

KARNATAKA ACT NO. 4 OF 2004
THE KARNATAKA TAX ON LOTTERIES ACT, 2004
Arrangement of Sections

Sections:

CHAPTER I

Preliminary

1. Short title, extent and commencement
2. Definitions

CHAPTER II

AUTHORITIES

3. Instructions to subordinate authorities
4. Jurisdiction of officers
5. Change of incumbent of an office

CHAPTER III

Levy of tax on lotteries

6. Levy of tax
7. Power of State Government to reduce tax

CHAPTER IV

Registration

8. Registration of promoters and sellers

CHAPTER V

Return, assessment, payment, recovery and collection of tax

9. Returns and assessment
10. Assessment of draw escaping assessment
11. Payment of tax in advance
12. Payment and recovery of tax
13. Recovery of tax, penalty, or any other amount, from certain other persons
14. Tax payable on transfer of business, assessment of legal representatives, etc

CHAPTER VI

Appeal and Revision

15. Appeals
16. Revisional powers of Joint Commissioner
17. Revision by the Commissioner
18. Rectification of mistakes

CHAPTER VII

Miscellaneous

19. Accounts and records to be maintained by promoters and sellers
20. Production and inspection of documents and powers of entry, search and seizure
21. Burden of proof

CHAPTER VIII

Penalties, Offences and Power to make Rules

22. Penalty relating to registration
23. Penalties relating to statement or returns
24. Penalties relating to the keeping of records

25. Penalties relating to production of records and furnishing of information
26. Penalties relating to seals and to unaccounted lottery tickets
27. Obstruction, etc.
28. Fraudulent evasion of tax
29. Cognizance of offences
30. Compounding offences
31. Offences by companies, etc
32. Validity of assessments not to be questioned in prosecution
33. Bar and limitation to certain proceedings
34. Courts not to set aside or modify assessments except as provided under this Act
35. Appearance before any Authority in proceedings
36. Power to summon persons to give evidence
37. Power to make rules
38. Laying of rules and notifications before the State Legislature
39. Power to remove difficulties
40. Repeal and savings

STATEMENT OF OBJECTS AND REASONS

Currently Lottery tickets (both under the conventional lottery and on line lottery) are subject to Sales Tax. The current rate is 25% on first sale of lottery tickets and there is no tax on their subsequent sales. The tax is leviable not on the face value of the lottery tickets, but on the sales proceeds at first sale point less the prize amounts announced for the scheme. Thus, a very small portion of the face value of the lottery tickets is liable for sales tax. Assessments are fraught with disputes and it is difficult to regulate the actual number of draws held by any lottery promoter.

It was proposed in the budget 2003-2004 that a legislation would be brought to levy an effective and efficient tax on lotteries. The legislation provides for the following:

- (i) Levy of tax at the rate of one lakh fifty thousand rupees for every bumper draw and one lakh rupees for other draws;
- (ii) registration of promoters and dealers';
- (iii) procedure relating to filing of return, assessment and collection of tax;
- (iv) appeals and revision against assessment orders;
- (v) maintenance of account by promoters and sellers;
- (vi) production and inspection of documents and power of officers to enter and search any place of business, and seizure of accounts, lottery tickets etc;
- (vii) penalties relating to registration, statement or returns, keeping of records etc.

Certain other incidental and consequential provisions are also made.

Since the matter was urgent and both the Houses of the Karnataka Legislature were not in session the Karnataka Tax on Lotteries Ordinance, 2003 (Karnataka Ordinance No. of 10 of 2003) was promulgated to achieve the object.

Hence the Bill.

(LA Bill No.4 of 2004)

(Entry 62 of List II of the Seventh Schedule to the Constitution of India)

KARNATAKA ACT NO. 4 OF 2004

(First published in the Karnataka Gazette Extra-ordinary on the twenty ninth day of January, 2004)

THE KARNATAKA TAX ON LOTTERIES ACT, 2004

(Received the assent of the Governor on the twenty ninth day of January, 2004)

An Act to provide for the levy and collection of tax on Lotteries (gambling).

