursuant to subsection (1) it appears to the person conducting the audit or inspection that there has been a contravention of this Act or a revenue law or the regulations, he or she may seize and take away any of the books of account, records and other documents and retain them until they are produced in any court proceeding and may make a copy thereof.

(6) A copy of any book of account, records or document purporting to be certified by the receiver of county government revenue, an inspector or an authorized person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been provide in the ordinary way.

PART IX—REFUNDS

Refund of tax

33. (1) Where a person—

(a) has paid an amount as tax that is not payable as tax; or

(b) has paid an amount as tax that is in excess of the amount payable as tax, the county executive member shall repay to that person the amount wrongly paid or the amount of excess if the application for refund is made in the manner prescribed by regulation within three years of the date the overpayment was made.

(2) Notwithstanding subsection (1), where an amount is paid as tax and it is subsequently determined that the amount was paid under a mistake in law, no action shall be maintainable against the county government for return of the amount so paid.

(3) A collector shall not be entitled to claim a refund under this Act, or to commence an action claiming a refund in respect of any amount collected and remitted by the collector as an agent of the receiver of county government revenue.

(4) Notwithstanding subsection (1), where—

(a) an amount of tax is reversed as a result of a decision respecting an objection or appeal of a notice of assessment issued to the person; and

(b) the person has paid tax during or subsequent to the applicable audit period which, as a result of the decision, was not payable.

The county executive member shall repay to the person any such amount wrongly paid by the person since the beginning of the applicable audit period if an application for refund has been made in the manner prescribed by regulation within 60 days of the date of the final determination of the notice of assessment under objection or appeal.

(5) Notwithstanding subsection (3), no interest shall be payable on any amount of tax refunded to a person pursuant to subsection (4) which was not part of the notice of assessment under objection or appeal.

PART X—CONFIDENTIAL INFORMATION

Confidentiality

34. (1) Except for purposes of the administration and enforcement of this Act or a revenue law, and subject to subsection (3), all information, and all statements and documents, obtained under this Act or a revenue law by the county executive committee member, the receiver of county government revenue, or any person employed by or authorized to act on behalf of any of them for any purposes of this Act, are confidential.

(2) Except for purposes of the administration and enforcement of this Act or revenue law, and subject to subsection (3), no person employed by the county shall communicate or allow to be communicated to any person any information obtained under this Act or a revenue law, or allow any person to inspect or have access to any written statement furnished under this Act or a revenue law.

(3) The executive committee member may communicate or allow to be communicated information obtained under this Act or a revenue Act to; or allow inspection of or access to any written statement furnished under this Act or a revenue law by, any person employed by the national government of Kenya or any county or

territory of Kenya, where the information and written statements obtained by such government for the purpose of any Act that imposes a tax are communicated or furnished on a reciprocal basis to the executive committee member, and if the information and written statements will not be used for any purpose other than administration or enforcement of a national, county or territorial law that provides for the imposition or collection of a tax

Communication of information to other departments

35. The executive committee member may—

(a) communicate or allow to be communicated, information obtained under this Act or a revenue law; or allow inspection of or access to any written statement furnished under this Act or a revenue law, to other departments of the government only where—

(i) the person to whom the information relates authorizes the executive member to so;

(ii) it is not possible to identify the sales or tax remitted of any individual or business;

(iii) the information requested is not available from any other source.

Oath of secrecy

36. Any person employed by the county who, by virtue of his position, obtains information pursuant to this Act or a revenue law may be required by the executive member to take an oath of secrecy.

PART XI—OFFENCES AND PENALTIES

Offences,

37. (1) Any person who—

(a) makes a false statement in any form or return provided for under this Act, a revenue law or any regulations thereunder;

(b) interferes with, impedes or obstructs the receiver of county government revenue, an inspector or a person acting pursuant to this Act; or

(c) violates any provision of this Act, a revenue law or any regulation thereunder for which no penalty is otherwise provided, is guilty of an offence and is liable on conviction to a fine of not less than ten thousand shillings and not more than one hundred thousand shillings.

(2) Every collector who fails to file a return as and when required by this Act or a revenue law is guilty of an offence and on conviction is liable to a fine of not more than One hundred thousand shillings in respect of each unfiled return included in the conviction.

(3) Where prosecution for violation of any provision of this Act or a revenue law involves a failure to pay tax, the court upon conviction of the accused person may order him to pay the amount of the tax in addition to any other penalty.

Unpaid cheques

38. Where a cheque issued by any person in payment of tax is retuned unpaid, the executive committee member may levy upon that person such penalty as may be prescribed.

Collection costs

39. Where a person owes taxes pursuant to this Act or a revenue law, the person shall pay to the county executive member on demand by the receiver of county government revenue, all costs and expenses incurred by the executive committee member in collecting the unpaid taxes, and the amounts of such costs and expenses as may be stated in a certificate issued by the receiver of county government revenue pursuant to section 26.

Failure to file or remit taxes, penalty imposed on collector

40. (1) Any collector who fails to make a return or to remit the tax collectable or payable as and when required by this Act or a revenue law, shall pay the following penalty to the executive committee member upon demand by the receiver of county government revenue—

(a) an amount equal to five per cent of the tax that was collectable and the tax that was payable by him for the period covered by the return, if the amount of such tax was less than Shillings Five Hundred Thousand; or

(b) Shillings Two Hundred and Fifty Thousand if the amount of the tax collectable and of the tax that was payable by him for the period covered by the return, was Shillings Five Hundred Thousand or more, the amount of such penalties may be stated in a certificate issued by the receiver of county government revenue pursuant to section 26.

