

Punjab Tax On Luxuries Act, 2009

04 of 2009

[01 April 2009]

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Punjab Tax On Luxuries Act, 2009

04 of 2009

[01 April 2009]

An ACT to provide for the levy and collection of tax on luxuries and for the matters connected therewith and incidental thereto. Be it enacted by the Legislature of the State of Punjab in the Sixtieth Year of Republic of India as follows:-

CHAPTER 1

PRELIMINARY

1. Short Title And Commencement :-

- (1) This Act may be called the Punjab Tax on Luxuries Act, 2009.
- (2) It shall come into force at once.

2. Definitions :-

In this Act, unless the context otherwise requires,-

- (a) "assessing authority" means an officer, appointed as such, by the State Government by notification in the Official Gazette to make an assessment under this Act;
- (b) "banquet hall" means any premises, garden or farm house, marriage palace or any part thereof, where accommodation or space is let out for a monetary consideration for marriages, receptions, conventions, banquets, kitty-parties, meetings or exhibitions for sale of goods or for arranging functions or events whether on regular or periodical or occasional basis;
- (c) "charges for luxury provided in a banquet hall" includes an amount received by way of donation or charity or by whatever name called for luxury provided in a banquet hall;
- (d) "Commissioner" means an officer, appointed as the Excise and Taxation Commissioner by the State Government under subsection (1) of section 3;
- (e) "concessional rate" means a rate, lower than the normal rate, fixed for such a luxury by the proprietor;
- (f) "hotel" means any premises including lawn, lodging house, club, if any, or a holiday resort, let out whether on regular or periodical or occasional basis for a monetary consideration;
- (g) "luxury" means the services, rendered for the purpose of enjoyment, comfort or pleasure;
- (h) "luxury provided in a banquet hall" means the luxury, provided by way of accommodation or space in a banquet hall on payment of a sum, not less than five thousand rupees per occasion or such other sum, as may be specified by the State Government by notification, which shall include the charges for air cooling, air conditioning, chairs, tables, linen, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music orchestra, live telecast or other amenities whether such charges are received collectively or separately, but excluding the charges for food and drinks;

Explanation:- While calculating the sum of five thousand rupees or any other specified sum, the charges for providing the aforesaid amenities or any other such like amenities, shall be taken into

account collectively, even if charges for any of the amenities are received separately by the proprietor or by any other person on his behalf;

(i) "luxury provided in a hotel" means a luxury, provided by way of accommodation for lodging in a hotel on payment of a sum, not less than two hundred rupees per day or such other sum, as may be specified by the State Government by notification, which shall include the charges for air-conditioning, telephone, fax, internet, television, radio music, health club, beauty parlour, swimming pool, conference hall or other amenities whether such charges are received collectively or separately, but excluding the charges for food and drinks;

Explanation:- While calculating the sum of two hundred rupees or any other specified sum, the charges for providing the aforesaid amenities or any other such like amenities, shall be taken into account collectively, even if changes for any of the amenities are received separately by the proprietor or by any other person on his behalf;

(j) "normal rate" means the rate, charged from any user after giving the discounts as per ordinary practice in a hotel or banquet hall, but excluding the cash discount, if any;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "proprietor" means any person, who is an owner or a contractor or a lessee, managing a hotel or a banquet hall, as the case may be, in any capacity, and includes the person, who for the time being, is managing the affairs of such hotel or banquet hall;

(m) "section" means a section of this Act;

(n) "State Government" means the Government of the State of Punjab in the Department of Excise and Taxation;

(o) "tax" means the luxury tax, levied and collected under this Act; and

(p) "year" means the financial year.

3. Commissioner And Other Officers :-

(1) For carrying out the purposes of this Act, the State Government may, by notification in the Official Gazette, appoint an officer, to be the Commissioner and such other officers to assist him, as it may deem appropriate.

(2) The Commissioner shall have jurisdiction over whole of the State of Punjab and shall have all the powers and perform all the duties, conferred or imposed upon him by or under this Act. All

other officers, appointed under subsection (1), shall exercise such powers, as may be conferred upon them by the State Government.

(3) Every Officer, appointed under sub-section (1), to assist the Commissioner, shall exercise his powers, subject to the general superintendence and control of the Commissioner.

CHAPTER 2

LEVY OF TAX ON LUXURY PROVIDED IN HOTELS AND BANQUET HALLS

4. Levy Of Tax On Hotels :-

(1) Every proprietor shall be liable to pay tax under this Act, on the amount received by him for luxury, provided in a hotel on daily basis, at such rate, as may be specified by the State Government by notification in the Official Gazette, but such tax shall not exceed fifteen per cent of the total amount received.

(2) In case, an amount is received by a proprietor for luxury, provided in a hotel, other than on daily basis, the tax liability shall be determined by taking into consideration, the daily average charges of the amount so received:

Provided that the tax shall be levied only if, the charges for luxuries are more than two hundred rupees per day or such other sum, as may be specified by the State Government by notification in the Official Gazette.

(3) The tax levied under sub-section (1) or sub-section (2), as the case may be, shall be paid by the proprietor in such manner, as may be prescribed.

