

PART II

HARYANA GOVERNMENT LEGISLATIVE DEPARTMENT NOTIFICATION

The 7TH September, 2007

No. Leg 18/2007. – The following Ordinance of the Governor of Haryana promulgated under clause (1) of article 213 of the Constitution of India, on the 5th September, 2007, is hereby published for general information:-

HARYANA ORDINANCE NO. 3 OF 2007

THE HARYANA TAX ON LUXURIES ORDINANCE, 2007

AN

ORDINANCE

to provide for the levy and collection of tax on luxuries and for matters incidental thereto and connected therewith:

Promulgated by the Governor of Haryana in the Fifty-eighth Year of the Republic of India.

Whereas the Legislature of the State of Haryana is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Haryana hereby promulgates the following Ordinance:-

CHAPTER 1

PRELIMINARY

Short title, extent and commencement.	1.	(1) This Ordinance may be called the Haryana Tax on Luxuries Ordinance, 2007. (2) It extends to the whole of the State of Haryana. (3) It shall come into force on the 1 st day of August, 2007.
Definitions.	2.	In this Ordinance, unless the context otherwise requires,- (a) "Additional Commissioner" means the Additional Excise and Taxation Commissioner appointed under sub-section (1) of section 3; (b) "assessing authority" means a Deputy Excise and Taxation Commissioner or Excise and Taxation Officer or Assistant Excise and Taxation Officer appointed under sub-section (1) of section 3 by the State Government to make any assessment under this Ordinance and to perform such other duties as may be required, by or under this Ordinance; (c) "banquet hall" means any premises or part of premises, garden or part of the garden or farm house or part of farm house where accommodation or space is provided, by way of business for a monetary consideration, for marriage,

reception, or matters related therewith, seminar, convention, banquet, kitty-party, meeting, or exhibition cum sale or such other hall as may be specified by the Commissioner, whether functions or events are conducted in such halls regularly or not;

- (d) "charges for banquet hall" include charges for air cooling , air conditioning, chairs, tables, utensils and vessels, shamiana, tent, electricity, water, fuel, interior or exterior decoration, music systems, orchestra, live telecast, and the like and any amount received by way of donation or charity or by whatever name called in relation to letting out the banquet hall but do not include any charges for food and drinks;

Explanation.- If any question arises whether any charges are charges for banquet hall, such question shall be referred to the State Government and decision of the State Government shall be final;

- (e) "charges for lodging" includes charges for air-conditioning, telephone, telephone calls, internet, television, radio, music, extra beds and other amenities for which charges are compulsorily payable, but excluding charges for food and drinks;

Explanation.- If any question arises whether any charges are charged for lodging, such question shall be referred to the State Government and the decision of the State Government shall be final;

- (f) "Commissioner" means the Excise and Taxation Commissioner appointed under sub-section (1) of section 3;
- (g) "concessional rate" in relation to luxury provided in a hotel or banquet hall means a rate lower than the normal rate fixed for such luxury by the proprietor;

Explanation.-"Normal rate" means the rates discounted according to ordinary practice in hotel industry but shall not include cash discount;

- (h) "hotel" means any premises or part of premises where lodging accommodation along with the lawns thereof, with or without board is by way of business provided for a monetary consideration, and includes a lodging house, club and holiday resorts;

Explanation.- A club, a lodging house and a holiday resort for which charges are collected for providing accommodation along with the lawns thereof, whether or not in the course of business shall be deemed to be a hotel for the purpose of this Ordinance;

- (i) "Joint Commissioner" means the Joint Excise and Taxation Commissioner appointed under sub-section (1) of section 3;
- (j) "luxuries" means services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life ;
- (k) "luxury provided in a banquet hall" means accommodation or space provided in a banquet hall, the rate of charges for which (including charges for air cooling, air conditioning, chairs, tables, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music, orchestra, live telecast, or other amenities but do not include any charges for food and drinks) is twenty thousands rupees

or more per occasion;

Explanation.-While computing twenty thousand rupees or more, charges for providing air cooling, air conditioning, chairs, tables, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music, orchestra, live telecast, or other amenities will be taken in account even if charged separately whether by the proprietor of a banquet hall or on his behalf by any other person providing such amenities in any capacity recognized by law if such amenities are provided within the precincts of such banquet hall;

- (l) "luxury provided in a hotel" means, accommodation for lodging provided in a hotel, the rate of charges for which (including charges for air-conditioning, telephone, telephone calls, internet, television, radio, music, extra beds and other amenities for which charges are compulsorily payable, but excluding charges for food and drinks) is two thousand rupees or more per room per day or part of a day; Explanation.-While computing two thousand rupees or more, charges for use of amenities such as health club, beauty parlor, swimming pools, conference hall and the like shall be taken in account even if charged separately whether by the proprietor of a hotel or on his behalf by any other person owning or holding such amenities in any capacity recognized by law if such amenities are located within the precincts of such hotel;
- (m) "proprietor" means any person who is owning or holding a hotel or a banquet hall in any capacity recognized by law and includes, the person who for the time being is in-charge of the management of such hotel or banquet hall;
- (n) "State Government" means the Government of the State of Haryana in the Administrative Department;
- (o) "tax" means the luxury tax levied and collected under this Ordinance;
- (p) "year" means the financial year.

