

PART - III

Commented [A1]:

AMUSEMENT TAX

CHAPTER - I

Preliminary

3.1.1 Legislative background - Taxes on theatres and dramatic performances, cinema (subject to the provision of Entry 60 of, List I), sports, entertainments and amusements are subjects include in Item 33 of State List of the Seventh Schedule to the Constitution. Taxes on luxuries including taxes on entertainments, amusements, betting and gambling are subjects included in Item 62 of the State List of the said Schedule. In terms of Articles 246(3) of the Constitution, the State Legislative has jurisdiction to make laws on the subjects enumerated above.

The levy and collection of entertainment tax and luxuries tax are governed by the Bengal Amusements Tax Act, 1922, the West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972 and the West Bengal Entertainment-cum-Amusement Tax Act, 1982 and the rules framed thereunder. The acts prescribe levy of taxes as under:-

3.1.2 The Bengal Amusement Tax Act, 1922:

The Act envisages imposition of tax on certain forms of entertainment like film shows, musical soirees, betting on horse-racing etc. Revenue collected under this Act comes mainly from sources like film shows in commercial cinema halls and betting on horse-racing. The rate of entertainments tax in the case of Bengali, Nepali and Santhali films is not exceeding three-fourth of admission charge and that in case of films other language in admission charge is 30 *per cent*.

3.1.3 The Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972:

Taxes imposed under this Act can be classified into two categories viz. entertainment tax and luxury tax. Entertainment tax is imposed on certain types of entertainment like cabaret, dance, floor shows, etc. performed in air-conditioned hotels and restaurants. Luxury tax is imposed on hotels and restaurants providing air-conditioning facilities.

Entertainment tax is calculated on the total sum paid by the person admitted to the place of entertainment, while luxury tax on hotels is payable on the daily charges realised for occupied air-conditioned rooms. Luxury tax on restaurants is calculated on the floor area provided with air-conditioning facilities.

3.1.4 The West Bengal Entertainment-cum-Amusement Tax Act, 1982:

The Act imposes taxes on four categories of persons, namely:

- i. Owners of Video Halls;
- a Cable operators who distribute programmes through Cable Television Networks;
- b. Sub-cable operators who in addition to providing programmes distributed by the cable operators provide entertainment programmes independently to their customers with the help of Video Cassette Recorders/ Players (VCR/VCP) etc.

- c. Persons supplying luxury-cum-entertainment products like Colour TV, VCR, DVD etc. for the first time in the State.

3.1.5 Organisational set up:

The Government of West Bengal, Finance (Revenue) Department administers the laws relating to Entertainments Tax in the State.

The Commissioner, Agricultural Income Tax is also the Commissioner of Entertainment Tax, West Bengal. All the works relating to entertainment tax under various Acts and Rules are looked after by the Agricultural Income Tax (AIT) Branch. At present, the AIT Branch of the Directorate has 19 (nineteen) Regional Offices in different districts. The Regional Offices have been divided into four circles viz. Kolkata, Howrah, Burdwan and Malda Circles headed by Deputy Commissioners.

In Kolkata:

The Commissioner, AIT, West Bengal acts as a levying and collecting authority in respect of Amusement Tax, Show Tax, Totalizator and Betting Tax, Luxury Tax etc. He is assisted by the Additional Commissioners, Assistant Commissioners, Agricultural Income Tax Officers and Agricultural Income Tax Inspectors.

In Districts:

The Collectors of the districts act as licensing authority and the Agricultural Income Tax Officers act as levying and collecting authority in their respective district and sub-divisional officers similarly discharge these functions in their respective sub-division.

CHAPTER - II

3.2.0 Definitions

3.2.1 The Bengal Amusements Tax Act, 1922

3.2.1.1 "admission" includes admission as a spectator or as one of an audience and admission for the purpose of amusement by taking part in an entertainment;

3.2.1.2 "admission to an entertainment" includes admission to any place in which the entertainment is held;

3.2.1.3 "agriculture" includes horticulture and live-stock breeding;

3.2.1.4 "Collector" means the Collector of a district and includes the Collector of Stamp Revenue, Calcutta;

3.2.1.5 'The Commissioner of Entertainments Tax' means the Commissioner of Agricultural Income Tax, West Bengal appointed by the State;

3.2.1.6 "entertainment" includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment;

3.2.1.7 "entertainment tax" means a tax levied under Section 3 ;

3.2.1.8 "live-stock" includes animals of every description;

3.2.1.9 'multiplex theater complex' means a film theatre–cum-cultural which provides not less than three theatres in such complex:

i. with a minimum sitting capacity of 1000 in the city of Kolkata where the Commissioner of Police is the licensing authority under the West Bengal Cinemas (Regulation) Act, 1954; or

ii. with a minimum sitting capacity of 800 in an area where the District Magistrate is the licensing authority under the West Bengal Cinemas (Regulation) Act, 1954;

iii. and includes such other multi-entertainment activities and facilities as the State Government may by notification in the Official Gazette, specify;