5. Levy Of Tax On Banquet Halls :-

(1) Every proprietor shall be liable to pay tax under this Act on the amount received by him for luxury, provided in a banquet hall, at such rate, as may be specified by the State Government by notification in the Official Gazette, but such tax shall not exceed fifteen per cent of the total amount received:

Provided that the tax shall be levied only, if the charges for luxuries are more than five thousand rupees per day or such other sum, as may be specified by the State Government by notification in the Official Gazette.

(2) The tax levied under sub-section (1), shall be paid by the proprietor in such manner, as may be prescribed.

6. Method Of Calculation Of Tax :-

(1) Where the charges for luxury, provided in a hotel or a banquet hall, as the case may be, are inclusive of the charges for food and drink, the assessing authority may, after giving the proprietor an opportunity of being heard, segregate the charges separately i.e. charges for luxury and charges for food and drink.

(2) Where any service charges, other than the charges for luxury, provided in a hotel or a banquet hall, as the case may be, are collected and appropriated either wholly or partly by the proprietor, and are not paid to the staff, such charges shall be deemed to be the part of the charges for luxury.

(3) Where luxury in a hotel or banquet hall, as the case may be, is provided to any person free of cost or at a concessional rate, the tax shall be levied at the normal rate for such luxury.

(4) Where a luxury was to be provided in a hotel at a normal rate to certain specified number of persons, but actually the same was availed of by more than the specified persons, then tax shall also be levied on the extra persons at the same rate.

7. Declaration Of Charges :-

Every proprietor liable to pay tax, shall declare the normal rates for luxuries, provided by him in such manner and within such period, as may be prescribed.

CHAPTER 3 REGISTRATION

8. Registration :-

(1) No proprietor, who is liable to pay tax under this Act, shall provide luxury in a hotel or banquet hall, unless he is registered under this Act.

(2) Every proprietor, required to be registered under sub-section (1), shall make an application for registration to the Commissioner, within a period of thirty days from the date, when such proprietor becomes liable to pay tax under this Act alongwith such fee and in such manner, as may be prescribed.

(3) If the Commissioner is satisfied that the application made under sub-section (2), is in order, he shall, in accordance with such manner, as may be prescribed, register the proprietor and grant him a registration certification in such form, as may be prescribed: Provided that if the Commissioner is satisfied that the particulars, contained in the application, are not correct or are incomplete or that any evidence or information, required for registering the

proprietor, is not furnished, he may, after making an inquiry and giving the proprietor an opportunity of being heard, reject the application for reasons, to be recorded in writing. However, after furnishing the required information or correcting the application, as desired by the Commissioner, the proprietor may submit a fresh application for registration in accordance with the provisions of this Act and the rules made thereunder:

Provided further that during the pendency of an application for registration, the proprietor shall file return and pay the due amount of tax in such manner, as may be prescribed.

9. Information On To Be Furnished Regarding Change Of Business :-

If any proprietor,-

- (a) sells or otherwise disposes of his business or any place of business; or
- (b) discontinues or transfers his business or changes his place of business or opens a new place of business; or
- (c) changes the name, constitution or nature of his business; or
- (d) appoints an agent, he shall inform the Commissioner in this regard in such manner, as may be prescribed. In case of death of a proprietor, his legal representative shall inform the Commissioner in such manner, as may be prescribed:

Provided that if a proprietor or his legal representative, as the case may be, fails to inform the Commissioner in respect of the changes, then, notwithstanding any such change, the tax due from such proprietor, shall be recovered as if no change has taken place:

Provided further that in the case of transfer of business, the transferee or his successor, as the case may be, shall also be liable to pay the due tax under this Act.

10. Changes In Registration :-

Consequent upon the receipt of information under section 9, the Commissioner shall, by an order in writing, make necessary changes in the relevant record.

11. Cancellation Of Registration :-

(1) The Commissioner may, on an application, made to him by the proprietor for cancellation or otherwise on information that the proprietor has,-

- (a) discontinued his business; or
 - (b) violated any of the provisions of this Act or the rules made thereunder; or
 - (c) not made the payment of due tax under this Act; or
 - (d) not filed the return, as required under this Act; or
 - (e) misused his registration, cancel the registration.
- (2) No registration, otherwise than on application, made by the proprietor, shall be cancelled without giving him an opportunity of being heard.

12. Security From Proprietors :-

(1) Every proprietor applying for registration under this Act, shall furnish a security of rupees fifty thousand in such manner, as may be prescribed, for securing proper and timely payments of tax or any other sum, payable by him under this Act.

(2) The Commissioner may, on an application, made to him by the proprietor for release, discharge or refund of security, furnished by him under sub-section (1), order the release, discharge or refund of the whole or any part thereof, if the same is not required.

(3) Where it appears expedient to the Commissioner so to do, for proper realisation of tax, payable under this Act, he may, at any time while such registration is in force, by an order in writing and for the reasons, to be recorded therein, require the proprietor to furnish within such time, as may be specified in the order and in the prescribed manner, such additional security, not exceeding rupees two lac in addition to the security, already furnished under sub-section (1), as may be specified in the order for the aforesaid purpose:

Provided that no proprietor shall be required to furnish any additional security under this sub-section, unless he has been given an opportunity of being heard.