Officers etc of corporation

41. Any officer, director, or agent of a corporation, or any other person, who directed, authorized, assented to, acquiesced in or participated in the commission of any act by the corporation which is an offence under this Act, is guilty of an offence and on conviction is liable to the punishment provided for the offence whether or not the corporation has been prosecuted or convicted of any offence under this Act.

Directors

42. (1) Where a corporation has failed to collect tax or has collected tax and failed to remit the tax or has failed to pay any interest or penalty relating thereto, the directors of the corporation at the time the corporation was required to collect or remit the taxes or to pay the interest or penalty relating thereto, are jointly and severally liable, together with the corporation to pay such amounts.

(2) A director of a corporation is not liable for a failure described under subsection (1) if the director exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances.

Assessment

43. The receiver of county government revenue may assess any person for any amount payable by the person under this part and, where the receiver of county government revenue sends a notice of assessment, the sections of this Act respecting assessments, objections and appeals apply with such modifications as the circumstances require.

Time limit

44. Any assessment under section 43 of any amount payable by a person who is a director of a corporation shall not be made more than two years after the person ceased to be a director of the corporation.

Limitation period

45. A prosecution for a violation of this Act, or a revenue law or the regulations, shall be commenced within seven years from the time of violation.

PART XII—GENERAL PROVISIONS

Evidence

46. (1) In any prosecution or other proceeding under this Act, a certificate signed by the executive committee member or the receiver of county government revenue stating that—

(a) a specified amount is the amount of tax due and payable, by a person under this Act or a revenue law;

(b) a person failed to keep such records in such form, containing such information and in such place as is required under this Act and the regulations;

(c) a person failed to make a return in such form and manner and at such times as is required under this Act and regulations;

(d) a specified amount is the amount of tax collected or deemed to have been collected under this Act or a revenue law at such time or times and in such manner as is required under this Act and the regulations;

(e) a person failed to remit to the executive committee member taxes collected or deemed to have been collected under this Act or a revenue law at such time or times and in such manner as is required under this Act and the regulations;

(f) taxes were unremitted during a specified period of time;

(g) a person at a specified time refused to permit the receiver of county government revenue, an inspector, a police officer or a person designated by the receiver of county government revenue to conduct an investigation or an audit under this Act or obstructed or interfered with an investigation or audit conducted by the receiver of county government revenue, an inspector, police officer, or a person designated by the receiver of county government revenue under this Act,

may be adduced in evidence without proof of the appointment, signature or authority of the county executive member or the receiver of county government revenue and, when so adduced, is, in the absence of evidence to the contrary, proof of the facts stated therein and, where the person named in the certificate has the same identity as the accused, that the person named in the certificate is the accused.

(2) Any report, certificate or other document signed by

the executive committee member or by the receiver of county government revenue purporting to be signed by the executive committee member or by the receiver of county government revenue may be adduced in evidence in any court without proof of the appointment, signature or authority of the executive committee member or of the receiver of county government revenue and, when so adduced, is, in the absence of evidence to the contrary, proof of the facts stated therein.

Payment into County Revenue Fund

47. The proceeds of a tax shall be paid into the County Revenue Fund.

Revenue Register

48. (1) The receiver of county government revenue shall establish a revenue register and keep the register updated.

(2) The revenue register shall contain the prescribed information and may be kept in such form as the receiver of county government revenue may prescribe from time to time.

Agreements, recollections , etc

49. The executive committee member with the approval of the Governor may enter into an agreement with the national government, any county or territory of the Republic of Kenya, or any government or territory of neighboring country in respect of the application, collection and division of a tax to be applied or collected under such an agreement.

Agreement for constitution of an agent

50. (1) The executive committee member with the approval of the Governor may enter into an agreement with the Kenya Revenue Authority or any person respecting the collection of a tax and such other matters as the executive committee member may determine whereby each such person is constituted an agent of the county for the collection of tax.

(2) An agreement may provide that the person constituted an agent of the county for the collection of a tax may constitute sub-agents for the collection of the tax.

(3) The receiver of county government revenue may authorize any county public officer employed by the county government or any of it's entities to be a collector of revenue for purposes of collecting revenue under this Act

or a revenue law.

(4) A county public officer who collects revenue pursuant subsection (3) shall, not more than three days after receiving it, deliver the revenue to the receiver of county government revenue.

Regulations

51. The executive committee member may make regulations—

(a) respecting the forms and records to be used for the purpose of this Act or a revenue law, or the regulations;

(b) prescribing the method of collection and remittance of the tax, and of remittance of deposits and any other conditions or requirements affecting the collection and remittance;

(c) prescribing interest rates;

(d) prescribing the allowances and conditions thereof to be paid to collectors for collecting the tax and deposits to the executive committee member;

(e) authorizing a designated officer or class of officers to exercise any powers or to perform any duties of the receiver of county government revenue under this Act or a revenue law;

(f) respecting the release of returns and other tax-related information;

(g) respecting the suspension, cancellation and re-instatement of a certificate or permit issued by the executive committee member under this Act;

(h) respecting the relief, in circumstances prescribed by regulation, of interest;

(i) penalties assessed against tax payers;

(j) defining any expression used in this Act;

(k) prescribing the period for which an assessment may be made under this Act; and

(l) respecting any other matter or thing that is considered necessary to carry out effectively the intent and purposes of this Act.

MEMORANDUM OF OBJECTS AND REASONS

Article 209 (4) together with Part 2 of the Fourth Schedule of the Constitution gives counties the power to impose fees and charges for services provided and for regulatory purposes in respect of certain licensed activities.

Article 209 (5) of the Constitution requires that taxation and other revenue-raising powers of a county be exercised in a way not prejudicial to national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

This Bill provide for the general administration of taxation laws and other revenue raising laws, and for related purposes

The enactment of this Bill into law does not occasion additional expenditure of public funds.

FAITH CHEPKAIROR,
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