Whereas it is expedient to provide for the levy and collection of tax on lotteries and for matters connected therewith;

Be it enacted by the Karnataka State Legislature in the fifty-fourth year of the Republic of the India as follows:-

CHAPTER I**Preliminary**

1. Short title, extent and commencement.- (1) This Act may be called the Karnataka Tax on Lotteries Act, 2004.

(2) It extends to the whole of the State of Karnataka.

(3) It shall be deemed to have come into force with effect from the tenth day of December, 2003.

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

(1) "Assistant Commissioner" means an Assistant Commissioner of Commercial Taxes appointed under sub-section (1) of Section 3 of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957);

(2) "Commissioner" means the Commissioner of Commercial Taxes appointed under sub-section (1) of Section 3 of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957);

(3) "Joint Commissioner" means the Joint Commissioner of Commercial Taxes appointed under sub-section (1) of Section 3 of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957);

(4) "Lottery" means a scheme, in whatever form and by whatever name called, for distribution of prizes by lot or chance to those persons participating in the chances of a prize by purchasing tickets organized by the Government of India or the Government of a State or an Union Territory or any country having bilateral agreement or treaty with the Government of India;

(5) "Promoter" means the Government of India or a Government of a State or an Union Territory or any country organizing, conducting or promoting a lottery and includes any person appointed for selling lottery tickets in the State on its behalf by such Government or Country where such Government or country is not directly selling lottery tickets in the State;

(6) "Tax" means the tax levied and collected on lotteries under this Act;

(7) "Week" means the week commencing from Monday to Sunday;

(8) "Year" means the year commencing on the first day of April.

CHAPTER II**AUTHORITIES**

3. Instructions to subordinate authorities.- (1) 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 Act as they may deem fit for the administration of this Act, and all such officers and persons shall observe and follow such orders, instructions and directions of the State Government and the Commissioner:

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.

(2) All officers and persons employed in the execution of this Act, shall observe and follow such administrative instructions as may be issued to them for their guidance by the Joint Commissioner within whose jurisdiction they perform their functions.

4. Jurisdiction of officers.- (1) The Joint Commissioners shall perform their functions in respect of such areas or of such promoters or classes of promoters or of such cases or classes of cases as the Commissioner may direct.

(2) The Assistant Commissioners shall perform their functions in respect of such areas or of such promoters or classes of promoters or such cases or classes of cases as the Commissioner may direct.

5. Change of incumbent of an office.- Whenever in respect of any proceeding under this Act, an officer ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the authority or officer so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the promoter may demand that before the proceeding is so continued the previous proceedings or any part thereof be re-opened or that before any order of assessment is passed against him, he be re-heard.

CHAPTER III

Levy of tax on lotteries

6. Levy of tax.- (1) There shall be levied and collected a tax on lotteries at the following rates, namely:-

- (a) one lakh and fifty thousand rupees for every bumper draw; and
- (b) one lakh rupees in respect of any other draw.

(2) Tax levied under sub-section (1) shall be paid by every promoter.

7. Power of State Government to reduce tax.- (1) The State Government may, by notification, make reduction in the rate of any tax payable under this Act.

(2) Any reduction in the rate of tax, notified under sub-section (1) may be subject to such restrictions and conditions as may be specified in the notification.

(3) The State Government may, by notification, cancel or vary any notification issued under sub-section (1).

CHAPTER IV

Registration

8. Registration of promoters and sellers.- (1) Every promoter, and every person selling lottery tickets received from a promoter directly or otherwise, shall get himself registered under this Act in such manner on payment of such fee and within such period as may be prescribed.

Provided that a person ordinarily selling lottery tickets (other than lottery tickets of any computerized network lottery) in retail shall not be liable to get himself registered.

(2) The registration may be renewed from year to year on payment of the prescribed fee until it is cancelled.

(3) Nothing contained in this Section shall apply to the Government of India or Government of any State or Union Territory or any country except when it sells the lottery tickets itself.

CHAPTER V

Return, assessment, payment, recovery and collection of tax

9. Returns and assessment.- (1) Notwithstanding anything contained in Section 11, every promoter or person liable to get himself registered under this Act shall submit a return to the Assistant Commissioner for such period and within such period and in such manner containing such particulars as may be prescribed.