(4) The Commissioner shall not retain the security, furnished by a proprietor, if the registration of such proprietor has been cancelled and nothing remains due against him.

(5) The Commissioner may, by an order in writing, for good and sufficient cause, forfeit the whole or any part of the security or additional security, furnished by a proprietor for recovery of any amount of tax or penalty, due or payable by him under this Act:

Provided that no order shall be made under this sub-section without giving the proprietor an opportunity of being heard.

(6) In case, the security is rendered insufficient because of the

order made under sub-section (5), the proprietor shall furnish further security to make up for the amount, which has fallen short in such manner, as may be prescribed and within such time, as may be specified.

CHAPTER 4

RETURN, ASSESSMENT, PAYMENT, RECOVERY AND COLLECTION OF TAX

13. Self Assessment, Returns And Payment Of Tax :-

(1) Every proprietor shall make self assessment of the tax, payable by him, under this Act, and shall file a return in such form, as may be prescribed, in this regard to the Commissioner or to any other officer, authorised by him within a period of sixty days from the date of expiry of the year.

(2) Every proprietor shall pay the full amount of tax, payable by him before filing the return, and shall furnish alongwith the return, a satisfactory proof of the payment of such tax in such manner, as may be prescribed. Any return without such proof, shall not be entertained.

(3) Every return shall be verified in such manner, as may be prescribed.

(4) Every proprietor shall make monthly payment of tax within a period of fifteen days from the date of expiry of the month, and shall furnish to the Commissioner or any other officer, authorised by him, a statement in the prescribed form. Such statement shall be accompanied by a satisfactory proof of payment of the full amount of due tax. A statement without such proof of payment, shall not be entertained.

(5) If there is a default in the payment of due tax for any month, beyond a period of ten days, whether a statement, as required under sub-section (4), is furnished or not, the defaulting proprietor shall, in addition to making payment of due tax, pay interest also at the rate of two per cent per month or part thereof, from the date of such default.

(6) If a proprietor discovers any bona-fide error or omission in any return, furnished by him, he may rectify such error or omission by filing a revised return immediately after the detection of such error or omission. If such rectification results in a higher amount of tax, to be due than the one, shown in the original return, the same shall be accompanied by a receipt of payment of the additional amount of tax payable, alongwith the interest at the rate of two per cent per month for the period of delay in such manner, as may be

prescribed. No such rectification shall, however, be allowed after the end of the year immediately following the year to which the rectification relates or after the issuance of a notice for assessment, whichever is earlier. Where such rectification results in excess amount of tax having been paid than the tax due, such excess amount shall be refunded on application made by the proprietor in such manner, as may be prescribed.

14. Assessment Of Tax :-

(1) Where on scrutiny of a return filed either under sub-section (1) or sub-section (6) of section 13, any tax or interest is found to be due after adjustment of any tax or interest paid on self-assessment or otherwise, then, without prejudice to the provisions of sub-section (2), an intimation sent to the proprietor in this regard by the assessing authority, shall be deemed to be a notice of demand, served under sub-section (11), and all the provisions of this Act shall apply accordingly:

Provided that the acknowledgement of return shall be deemed to be an intimation, in case, no sum is payable by the proprietor or no refund is due to him:

Provided further that no intimation under this sub-section, shall be sent after the expiry of a period of two years from the date of expiry of the year in which the return is filed.

(2) Notwithstanding anything contained in sub-section (1), the Commissioner may, on his own motion or on the basis of the information received by him, make an assessment of the tax, payable by a proprietor to the best of his judgement and determine the tax payable by him, where,-

- (a) a proprietor has not filed a return under section 13; or
- (b) there are definite reasons to believe that a return filed by a proprietor, is not correct and complete; or
- (c) there are reasonable grounds to believe that a proprietor has not paid the due amount of tax; or
- (d) provisional assessment has been made.

(3) The Commissioner on his own motion or on the basis of the information received by him, may, by an order in writing, direct the assessing authority to make an assessment of the amount of tax, payable by any proprietor for such period, as he may specify.

(4) An assessment under sub-section (2) or sub-section (3), as the case may be, may be made within a period of three years from the date, when the return was filed or due to be filed, whichever is

later:

Provided that where circumstances so warrant, the Commissioner may, by an order in writing, allow assessment of a proprietor after three years, but not later than six years from the date, when return was filed or due to be filed, whichever is later.

(5) Where an assessment is to be made under this section, the assessing authority shall serve a notice to the concerned proprietor and such notice shall state-

(a) the grounds for the proposed assessment; and

(b) the time, place and manner for filing objections, if any.

(6) The assessing authority after taking into account all the relevant material, available with it, shall, on the date, specified in the notice, served under sub-section (5) or soon thereafter, as the case may be, and after taking into consideration such evidence, as may be produced by the proprietor, by an order in writing, make an assessment, determining the sum, payable by or refundable to the proprietor on the basis of such assessment.

