SPECIAL ISSUE

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REPUBLIC OF KENYA

SIAYA COUNTY GAZETTE SUPPLEMENT

BILLS, 2013

NAIROBI, 6th September, 2013

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI
THE SIAYA COUNTY TAX WAIVERS ADMINISTRATION BILL, 2013.

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THE SIAYA COUNTY TAX WAIVERS
ADMINISTRATION BILL, 2013

A Bill for

AN ACT of the Siaya County to provide for the
regulation and administration of tax waivers; to
give further effect to article 210 of the Constitution
and for connected purposes.

ENACTED by the County Assembly of the County of
Siaya as follows —

PART 1 — PRELIMINARY

1. This Act may be cited as the Siaya County Tax
Waivers Administration Act, 2013 and shall come into
operation on such a date as the county executive committee
member for finance, may in consultation with the Governor
appoint.

2. In this Act, except where the context otherwise
requires —

“Governor” mean the Governor of the Siaya County

“executive committee member” means the executive
committee member of the County Government of Siaya
responsible for finance.

“tax” includes any revenue of licensing fee payable by
any person to the County Government, whether it has
become due or not.

“tax waiver” includes the forebearing of tax
collection, partial or full remission, spreading out a
payment in respect of tax already accrued and any variation
of the amount due or interest or penalty due on any amount
owing to the county government.

3. the objectives of this Act are to —

(a) give further affect to Article 210 of the
Constitution as regards tax waiver and the
administration thereof.

(b) to ensure transparency in the administration of
taxes and other revenue in particular in the waivers
thereof.

(c) to provide for the procedure applicable to and
requirements for tax waivers.
PART II — AUTHORITY TO WAIVE TAX AND ADMINISTRATION OF TAX WAIVERS

4. No tax may be waived except in the manner provided for in this Act, any applicable national legislation or any other Act of the Siaya County Assembly.

5. (1) the Executive Committee Member responsible for finance may, where he or she deems it appropriate, and with the concurrence in writing of the Governor waive the payment of any tax, fee, or other payment due to the County Government.

(2) The power of the executive committee member to waive tax shall be exercisable in the respect of every transaction, with the written approval of the Governor, but in any case, only in the following circumstances —

(a) Where the waiver is for purpose of encouraging defaulting tax payers to pay such amount as may enable the county government recover part of the amount owing from the defaulting payer.

(b) Where, in the opinion of the county executive committee member, there exist such compelling circumstances that make it equitable, expedient and in the interest of the financial advantage to the county that the waiver be made.

(c) For any other public interest reason, in consultation with the Governor.

6. (1) Where the committee member intends to waive any tax, he or she shall publish such intention in the Gazette not less than fourteen days before the intended date of the waiver.

(2) The notice referred to in subsection (1) shall indicate the reasons for the intended waiver and shall invite comments from the public on the intended waiver.

7. Every waiver shall be reported to the Assembly and published in the Gazette not more than fourteen days after it is granted.

8. Pursuant to Article 210 of the Constitution, the Executive committee member shall in respect of every waiver of tax or license fee —

(a) Maintain a public record of each waiver together with the reason for the waiver; and
(b) Report to the Auditor General and the County Assembly, each waiver, and the reason for it.

9. The Executive committee member shall not waive tax or fees authorize the exclusion of a State Officer or Public officer from payment of tax or fees by reason of the office held by that State officer or public officer or the nature of the work of the state officer or public officer.

PART III – MISCELLANEOUS

10. (1) The Executive committee member may, with the approval of the Governor make regulations or the better carrying out of the provision of this act

(2) Without prejudice to provide for the procedure in accordance with subsection (1) the regulation may provide for –

(a) The procedure of application for tax waiver;

(b) Where any payment of tax is due, the time within which the waiver may be applied for;

(c) The requirements with respect to documentation that may be required with the application for tax waiver.
MEMORANDUM OF OBJECTS AND REASONS

Article 210 of the Constitution provides for the imposition and condition for the waiver of taxes.

This bill proposes to give further effect to the principles and stipulations set out in the Constitution by providing for the condition of the administration of tax waivers.

This Bill provides that the Executive Committee Member responsible for finance may, where he or she deems it appropriate, and with the concurrence of the Governor, in writing, waive the payment of tax, fees or other payment due to the County Government.

The power of the executive committee member to waive tax shall be exercisable, in the respect of every transaction, or generally, with the written approval of the Governor, but in any case, only in the following circumstances;

a) Where the waiver is for purpose encouraging defaulting tax payer to pay such amount as may enable the county government recover part of the amount owing from the defaulting payer;

b) Where, in the opinion of the county executive committee member, there exist such compelling circumstances that make it equitable expedient and in the interest of the financial advantage to the county that the waiver be made.

A statement of delegation of legislative powers.

The Bill proposes the delegation of legislative powers to the Executive Committee Member responsible for Finance. These powers extend only to the prescription of the procedures and timelines for application for waivers. The power of the committee member are exercisable with the concurrence of the Governor. This is to enhance accountability.

The enactment of this bill in to law shall not occasion additional expenditure of public funds.

Dated 10th September 2013

JACKTON ODINGA,
Chairperson,
County Budget and Appropriation Committee.