(2) Before any promoter submits any return under sub-section (1), he shall in the prescribed manner, pay in advance under Section 11, the full amount of tax payable by him for the period to which such return relates and shall furnish along with the return satisfactory proof of the payment of such tax, and 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) If the Assistant Commissioner is satisfied that any return submitted under sub-section (1) is correct and complete, he shall assess the promoter or person on the basis thereof.

(4) If no return is submitted by the promoter under sub-section (1) before the period prescribed or if the return submitted by him appears to the Assistant Commissioner to be incorrect or incomplete, he shall assess the promoter to the best of his judgment recording the reasons for such assessment:

Provided that before taking action under this sub-section the promoter or person shall be given reasonable opportunity of proving the correctness and completeness of the return submitted by him.

(5) While making any assessment under sub-section (4), the Assistant Commissioner may also direct the promoter to pay in addition to the tax assessed a penalty equal to one half of the amount of tax due that was not disclosed by the promoter in his return or in the case of failure to submit a return, one half of the tax assessed.

10. Assessment of draw escaping assessment.- (1) If the Assistant Commissioner has reasons to believe that any draw has escaped assessment to tax or has been assessed at a rate lower than the rate at which it is assessable under this Act, the Assistant Commissioner may, notwithstanding the fact that assessment in respect of such draw was already before him at the time of assessment or re-assessment, but subject to the provisions of sub-section (3), at any time within a period of three years from the expiry of the period to which the tax relates, proceed to assess or re-assess to the best of his judgment the tax payable by the promoter in respect of such draw after issuing a notice to the promoter and after making such enquiry as he may consider necessary.

(2) In making an assessment under sub-section (1) the Assistant Commissioner may, if he is satisfied that the escapement from assessment is due to willful non-disclosure of the draw by the promoter, direct him to pay in addition to the tax assessed under sub-section (1) a penalty equal to one half of the tax so assessed:

Provided that no penalty under this sub-section shall be directed to be paid unless the promoter affected has had a reasonable opportunity of showing cause against such imposition.

(3) In computing the period of limitation for assessment under this Section the time during which an assessment has been deferred on account of any stay order granted by any Court or other authority or by reason of the fact that an appeal or other proceeding is pending, shall be excluded:

Provided that nothing contained in this section limiting the time within which any action may be taken or any order, assessment or re-assessment may be made, shall apply to an assessment or re-assessment made on the promoter in consequence of, or to give effect to, any finding direction or order made under Sections 15 to 18 or any judgment or order made by the Supreme Court, the High Court or any other Court.

11. Payment of tax in advance.- (1) Subject to such rules as may be prescribed, every promoter shall submit every Monday to the Assistant Commissioner a statement containing such particulars as may be prescribed relating to the draws to be conducted during the week commencing from the second Monday succeeding such day and shall pay in advance the full amount of tax payable by him under this Act, in respect of the draws shown in the statement and the amounts so payable shall for the purposes of Section 12 be deemed to be an amount due under this Act from such promoter:

Provided that the tax relating to any draw to be conducted immediately after the commencement of this Act shall be paid within a period of five days from such commencement:

Provided further that if any Monday is not a working day, the statement shall be filed on the immediately succeeding working day.

(2) If default is committed in the payment of tax for any week, 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 week, the promoter defaulting payment of tax or making short payment of tax shall, in addition to the tax, pay interest calculated at the rate of two per cent per month from the date of such default or short payment to the date of payment of such tax.

(3) If no such statement is submitted by a promoter under sub-section (1) before the date prescribed or if the statement submitted by him appears to the Assistant Commissioner to be incorrect or incomplete, the Assistant Commissioner may assess the promoter provisionally for that week to the best of his judgment, recording the reasons for such assessment, and proceed to demand and collect the tax forthwith on the basis of such assessment:

Provided that before taking action under this sub-section the promoter shall be given a reasonable opportunity of being heard.

12. Payment and recovery of tax.- (1) The tax or any other amount due under this Act shall be paid in such manner and within such time, as may be prescribed.

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

- (i) the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the property of the promoter liable to pay tax under this Act;
- (ii) the promoter liable to pay the tax or any other amount due under this Act shall pay a interest equal to two per cent of the amount of tax or any other amount due remaining unpaid for each month after the expiry of the time specified under sub-section (1).