(7) The assessing authority may, with the prior permission of the Commissioner, amend an assessment, made under sub-section (2) or subsection (3), as the case may be, within a period of three years from the date of the order of assessment, if it discovers under-assessment of tax, payable by a proprietor for the reason that-

(a) such a proprietor has committed fraud or wilful neglect; or

(b) such a proprietor has misrepresented; or

(c) a part of the amount, received on account of luxury provided in a hotel or a banquet hall, has escaped assessment.

(8) The assessing authority may, within a period of one year from the date of assessment order, rectify an assessment, made under sub-section (2) or sub-section (3), as the case may be, if it discovers that there is a mistake apparent on the face of the record.

(9) An assessment, referred to in sub-section (7) or sub-section (8), shall be an assessment, made under this Act for all intents and purposes.

(10) No assessment or other proceeding purported to be made or taken under this Act or the rules made thereunder, shall be-

(a) quashed or deemed to be void for the reason that the same was not in the prescribed form; or

(b) affected by reason of a mistake, defect or omission therein: Provided that such an assessment is substantially in conformity with the provisions of this Act the rules framed thereunder.

(11) When any tax, interest, penalty or any other sum is payable in consequence of any order made under this Act, the assessing authority shall serve upon the proprietor, a notice of demand in the prescribed form specifying therein the sum, so payable.

(12) No order under this section shall be made without affording an opportunity of being heard to the proprietor concerned.

15. Provisional Assessment :-

(1) Notwithstanding anything contained in section 14, where a fraud or wilful neglect has been committed with a view to evade or avoid the payment of tax or due tax has not been paid or a return has not been filed by or on behalf of a proprietor, the assessing authority may, for the reasons, to be recorded in writing, make provisional assessment for any period to determine the tax liability so evaded, avoided or the tax so unpaid:

Provided that the tax liability of such a proprietor shall be assessed finally after he files his return in the prescribed manner:

Provided further that in addition to the tax so assessed in such provisional assessment, the proprietor shall be liable to pay a penalty of double the amount of tax so assessed.

(2) The provisional assessment under sub-section (1), shall be made within a period of six months from the date of detection of fraud or wilful neglect. The Commissioner may, however, for the reasons, to be recorded in writing, on a reference made by the assessing authority, extend the said period by another six months.

16. Interest On Nonpayment Or Delayed Payment Of Tax :-

(1) If a proprietor, fails to pay the amount of tax due from him under this Act, he shall, in addition to the amount of tax, be liable to pay interest on the said amount of tax at the rate of two per cent per month from the due date of payment till the date, he actually pays such tax alongwith the interest.

(2) When a revised return filed under sub-section (6) of section 13, shows higher amount of tax due, the proprietor shall be liable to pay interest at the rate of two per cent per month on such higher amount of tax from the due date till the date, he actually pays the due amount of tax alongwith the interest.

(3) If a proprietor fails to declare the amount of tax in the return, which should otherwise have been declared, such proprietor shall be liable to pay interest at the rate of two per cent on such amount of tax from the due date till the date, he actually pays such amount

of tax.

(4) If the amount of tax or penalty due from a person, is not paid by him within the period specified in the notice of demand or if no such period is specified, within a period of thirty days from the date of service of such notice, the proprietor shall, in addition to the payment of amount of tax or penalty, be liable to pay interest on such amount at the rate of two per cent per month from the date, the tax is due till the date, he actually pays the due amount of tax or penalty, as the case may be, alongwith the interest.

Provided that where the recovery of tax or penalty as the case may be is stayed by an order of competent authority, the amount of tax or penalty shall, after the order of stay is vacated, be recoverable alongwith interest at the aforesaid rate on the amount, ultimately found to be due and such interest shall be payable from the date, the tax or penalty had first become due.

(5) The amount of interest payable under this section, shall,-

(a) be calculated by considering part of a month as a full month;

(b) for the purposes of collection and recovery, be deemed to be tax under this Act; and

(c) be in addition to the penalty, if any, imposed under this Act.

Explanation:- For the purpose of this section, if payment of tax is made by the proprietor through cheque, and the cheque is dishonoured by the bank, then it will amount to failure on the part of the proprietor to pay tax.

17. Tax As A Debt Due To The State Government :-

The tax or any other amount due or payable by a proprietor under this Act, shall be a debt due to the State Government, and shall be paid or recovered as per the provisions of this Act and the rules made thereunder.

18. Liability Under This Ordinance Be The First Charge :-

Notwithstanding anything to the contrary contained in any other law enacted by the Punjab State Legislature for the time being in force, the amount of tax, penalty, interest or any other sum, payable by a proprietor or any other person under this Act, shall be the first charge on the property of such proprietor or person from the date, on which the amount becomes due and payable.

19. Unpaid Amount Recoverable As Arrears Of Land Revenue :-

Any amount of tax, penalty, interest or any other such sum due and payable under this Act, which remains unpaid after the due date, shall be recoverable as arrears of land revenue.