3.2.1.10 "payment for admission" includes any payment made by a person admitted to one part of a place of entertainment and subsequently admitted to another part thereof, for admission to which a payment involving a tax or a higher rate of tax is required and any payment for seats or other accommodation or participation in any entertaining event in such place of entertainment like Pool Game or Bowling and also sports and games held in an Amusement park, theme park or water games park for any value of admission fee with effect from 01.04.2002 and include a person making payment of entertainments tax not only for admission for seats or other accommodations in a place entertainment but also for participation in any entertaining event in such place of entertainments;

3.2.1.11 'prescribed' means prescribed by rules made under;

3.2.1.12 "proprietor" in relation to any entertainment includes:

i. any person;

ii. a licensee of cinematograph exhibition under the West Bengal

Cinemas (Regulation) Act, 1954 ;and

iii. a society who is responsible for or is for the time being in charge of the management thereof;

3.2.1.13 "show tax" means a tax levied under Section 3A;

3.2.1.14 "society" includes a company, institution, club or other association of persons by whatever name called.

3.2.2 Taxes on certain form of Betting:

3.2.2.1 "backer" includes any person who bets at a totalizator or which a licensed bookmaker on a horse race or pony race held on a race course within or outside West Bengal;

3.2.2.2 "bet" includes "wager" and "betting" includes wagering;

3.2.2.3 "licensee" means a person or association of persons to whom a licence has been granted under section 2C of the West Bengal Gambling and Prize Competitions Act, 1957;

3.2.2.4 "licensed bookmaker" means any person who carries on the business or vocation of or acts as a bookmaker or turf commission agent under a license or permit issued by a licensee to enable him to carry on his business or vocation as such bookmaker or turf commission agent;

3.2.2.5 "prescribed" means prescribed by this Chapter or by the rules made thereunder;

3.2.2.6 "race course" means any ground on which a horse race or a pony race can be held;

3.2.2.7 "racing club" includes a club, association, society or body of persons, corporate or incorporate-formed for the purpose of promoting horse-racing or pony-racing or for holding race-meetings; or conducting or controlling such meetings;

3.2.2.8 "steward" means a member of a racing club who manages the affairs of such club either as its authorized representative elected in accordance with its rules or nominated by the State Government;

3.2.2.9 "totalizator" means a totalizator in an enclosure which the stewards, controlling a race-meeting, have set apart and includes any instrument, machine, or contrivance known as the totalizator, or any other instrument, machine, or contrivance of a like nature or any scheme for enabling any number of persons to make bets with one another on the like principles.

3.2.3 The West Bengal Entertainments and Luxuries (Hotels and Restaurants) Tax Act, 1972:

3.2.3.1 'Kolkata' means the area described in Schedule 1 to the Calcutta Municipal Corporation Act, 1980,

3.2.3.2 'entertainment 'means any exhibition, performance, amusement, game, sport, cabaret, dance or floor show provided in any hotel or restaurant;

3.2.3.3 'entertainment tax' means tax payable under section 3 of this Act;

3.2.3.4 ‘hotel’ means a building or part of a building or any place where any activity or business is carried on in providing lodging or boarding or any kind of accommodation with or without supply of food, drinks or refreshments to the members of the public on payment or for any consideration with the object of making profit;

3.2.3.5 ‘luxury’ means provision for –

- i. air-conditioning through air conditioner or central air conditioning or any other mechanical means, or
- ii. air-cooling through air-cooler;

3.2.3.6 ‘luxury tax’ means tax levied under section 4 of this Act;

3.2.3.7 ‘prescribed’ means prescribed by rules made under this Act;

3.2.3.8 ‘proprietor’ in relation to a hotel or restaurant includes the person who for the time being is in charge of management of a hotel or restaurant;

3.2.3.9 ‘restaurant’ includes an eating house.

3.2.4 The West Bengal Entertainment-cum-Amusement Tax Act, 1982:

3.2.4.1 ‘holders of a television set’ means as person in whose name a license is issued in respect of any television set under the Indian Wireless Telegraphy Act, 1933 and includes a person, who is, for the time being, found in possession of any television set irrespective of its size or whether it is black and white set or colour set, and irrespective of the fact whether the person holds such licence or not;

3.2.4.2 ‘holders of a video cassette player set’ means a person who owns a video cassette player set and includes a person, who is, for the time being, found in possession of such set but does not include a person who owns or possesses such set as a part of video cassette recorder set owned or possessed by him;

3.2.4.3 ‘holder of a video cassette recorded set’ means a person who owns a video cassette player set and includes a person, who is, for the time being, found in possession of such set;