Explanation.- For the purposes of clause (ii), the interest payable for a part of a month shall be proportionately determined.

(3) Any amount, which remains unpaid under this Act after the due date of payment, shall be recoverable from a promoter in the manner specified under this Act.

(4) Any tax due or assessed, or any other amount due under this Act from a promoter or any other person, may without prejudice to any other mode of collection be recovered.-

- (i) as if it were an arrear of land revenue; or
- (ii) as if it were an arrear of sales tax under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957).

13. Recovery of tax, penalty, or any other amount, from certain other persons.- (1) The Assistant Commissioner may at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the promoter at his last address known to the Assistant Commissioner, require any person from whom money is due or may become due to the promoter or other person who holds or may subsequently hold money for or on account of the promoter or other person to pay to the Assistant Commissioner, 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 promoter or other person in respect of arrears of tax or penalty or the whole of the money when it is equal to or less than that amount.

(2) The Assistant Commissioner 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 the notice.

(3) Any person making any payment in compliance with a notice under this Section shall be deemed to have made the payment under the authority of the promoter or other person and the receipt of the Assistant Commissioner shall constitute a good and sufficient 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 promoter or other person after receipt of the notice referred to in this Section shall be personally liable to the Assistant Commissioner to the extent of the liability discharged or to the extent of the liability of the promoter for the amount due under this Act, whichever is less.

(5) Where any person to whom a notice under this Section is sent, proves to the satisfaction of the Assistant Commissioner issuing such notice, that the sum demanded or any part thereof is not due by him to the promoter or other person or that he does not hold any money for or on account of the promoter, then nothing contained in this Section shall be deemed to require such person to pay the sum demanded or any part thereof, to the Assistant Commissioner.

(6) Any amount which a person is required to pay to the Assistant Commissioner or for which he is personally liable to the Assistant Commissioner under this Section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrear of land revenue or arrear of sales tax.

(7) For the purpose of this Section, the amount due to a promoter or money held for or on account of a promoter or other person by any person shall be computed after taking into account such claims, if any, as may have fallen due for payment by such promoter or other person to such person and as may be lawfully subsisting.

14. Tax payable on transfer of business, assessment of legal representatives, etc.-

(1) When the ownership of the business of a promoter other than a Government is transferred, the transferor and the transferee shall jointly and severally be liable to pay any tax or penalty or any other amount remaining unpaid at the time of transfer or that may become payable in respect of such business after the date of transfer but relating to the periods up to the date of transfer and for the purpose of recovery from the transferee, such transferee shall be deemed to be the promoter liable to pay the tax or penalty or other amount due under this Act.

(2) Where any firm is liable to pay any tax or penalty or any other amount under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payment.

(3) When a firm liable to pay the tax or penalty is dissolved, the assessment of the tax and imposition of penalty shall be made as if no dissolution of the firm had taken place, and every person who was at the time of dissolution 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 or penalty assessed or imposed.

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

(5) When an undivided Hindu family or Aliyasanthana family liable to pay the tax or penalty is partitioned, the assessment of the tax and the imposition of penalty shall be made as if no partition of the family had 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 or penalty assessed or imposed.

(6) Where a promoter dies, his executor, administrator or other legal representative shall be deemed to be the promoter for the purposes of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased promoter:

Provided that, in respect of any tax, penalty or fee assessed as payable by any such promoter or any tax, penalty or fee, which would have been payable by him under this Act 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.

CHAPTER VI

Appeal and Revision

15. Appeals.- (1) Any person objecting to an order affecting him passed under the provisions of this Act by the Assistant Commissioner may appeal to the Joint Commissioner of the concerned jurisdiction.

(2) The appeal shall be preferred within thirty days from the date of communication of such order.

(3) (a) No appeal against an order shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of payment of tax and penalty not disputed in appeal.

(b) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amount shall be paid in accordance with the order against which the appeal has been preferred.

(4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(5) In disposing of an appeal, the appellate authority, may, after giving the appellant a reasonable opportunity of being heard.-

- (i) confirm, reduce, enhance or annul the order;
- (ii) set aside the order and direct the prescribed authority to pass a fresh order after such enquiry as may be directed; or
- (iii) pass such orders as it may think fit.