Taxing
authorities.

3. (1) The State Government may appoint a Commissioner for carrying out the purposes of this Ordinance, and as many Additional Commissioners, Joint Commissioners, Deputy Excise and Taxation Commissioner, Excise and Taxation Officer, Assistant Excise and Taxation Officer and such other officers to assist him, as it thinks fit and may authorise the Commissioner to appoint as many Inspectors and other officials to assist him as it thinks fit.

(2) The Commissioner shall have jurisdiction over the whole of the State and shall exercise all the powers conferred and perform all the duties imposed on the Commissioner, by or under this Ordinance; and other officers appointed under sub-section (1) shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Ordinance in the area of

jurisdiction as may, from time to time, be assigned to them.

(3) All persons appointed under sub-section (1) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

Instructions to subordinate authorities.

4. The State Government or the Commissioner may, from time to time, issue such orders, instructions and directions to all officers and persons employed in the execution of this Ordinance, as deemed fit for the administration of this Ordinance, and all such officers and persons shall observe and follow such orders, instructions and directions of the State Government or the Commissioner, as the case may be:

Provided that no such orders, instructions, or directions shall be issued so as to interfere with the discretion of any appellate authority in the exercise of its appellate functions.

Jurisdiction of officers.

5. (1) The persons appointed under sub-section (1) of section 3 to assist the Commissioner, shall perform their functions in respect of such areas or of such proprietors or classes of proprietors as the Commissioner may by written order direct.

(2) The assessing authority shall perform functions in respect of such areas or of such proprietors or classes of proprietors as the Commissioner may, by written orders direct.

Change of incumbent of an office.

6. Whenever in respect of any proceeding under this Ordinance, an assessing authority or any other officer ceases to exercise jurisdiction and is succeeded by another who has and exercises such jurisdiction, the authority or officer so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

CHAPTER II

LEVY OF TAX ON LUXURY PROVIDED IN HOTELS, LODGING HOUSES, HEALTH CLUBS AND BANQUET HALLS

Levy and collection of tax on luxury provided in a hotel.

7. (1) Subject to the provisions of this Ordinance, there shall be levied and collected a tax, on the charges payable for luxury provided in a room of a hotel, at the rate of ten percent or such other rate not exceeding fifteen percent, as the State Government may, by notification in the Official Gazette, direct:

Provided that where charges are payable otherwise than on daily basis, then, for the purposes of determining the tax liability under this section, the charges shall be computed as for a day, based on the period for which the charges are payable.

- (2) The tax levied under sub-section (1), shall be paid by every proprietor in such manner as may be prescribed.
- Tax on other luxuries etc. 8. (1) There shall be levied and collected a tax, on the charges collected for luxuries provided in a hotel for residents or others such as health club, beauty parlour, swimming pool, lawn, conference hall and the like when such charges are collected separately, at the rate of ten percent or such other rate not exceeding fifteen percent as the State Government may, by notification in the Official Gazette, direct:
- Provided that tax levied under sub-section (1) shall be paid only by such proprietor wherein charges for the luxury provided in a room are two thousand rupees or more within the meaning of clause (l) of section 2.
- (2) The tax levied under sub-section (1), shall be paid by every proprietor in such manner as may be prescribed.
- Levy and collection of tax on charges for banquet hall. 9. (1) Subject to the provisions of this Ordinance, there shall be levied and collected a tax, on the charges payable on the luxury provided in a banquet hall, at the rate of ten percent or such other rate not exceeding fifteen percent, as the State Government may, by notification in the Official Gazette, direct:
- Provided that tax levied under sub-section (1) shall be paid only by such proprietor wherein charges for the luxury provided in a banquet hall are twenty thousand rupees or more with in the meaning of clause (k) of section 2.
- (2) The tax levied under sub- section (1) shall be paid by every proprietor in such manner as may be prescribed.
- Mode of collection of tax. 10. (1) Where the rate of charges for luxury provided in a hotel or banquet hall is inclusive of the charges for food or drink, then the assessing authority may, from time to time, after giving the proprietor an opportunity of being heard, fix separate rates of charges for such luxury and for food or drink or other amenities, if any, for the purpose of calculating the tax.
- (2) Where charges for use of amenities such as health club, beauty parlour, swimming pools, lawn, conference hall or the like are charged separately whether by the proprietor of a hotel or on his behalf by any other person owning or holding such amenities in any capacity recognized by law and if such amenities are located within the precincts of such hotel, then such charges shall be deemed to be

part of the charges for luxury provided in the hotel.