20. Adjustment Of Any Payment :-

Any payment made by a proprietor towards the amount, due as a result of any order passed under this Act, shall first be adjusted, except in so far as the recovery of such amount or part thereof, is stayed under the provisions of this Act, against the interest payable by him on the date of payment and thereafter, against the amount due as a penalty. Any amount remaining unadjusted thereafter, shall be adjusted against the tax payable.

21. Restrictions On Transfer Of Property :-

(1) No proprietor against whom any recovery proceedings under this Act are pending, shall create a charge on or part with the possession by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever of any of his assets with the intention to avoid or evade payment of tax, penalty, interest or any other sum due or likely to become due against him.

(2) Any charge or transfer made in violation of the provisions of subsection (1), shall be void as against any claim in respect of tax or any other sum, payable by the proprietor till the completion of such proceedings:

Provided that such charge or transfer shall not be void, if it is made with the previous permission of the Commissioner or the payment of tax or any other amount due from such proprietor, has been fully secured by furnishing a bank guarantee. In case of outstanding arrears, the Commissioner shall take into account any other liability under this Act.

Explanation:- For the purpose of this section assets means land, building, machinery, plant, shares, securities and fixed deposits in the banks to the extent, to which any of the aforesaid assets, do not form part of the stock in trade of the business of the proprietor.

CHAPTER 5 **REFUND**

22. Refund Of Tax :-

Subject to the provisions of this Act and the rules made

thereunder, the Commissioner shall, in such manner and within such period, as may be prescribed, refund to a proprietor the amount of tax, penalty or interest, if any, paid by such proprietor in excess of the amount due from him. The refund may either be made by refund voucher or at the option of the proprietor, by refund adjustment order:

Provided that the Commissioner shall first apply such excess amount towards the recovery of any amount due, in respect of which, a notice of demand under sub-section (11) of section 14 has been served or towards any amount, which is due, but not paid, and shall refund the balance amount, if any.

23. Interest On Delayed Refund :-

(1) Where an amount, required to be refunded under section 22 by the Commissioner to a proprietor, is not so refunded to him within a period of sixty days from the date of application, a simple interest at the rate of half per cent per month on the said amount shall be paid to such proprietor from the date, immediately following the expiry of the said period of sixty days to the date of making refund. Explanation:- If delay in making refund within the aforesaid period of sixty days, is attributable to the proprietor whether wholly or in part, then such period of delay shall be excluded from the period, for which interest is payable.

(2) Where any question arises as to the period, to be excluded in terms of the Explanation to sub-section (1), then such a question shall be determined by the Commissioner, whose decision shall be final.

(3) Interest under this section, shall be calculated by considering part of a month as full one month.

24. Power To Withhold Refund In Certain Cases :-

(1) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the officer competent to make such refund is of the opinion that making of refund is likely to affect the revenue adversely, such officer may, with the prior approval of the Commissioner, withhold the refund till such time, as may be determined by such officer.

(2) Where a refund is withheld under sub-section (1), the Commissioner shall pay interest in accordance with the provisions of section 23, on the amount of refund ultimately determined to be

due to the proprietor as a result of such appeal or further proceeding or any other proceeding for the period, starting from the date, immediately following the expiry of the period of sixty days from the date of order, referred to in sub-section (1), to the date of making refund.

CHAPTER 6

MAINTENANCE OF ACCOUNTS AND INSPECTION

25. Maintenance Of Accounts And Registers Etc. :-

(1) Every proprietor, shall maintain and keep true and complete accounts relating to his business and shall also maintain such other registers or records, as may be prescribed. All such accounts, registers or records shall be retained by the proprietor in safe custody till his assessment for the relevant year is completed or in case where an appeal, revision or any other proceeding in respect of such year has been filed or instituted and is pending, the same is disposed of.

(2) Every proprietor liable to pay tax, shall issue a bill or cash memo in respect of the charges, received for providing accommodation in a hotel or charges, received for providing banquet hall, and shall mention therein, the true amount of such charges, the name and address of the person from whom the same are received. Where such charges are received in any foreign currency, the name of such currency shall be mentioned clearly in such bill or cash memo. The cash memo to be issued by such proprietor, shall bear the full name, address and registration number of the hotel or banquet hall, as the case may be.

26. Power Of Inspection And Search :-

(1) The Commissioner or the assessing authority, may, subject to such conditions, as may be prescribed, require any proprietor to produce before it, the records of accounts, registers or other documents or to furnish any other information relating to his business, as may be necessary for the purpose of this Act.

(2) All records of accounts, registers or other documents relating to the business of any hotel or banquet hall, shall at all reasonable times, be open for inspection by the Commissioner or the assessing authority, and the Commissioner or the assessing authority, as the case may be, may take or cause to be taken such copies or extract of the said records, as may be necessary, for the purpose of ascertaining the accuracy of the charges, received for providing

luxury.