(6) Every order passed on appeal under this Section shall subject to the provisions of Sections 17 and 18, be final.

16. Revisional powers of Joint Commissioner.- (1) The Joint Commissioner may on his own motion call for and examine the record of any order passed or proceedings recorded under the provisions of this Act by the Assistant Commissioner and against which no appeal has been preferred under Section 15, for the purpose of satisfying himself as to the legality or propriety of such order or as to the regularity of such proceedings in so far as it is prejudicial to the interests of revenue and pass such order with respect thereto as he thinks fit.

(2) In relation to an order passed under this Act, the power under sub-section (1) shall be exercisable only within a period of two years from the date on which the order was passed.

(3) No order shall be passed under sub-section (1) enhancing any assessment, unless an opportunity has given to the promoter to show cause against the proposed enhancement.

(4) Every order passed in revision under this Section shall subject to the provisions of Sections 17 and 18, be final.

17. Revision by the Commissioner.- (1) The Commissioner may on his own motion call for and examine the record of any proceedings under this Act, and if he considers that any order passed therein by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue, he may, if necessary, stay the operation of such order for such period as he deems fit and after giving the promoter an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.

(2) The power under sub-section (1) shall be exercisable only within a period of three years from the date of the order sought to be revised was passed.

(3) The Commissioner shall not exercise any power under sub-section (1), if the time for appeal against the order has not expired.

(4) Every order passed in revision under this Section shall, subject to the provisions of Section 18, be final.

18. Rectification of mistakes.- (1) With a view to rectifying any mistake apparent from the record, the Assistant Commissioner, appellate authority or revising authority, may, 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 promoter shall not be made unless the Assistant Commissioner, appellate authority or revising authority, as the case may be, has given notice to the promoter of its intention to do so and has allowed the promoter a reasonable opportunity of being heard.

(2) Where an order has been considered and decided in any proceedings by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) 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, has been passed.

CHAPTER VII

Miscellaneous

19. Accounts and records to be maintained by promoters and sellers.- (1) Every promoter or other person registered or liable to be registered under this Act, shall keep and maintain true and correct accounts and such other records as may be prescribed, relating to his business, showing such particulars as may be prescribed.

(2) All such accounts and records shall be retained by the promoter or other person in his safe custody until the expiry of three years after the end of the year to which they relate or until the assessment reaches finality, whichever is later.

(3) Where such promoter is party to an appeal or revision under this Act, he shall retain, until appeal or revision and any appeal therefrom is finally disposed of, every record and accounting document that pertains to the subject matter of the appeal or revision.

20. Production and inspection of documents and powers of entry, search and seizure.- (1) Any officer authorised by the State Government or Commissioner in this behalf, may for the purpose of this Act, shall have the power.-

- (a) to enter and inspect the place of business of any promoter or other person carrying on business in lottery or any other place, where it is believed by such Officer that business is being carried on or accounts including documents are being kept by such promoter or person,
- (b) to direct such promoter or person to produce at such time and at such place accounts, registers and documents relating to his business activities for examination,
- (c) to enter and inspect the lottery tickets in the possession of the promoter or in the possession of any other person on behalf of such promoter, wherever such lottery tickets are kept,
- (d) to enter and search such places, including the search of the promoter or person acting on behalf of the promoter found there, where concealment of facts relating to the business are suspected,
- (e) to seize any accounts, registers or documents from the promoter or other person, where he has reason to suspect that a promoter or other person is attempting to avoid or evade tax or is concealing his tax liability in any manner, after recording such reasons in writing, and give the promoter or any other person from whose custody such accounts, records or documents are seized, a receipt for and, if requested, copies of the same and may retain them in his custody for examination, inquiry, prosecution or other legal proceedings for such period as he considers necessary,
- (f) to seal any box or receptacle, godown or building or any part of the godown or building in which accounts or lottery tickets are suspected to be kept or stored, where the owner or the person-in-charge of the business or any other person-in-charge of the business or any other person-in-occupation either leaves the premises or is not available or fails or refuses to open any box or receptacle, godown or building or any part of the godown or building when called upon to do so,
- (g) to break open the receptacle, godown or building or part of the godown or building where the owner or the person-in-charge of the business or the person in occupation leaves the premises or, after an opportunity having been given to him to do so, fails to open the receptacle, godown or building or part of the godown or building, and to prepare a list of the goods and documents found therein,
- (h) to record the statement of any promoter or his manager, agent or servant, to take extracts from the records found in any premises and to put identification marks on accounts, registers, documents or goods,
- (i) to seize any stock of lottery tickets, which are found in possession of a promoter or in the possession of any person on behalf of a promoter and which are not accounted for in his accounts, records or documents maintained in the course of his business, and a list of lottery tickets including any device or contrivance used to