3.2.4.4 ‘month’ means a month reckoned according to the British calendar;

3.2.4.5 ‘prescribed’ means prescribed by rules made under this Act.;

3.2.4.6 ‘registered’ means registered under Section 5A;

3.2.4.7 ‘tax’ means the luxury-cum-entertainment and amusement tax levied under this Act;

3.2.4.8 ‘week’ means a week commencing on Friday and ending on Thursday;

3.2.4.9 ‘year’ means the year commencing on the first day of January and ending on the thirty-first day of December;

3.2.4.10 ‘enrolled’ means enrolled under sub-clause (d) of sub-section (4c) of Section 4A or clause (b) of sub-section (3) of Section 4BB;

3.2.4.11 ‘luxury-cum-entertainment product’ means any product which is ordinarily used for providing audio visual or audiovisual entertainment.

3.2.4.12 ‘notification’ means a notification published in the Official Gazette;

3.2.4.13 ‘value of supply’ means the valuable consideration received or

receivable by any person at the time of supply of any luxury-cum-entertainment product at the first instance.

CHAPTER – III

Issue of Cinema Licenses and Sale of Cinema Tickets

3.3.1 Entertainment:- Entertainment includes exhibition of films by means of cinematograph and display of electronic and video transmitted images of films, both feature and documentary, or drama or musical or dance performances or conference in a cinema house or in different cinema houses of a multiplex theatre complex.

3.3.2 Licensing Authority:

Under Sec, 3(1) of the West Bengal Cinemas (Regulation) Act, 1954, the following authorities are empowered to issue license for cinema houses

Place	Name of Authority
In Kolkata	Commissioner of Police, Kolkata
In Districts	District Magistrate of the district concerned

3.3.3 Kinds of licenses:

Rule 3 of the West Bengal Cinemas (Regulations of Public Exhibitions) Rules, 1956 states that there shall be three kinds of licences, namely:

- i. Licences for permanent cinemas;
- ii. Licences for temporary indoor cinemas, and
- iii. Licences for temporary open air cinemas.

3.3.4 Licences for Permanent Cinemas - Rates of licence fee:

Where the cinema house is situated within a municipal area or town or cantonment with a population of more than one lakh:-

- Rs. 160 for the first year and for each subsequent year if the licence is renewed on application from 10 January 2006 the licence fee was Rs. 10,000 for three years and the rate was withdrawn from 9 September 2007. The rate of licence fee in case of cinema is Rs. 3,000 for the first three years and for every subsequent years;
- With effect from 10th January 2006 Rs. 10000 for each permanent cinema of a multiplex theatre complex for the first three years and for every subsequent three years if the licence is renewed on application, the years being calculated from the date of licence;
- With effect from 10th September 2007 in case of air-conditioned cinema house – Rs. 3000 for the first three years and for every subsequent three years if the licence is renewed on application, the years being calculated from the date of licence

Where the cinema house situated in any other locality-

- Rs. 80 for the first year and for each subsequent year if the licence is renewed on application, the year being calculated from the date of licence(Valid upto 9th January 2006).
- Rs. 5000 for the first three years and for every subsequent three years if the licence is renewed on application, the years being calculated from the date of licence

(Valid upto 9th September 2007).

- With effect from 10th September 2007 in case of blower cooled cinema house – Rs. 3000 for the first three years and for every subsequent three years if the licence is renewed on application, the years being calculated from the date of licence.
- With effect from 10 September, 2007 in case of fan-cooled cinema house- Rs. 1,000 for the first three years and for every subsequent three years if the licence is renewed on application, the years being calculated from the date of licence

[Rule 6(1)(a), (b) & (c)].

3.3.5 Period of validity of licence:

- The licence granted shall be valid for one year unless renewed earlier by the licensing authority. It may be renewed from year to year on receipt of an application in writing from the licensee for such renewal accompanied by a fee as prescribed in Rule 6(1) (Valid upto 9th January 2006).
- With effect from 10 January 2006 the licence granted shall be valid for three years unless renewed earlier by the licensing authority. It may be renewed after the expiry of the term on receipt of an application in writing from the licensee for such renewal accompanied by a fee as prescribed in Rule 6(1)

3.3.6 Penalty for not renewing licence in time:

Rule 6 (3) Any licensee who fails to apply for renewal of his licence with requisite fee within thirty days (fifteen days upto 9th January 2006) of the expiry of the time of its licence, shall at the time of its renewal be required to pay a fine of Rs. 1500 (Rs. 80 upto 9th January 2006) if the cinema house is within a municipal area or town or cantonment with a population of more than one lakh and Rs. 750 (Rs. 40 upto 9th January 2006) if the cinema house is situated in any other locality.