(3) Where charges for providing air cooling, air conditioning, chairs, tables, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music, orchestra, live telecast, or other amenities are charged separately whether by the proprietor of a banquet hall or on his behalf by any other person providing such amenities in any capacity recognized by law and if such amenities are provided within the precincts of such

banquet hall, then such charges shall be deemed to be part of the charges for luxury provided in a banquet hall.

(4) Where, in addition to the charges for luxury provided in a hotel or banquet hall, service charges are levied and appropriated to the proprietor and not paid to the staff, then, such charges shall be deemed to be part of the charges for luxury provided in the hotel or banquet hall.

(5) Where luxury provided in a hotel or banquet hall to any person (not being an employee of the hotel or banquet hall) is not charged at all or is charged at a concessional rate, then the tax shall be levied and collected at normal rates.

(6) Where luxury provided in a hotel for a specified number of persons is shared by more than the number specified, then, in addition to the tax paid for the luxury provided to such specified number of persons, there shall also be levied and collected separately, the tax in respect of the charges made for the additional number of persons accommodated.

Registration of proprietors.

11. (1) Every proprietor liable to pay tax shall get himself registered under this Ordinance in such manner and within such period as may be prescribed and shall pay such registration fee as may be prescribed.

(2) Every proprietor registered under sub-section (1) shall be granted a registration certificate and the same shall be valid until cancelled.

(3) The assessing authority may for good and sufficient reasons, demand from a proprietor liable to pay tax, security for securing payment of tax and on such demand, the proprietor shall furnish security within a period of ten days from the date of receipt of the order demanding security.

(4) The amount of security payable under sub-section (3) shall not exceed an amount equivalent to one-fourth of tax anticipated for the year from the proprietor. The assessing authority may demand an additional security, if it has reason to believe that the security furnished already is inadequate.

(5) The security furnished shall be maintained in full until the registration is cancelled.

(6) Where a proprietor has more than one place of business, the registration shall cover all such places of business. The assessing authority shall issue, free of cost, copies of the registration certificates to the proprietor for exhibition at each of his places of business.

(7) A proprietor registered under sub-section (1) shall be entitled to have his registration cancelled if he is able to prove to the satisfaction of the assessing authority that he has discontinued, transferred or otherwise disposed off his business.

(8) The assessing authority shall have power, for good and sufficient reasons, to cancel, modify or amend any registration certificate issued by it.

(9) A registration certificate shall be personal to the proprietor to whom it is granted and shall not be transferable.

Declaration of charges.

12. Every proprietor liable to pay tax shall declare the normal rate fixed for luxury provided by him in such manner and within such period as may be prescribed.

CHAPTER III

RETURN, ASSESSMENT, PAYMENT, RECOVERY AND COLLECTION OF TAXES

Returns.

13. (1) Notwithstanding anything contained in section 14, every proprietor liable to pay tax under this Ordinance shall furnish to the assessing authority within a period of sixty days of the expiry of the year, a return in such form as may be prescribed.

(2) Before any proprietor submits any return under sub-section (1), he shall pay in advance the full amount of tax payable by him on the basis of such return as reduced by any tax already paid under section 14 and shall furnish along with the return satisfactory proof of the payment of such tax in such manner as may be prescribed and a return without such proof of payment shall not be deemed to have been

filed. After the final assessment is made, the amount of tax so paid shall be deemed to have been paid towards the tax finally assessed.

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

Payment of tax in advance.

14. (1) Every proprietor liable to pay tax under this Ordinance shall furnish to the assessing authority within a period of fifteen days of the expiry of a month, a statement in such form as may be prescribed showing therein the whole amount of tax due from him according to such statement.

(2) Every statement under sub-section (1) shall be accompanied by a treasury challan in proof of payment of the full amount of tax due according to the statement, and a statement without such proof of payment shall not be deemed to have been duly filed and the amount so payable shall for the purpose of section 19 and section 21 be deemed to be tax due from such proprietor.

(3) If a default is committed in the payment of tax for any month beyond ten days whether or not a statement as required under sub-section (1) is filed; or if the amount of tax paid is less than the amount of tax payable for any month, the proprietor defaulting payment of tax or making less-payment of tax shall, in addition to the tax, pay interest calculated at the rate of two per cent per month or part thereof from the date of such default or less-payment to the date of payment of such tax.

(4) If no such statement is submitted by any proprietor under sub-section (1) before the date specified therein or if the statement submitted by him appears to the assessing authority to be incorrect or incomplete, the assessing authority may assess the proprietor provisionally for that month to the best of its judgment, recording the reasons for such assessment and proceed to demand and collect the tax on the basis of such assessment:

Provided that before making such assessment, the proprietor shall be given an opportunity of being heard.

Assessment and collection of tax.