issue lottery tickets so seized shall be prepared by such officer and a copy thereof shall be given to the promoter or any other person from whose custody such lottery tickets, device or contrivance are seized,

- (j) in circumstances where it is not possible to seize the accounts, records or documents under clause (e) or the lottery tickets under clause (i), to serve on the owner or the person who is in immediate possession or control thereof, an order that he shall not remove, part with or otherwise deal with them except with the prior consent of such Officer, and after serving such order to take such steps as are deemed necessary to secure the items referred to in the order.
- (2) Where the records and accounts under section 19 are maintained by electronic means, the promoter shall provide such access to such accounts and records as may be required by the officer authorised under sub-section (1).
- (3) The powers conferred on the officer under clauses (d) to (g) and (i) of sub-section (1) shall be exercised in accordance with the provisions of the Code of Criminal Procedure, 1973, (Central Act 2 of 1974) and the power to enter a promoter's or other person's place of residence shall be authorized by the Commissioner.
- (4) The accounts, registers, records, including computer hardware and software, and other documents seized under sub-section (1) shall not be retained by such officer for a period exceeding one hundred and eighty days from the date of seizure, unless the reasons for retaining the same beyond the said period are recorded by him, 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.
- (5) There shall be a presumption in respect of devices, contrivances, accounts, registers or documents found at any place of business that they relate to that business, unless the contrary is proved by the promoter or person whose business occupies that place.
- (6) The promoter or person from whom lottery tickets have been seized under clause (i) of sub-section (1) shall have a period of seven days to appeal against seizure of the lottery tickets.
- (7) Subject to sub-section (6), after the expiry of the specified period, if any tax assessed or penalty or interest due is not paid, the officer shall dispose of the lottery tickets or other goods in public auction and adjust the sale proceeds towards any such amount due, and the excess amount shall, after deducting the charges incurred by the State, be refunded in the manner prescribed.

21. Burden of proof.- (1) For the purposes of payment or assessment of tax, the burden of proving that any claim to payment of tax on the draw relating to any lottery tickets is correct, shall lie on the promoter or other person selling lottery tickets as a distributor or selling agent or any other capacity.

(2) Where a promoter or other person knowingly issues or produces a false declaration, certificate or other document with a view to support or make any claim that tax has been paid on the draw relating to the lottery tickets sold or held by him, the Assistant Commissioner shall, on detecting such issue or production, direct the promoter or person issuing or producing such document to pay as penalty, three times the tax due in respect of such claim.

(3) Before issuing any direction for the payment of the penalty under this Section, the Assistant Commissioner shall give to the promoter the opportunity of showing cause in writing against the imposition of such penalty.

CHAPTER VIII

Penalties, Offences and Power to make Rules

22. Penalty relating to registration.- (1) A promoter who, without reasonable cause, fails to apply for registration within the time prescribed shall be liable to a penalty of twenty five thousand rupees.

(2) Any other person who, without reasonable cause, fails to apply for registration within the time prescribed shall be liable to a penalty of twenty five thousand rupees.

(3) The power to levy the penalties shall be vested in the Assistant Commissioner.

23. Penalties relating to statement or returns.- (1) A promoter or other person who fails to furnish a statement or return or who fails to pay the tax due on any statement furnished as required under Section 11 shall be liable to a penalty of one thousand rupees for each day of default in addition to a further penalty of a sum not less than ten per cent but not exceeding fifty per cent of the amount of tax due, together with any tax or interest due.

(2) The power to levy the penalty under this Section shall be vested in the Assistant Commissioner.