3.3.7 Temporary Indoor Licence

3.3.7.1 Rate of licence fee:

The fee to be levied for a licence for a temporary indoor cinema house shall be:

In municipal areas, towns or cantonments with a population of more than one lakh Rs. 150 per month (Rs. 12 per month upto 9th January 2006) or' part thereof;

In other localities-Rs. 75 per month (Rs. 6 upto 9th January 2006) or part thereof.

(Rules 8, 9, 10 & 11)

3.3.7.2 Period of validity of licence:

The licence granted, unless revoked earlier by the licensing authority, remains valid for such period as may be specified in the licence subject to the condition that no such licence shall remain valid for more than nine months in a continuous period of twelve months.

[Rule 9(2)]

3.3.7.3 Temporary open air licence:

The fee for the grant of licence for a temporary open air cinema shall be the same as for licences for temporary indoor cinema as provided in sub-rule (1) of Rule 9.

(Rule 12, 13, 14 & 15)

3.3.7.4 Issue of Duplicate Licence:

When a licence granted or renewed is either lost or accidentally destroyed, the licensing authority, may, on receipt of a written application, grant a duplicate of the original licence on payment of a fee of Rs. 60 (Rs. 5 upto 9th January 2006).

(Rule 17)

3.3.7.5 Suspension or Revocation of Licence:

Any licence granted may be suspended or revoked by the licensing authority or the State Government for failure of the licensee to comply with any direction or condition imposed.

(Rule 20)

3.3.7.6 Sale of Cinema tickets:

All tickets for cinema shows shall be sold either from counters or through telephone, internet booking, registered kiosks (manned or unmanned) or any other emerging technology as the licensing authority may determine:

Where a kiosk is owned, by any agency, not being a licensee, the proprietor of such agency will have to take permission/registration from the licensing authority in the area where the kiosk will be situated and the licensee will be responsible for the conduct of the owners of the kiosk appointed by the licensee to sell his tickets:

For multipoint/internet/kiosks/booking sale, the price will be printed on every ticket and it will display price charged, entertainments tax, service charges and other taxes if any.

(Reference:- Notification Nos. 103-ICA dated 10.01.2006 and 2712-ICA dated 10.09.2007)

CHAPTER – IV

Assessment, Collection and Accounting of Amusement Tax

3.4.1 Tax for admission to entertainments –

3.4.1.1 On all payments for admission to any entertainment a tax at the rate specified in sub-section (3) of the Amusement Tax Act, is levied and paid to the State Government:

However, in the case of any admission to -

i. an entertainment for horse racing, tax shall be charged on all payments for such admission at such rate, not exceeding one hundred *percent* of such payments as the State Government may, by notification, fix and

ii. a cabaret held in a place other than in a hotel or a restaurant, tax shall be charged at the rate of hundred *percent* on all payments for such admission.

iii. Entertainment tax shall not be leviable where the payment for admission is not more than nineteen paise;

3.4.1.2 Rate of tax

In respect of different classes of entertainments, other than cinematograph exhibition the rate of entertainment tax upon the value of tickets for admission to such class of entertainments as specified in the table below:

Table

Class of entertainments	Value of tickets	Rate of entertainments tax
a. Musical soiree magic show and dance (except cabaret)	Upto Rs.40 above Rs.40	Nil 20 <i>per cent</i> of such value
b. Theatrical performance, jatra and dramatic performance held in a hall auditorium or building	Upto Rs.60 above Rs.60	Nil 20 <i>per cent</i> of such value
c. Pool game or bowling game	Any value	20 <i>per cent</i> of such value
d. Sports and games held in an amusement park, theme park or water games park	Any value	20 <i>per cent</i> of such value
e. Any entertainment other than- <i>i.</i> theatrical performance, jatra and dramatic performance held in open air or any place excluding the place referred to in item (b) <i>ii.</i> circus <i>iii.</i> Sports and games including referred to in item (d)	Upto Rs.40 above Rs.40	Nil 20 <i>per cent</i> of such value

The amount of entertainments tax upon the value of each ticket for admission to any cinematograph exhibitions shall be thirty *per cent* of such value;

Further, in the case of cinematograph exhibitions in Bengali, Nepali and Santhali language, the amount of entertainment tax shall not exceed three-fourths of the value of each ticket.

3.4.1.3 Entertainment tax shall be charged and paid on all free or complementary passes or tickets by whatever name called, issued by the proprietor of a cinematograph exhibition every person who is so admitted on a free or complementary pass shall be liable to pay the same amounts of entertainment tax as would be payable by him had he been admitted to such seat or other accommodation on payment.

However, the entertainment tax shall not be charged or paid on service charge realised separately from any person in respect of his admission to such cinematograph exhibition for the purpose of incurring expenditure towards electricity, repair, maintenance and for the benefit of the employees of such cinema hall and the service charge so realised shall be utilised in such manner as may be described.

