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BUNGOMA COUNTY ACTS, 2017

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THE BUNGOMA COUNTY AGRICULTURAL PRODUCE
CESS, 2017

No. 3 of 2017

Date of Assent: 17th April, 2017

Date of Commencement: See Section 1

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SCHEDULES

**THE BUNGOMA COUNTY AGRICULTURAL
PRODUCE CESS ACT, 2017**

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

ENACTED by the County Assembly of Bungoma, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Bungoma County Agricultural Produce Cess Act, 2017 and shall come into force thirty days from the date of assent.

Short title and commencement.

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

Interpretation.

“agriculture” means cultivation of land and the use of land (whether or not covered by water) for any purpose of husbandry and includes—

- (a) horticulture, fruit growing and seed growing;
- (b) dairy farming, bee keeping and breeding and keeping of livestock;
- (c) conservation and keeping of game animals, game birds and protected animals (all as defined in the Wildlife Conservation and Management Act (Cap. 376)), and also of all aquatic animals; breeding, game ranching, game cropping and other wildlife utilization and otherwise turning to account within the provisions of the Act referred to in paragraph (c) but not otherwise of game animals and game birds (not being protected animals) and also of all aquatic animals whether in inland waters or the waters of the maritime zones falling within the provisions of the Fisheries Act (Cap. 378);

“Agricultural producer” means a processor, of agricultural produce and includes any marketing organization acting on behalf of producers”

“agricultural produce”-means both produce and products from crops, livestock and fisheries

“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;

“County Government” means the County Government of Bungoma County;

“County Treasury” means “the entity in Bungoma County Government established under Section 103 of the Public Finance Management Act;

“CECMA” means County Executive Committee Member for Agriculture

“Essential produce” 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;

“Foreign Limited Partnership” means a partnership —

- (a) constituted under the law of a country other than Kenya; and
- (b) in which one or more of the partners has limited liability in respect of a partnership obligation;

“Limited Partnership” means a partnership with one or more limited partners, each of whom has limited liability;

“Local Agricultural Producer” means an inhabitant of the County who cultivates or operates land for the purposes of growing and generating agricultural produce, whether in small scale or large scale;

“Multinational Agricultural Producer” means an international juristic person that owns land within the County and cultivates it for the purpose of growing and generating agricultural produce;

“Partnerships” means the relationship which exists

between persons who carry on business in common with a view to making a profit;

“Scheduled produce” means any agricultural produce for the time being specified in the First Schedule;

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 209(3) of the Constitution of Kenya, 2010.

Objects and purpose of the Act.

PART II— TAX CHARGEABLE ON AGRICULTURAL PRODUCE

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

Imposition of Cess

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

(3) The County Executive Committee Member in consultation with CECMA may impose a cess on any kind of agricultural produce and make any such incidental provision as is necessary or expedient; and the Cess shall form part of the County Government’s revenues.

(4) The incidental provisions which may be made in the regulations to this Act, under subsection (1) may include provisions—

(a) requiring any person whether Foreign Limited Partnership, Limited Partnership, Local Agricultural Producer, Multinational Agricultural Producer, and Partnerships who buys or markets on behalf of a producer agricultural produce on which the cess is payable, and on which no cess has then been paid, to deduct from the money payable to the seller an amount equal to the cess payable on the produce, and to remit the amount to the authority to whom the cess is payable;

(b) provided that in any proceedings it shall be presumed that where agricultural produce on which a cess is payable is brought, no cess has been paid on that produce, until the contrary is proved.

(5) The county assembly may in the County Finance Act adopt one or more forms of assessment of cess as may

be presented for approval by the County Executive Committee Member to determine the amount of cess payable for a particular agricultural produce or product.

(6) If the County Assembly does not approve the amount of the cess payable for a particular year, then the amount of the cess payable for that year shall be of the immediately preceding year.

5. (1) Agricultural Produce Cess shall not be levied or imposed on agricultural produce that is declared to be an essential produce under this Act. Declaration on essential Produce

(2) The County Executive Committee Member in consultation with the CECMA may review, declare and publish essential produce that in his or her opinion are necessary to be essential produce for the purposes of this Act.

(3) In declaring agricultural produce as an essential produce 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 produce to be an essential produce.

6. (1) If any cess or any part thereof remains unpaid after the day on which the cess became payable, the cess or part thereof, as the case requires, and any interest on any such unpaid cess provided for in section 13, is recoverable in a court of competent jurisdiction as a debt due and owing to the county cess committee from the person liable for payment. Recovery of cess

(2) The receiver of revenue is authorized to sue for and recover the debt on behalf of the county cess committee.

(3) A certificate signed by the receiver of revenue and certifying that—

(a) an amount of cess is or was due and payable on or before a certain date; and

(b) the amount or part thereof has not been paid on or before that date;

is admissible as evidence against the defendant in proceedings under this section, and is *prima facie* evidence as to the matters certified.