15. (1) If the assessing authority is satisfied that the return furnished under sub-section (1) of section 13 is complete and it has no reason to believe that it is incorrect, it shall assess the amount of tax due from the proprietor on the basis of such return.

(2) (a) If the assessing authority is not satisfied that the return furnished under sub-section (1) of section 13 is complete or it has reason to believe that it is incorrect and it considers it necessary to require the presence of the proprietor or the production of further evidence, it shall, within a period of three years from the date of

furnishing of such return, serve on such proprietor a notice in such manner as may be prescribed, requiring him on a date and at a place specified therein either to attend and produce or cause to be produced all evidence on which such proprietor relies in support of his return or to produce such evidence as specified in the notice.

- (b) On the date specified in the notice, or as soon as may be thereafter, the assessing authority shall, after considering all the evidence which may be produced, assess the amount of tax due from the proprietor.
- (c) If the proprietor fails to comply with the terms of the notice issued to him under clause (a), the assessing authority at any time thereafter may, assess to the best of its judgment, the amount of tax due from him.

(3) If a proprietor liable to pay tax, fails to furnish a return in respect of any period within the period specified in sub-section (1) of section 13, the assessing authority shall, within a period of three years after the expiry of such period, assess to the best of its judgment, the amount of tax, if any, due from him:

Provided that the proprietor shall be afforded a reasonable opportunity of being heard by the assessing authority before such assessment is made.

(4) Any assessment made under this section shall be without prejudice to any penalty or interest that may be imposed under any other provisions of this Ordinance.

Assessment of
escaped tax.

16. (1) Where for any reason the whole or any part of the charges for luxury provided in a hotel, or charges for luxury provided in a banquet hall has escaped assessment to tax or has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of three years from the date of order of assessment, proceed to assess to the best of its judgment the tax payable on such charges after issuing a notice to the proprietor and after making such enquiry as it considers necessary.

(2) In making an assessment under sub-section (1), the assessing authority may, if it is satisfied that the tax escaped from assessment is due to willful non-disclosure of the charges for luxury by the proprietor, after giving a reasonable opportunity of showing cause, direct the proprietor to pay, in addition to the tax assessed

Assessment of unregistered proprietor liable to pay tax.	<p>under sub-section (1), a penalty twice the tax so assessed.</p> <p>17. If upon information, the assessing authority is satisfied that any proprietor of a hotel or banquet hall is liable to pay tax in respect of any period but has failed to apply for registration, the assessing authority shall, within three years after the expiry of such period, after giving such proprietor a reasonable opportunity of being heard, proceed to assess, to the best of its judgment, the amount of tax, if any, due from the proprietor in respect of such period and all subsequent periods and in case where such proprietor has willfully failed to apply for registration, the assessing authority may direct that the proprietor shall pay by way of penalty, in addition to the amount of tax so assessed, a sum equal to twice the amount of tax so assessed.</p>
Collection of tax by a proprietor and forfeiture of illegal or excess collection of taxes.	<p>Explanation.- For the purposes of this section a proprietor shall be deemed to have failed to apply for registration, if he makes an incomplete application for registration or, having made an application for registration, fails to comply with any direction given to him by the assessing authority within the time specified including direction to furnish security issued under sub-section (3) of section 11.</p> <p>18. (1) A proprietor who is not registered under this Ordinance, shall not collect any amount by way of tax or purporting to be by way of tax nor shall a registered proprietor collect any amount by way of tax or purporting to be by way of tax at a rate exceeding the rate specified under this Ordinance at which he is liable to pay tax.</p> <p>(2) If any proprietor contravenes the provisions of sub-section (1), the assessing authority, after giving such proprietor a reasonable opportunity of being heard shall, by order in writing, forfeit in favour of the State Government the amount unauthorisedly collected or collected in excess of the specified rate and may, in addition, by order in writing, impose upon him by way of penalty, a sum not exceeding one and a half times the amount so collected.</p>
Imposition of penalty.	<p>19. Where any proprietor liable to pay tax ,-</p> <p>(a) fails without sufficient cause to furnish a return as required by sub-section (1) of section 13; or</p> <p>(b) fails without sufficient cause to furnish a statement as required by sub-section (1) of section 14; or</p> <p>(c) while furnishing a return under sub-section (1) of section 13</p>

fails, without sufficient cause to pay into Government Treasury, the whole amount of tax due from him according to such return, as required by sub-section (2) of section 13; or

- (d) while furnishing a statement under sub-section (1) of section 14 fails, without sufficient cause to pay into Government Treasury, the whole amount of tax due from him according to such return, as required by sub-section (2) of section 14,

the assessing authority in case falling under clauses (a) and (b) may impose upon such proprietor a penalty computed at the rate of one hundred rupees per day of default and in case falling under clauses (c) and (d) in addition to any tax assessed under section 15, a sum equivalent to twice the interest chargeable or charged:

Provided that no penalty shall be imposed without affording an opportunity of being heard to the proprietor.

