

REPUBLIC OF KENYA



THE COUNTY GOVERNMENT OF NANDI

THE NANDI COUNTY AGRICULTURAL PRODUCE CESS

BILL, 2015

NO. .... OF 2015

**NANDI COUNTY AGRICULTURAL PRODUCE CESS BILL, 2015**

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**THE NANDI COUNTY AGRICULTURAL PRODUCE CESS BILL, 2015**

**A BILL for-**

An Act of the County Assembly of Nandi to provide for the imposition of Cess tax on any kind of agricultural crop produce within the County, and for connected purposes.

**ENACTED** by the County Assembly of Nandi as follows—

**PART I - PRELIMINARY**

**Short title and commencement.**

1. This Act may be cited as the Nandi County Agricultural Produce Cess Act, 2015 and shall come into operation on the date of publication in the County Gazette or Kenya Gazette, whichever comes earlier.

**Interpretation.**

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

"Agricultural producer" means a producer of agricultural crop 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;

"County Government" means the County Government of Nandi County;

"County Treasury" means the entity in Nandi County Government established under Section 103 of the Public Finance Management Act;

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"Essential produce" means produce 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 produce for the time being specified in the First Schedule;

"Special produce" means a produce declared as such under section 5 of this Bill;

**Object and purpose of the Act.**

3. The object and purpose of this Act is to impose tax and/or levies on agricultural produce grown in, and/or 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**

**Tax Chargeable for Agricultural Produce.**

4. (1) Subject to subsection (2), the County Government shall collect Cess revenue on Agricultural produce within the County in accordance with the Second Schedule of this Act.

(2) The County Government shall collect Cess revenue with the consent of the County Executive Committee Member for Finance, upon the approval of the County Executive Committee.

(3) The County Executive Committee Member for Finance, may impose a Cess on any kind of agricultural produce not already provided for under the Second Schedule of this Act, or by Regulations, and may make such incidental provisions as are necessary or expedient for the collection of the Cess revenue.

**Declaration of essential produce and development of certain produce.**

5. (1) The County Executive Committee Member for Finance in consultation with the County Executive Committee Member for Agriculture may, in every five years, review, declare and publish scheduled produce that in his opinion are necessary to be essential produce for the purposes of this Act.

(2) In making a declaration under subsection (1) the County Executive Member responsible for Agriculture may declare a particular variety only of a scheduled produce to be an essential produce.

**PART III – PAYMENT**

**Agricultural Cesses.**

6. (1) The County Executive Member in charge of Finance 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.

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

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(a) requiring any person (whether within or outside the area of jurisdiction of the county government) 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.

**Payment to the  
County Government  
by Agricultural  
Producers.**

7. (1) All payments to the County Government by Agricultural Producers made under this Act shall be deducted and paid by the company or factory 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 as per Regulations made 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 following the date of deduction.

(4) The authorized officer referred to in subsection (2) shall ensure that all the amounts collected are accounted for and remitted to the County Revenue account daily.

(5) The company or factory shall make and keep such up to date books, accounts and records as are reasonably necessary to determine the mass of agricultural produce supplied to it and Cess deductions made thereof for a period of at least 7 years after the completion of the transactions to which they relate.

(6) The receiver of revenue may by notice in writing given to the company or factory, direct the revenue payer as to the books, accounts and records the company or factory is required to make and keep.

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(7) An authorized officer shall be allowed unlimited access, within the legal bounds, to the records kept by the company or factory.

(8) Any company or factory 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

**Payment to the County Government on agricultural produce on transit.**

8. The authorized officer shall ensure that cess on agricultural produce on transit is collected at barriers set up at the points of entry as per Regulations made by the County Executive Committee Member and shall ensure that all the amounts collected are accounted for and remitted to the County Revenue account daily.

**PART IV – ADMINISTRATION OF THE CESS REVENUE**

**Annual report.**

9. (1) Not later than three (3) months after the end of each financial year, the receiver of revenue must prepare annual reports and submit the same to the County Executive Committee Member responsible for Finance as per the provisions of the Public Finance Management Act.