(3) If the Commissioner or the assessing authority has reason to believe that a proprietor has evaded or is trying to evade the payment of tax due from him, it may, for the reasons to be recorded in writing, seize such records of accounts, registers or other documents of the proprietor, as may be necessary and shall issue a receipt for the same, and shall retain them so long as may be necessary in connection with any proceedings under this Act:

Provided that the records of accounts, registers or other documents so seized, shall not be retained for a period, exceeding one hundred eighty days from the date of seizure, unless reasons for retaining the same beyond the said period, are recorded by it in writing and the approval of the Commissioner is obtained in case of seizure by the assessing authority, and such approval in any case, shall not be for more than sixty days at a time.

(4) For the purposes of this Act, the Commissioner or the assessing authority, may enter and search any hotel or banquet hall or any place of business of the proprietor or any other place where such authority has reason to believe that the proprietor keeps, or is for the time being keeping any records of accounts, registers or other documents relating to his business:

(5) No other person shall enter and search any premises, without the prior permission of the Commissioner or of such other officer, not below the rank of Assistant Excise and Taxation Commissioner, as the Commissioner may authorize in writing.

(6) The assessing authority shall have the power to record the statement of any person connected with his business, including a bailee or a transporter, and such statement may, after giving the affected person a reasonable opportunity of being heard, be used for the purpose of determining the liability of the proprietor of tax.

CHAPTER 7

PENALTIES

27. Penalty For Failure To Register :-

Whoever fails to make an application for registration as required under sub-section (2) of section 8, shall be liable to pay penalty of double the amount of tax, as assessed to be due, in addition to the amount of tax, due and the interest payable from the date, the proprietor becomes liable for registration till the application for registration is made.

28. Penalty For Failure To Pay Tax :-

If a proprietor, fails to pay the amount of tax in accordance with the provisions of this Act, he shall be liable to pay in addition to the tax and the interest payable by him, a penalty thereon also at the rate of two per cent per month.

29. Penalty For Failure To File Return :-

If a proprietor without any sufficient cause fails to,-

- (a) furnish any return or annual statement by the specified date; or
- (b) furnish alongwith the return, the proof of payment of tax in accordance with the provisions of this Act; or
- (c) rectify any error or omission in any return or statement in accordance with the provisions of this Act; or
- (d) comply with the requirements of any notice, issued under this Act, the Commissioner or the assessing authority, as the case may be, may, direct him to pay in addition to the tax, interest and penalty under any of the provisions of this Act, a further penalty of a sum of rupees one hundred per day for such default, subject, however, to the maximum sum of ten thousand rupees.

30. Penalty For Un-Authorised Collection Of Tax :-

Where a proprietor collects tax in contravention of the provisions of this Act, he shall, in addition to the payment of tax, be liable to pay a penalty of a sum, equal to one-and-a-half times of the tax, so collected.

31. Penalty For Evasion Of Tax :-

If the Commissioner or the assessing authority, as the case may be, is satisfied that a proprietor, in order to evade or avoid payment of tax, has,-

- (a) concealed any particulars from any return, filed by him; or
- (b) deliberately furnished incorrect particulars in any return; or
- (c) concealed any transaction from his account books; or
- (d) not maintained proper and clear accounts, which prevents the Commissioner or the assessing authority to assess the tax due from him, he shall direct that the proprietor shall pay a penalty, in addition to the tax and interest payable by him of a sum, equal to double the amount of the tax assessed.

32. Penalty For Failure To Issue Bill Or Cash Memo :-

(1) A proprietor, who fails to issue a bill or cash memo for any transaction as required under sub-section (2) of section 25, shall be liable to pay a penalty of double the amount of tax relating to such transaction or rupees five thousand, whichever is higher.

(2) A proprietor, who issues a false bill or cash memo or uses a bill or cash memo knowing it to be false, shall be liable to pay a penalty, equal to double the amount of tax due on the amount, shown in such false bill or cash memo.

33. Penalty For Misuse Of Registration Number :-

A proprietor, who knowingly uses a false registration certificate or uses registration certificate of another proprietor with a view to evade payment of tax, shall be liable to pay in addition to the due tax, a penalty equal to the amount of tax, evaded on account of the aforesaid reasons.

34. Penalty For Non-Payment Of Assessed Amount Of Tax :-

Where a person fails to make payment of the tax assessed or interest levied or penalty imposed upon him or any other amount due from him under this Act, within a period of thirty days from the date of service of the notice of demand, he shall be liable to pay a penalty equal to two per cent per month on such amount of tax, penalty, interest or any other amount due, in addition to the tax assessed or interest or any other amount due, for the period for which, payment has been delayed by him after the date on which, such amount was due to be paid.

35. Penalty In Cases Not Covered Elsewhere :-

(1) Whoever, contravenes or fails to comply with any of the provisions of this Act or the rules made thereunder, shall, if no other penalty is provided under this Act for such contravention or failure, be liable to pay penalty, not exceeding ten thousand rupees, within the date, specified in this regard by the competent authority.

(2) Where such contravention or failure continues even after the date, as specified under sub-section(1), the proprietor shall be liable to pay a further penalty of rupees one hundred per day from that date.