Failure to maintain correct accounts and to furnish correct returns.

20. If a proprietor has maintained false or incorrect accounts or documents with a view to conceal the particulars of any transaction or deliberately furnished inaccurate particulars of any transaction liable to tax or suppressed or furnished or produced before any authority under this Ordinance any account, return, document or information which is false or incorrect in any material particular, the assessing authority may, after affording such proprietor a reasonable opportunity of being heard, direct him to pay by way of penalty, in addition to the tax to which he is assessed or is liable to be assessed, a sum not less than twice and not more than three times the amount of tax and when no tax is payable, a sum not less than ten thousand rupees and not exceeding twenty thousand rupees.

Payment of tax and penalty.

21. (1) The amount of tax due, where returns have been furnished without full payment thereof or the amount of tax assessed for any period less any sum already paid by the proprietor in respect of such period or the amount of interest or penalty, if any, levied under this Ordinance shall be paid by the proprietor in such manner as may be prescribed and by such date as may be specified in the notice issued by the assessing authority for this purpose being a date not later than thirty days from the date of service of notice.

(2) If default is made in making payment in accordance with sub-section (1),-

- (i) the whole of the amount towards tax, interest or penalty outstanding on the date of default shall become immediately due and shall be a charge on the properties of the proprietor liable to pay such tax, interest or penalty, and

- (ii) the proprietor liable to pay such tax, or penalty shall be liable to pay simple interest at the rate of two per cent of the amount of the tax or penalty due for each month or part thereof for the period for which the tax or penalty remains unpaid.

(3) Any tax, interest, or penalty which remains unpaid on the date specified in the notice of payment shall be recoverable,-

- (a) as if it were an arrear of land revenue ; or
- (b) by attachment and sale or by sale without attachment of any property of such proprietor or from certain other persons by the assessing authority in such manner as may be prescribed.

Recovery of tax.

22. (1) The assessing authority may, at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the proprietor at his last address known to the assessing authority) require any person from whom money is due to the proprietor or any person who holds or may subsequently hold money for or on account of the proprietor, to pay to the assessing authority either forthwith upon the money becoming due or being held at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the proprietor in respect of arrears of tax, interest, or penalty or the whole of the money when it is equal to or less than that amount.

(2) The assessing authority may at any time or from time to time, amend or revoke any such notice or extend the time for making any payment in pursuance of such notice.

(3) Any person making any payment in compliance with the notice under this section shall be deemed to have made the payment under the authority of the proprietor and the receipt of the assessing authority shall constitute a good and sufficient proof of discharge of the liability of such person to the extent of the amount referred to in the receipt.

(4) Any person discharging any liability to the proprietor after receipt of the notice referred to in this section shall be personally liable to the assessing authority to the extent of the liability discharged or to the extent of the liability of the proprietor for the amount due under this Ordinance, whichever is less.

(5) Where any person to whom a notice under this section is sent, objects to it on the ground that the sum demanded or any part thereof is not due by him to the proprietor or that he does not hold any money for or on account of the proprietor, then nothing contained in this section shall be deemed to require such person to pay the sum demanded or any part thereof, to the assessing authority.

(6) Any amount which a person is required to pay to the assessing authority or for which he is personally liable to the assessing authority under this section shall, if it remains unpaid be a charge on the properties of the said person and may be recovered in the manner specified in section 21.

Explanation.- For the purposes of this section, the amount due to proprietor or money held for or on account of proprietor shall be computed after taking into account such claims, if any, as may have fallen due for payment by such proprietor to such person and as may be lawfully subsisting.

Liability of firms. 23. (1) Where any firm is liable to pay any tax, interest, penalty or any other amount under this Ordinance, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

(2) Where a partner of a firm liable to pay any tax, interest, penalty or other amount under this Ordinance retires, he shall, notwithstanding any contract to the contrary, be liable to pay the tax or penalty or other amount remaining unpaid at the time of his retirement and any tax, interest, penalty or other amount upto the date of retirement, though unassessed.

(3) When a firm liable to pay the tax or penalty under this Ordinance is dissolved or discontinued, the assessment of the tax, calculation of interest and imposition of penalty shall be made as if no dissolution or discontinuance of the firm had taken place and every person who was, at the time of dissolution or discontinuance, a partner of the firm and the legal representative of any such person who is deceased, shall be jointly and severally liable to pay the tax assessed, interest calculated or penalty imposed.

Information to be furnished regarding change of business.