[Act No. 18 of 2012, S. 165]

(2) The County Executive Committee Member responsible for Finance must table the annual report in the county assembly as soon as practicable.

**Agreement in relation to revenue collection**

10. The County Government may enter into an agreement authorizing a person or entity to collect Cess revenue payable to the county government on such terms and conditions as are specified in the agreement.

**PART V – OFFENCES AND PENALTIES**

**General penalty for offences committed by Agricultural Producers.**

11. Except as provided for in this Act, an agricultural producer who contravenes the provisions of this Act shall be guilty of an offence and is liable to - a fine not exceeding 300, 000/= Kenya shillings or imprisonment of two years or both

**Offences by an Authorized Officer.**

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

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- 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) willfully contravenes the provisions of this Act to give undue advantage or favor 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 200, 000/= Kenyan shillings or to imprisonment for a term of one year, or to both.

**PART VI – MISCELLANEOUS**

**Variation of tax.**

13. (1) The County Executive Committee Member may from time to time vary tax payable under this Act.
- (2) The said variation of tax shall be in writing and published in the County Gazette or National Gazette.

**Regulations.**

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

**No action maintainable against Minister, etc.**

15. Neither the County Executive Members nor any other person or body of persons shall be personally liable to any action or proceedings for or in respect of any act or thing done or omitted to be done in good faith in the performance or exercise or intended performance or exercise of any duty or power imposed or conferred by or under this Act.

**Saving Clause.**

16. Nothing in this Act or any rules or regulations made pursuant thereto shall prejudice or affect collection of Cess revenue under the previous by-laws of the defunct local authority of the county,

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and where anything in this Act or any rule is inconsistent with any such provision of the by-law, the provisions of this Act shall prevail.

**Saving of rules and orders under the by-laws.**

17. Notwithstanding the repeal of the by-laws of the defunct local authorities—

- (a) all rules made under the by-laws in relation to collection of Cess revenue and in force before the commencement of county governments, except only in so far as they conflict with this Act, shall remain in force until revoked as if they were rules made under this Act; and
- (b) all orders made under the by-laws and subsisting at the commencement of this section shall remain in force as if they were orders made pursuant to this Act.

**Prosecution of matters under this Act.**

18. The county government shall liaise with the Office of the Director of Public Prosecution to provide a special prosecutor to prosecute matters for and on behalf of the county government under this Act.

**SCHEDULES**

**FIRST SCHEDULE**

**(Section 2)**

**SCHEDULED PRODUCE**

1. Banana
2. Beans
3. Carrots
4. Cassava
5. Cereals
6. Coffee
7. Cucumber
8. Eggs
9. Fruits
10. Ground nuts
11. Log
12. Maize
13. Mangoes
14. Milk
15. Onions
16. Pawpaw
17. Peas
18. Potatoes
19. Processed fresh milk
20. Sugar cane
21. Sweet potatoes
22. Tea leaves
23. Timber
24. Tobacco
25. Tomatoes
26. Vegetables

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**SECOND SCHEDULE**

**(Section 4 (1))**

**SCHEDULED AGRICULTURAL PRODUCE CESSES**

<b>ITEMS</b>	<b>WITHIN KAPSABET TOWN</b>	<b>NANDI HILLS</b>	<b>SUB- COUNTIES</b>
Coffee Cess in percentage of market price	<b>1%</b>	<b>1%</b>	<b>1%</b>
Tea Cess in percentage of market price	<b>1%</b>	<b>1%</b>	<b>1%</b>
Maize Cess in percentage	<b>1%</b>	<b>1%</b>	<b>1%</b>
Water Cess in percentage of market price	<b>1%</b>	<b>1%</b>	<b>1%</b>
Milk Cess in percentage of market	<b>1%</b>	<b>1%</b>	<b>1%</b>
Produce in Cess percentage of market price	<b>1%</b>	<b>1%</b>	<b>1%</b>
Timber Cess per ton	<b>500</b>	<b>500</b>	<b>300</b>
Log Cess in percentage of market price	<b>1%</b>	<b>1%</b>	<b>1%</b>
Log Cess in percentage of market price	<b>1%</b>	<b>1%</b>	<b>1%</b>