36. Authority Competent To Impose Penalty :-

The Commissioner or the assessing authority, as the case may be, shall be competent to impose penalty under this Act. However, no penalty shall be imposed, unless the proprietor concerned is afforded an opportunity of being heard by way of serving a notice.

CHAPTER 8

APPEAL, REVISION, REVIEW, REFERENCE AND RECTIFICATION

37. Appeal :-

(1) Any proprietor aggrieved by an order of the Commissioner or the officer, authorised by him, may prefer an appeal to such authority, as may be prescribed, within a period of sixty days from the date of receipt of the order appealed against:

Provided that the appellate authority may entertain an appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(2) No appeal shall be entertained, unless it is accompanied by a satisfactory proof of the prior payment of not less than twenty-five per cent of the total amount of tax, penalty and interest, if any.

(3) After entertaining an appeal under sub-section (1), the appellate authority may, after giving the appellant an opportunity of being heard,-

(a) confirm, reduce, enhance, annul or modify the assessment, interest, or penalty; or

(b) set aside the assessment, interest or penalty, and direct the assessing authority to pass a fresh order after such enquiry, as may be directed; or

(c) pass such order, as it may think fit.

(4) The appellate authority may, at the time of entertaining an appeal, allow the proprietor to produce fresh or additional evidence before it, in case it is satisfied that the proprietor was prohibited by sufficient cause to produce the same before the assessing authority and there was no wilful or unreasonable omission on his part to produce such evidence.

(5) Every order passed under sub-section (3), shall be communicated to the proprietor and the assessing authority, against whose order, the appeal was preferred and also to the Commissioner.

38. Revision :-

(1) The Commissioner shall, by an order, have the power to revise, at any time, any order passed by the assessing authority or any officer, appointed under sub-section (1) of section 3, either suo moto or on an application of the proprietor submitted to him within a period of sixty days from the date of communication of the order: Provided that the State Government may, entertain an application of the proprietor submitted after the expiry of a period of sixty days, but within a period of sixty days from the date of such expiry, if it is satisfied that the appellant had sufficient cause for not preferring the revision within that period.

(2) The State Government may, after giving the appellant an opportunity of being heard, pass such orders, as it may deem fit.

(3) Every order passed under sub-section (1) or sub-section (2), as the case may be, shall be communicated to the proprietor and the authority or officer against whose order, the revision was filed.

39. Rectification Of Mistake :-

(1) With a view to rectify any mistake, apparent from the record, the assessing authority, appellate authority or revising authority, as the case may be, may, at any time, but within a period of three years from the date of the order passed by it, amend or rectify such order:

Provided that where such rectification may enhance an assessment or otherwise increase the liability of the proprietor, such an order shall not be passed, unless the assessing authority, appellate authority or revising authority, as the case may be, has given a notice to the proprietor to do so, and has given him an opportunity of being heard.

(2) An order passed under sub-section (1), shall be deemed to be an order, passed under the same provisions of law, under which the original order had been passed.

(3) Where such rectification may reduce an assessment or penalty, the assessing authority shall make the refund, which may be due to the proprietor.

(4) Where such rectification may enhance the amount of tax or penalty or interest or reduce the amount of refund, as the case may be, the Commissioner shall, pass an order for the recovery of the amount, due as per provisions of this Act.

40. Power To Transfer Proceedings :-

(1) An officer, not below the rank of Deputy Excise and Taxation

Commissioner, may, in such manner and subject to such conditions, as may be prescribed, either suo moto or on an application made to it in this behalf, by an order in writing, transfer any case or proceeding or class of proceedings from him to any other officer working under him, and in the same way, may transfer any such case, including the case, already transferred under this section, from one officer to another or to himself.

(2) Where any proceeding or class of proceedings or case is transferred under sub-section (1), the officer to whom such proceeding or class of proceedings or case is transferred, he shall proceed to dispose it of as if, it had been initiated by him irrespective of the local limits of his jurisdiction, and such transfer shall not render necessary, the re-issue of any notice, already issued before such transfer; and the officer to whom the proceeding or case is transferred, may, in his discretion, continue it from the stage at which, it was left by the officer from whom it was transferred.

41. Proprietor Permitted To Attend Through Authorized Agent :-

(1) Any proprietor, who is entitled or required to attend any authority in connection with any proceedings under this Act, may be represented by a person, authorised by him in writing in this behalf, being a relative or a whole time employee of the proprietor or an advocate or a tax consultant, not being disqualified by or under sub-section (2) or sub-section (3).

Explanation:- For the purposes of this section, a tax consultant means,-

(a) a retired Gazetted Officer of the Punjab Excise and Taxation Department, who has worked as a taxing authority or an appellate authority or both for a minimum period of five years after a period of two years from the date of his retirement; or

(b) any person, who has passed an accountancy examination recognised by the Central Board of Direct Taxes or holds a degree in Commerce, Law, Economics, Banking, Auditing, conferred by any Indian University, incorporated by law.

(2) No person, who has been dismissed from Government service, shall be qualified to represent any proprietor under sub-section (1).