24. If any proprietor liable to pay tax ,-

- (a) sells, transfers or otherwise disposes of or discontinues his business; or
- (b) sells, transfers or otherwise disposes of or discontinues his place of business or opens new place of business; or
- (c) changes the name, constitution or nature of his business; or
- (d) appoints an authorised agent,

he shall within such time as may be prescribed, inform the assessing authority accordingly, and if any proprietor dies, his legal representative shall in like manner inform the said authority:

Provided that if a proprietor or his legal representative, as the case may be, fails to inform the change as required under the foregoing provision having the effect of transferring the liability to pay tax on another person, then, notwithstanding the change, any tax which such person has become liable to pay after the change has taken place, may be recovered as if no change has taken place:

Provided further that nothing in the foregoing proviso shall discharge the transferee or the succeeding proprietor as a result of change of his liability to pay tax.

Tax payable on transfer of business.

25. (1) When the ownership of the business of a proprietor liable to pay tax is transferred, the transferor and the transferee shall jointly and severally be liable to pay tax, interest, penalty or any other amount due under this Ordinance in respect of such business which remains unpaid at the time of transfer and for the purpose of recovery from the transferee, such transferee shall be deemed to be the proprietor liable to pay the tax. .

(2) Where a proprietor dies, his executor, administrator or other legal representative shall be deemed to be the proprietor for the purpose of this Ordinance and the provisions of this Ordinance shall apply to him in respect of the business of the deceased proprietor:

Provided that in respect of any tax or penalty assessed as payable by any such proprietor or any tax, interest or penalty which would have been payable by him under this Ordinance, if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands.

(3) When an Undivided Hindu Family liable to pay tax or penalty or other amount under this Ordinance is partitioned, the assessment of the tax, interest and the imposition of the penalty shall be made as if no partition of the family has taken place, and every person who was a member of the family before the partition shall be jointly and severally liable to pay the tax assessed, interest calculated or penalty imposed.

CHAPTER IV

MAINTENANCE OF ACCOUNTS AND INSPECTION

Maintenance of accounts and issue of sale bills or cash

26. (1) Every registered proprietor, and every proprietor liable to get himself registered under this Ordinance shall maintain and keep

memorandum. true and complete accounts relating to his business as well as such other registers or records as may be prescribed. All such accounts, registers or records shall be retained by him in safe custody till his assessment or re-assessment, as the case may be, for the relevant year is completed or, in cases where any appeal, revision or other proceedings 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 memorandum in respect of the charges for lodging accommodation or charges for banquet hall recovered by him from a guest or any person and shall specify in such bill or cash memorandum, the full name of the hotel or banquet hall, the amount of tax recovered, the name of the guest or any person from whom it is recovered and where the charges are recovered in any foreign exchange, the name of the currency.

Powers to enforce attendance. 27. All authorities under this Ordinance, shall for the purpose of this Ordinance, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) while trying a suit, in respect of enforcing the attendance of and examining any person on oath or affirmation or for compelling the production of any document.

Power to call for information. 28. All officers appointed under sub-section (1) of section 3 or an assessing authority may, for carrying out the purposes of this Ordinance, require any person including a banking company, insurance company, electricity supply and distribution company, courier service company, post office, railway, a State Government corporation, or a State Government agency or body regulating any trade, tourism or commerce, or any officer thereof, to furnish any information, data or statistics which may be relevant to any proceedings or useful for tax administration.

Power to determine real proprietor. 29. An assessing authority shall, for the purposes of this Ordinance, have the power to determine as to who is the real proprietor of luxuries being provided in the precincts of a hotel at any place outside the room or inside a banquet hall:

Provided that before passing any order under this section, the person concerned shall be given a reasonable opportunity of being heard.

Power of inspection of accounts, 30. (1) The assessing authority or any officer authorized by the State Government in this behalf may, subject to such conditions as

documents and search.

may be prescribed require any proprietor to produce before it the working records of accounts, registers or other documents or to furnish any information relating to his business as may be necessary for the purposes of this Ordinance.

(2) All working records of accounts, registers or other documents relating to the business of any hotel, lodging house, health club, beauty parlour, swimming pool, conference hall and the like and banquet hall shall at all reasonable times be open to inspection by the assessing authority or the authorized officer and the assessing authority or the authorized officer may take or cause to be taken such copies or extract of such records as may be necessary for the purpose of testing the accuracy of the charges for such luxury or for informing itself as to the particulars regarding which information is required for the purpose of this Ordinance or any rules there under as would appear to it necessary.

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

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

(4) For the purposes of this Ordinance, the assessing authority or the person authorized by it in this behalf or the authorized officer under this section, may enter and search any hotel or any place of business of the proprietor or any other place where the assessing authority or the officer authorized 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.

CHAPTER V

APPEAL, REVISION, REVIEW, REFERENCE AND RECTIFICATION

Appeal.

31. (1) Any proprietor considering himself aggrieved by any order of assessing authority may prefer an appeal to such authority as may be prescribed by the State Government by notification in the Official Gazette, (hereinafter referred to as appellate authority), if preferred within a period of sixty days from the date of receipt of the order appealed against:

Provided that the appellate authority may admit an appeal preferred after the period of sixty days aforesaid but within a further period of sixty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(2) After admitting an appeal under sub-section (1), the appellate authority shall, 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 order of assessment, interest or order imposing penalty and direct the assessing authority to pass a fresh order after such enquiry as may be directed; or
- (c) pass such orders as it may think fit.