PART III—CESS

7. (1) There shall be a County Cess Committee. County Cess Committee

(2) The County Cess Committee shall comprise of—

- (a) Two representative from Agricultural sector Departments
- (b) One representative from Finance Department
- (c) One representative appointed from Public Administration department;
- (d) One representative from Roads and public works Department;
- (e) Two representative from sugarcane sector;
- (f) One representative from coffee sector ;
- (g) One representative from Tea sector;
- (h) One representative from Tobacco sector
- (i) One representative from maize sector
- (j) One youth representative
- (k) One women representative
- (l) One representative from from livestock sector
- (m) One representative from fisheries sector
- (n) One representative for people with disabilities;

(3) The chairperson of the committee shall be elected by the members on the 1st day of sitting of the committee .

(4) The committee shall have a term of three years and no member may be appointed to represent an agricultural sector for more than two terms.

(5) a person may cease to be a member of the cess committee if—

- (a) is unsound mind;

- (b) is adjudged bankrupt;
- (c) Ceases to be a member of the agricultural sector that appointed him into the committee;
- (d) is unfit to hold public office as envisaged in chapter 6 of the Constitution of Kenya.

8. The functions of the county cess committee will be—

- (a) to oversee the Agricultural Cess programmes in the county
- (b) enhance collection of cess in the county
- (c) facilitate enforcement of Agricultural cess legislation
- (d) planning and implementation of programmes under the Agricultural cess fund
- (e) monitoring and Evaluation of the programmes
- (f) reporting biannually to the County Executive Committee Members of Agriculture and Finance and Economic Planning on the progress made in the discharge of their functions.

9. (1) No person shall conduct a business or deal with agricultural produce and or products within the county, unless he/she is a holder of a valid trade license for that business.

Requirement of a trading license.

(2) If a person contravenes subsection (1) above, he/she will be guilty of an offence punishable on conviction by a fine not exceeding—

- (a) KSh. 100,000 for mega agricultural produce dealers or to an imprisonment for a term not exceeding twelve months or both.
- (b) KSh. 50,000 for large agricultural produce dealers or to an imprisonment for a term not exceeding six months or both.
- (c) KSh. 25,000 for medium agricultural produce dealers or to an imprisonment for a term not exceeding three months or both.
- (d) KSh. 10,000 for small agricultural produce dealers or to an imprisonment for a term not exceeding one month or both.

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

Payment to the
County
Government
by Agricultural
Producers

(2) All payments not provided for under subsection 1 shall be collected by an authorized officer at County Exit points or any other place 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, factory or any other entity for purposes of determining Cess payable and collected by the entity.

(7) Any company, factory, 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.

11. (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 points.

Collection of Cess
at Exit points

(2) All Cess collected at the County exit 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 County exit points.

(4) This Section shall not apply to agricultural produce 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.

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

12. Ninety per cent (90) of all monies collected as cess from all agricultural produce or products shall be used in maintaining agricultural infrastructure and provide other services related to agriculture in areas where the agricultural produce are produced in the County and three per cent (3%) deposited in the county revenue account shall be used for the cess committee's administrative purposes while the remaining seven per cent (7%) shall be credited to the county Revenue account. The ninety per cent (90%) allocation shall be administered under a separate roads maintenance account in the ministry of roads and public works.

Use of cess collected.

PART IV— OFFENCES AND PENALTIES

13. (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 for two years or both

Offence by an agricultural producer.

(2) Where the offence is 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

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

Offences by an authorized officer

- (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 both

PART V—MISCELLANEOUS PROVISIONS

15. (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.

Waiver of Cess

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

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

(4) The County 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

16. The fees and charges payable pursuant to the provisions of this Act including any additional fees and charges for the non-payment or late payment of such fees and charges shall be determined each year by the County Assembly in the County Finance Act as in second schedule

County Assembly
to determine fees
and charges

* 17. The County Executive Committee Member may make Regulations for the better carrying out of the purposes and provisions of this Act with the approval of the County Assembly.

Regulations

FIRST SCHEDULE**Section 4****Scheduled Produce**

1. Banana
2. Beans
3. Carrots
4. Cassava
5. Coffee
6. Cucumber
7. Eggs
8. Fish
9. Ground nuts
10. Maize
11. Mangoes
12. Milk
13. Onions
14. Pawpaw
15. Peas
16. Potatoes
17. Processed fresh milk
18. Sugar cane
19. Sweet potatoes
20. Tea
21. Timber
22. Tobacco
23. Tomatoes
24. Vegetables
25. Charcoal
26. Cotton
27. Pyrethrum
28. Water Mellon
29. Macadamia nuts