(3) If any advocate or other person, who represents a proprietor, is found guilty of misconduct in any proceedings before any authority under this Act by the Commissioner, the Commissioner may direct

that he shall be disqualified to represent a proprietor under sub-section (1):

Provided that no such direction shall be issued in respect of any person, unless he is given a reasonable opportunity of being heard.

(4) Any person against whom any direction is issued under sub-section (3), may appeal to the State Government against such direction within a period of sixty days of its communication to him.

42. Delegation Of Powers :-

Subject to such conditions, as may be prescribed, the Commissioner may, by an order in writing, delegate any of his powers under this Act to any officer, appointed under section 3 to assist him.

43. Returns Etc. To Be Confidential :-

(1) All particulars contained in any return furnished or accounts or documents produced in accordance with the provisions of this Act or in any evidence, given in the course of any proceedings under this Act, except in the proceedings before a court of law, shall be treated as confidential.

(2) Nothing in this section shall apply to the disclosure of any of the particulars, referred to in sub-section (1), for the purpose of any investigation or prosecution under the Indian Penal Code, 1860 (Central Act 45 of 1860), in respect of such return, accounts, documents or evidence, or for the purpose of departmental use of the officials of the Government of India or of any State Government, or for the purpose of any inquiry in relation to a business transaction by a person, who is a party to such transaction.

44. Power To Seek Assistance From Police Officer Or Other Officer :-

An officer, exercising the powers under this Act, may take the assistance of any police officer or other officer of the State Government, as and when required and upon such request, the police officer or the other officer, as the case may be, shall render necessary help in accordance with law.

45. Power To Summon Witness And Production Of Records :-

(1) In performing the functions conferred on them by or under this Act, the Commissioner or the officers, appointed under section 3 to assist him, shall have all the powers of a Civil Court under the provisions of the Civil Procedure Code, 1908 (Central Act 5 of 1908) in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath or affirmation;
- (b) compelling the production of documents and impounding them;
- (c) proof of facts by affidavits; and
- (d) issuing commissions for examination of witnesses.

(2) In the case of an affidavit, any officer, appointed under section 3, may administer the oath to the deponent.

(3) Any proceeding under this Act before the Commissioner or any officer, appointed to assist the Commissioner under section 3, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (Central Act 45 of 1860) and for the purposes of section 199 of that Code.

46. Bar Of Proceedings :-

(1) No suit shall lie in any civil court to set aside or modify an assessment, made or order passed under this Act.

(2) No suit, prosecution or other legal proceedings shall lie against any officer of the State Government for anything, which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rules made thereunder.

47. Power To Make Rules :-

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the manner, in which tax is to be paid by the proprietor under subsection (3) of section 4 and sub-section (2) of section 5;
- (b) the manner and period in which normal rates for luxuries are to be declared under section 7;
- (c) the manner for making an application for registration and prescribing fee therefore under sub-section (2) of section 8;
- (d) the manner for registering the proprietor and prescribing a form of registration certificate under sub-section (3) of section 8;
- (e) the manner for filing return and making payment of the due

amount by the proprietor under the second proviso to sub-section (3) of section 8;

(f) the manner for informing the Commissioner under section 9;

(g) the manner for furnishing security, additional security and further security to make up for the amount, respectively, under subsections (1), (3) and (6) of section 12;

(h) prescribing form for filing self assessment return under sub-section (1) of section 13;

(i) the manner for furnishing satisfactory proof of payment of tax by the proprietor under sub-section (2) of section 13;

(j) the manner of verification of returns under sub-section (3) of section 13;

(k) prescribing the manner for making payment of additional amount of tax for the period of delay by the proprietor under sub-section (6) of section 13;

(l) prescribing the form of notice of demand specifying therein the sum payable under sub-section (11) of section 14;

(m) prescribing the manner and period in which refund is to be made to the proprietor of the amount of tax, penalty or interest under section 22;

(n) prescribing other registers or records under section 25;

(o) prescribing the conditions requiring a proprietor to produce records of accounts, registers or other documents or to furnish any information relating to his business to the assessing authority under sub-section (1) of section 26;

(p) prescribing the authority to which appeal is to be preferred by a proprietor under sub-section (1) of section 37;

(q) prescribing the manner in which and the conditions, subject to which, the assessing authority may transfer any case or proceeding or class of proceedings under sub-section (1) of section 40; and

(r) prescribing the conditions, subject to which, the Commissioner may delegate his powers to any officer under section 42.

(s) any other matter, which is to be or may be prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session, for a total period of ten days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rule, or the House agrees, that the rule should not be made, the rule shall thereafter, have effect only in such modified form or be of no effect, as the case may be, so however,

that any such modification or annulment, shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

48. Power To Remove Difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, published in the Official Gazette, make such provision, not inconsistent with the provisions of this Act, as may appear to it, to be necessary for removing the difficulty:

Provided that no order under this section, shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section, shall be laid as soon as may be, after it is made, before the House of the State Legislature.

49. Repeal And Savings :-

(1) The Punjab Tax on Luxuries Ordinance, 2008 (Punjab Ordinance No. 4 of 2008), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act.