(3) The appellate authority shall not, for the first time receive in evidence in any appeal, any account, register, record or document, unless for reasons to be recorded in writing, it considers that such account, register, record or document is genuine and that the failure to produce the same before the authority below or bring the same on record was for reasons beyond the control of the party which is producing the same.

(4) Every order made under sub-section (2) shall be communicated to the proprietor and the assessing authority, whose order was subject matter of appeal and also to the Commissioner.

Revision.

32. (1) The Commissioner or any other person appointed by the State Government in this behalf, not below the rank of Additional Commissioner, shall have the power to revise, at any time, any order passed by the assessing authority, Joint Commissioner or the Additional Commissioner either suo motu or on an application of the proprietor submitted to him within a period of sixty days from the date of the communication of order of the Joint Commissioner or the Additional Commissioner, as the case may be:

Provided that the State Government may admit an application of the proprietor submitted after the period of sixty days aforesaid

but within a further period of sixty days, if he is satisfied that the appellant had sufficient cause for not preferring the appeal 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 made under sub-section (1) shall be communicated to the proprietor and the authority or officer whose order was subject matter of revision.

Rectification of mistake.

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

Provided that an amendment which has the effect of enhancing an assessment or otherwise increasing the liability of the proprietor shall not be made unless the assessing authority, the appellate authority or the revising authority, as the case may be, has given notice to the proprietor of its intention and has given the proprietor an opportunity of being heard.

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

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

CHAPTER VI MISCELLANEOUS

Payment of interest.

34. Where any amount refundable to any person under an order made under any provision of this Ordinance is not refunded to him within a period of ninety days of the date of such order, the assessing authority shall pay simple interest at the rate of twelve percent per annum on the said amount from the date immediately following the expiry of the said ninety days to the day of the refund :

Provided that the interest shall be calculated on the balance of the amount remaining after adjusting out of refundable amount, any tax, penalty or other amount due under this Ordinance, for any

year by the person on the date from which such interest is calculable.

Explanation.- If the delay in granting the refund within the aforesaid period of ninety days is attributable to the person to whom the refund is payable, the period of such delay shall be excluded for the purpose of calculation of interest.

Power to transfer proceedings.

35. (1) An assessing authority not below the rank of Deputy Excise and Taxation Commissioner, or such other rank, as may be prescribed, may, in such manner and subject to such restrictions and conditions, as may be prescribed, suo motu or on an application made to him in this behalf, by order in writing, transfer any case or proceedings or class of proceedings from him to any other officer working under him and he may likewise transfer any such case (including a case already transferred under this section) from one such officer to another or to himself.

(2) Where any proceedings or class of proceedings or case is transferred under sub-section (1), the officer to whom such proceedings or class of proceedings or case is transferred, shall proceed to dispose it off as if it had been initiated by the said officer irrespective of the local limits of the jurisdiction of such officer, and such transfer shall not render necessary the re-issue of any notice already issued before the transfer and the officer to whom the proceeding or class of proceedings 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.

Proprietor permitted to attend through authorized agent.

36. (1) Any proprietor, who is entitled or required to attend before any authority in connection with any proceedings under this Ordinance, may attend 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 (3) or sub-section (4).

(2) In this section a "tax consultant" means –

- (i) any person, who before the 10th day of May, 1953, appeared before any assessing or other sales tax authorities in connection with any proceedings under the Punjab General Sales Tax Act, 1941 or the Punjab General Sales Tax Act, 1948, on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee; or
- (ii) a retired Gazetted Officer of the Haryana Excise and

Taxation Department who has worked as an taxing authority or an appellate authority under the Haryana General Sales Tax Act, 1973 (Act 20 of 1973), or Haryana Value Added Tax Act, 2003 (Act 6 of 2003), for a minimum period of five years in one or more than one of the aforesaid capacities after a period of not less than two years has passed since the date of his retirement; or

- (iii) any person who has passed any accountancy examination recognised by the Central Board of Direct Taxes or holds a degree in Commerce, Law, Economics or Banking including auditing conferred by any Indian University, incorporated by any law for the time being in force.

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

(4) If any practitioner or other person, who represents a proprietor, is found guilty of misconduct in any proceedings before any authority under this Ordinance 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 made in respect of any person unless he is given a reasonable opportunity of being heard.

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

Delegation of powers.

37. (1) Subject to such restrictions and conditions as may be prescribed, the Commissioner may, by order in writing, delegate any of his powers under this Ordinance.

(2) Subject to such restrictions and conditions, as may be prescribed, any assessing authority may, by order in writing, delegate any of its powers conferred on it to other authority subordinate in rank to it.

Returns etc. to be confidential.