3.4.1.4 No claim under sub-section (3c) for exemption from payment of entertainment tax shall be admissible to any proprietor of cinematograph exhibition in a cinema hall unless he proves to the satisfaction of such authority that the sum realised separately by way of service charge has been utilised, or that adequate provision has been made in his books of accounts for the purposes referred to in Sub-section 3(c).

3.4.2 Additional tax on cinematograph and other exhibition

3.4.2.1 In respect of any theatrical performance, jatra and dramatic performance held in open air or anyplace, other than a hall or auditorium of building, to which persons are admitted for payment, a show tax at the rate of Rupees two hundred for each such performance shall be charged and collected.

(Section 3A)

3.4.3 Admission to entertainments

3.4.3.1 No person liable to pay an entertainment tax shall be admitted to any entertainment except –

i. with a ticket stamped with a impressed, embossed, engraved or adhesive stamp (not before used) issued by the State Government for the purpose of revenue and denoting that the proper entertainment tax has been paid in which case the proprietor in relation to any cinematograph exhibition shall furnish a return for such period, in such manner and by such date as may be prescribed by rules made under this Act;

ii. in special cases, with the approval of the State Government through a barrier or by means of a mechanical contrivance which automatically registers the number of persons admitted.

Unless the proprietor of the entertainment has made arrangements approved by the State Government for furnishing return of the payments for admission to the entertainment and in the case of cinematograph exhibition, return of admission to seats or other accommodations without payment or free or complementary passes or tickets has also to be furnished with security upto an amount and in a manner approved by the State Government for the payment of the entertainments tax.

(Section 4)

3.4.3.2 Special mode of recovery of dues

3.4.3.2.1 The collector or any other officer authorised by the State Government in this behalf may require the proprietor of any cinematograph exhibition to deposit in a Government treasury an amount not exceeding rupees ten thousand or to furnish Government promissory notes or bank guarantee of equivalent amount as security pledged with him for due payment of the entertainment tax;

3.4.3.2.2 If the collector or the officer authorised for the Sub-Section (1) is satisfied that any sums due to the State Government from the proprietor of a cinematograph exhibition on account of the entertainment tax cannot otherwise be recovered, the collector or the said officer may forfeit the whole or any part of the security;

3.4.3.2.3 The collector or the office authorised shall, if he is satisfied that the proprietor of any cinematograph exhibition and that no sum is due to the State Government from him, refund the security to the said proprietor or to his legal heirs in the event of his death.

(Section 4A)

3.4.4 Suspension of licence

3.4.4.1 If it appears to the Collector or any other office authorised by the State Government that the proprietor of any cinematograph exhibition admits to a cinematograph exhibition persons in violation to the provision of the Act or defaults in the payment of the entertainments tax under this Chapter, the Collector or the other officer may lodge with the licensing authority a report containing details of such admission or default and recommending appropriate action against the holder of the licensee.

3.4.4.2 If on consideration of a report lodged by the Collector and after making enquiries the licensing authority is satisfied that the holder of the licence admits to cinematograph exhibitions persons liable to pay entertainment tax, otherwise than in the manner specified in the Act or defaults in the payment of the entertainment tax he may, by an order, declare such holder of the licence disqualified for holding such licence for such period as he may think fit and shall cancel and impound the licence:

However, when any order is passed under this sub-section, the licensing authority passing such order shall forthwith forward a copy of the same together with a statement of the reasons therefore, to the Commissioner of the Division having jurisdiction, who shall make an order affirming, modifying or revoking the order passed by the licensing authority;

Provided further that no order shall be passed by the licensing authority or the Commissioner, as the case may be, without giving the holder of the licence an opportunity of showing cause against the proposed order.

The order passed by the licensing authority under sub-Section (2) as affirmed or modified by the Commissioner of the Division under the proviso thereof shall take effect from the date on which such order is affirmed or modified by him.

The provisions of this section shall be in addition to and not in derogation of any other provision contained in this Act or in the West Bengal

Cinemas (Regulation) Act. 1954.

Explanation- The expression “licensing authority” means an authority having power to grant licenses under the West Bengal Cinemas (Regulation) Act. 1954.

(Section 4B)

3.4.5 Manner of payment:

3.4.5.1The entertainment tax shall be charged in respect of each person admitted for payment. In the case of a cinematograph exhibition, also in respect of each person admitted without payment or a free or complimentary pass or ticket and, in the case of admission by stamped ticket said tax shall be paid by means of the stamp on the ticket and, in the case of admission otherwise than by stamped ticket, shall be calculated and paid on the number of admissions.

3.4.5.2The entertainment tax, in the case of admission otherwise than by stamped ticket, shall be recoverable from the proprietor.

3.4.5.3Where a proprietor in relation to a cinematograph exhibition allows admission to any person with a ticket which is not duly stamped in accordance with the provisions of the Act, the proprietor shall be liable for payment to the extent of the amount of entertainment tax, under stamped in such ticket.