24. Penalties relating to the keeping of records:- (1) Any promoter or other person who fails to keep and maintain proper records, in accordance with Sections 19 shall be liable to a penalty of five thousand rupees and, in addition, one thousand rupees per day for so long as the failure continues after being given an opportunity to show cause against such imposition of penalty.

(2) Any promoter or other person who fails to retain records and accounts in accordance with Section 19, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of ten thousand rupees.

(3) The power to levy the penalties under this Section shall be vested in the Assistant Commissioner.

25. Penalties relating to production of records and furnishing of information.- (1) Any promoter or person who on demand by the authorized officer fails to produce any records or furnish any information in accordance with the requirements of this Act, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of five thousand rupees and, in addition, one thousand rupees per day for so as long as the failure continues.

(2) The power to levy the penalties under this Section shall be vested in the Assistant Commissioner.

26. Penalties relating to seals and to unaccounted lottery tickets.- (1) Any person who removes, or in any way tampers with, a seal attached under the provisions of clause (f) of sub-section (1) of Section 20, shall be liable on conviction by a Court, not inferior to that of a Magistrate of the First Class, to a fine of not less than five thousand rupees but not exceeding fifty thousand rupees and imprisonment for a period not less than fifteen days but not exceeding one year.

(2) Any person or promoter who is found to be in possession of unaccounted lottery tickets under the provisions of clause (i) of sub-section (1) of Section 20, after being given the opportunity of showing cause in writing against the imposition of a penalty, shall be liable to a penalty of five thousand rupees.

(3) The power to levy the penalty under sub-section (2) shall be vested in the officer authorised under section 20.

27. Obstruction, etc.. -Any person who obstructs, hinders, molests or assaults an authorised officer or any other public servant assisting him in the performance of his duties under this Act, or does anything which is likely to prevent or obstruct any search or production of evidence, shall on conviction be liable to a fine of not less than five thousand rupees but not exceeding fifty thousand rupees and imprisonment for a period not less than fifteen days but not exceeding one year.

28. Fraudulent evasion of tax.- Without prejudice to the provisions of Sections 22 to 26, if any person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion of tax by him or any other person, he shall be liable to a fine of one lakh rupees or double the amount of the tax evaded, whichever is the higher or to imprisonment for a period of not less than six months but not exceeding five years, or to both.

29. Cognizance of offences.- No Court shall take cognizance of any offence punishable under Sections 28 except with the previous sanction of the Joint Commissioner.

30. Compounding offences.- (1) Where any promoter or person has committed an offence under sub-section (1) of Section 26 or Section 28, the authorized officer may, on admission by such promoter or person in writing and upon his option to compound at any time prior to the commencement of the court proceedings relating thereto, compound such offence

and order the promoter or person to pay such sum of money as specified by the authorized officer, provided it does not exceed the amount of the fine prescribed for the offence in addition to any tax and interest due.

(2) Furnishing of a cheque or any other instrument towards payment of a sum by any such promoter shall be deemed to be an application for compounding the offence.

(3) Where the authorized officer compounds an offence under this Section, the order referred to in sub-section (1),

- (a) shall be in writing and specify the offence committed, the sum of money to be paid and the due date for the payment;
- (b) shall be served on the promoter or person who committed the offence;
- (c) shall be final and not subject to any appeal; and
- (d) may be enforced in the same manner as a decree of a court for the payment of the amount stated in the order.

(4) When the authorized officer compounds an offence under this Section, the promoter or person concerned shall not be liable to prosecution in respect of such offence or to any further penalty under this Section and such promoter or person shall not appeal against the said proceedings.

31. Offences by companies, etc.- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section.-

- (a) "Company" means any body corporate and includes a firm or other association of individuals; and
- (b) "Director", in relation to a firm, means a partner in the firm.

32. Validity of assessments not to be questioned in prosecution.- The validity of the assessment of any tax or of the levy of any fee or other amount, made under this Act, or the liability of any person to pay any tax, fee or other amount so assessed or levied shall not be questioned in any Criminal Court in any prosecution or other proceeding, whether under this Act or otherwise.

33. Bar and limitation to certain proceedings.- (1) No suit, prosecution or other proceeding shall lie against any officer or servant of the State Government, for any act done or purported to be done under this Act without the previous sanction of the State Government.

(2) No officer or servant of the State Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties or the discharge of the functions imposed by or under this Act.

(3) No suit shall be instituted against the State Government and no suit, prosecution or other proceeding shall be instituted against any officer or servant of the State Government in respect of any act done or purporting to be done under this Act, unless the suit, prosecution or other proceeding is instituted within six months from the date of the act complained of.

34. Courts not to set aside or modify assessments except as provided under this Act.- Notwithstanding anything contained in any law for the time being in force, no suit or other proceedings shall be entertained by any court, except as expressly provided for under this Act,

to set aside or modify any assessment or other proceedings commenced by virtue of the provisions of this Act, and no such court shall question the validity of any assessment, levy of penalty or interest nor grant any stay of proceedings or recovery of any amount due under this Act.

35. Appearance before any Authority in proceedings.- Any person who is entitled to appear before any authority other than the High Court in connection with any proceeding under this Act, may be represented before such authority-

- (a) by his relative or a person regularly employed by him if such relative or person is duly authorized by him in writing in this behalf;
- (b) by a legal practitioner.

36. Power to summon persons to give evidence.- The officers empowered by rules made in this behalf shall have all the powers conferred on a Court by the Code of Civil Procedure, 1908 (Central Act V of 1908), for the purpose of securing attendance of persons or the production of documents in any enquiry under this Act.

37. Power to make rules.- (1) The State Government may, make rules, by notification, to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for:

- (a) all matters expressly required or allowed by this Act to be prescribed;
- (b) determination of liability of any person for purposes of registration;
- (c) the assessment to tax under this Act of business which are discontinued or the ownership of which has changed;
- (d) compelling the submission of statements or returns and the production of documents and enforcing the attendance of persons and examining them on oath or affirmation;
- (e) securing that returns furnished or accounts or documents produced or evidence of any kind given under this Act before any prescribed authority or an appeal or revision from any decision of such authority are kept confidential;
- (f) the duties and powers of officers appointed for the purpose of enforcing the provisions of this Act;
- (g) the fees payable for the grant of duplicate certificates of registration or copies of such certificates or of any other document;
- (h) the maintenance of documents or accounts of receipts or purchases and sales of lottery tickets by promoters or persons and the time for which they should be preserved;
- (i) generally regulating the procedure to be followed and the forms to be adopted in proceeding under this Act;
- (j) any other matter for which there is no provision or no sufficient provision in this Act and for which provision is, in the opinion of the Government, necessary for giving effect to the purposes of this Act.

(3) In making a rule under sub-section (1) or sub-section (2), the State Government may provide that a person guilty of breach thereof shall, on conviction by a Magistrate of the first class, be punishable with fine which may extend to five thousand rupees and where the breach is a continuing one, with further fine which may extend to one hundred rupees for every day after the first during which the breach continues.

(4) Any rule under this Act may be made to have effect retrospectively and when any such rule is made, a statement specifying the reasons for making such a rule shall be laid before both Houses of the State Legislature along with the rule under section 38, and all rules, shall, subject to any modification made under Section 38, have effect as if made in this Act.

38. Laying of rules and notifications before the State Legislature.- Every rule made under this Act and every notification issued under Section 39 shall be laid as soon as may be after it is published before each House of the State Legislature while it is in session for a total

period of thirty 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, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or 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 rule or notification.

39. Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the Government may by notification make such provision as may appear to it to be necessary or expedient for removing difficulty.

40. Repeal and savings.- (1) The Karnataka Tax on Lotteries Ordinance, 2003 (Karnataka Ordinance 10 of 2003) is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

The above translation of the ಕರ್ನಾಟಕ ಲಾಟರಿಗಳ ಮೇಲೆ ತೆರಿಗೆ ಅಧಿನಿಯಮ, 2004 (2004 ರ ಕರ್ನಾಟಕ ಅಧಿನಿಯಮ ಸಂಖ್ಯೆ 4) be published in the Official Gazette under clause (3) of Article 348 of the constitution of India.

T. N. CHATURVEDI
GOVERNOR OF KARNATAKA

By Order and in the name of the Governor of Karnataka

M.R. HEGDE
Secretary to Government
Department of Parliamentary Affairs and Legislation