38. (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this

Ordinance, or in any record of evidence given in the course of any proceedings under this Ordinance, except in proceedings before a Court of Law shall be treated as confidential.

(2) Save as provided in sub-sections (1) and (3), if any officer of the State Government discloses any of the particulars referred to in sub-section (1), he shall be punishable with imprisonment, which may extend to six months, or with fine or with both.

(3) 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 (Act 45 of 1860), in respect of such statement, return, accounts, documents or evidence, or for the purpose of audit or for departmental use of the officials of the Government of India or of any State Government, or for the purpose of an inquiry in relation to a business transaction by a person who is a party to such transaction.

Bar of proceedings.

39. (1) No suit shall lie in any Civil Court to set aside or modify an assessment made or order passed under this Ordinance.

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

Power to make rules.

40. (1) The State Government may make rules by notification in the Official Gazette for securing the payment of the tax and generally for carrying out the purposes of this Ordinance.

(2) Any rule under this Ordinance may be made with retrospective effect and when such rule is made, the reasons for making the rules shall be specified in a statement laid before the State Legislature. Subject to any modification made under sub-section (3), every rule made under this Ordinance shall have effect as if enacted in this Ordinance.

(3) Every rule made under this Ordinance shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session for a total period of fourteen 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 sessions immediately following Legislative Assembly agrees that the

rules should be either modified or annulled, the rules 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 under those rules.

Laying of notifications before the State Legislature.

41. Every notification issued under the provisions of this Ordinance shall be laid as soon as may be after it is made before the Legislative Assembly while it is in session and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees that the notification should be either modified or annulled, the notification 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 under that notification.

Power to remove difficulties.

42. (1) If any difficulty arises in giving effect to the provisions of this Ordinance, the State Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this ordinance to be necessary or expedient for removing such difficulty.

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

DATED CHANDIGARH
THE ,2007

A.R.KIDWAI,
GOVERNOR OF HARYANA

3089 Leg. III (328)/07

From : F.C.E.T.
No./Dt : 2386-E.T-4-2007/2007-Chd/5.07.2007.
Subject: The Haryana Tax on Luxuries Ordinance, 2007.

 Administrative Department's note dated 4.07.2007 may kindly be perused. The Administrative Department has forwarded draft of the Haryana Tax on Luxuries Ordinance, 2007 for vetting/examination.

As desired, draft of the Haryana Tax on Luxuries Ordinance, 2007 has been prepared in consultation with Shri S.K. Yadav, Joint Director, Legal and Shri D.S. Pathania, E.T.O, Excise and Taxation Department and three typed copies thereof are placed in the file of the A.D. for consideration and further necessary action. The A.D. may ensure that the draft Ordinance meets with their requirements and is strictly in accordance with the decision of the Council of Ministers. The A.D. may please add to the draft Ordinance a note of emergency necessitating the promulgation of the said Ordinance. Hindi version of the draft Ordinance will follow. Technical advice on four points, mentioned in rule 36 of the Rules of Business of the Government of Haryana, 1977, is tendered as under:-

1. It will be necessary to embark upon legislation as the purpose in view cannot be achieved otherwise.
2. The subject-matter of the proposed Ordinance is relatable to entries 62, 64, 65 and 66 of the State List and entries 1, 12, 13, 43, 46 and 47 of the Concurrent List in the Seventh Schedule to the Constitution of India and the Governor of Haryana is competent to promulgate the same under article 213(1) of the Constitution of India.
3. It will not be necessary to obtain the instructions of the President of India for the promulgation of the proposed Ordinance.
4. The proposed Ordinance would not be inconsistent with the provisions of Constitution of India including those relating to Fundamental Rights.

The A.D. is further advised to obtain the approval of the Council of Ministers to the draft of the proposed Ordinance before its promulgation.

(Sanjay Singhmar)
 Supdt.L-I
 23.07.07

D.L.R&D.S (O)

LEGISLATIVE DEPARTMENT NOTE

As desired, draft of the Haryana Tax on Luxuries Ordinance, 2007 has been prepared in consultation with Shri S.K. Yadav, Joint Director, Legal and Shri D.S. Pathania, E.T.O, Excise and Taxation Department and three typed copies thereof are placed in the file of the A.D. for consideration and further necessary action. The A.D. may ensure that the draft Ordinance meets with their requirements and is strictly in accordance with the decision of the Council of Ministers. The A.D. may please add to the draft Ordinance a note of emergency necessitating the promulgation of the said Ordinance. Hindi version of the draft Ordinance will follow. Technical advice on four points, mentioned in rule 36 of the Rules of Business of the Government of Haryana, 1977, is tendered as under:-

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(V.P. Gupta),
Add. L.R & Sp. Sec.
For L.R. and Secretary, Haryana,
Legislative Department.

F.C.E.T.

U.O.No. 3089 Leg. III (328)/07/

Dated: