

SPECIAL ISSUE

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**THE EMBU COUNTY REVENUE
ADMINISTRATION ACT, 2015**

No. 2 of 2015

Date of Assent: 15th May, 2015

Date of Commencement: 20th May, 2015

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THE EMBU COUNTY REVENUE ADMINISTRATION ACT, 2015

AN ACT of the County Assembly of Embu to provide for the general administration of certain taxation laws and other revenue raising laws and for connected purposes.

ENACTED by the County Assembly of Embu as follows-

PART I—PRELIMINARY

1. This Act may be cited as the Embu County Revenue Administration Act, 2015 and shall come into operation on the date of publication in the *Gazette*.

Short title and
commencement

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

Interpretation

“authorised officer” means an officer within the meaning of section 8;

“board” means county public service board of Embu;

“collector of revenue” means a public officer authorised or required to collect a tax, fee, toll, levy under a revenue law ;

“county” means Embu County;

“county public officer” has the meaning assigned to it in the County Governments Act 2012;

“premises” includes—

- (a) any part of a building or structure; and
- (b) any part of a vehicle or vessel; and
- (c) an area of land;

“prescribed” means prescribed by the rules or regulations made under this Act;

“Receiver of revenue” means a person designated by the County executive

committee member for finance to be a receiver of county government revenue under section 3 of this Act;

“rate” means a rate imposed under the Embu County Rating Act;

“relevant person” means—

2015

Embu County Revenue Administration

- (a) a revenue payer;
- (b) an employee or agent of the revenue payer; or

any other person whom the Receiver of revenue believes on reasonable grounds may be able to assist in determining the liability (if any) of the revenue payer to pay a rate, tax, fee or charge payable under a revenue law;

“revenue law” means—

- (a) the Embu County Revenue Administration Act;
- (b) the Embu County Rating Act;
- (c) the Embu County Trade Licence Act;
- (d) the Act providing for annual county finances;
- (e) any other Act imposing an entertainment tax or any other tax that is payable to the county government;
- (f) any Act or other law providing for the payment to the county government of fees or charges for services provided; or
- (g) any other prescribed law; and

“revenue payer” means a person liable to pay a rate, tax, fee or charge to the county government under a revenue law

PART II—ADMINISTRATION OF REVENUE LAWS

3. (1) The receiver of revenue is:

- (a) in the case of taxation, the person who is the receiver;
- (b) in the case of any other kind of revenue, the person who is the receiver of revenue designated in respect of that other kind of revenue under section 157 of the Public Finance Management Act, 2012.

(2) A person shall be qualified to be designated as a receiver of revenue if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree in finance, economics business administration or any other relevant degree from a university that is recognised in Kenya by the

Receiver of
Revenue
No. 18 of 2012

Commission for Higher Education;

- (c) has at least five years relevant professional experience; and
- (d) meets the requirements of chapter six of the constitution;

(3) A receiver of revenue shall provide quarterly statements to the County Treasury with copies to the National Treasury and Commission on Revenue Allocation.

(4) A receiver of revenue is responsible to the county executive member for finance for ensuring that revenue for which the receiver is responsible is collected or recovered, and is accounted for.

4. (1) The powers and functions of the receiver of revenue shall be to—

Powers and
Functions of the
Receiver of
Revenue

- (a) administer and enforce 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 ;
- (b) advice the county government on all matters relating to the administration and enforcement of revenue laws, and the assessment and collection of rates, taxes, fees and charges under those laws; and
- (c) make recommendations to the executive member concerning proposals for legislation;
- (d) perform such other functions as may be provided for under the revenue laws or that may be assigned to him by the county government.

(2) A receiver of county revenue may authorize any public officer employed by the county government or any of its entities to be a collector of revenue for the purpose of collecting revenue for the county government and remitting it to the receiver.

(3) Any public officer, other than a receiver of revenue for the county government who collects revenue for the county government shall, not later than three days after receiving it, deliver the revenue to the receiver of revenue.

5. The receiver of revenue may, by instrument in writing delegate all or any of his or her functions or powers under a revenue law to a county public officer, except this power of delegation.

Delegation of
functions and
powers

6. (1) The county government may enter into an agreement authorizing a person to collect rates, taxes, fees and charges payable under revenue laws on such terms and conditions as are specified in the agreement

Agreement in
relation to revenue
collection

(2) In this section-

“person” includes a company, association or other body of persons whether incorporated or unincorporated

7. (1) At the end of each financial year, the Receiver of revenue shall prepare an account in respect of the revenue collected, received and recovered by the Receiver during that financial year.

Annual Reports

(2) The account under subsection (1) shall include-

(a) a statement of receipts and disbursement in a form prescribed by the accounting standards Board from time to time; and

(b) a statement of arrears of revenue.

(3) Not later than three months after the end of each financial year, the receiver of revenue shall deliver a copy of the account to the County Treasury and County Assembly.

(4) Not later than two months after the end of each financial year, submit to the County Assembly a report with respect to all waivers and variations of taxes, fees or charges granted by the Receiver during that year.

(5) The Receiver shall include in the report the following details in respect of each waiver or variation-

(a) the full name of each person benefiting from the waiver or variation;

(b) the amount of tax, fee or charge affected by the waiver or variation;

(c) the year to which the waiver or variation relates;

(d) the reasons for the waiver or variation; and

(e) The legislation in terms of which the waiver was authorised.

PART III—ENFORCEMENT

8. (1) The executive member for finance shall appoint for each sub-county, persons or class of persons to be authorised officers for the purposes of this Act.

Authorised
officers

(2) The executive member shall issue a certificate of appointment to every person appointed under this section.

(3) Notwithstanding the provisions of this section, the following officers shall be deemed to be authorised officers for the purposes of this Act—

- (a) the receiver of revenue or his or her representative;
- (b) officers appointed as enforcement officers under any revenue law or the National Police Service Act; and
- (c) any other person upon whom any written law vests functions of the maintenance of law and order

9. (1) For the purposes of determining the liability (if any) of a revenue payer to pay a rate, tax, fee or charge payable under a revenue law, the receiver of revenue may, by notice in writing, given to a relevant person, require the relevant person to provide the receiver of revenue with such information as the receiver of revenue may require.

Providing
information

(2) If a person fails to comply with a notice under subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding one hundred thousand (100,000) shillings.

10. For the purposes of determining liability of a revenue payer to pay a rate, fee, tax, or charge payable under a revenue law, an authorised officer shall have access to any premises of, or in the custody or control of, a relevant person and may, at all reasonable times, exercise all or any of the following powers—

Access, inspection
and other powers

- (a) enter and inspect those premises and any goods in or on those premises, including opening any packaging or containers that may contain goods;
- (b) obtain, copy and print information or data from any computer system in or on those premises and retain all information and data that is obtained, copied or printed;

- (c) take extracts from or copies of any books, accounts, records and other documents or record system in use in or on those premises and retain all copies of extracts taken there from for use as evidence against the revenue payer.

(2) If the authorised officer is of the view that it is impractical to exercise any of the powers under paragraph (1) (a), (b) or (c), the authorised officer may remove all or any of the things referred to in that paragraph to offices of the county government for such time as is reasonably necessary to determine a revenue payer's liability to pay.

(3) Pursuant to Article 24(1)(d) of the Constitution, the right to privacy set out in Article 31 and 40 of the Constitution is limited to the extent specified in this section for the purposes of determining liability (if any) of a revenue payer to pay a rate, fee, tax, or charge payable under a revenue law.

(3) A relevant person must give all reasonable assistance to the authorised officer so as to allow him to exercise all or any of his powers under this section.

11. (1) An authorised officer may take into his or her possession any property, other than land, that may be required as evidence in a court for proceedings to be brought under this Act or any other revenue law.

Seizure of
property required
as evidence

(2) When property is no longer required under subsection (1), the property must be returned as soon as practical to the person entitled to it.

(3) Any person from whom property is seized may within thirty days after the date of seizure apply to the high court for an order of restoration, and shall send notice containing the prescribed information to the relevant officer within the prescribed time and in the prescribed manner.

(4) The high court may order that any property seized be restored immediately to the applicant if on the hearing of the application the court is satisfied that—

- (a) the applicant is entitled to possession of the property seized; and
- (b) the property seized shall not be required as evidence in respect of an offence under this Act.

12. (1) No person shall hinder, obstruct or knowingly make a false or misleading statement to an authorised officer who is carrying out his duties under this Act.

Obstruction

(2) Any person who contravenes this section is guilty of an offence and is liable upon conviction to a fine not exceeding fifty thousand (50,000) shillings or a jail term not exceeding three months or both.

13. (1) Any document required to be published under a revenue law may be published by advertisement in the Gazette or in at least one local newspaper of nationwide circulation.

Publication and
service of
documents

(2) Any document required or authorised to be sent or served under or for the purposes of a revenue law may be sent or served—

- (a) by delivering it to the person to or on whom it is to be sent or served; or
- (b) by leaving it at the usual or last known place of abode or business of that person, or, in the case of a company, at its registered office; or
- (c) by ordinary or registered post; or
- (d) by emailing it to the person; or
- (e) any method as may be prescribed.

(3) However, if an authorised officer having attempted to send or serve a document by one of the methods provided under subsection (2) and is satisfied that such notice has not been received by the person to whom it was addressed, he may advertise, in the manner provided in subsection (1), the general purport of such document, and upon such advertising the document is to be deemed to have been received by that person.

(4) An advertisement referred to in subsection (3) may refer to one or more documents and to one or more revenue payers.

(5) Any document under a revenue law required or authorised to be served on the owner or occupier of any premises may be addressed by the description “owner” or “occupier” of the premises (naming them), without further name or description.

14. In performing any function or exercising any power under this Act, an authorised officer must produce an identification establishing his or her position if requested by any relevant person.

Identification

PART IV—GENERAL PROVISIONS

15. (1) The receiver of revenue shall establish and maintain a manual or electronic revenue register and always keep it up to date.

Revenue register

(2) The register must contain the prescribed information and may be kept in such form as the county executive member for finance directs from time to time.

16. (1) Books and records received in the course of administering this Act shall be kept confidential and a person who receives books and records shall not use or disclose them except—

Confidentiality of Records

- (a) for the purpose in relation to which they were provided;
- (b) for the purpose of administering or enforcing this Act or another revenue law;
- (c) under an agreement between the county government and another government that provides for the exchange or disclosure of information, returns or books and records that relate to the administration or enforcement of revenue laws;
- (d) for the purpose of conducting tax, fiscal and economic policy analysis, or compiling statistical information by the county government or the national Government of Kenya; or
- (e) for any other purpose authorised by law.

(2) Books and records received or handled under this Act shall not be made available to anyone except the receiver of revenue or those persons authorised by the executive member to do so and the executive member shall not authorize anyone to receive or handle books and records except for the purpose outlined in subsection (1).

17. Where a revenue payer does not pay tax in the time and manner required under a Revenue law, interest shall be levied upon that tax and shall be collected at a rate

Interest

and in the time and manner prescribed in the regulations.

PART V—MISCELLANEOUS

18. The executive member for the time being responsible for finance may approve forms for the purposes of a revenue law.

Approved forms

19. Any public officer convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding one million (1,000,000) shillings or to imprisonment for a term not exceeding two years or to both.

General penalty
for offence

20. The receiver of revenue in consultation with the executive committee member may issue guidelines for the purposes of a revenue law.

Guidelines

21. The county executive member responsible for finance may make regulations generally for the better carrying out of the provisions and purposes of this Act.

Regulations