3.4.5.4Where the payment for admission to an entertainment is made by means of lump sum as a subscription or contribution to any society, or for a season ticket or for the right of admission to a series of entertainments etc. the entertainment tax shall be paid on the amount of the lump sum, but where the State Government is of opinion that the payment of a lump sum or any payment for a ticket represents payment for other privileges, rights or purposes besides the admission to an entertainment, or covers admission to an entertainment during any period for which the tax has not been in operation, the tax shall be charged on such an amount as appears to the State Government to represent the right of admission to entertainments in respect of which the entertainment tax is payable.

(Section 7)

3.4.6 Assessment:

3.4.6.1If the authority prescribed by rules is satisfied that any return submitted under the Act by a proprietor in relation to a cinematograph exhibition is correct and complete, he shall assess the amount of tax payable.

3.4.6.2If no return is submitted by a proprietor in relation to a cinematograph exhibition or if the return submitted by such proprietor appears to the prescribed authority to be incorrect or incomplete, assess to the best of his judgement the amount of entertainment tax, surcharge or additional surcharge payable under this Act by the proprietor.

3.4.6.3Where such proprietor fails to submit the return within prescribed date or the date as specified in the arrangement approved by the State Government, or has willfully furnished incorrect particulars in the return submitted, the prescribed authority may, direct the proprietor to pay by way of penalty in addition to the amount of entertainment tax, surcharge or additional surcharge

so assessed a sum not exceeding double the amount of entertainment tax.

Where:

i. any proprietor in relation to any entertainment, other than horse racing and cinematograph exhibition, has not obtained any prior permission from the prescribed authority before holding any entertainment, or

ii. any proprietor in relation to a pool game or bowling game or sports and games held in an amusement park, theme park or water games park, as the case may be, has not furnished any information/particulars required under the provisions of this Act or the rules made thereunder, or

iii. upon enquiry or information received, the prescribed authority has reasons to believe that the proprietor has furnished incorrect particulars at the time of obtaining permission from the prescribed authority to hold any entertainment; or

iv. the proprietor in relation to a pool game or bowling game or sports and games held in an amusement park, theme park or water games park, has furnished any particulars required under the provisions of this Act or rules made thereunder which are incorrect or incomplete.

The prescribed authority shall proceed to assess to the best of his judgment, the amount of entertainment tax payable by such proprietor, direct such proprietor to pay the amount of tax so assessed in such manner, and within such date, as may be prescribed.

(Section 8A)

3.4.7 Special provision for new and existing cinema halls:

Where a proprietor of a new and permanent cinema hall establishes to the satisfaction of the State Government or any other officer authorised by the Government that his hall has been commissioned on or after the 1st day of April, 1986, the State Government or such officer may by an order in writing permit such proprietor to collect the entertainment tax, leviable and payable under the Act, wholly or partly in cash and to retain by way of subsidy the amount of entertainment tax so collected in cash or grant exemption for a period, not exceeding three years, commencing from the first day of cinematographic exhibition in such hall.

Where the proprietor of an existing cinema hall makes any expansion or modernisation of its features or the facilities provided in such hall, such proprietor shall be entitled to retain, by way of subsidy, such amount of the entertainment tax as collected upto a period not exceeding three years from such date and subject to such conditions and restrictions, as may be prescribed.

The special provision for new cinema halls in Section 8B to retain the entertainment tax by way of subsidy has been extended to the existing cinema halls with effect from 01.04.2003 on the grounds of expansion and modernization.

In Notification No. 2902-F.T., 23rd August, 2004 the existing cinema hall owners have been made eligible for grant of subsidy under the Act for:

i. Replacement of old power generating system with a new one

commensurate with the load capacity of a cinema hall;

ii. Providing new comfortable seats i.e. cushion chairs in place of wooden or plastic chairs and soubrettes or push chairs in place of fixed cushion chairs.

(Section 8B)

In the West Bengal Act 3 of 2003 a new Section has been inserted in the Act and the provision for retaining the entertainment tax by way of subsidy has been introduced in respect of new Multiplex Theatre Complex as well as existing cinema halls converted into such complex with effect from 01.04.2003.

(Section 8C)

3.4.8 Recoveries:

3.4.8.1 Any sum due on account of the entertainment tax, surcharge, additional surcharge, penalty or the show tax shall be recoverable by the State Government as a public demand.

3.4.8.2 Any fine imposed under this Chapter shall be recovered in the manner provided in the Code of Criminal Procedure, 1898 for the recovery of fines.

(Section 10)

3.4.9 Taxes on certain form of Betting:

3.4.9.1 Tax on totalisators and payment thereof:

A tax on backer shall be charged, levied and paid to the State Government out of all monies paid into any totalisator by way of stakes or bets, on every sum so paid at such rate, not exceeding twenty *percent* of every such sum, as the State Government may by notification fix in this behalf; and the amount calculated at the rate so fixed by the State Government, out of every sum so paid into a totalisator shall be deemed to have been paid by the backer on account of the totalisator tax, and shall be received by the stewards of the race-meeting on behalf of the State Government.

(Section 15)

3.4.9.2 Procedure for making over totalisator tax to Government:

The steward of a race-meeting shall, at such times and in such manner as may be prescribed, forward to the prescribed officer a return stating the total amount of the monies paid into the totalisator at the meeting, and shall, at the prescribed time, make over to the prescribed officer the amount of the totalisator tax for that meeting.

(Section 16)

3.4.9.3 Accounts of totalisator tax:

The stewards of a race-meeting shall keep accounts in the prescribed form of all monies paid into the totalisator at that meeting.

Every person having the custody or control of any such accounts shall, when required in writing by an officer empowered in this behalf, permit such officer, or an officer authorised in writing by him in this behalf, to inspect and take copies of them.

(Section 17)

3.4.9.4 Licensee to furnish copies of accounts of totalisator:

A licensee shall furnish copies of accounts of totalisator for all the race meetings throughout the year duly audited by a qualified auditor by 30th April or by such date as may be extended by the State Government on application.

(Section 17A)

3.4.10 Betting tax:

Betting tax means a tax on all monies paid or agreed to be paid to a licensed book maker by a backer in respect of a bet made in an enclosure set apart under the West Bengal Gambling and Prize Competitions Act on any race.

Different rates may be fixed for different classes of betting.

The betting tax shall be collected and paid to the State Government by a licensed bookmaker in such manner as may be prescribed.

(Section 18)

3.4.10.1 Totalisator tax and betting tax in respect of races held outside the State:

The totalisator and the betting tax to be charged, levied and paid in connection with a race which is held outside the State of West Bengal, shall be at a rates not exceeding twenty-two and a half per cent upon the monies paid under the Act.

(Section 18A)

3.4.10.2 Accounts of betting tax:

i. The stewards of a race meeting shall forward to the prescribed officer returns setting out the names of the bookmakers licensed or permitted by them to carry on the business or vocation of a bookmaker at that meeting.

ii. All licensed bookmakers shall keep accounts of all sums paid or agreed to be paid to them by backers in respect of bets, and shall, when required in writing by an officer empowered in this behalf by the State Government, permit such officer, or an officer authorized in writing by him to inspect and take copies of such accounts.

(Section 20)

3.4.10.3 Interest payable by a steward:

Where the steward of a race-meeting furnishes a return in respect of the race-meeting by the prescribed date but fails to make full payment of the amount of the totalisator tax payable under the Act in respect of any race-meeting by the prescribed date, he shall pay a simple interest at the rate of one per centum for each English calendar month of default from the first day of such month next following the prescribed date upto the month preceding the month of full payment of such tax or upto the month preceding the month of commencement of proceedings under sub-section (1) of Section 21, whichever is earlier, upon so much of the amount of tax payable by him according to such return as remains unpaid at the end of each such month.

(Section 20A)

3.4.10.4 Interest payable by a licensed bookmaker:

Where a licensed bookmaker fails to make full payment of the betting tax collected by him in respect of any period by the prescribed date, he shall pay a simple interest at the rate of one per centum for each English calendar month of default from the first day of such month next following the prescribed date up to the month preceding the month of full payment of such tax or up to the month preceding the month of commencement of proceedings under sub-section (2) of section 21, whichever is earlier, upon so much of the amount of such tax collected and payable by him as remains unpaid at the end of each such month.

(Section 20B)

3.4.11 Methods of recovery of totalisator tax and betting tax:

The totalisator tax payable under the Act shall be recoverable as a public demand from the racing club conducting the meeting, and any portion of such totalisator tax which is not so recovered, shall also be recoverable as a public demand from the steward of the race-meeting jointly and severally.

All monies which a licensed bookmaker is liable to pay to the State Government shall be recoverable from the licensed bookmaker as a public demand.

(Section 21)

3.4.12 Entertainments and Luxuries Tax Act

3.4.12.1 Liability for entertainment tax:

An entertainment tax shall be payable by every person who is admitted into or enters any place, within either a hotel or restaurant, which is provided with luxury, where an entertainment is provided, and such tax shall be calculated at the rate of 30 *per cent* of the total sum paid or payable by such person 20 *per cent* of such value services including food and drink supplied to him and also including any fee for admission into such place of entertainment:

where payment is charged for admission to the place of entertainment, the entertainment tax under this section shall in no case be less than 60 *per cent* of such payment for admission to the place of entertainment.

The entertainment tax shall be recoverable from the proprietor.

(Section 3)

3.4.13 Liability for luxury tax:

Luxury tax is payable by the proprietor of every hotel and restaurant in which there is provision for luxury and such tax shall be calculated

(a) in the case of a restaurant at the rate of an annual sum of rupees three hundred for every ten square metres or part thereof in respect of so much of the floor area of restaurant which is provided with luxury, and

(b) in the case of a hotel the following taxes on the daily charges realised or realisable, for an occupied room provided with luxury are realisable:

i. an entertainment tax @ 30% is payable on the sum received for all the services rendered by a hotel provided with luxury and entertainment;

ii. an entertainment tax not less than @ 60% is payable on the sum received as admission fee by a hotel provided with luxury and entertainment; and

iii. a luxury tax @ 10% is chargeable on the daily charges exceeding Rs. 500/- (Rs. 300 upto 31st July 2006) received by a hotel for an occupied room provided with luxury and when daily charges of a room does not exceed Rs. 500/- (Rs. 300/- upto 31st July 2006) no luxury tax is leviable.

(Reference:- Notification Nos. 1125-F.T., dated 24.04.1997 and 1454-F.T. dated 23.08.2006)

In the West Bengal Act XVI of 2001 (No. 1488-L., dated 31.07.2001) the Luxury Tax payable under Section 4(b) of the Act has been abolished in respect of the hotels situated outside the Kolkata Metropolitan Planning Area with effect from 01.08.2001.

(Section 4)

3.4.14 Payment of entertainment tax, luxury tax and submission of returns:

Entertainment tax and luxury tax payable by a proprietor, shall be deposited into a Government Treasury or the Reserve Bank of India, and returns shall be furnished by him to the prescribed authority.

(Section 4A)

3.4.15 Interest payable by the proprietor:

If the amount of entertainment tax or luxury tax payable under the Act is not paid within the time the proprietor shall pay a simple interest at the rate of two per centum for each English calendar month of default from the first day of such month next following the prescribed period, whichever is earlier, upon so much of the amount of tax payable by him according to returns where returns are furnished, or according to such assessment where returns are not furnished, as remains unpaid at the end of each such month of default.

Where a proprietor fails to make a payment of any tax payable after assessment by the date specified in the notice, he shall pay simple interest at the rate of two per centum for each English calendar month of default from the first day of such month next following the date specified in the demand notice up to the month preceding the month of full payment of such tax or up to the month preceding the month of commencement of proceeding under Section 7, whichever is earlier, upon so much of the amount of tax payable by him according to such notice as remains unpaid at the end of each such month of default.

(Section 4B)

3.4.16 Interest payable by the State Government:

The State Government shall, in the prescribed manner, pay a simple interest at the rate of two per centum for each English calendar month of delay in making refund of tax paid in excess which arises out of an order passed under Section 5A, from the first day of such month next following the expiry of three months from the date of passing of such order up to the month preceding the month in which the refund is made upon the amount of tax refundable to him according to such order.

(Section 4C)

3.4.17 Rounding off of the amount of tax payable for calculating interest:

In calculating the interest payable under the Act, the amount of tax in respect of which such interest is to be calculated shall be rounded off to the nearest multiple

of one hundred rupees and for this purpose where such amount contains a part of one hundred rupees, if such part is fifty rupees or more, it shall be increased to one hundred rupees and, if such part is less than fifty rupees, it shall be ignore.

(Section 4D)

3.4.18 Assessment of tax and determination of interest:

i. If any proprietor, who is liable to pay entertainment tax fails to furnish return in respect of any period or if the prescribed authority is not satisfied that the return furnished for any period is correct or complete, he shall assess to the best of his judgements the amount of entertainment tax due from such proprietor and, in making such assessment, he shall give such proprietor a reasonable opportunity of being heard;

ii. If any proprietor, who is liable to pay luxury tax fails to furnish return in respect of any period or if the prescribed authority is not satisfied that the return furnished for any period is correct or complete, he shall assess to the best of his judgements the amount of luxury tax due from such proprietor and, in making such assessment, he shall give such proprietor a reasonable opportunity of being heard;

iii. Where the prescribed authority is satisfied that any proprietor is liable to pay interest he shall determine the amount of interest payable by such proprietor;

iv. No assessment under sub-section (1) or sub-section (2) shall be made after the expiry of two years from the end of the period in respect of which the assessment is made or from the commencement of Section 7 of the West Bengal Taxation Laws (Section Amendment) Act, 1990, whichever is later;

v. In computing the time limited by sub-section (4) for making any assessment under sub-section (1) or sub-section (2), the period during which the prescribed authority is restrained from commencing or continuing any proceeding for such assessment by an order of any Court shall be excluded.

vi. Where any tax is due in consequence of any assessment made under sub-section (1) or sub-section (2) or interest is due in consequence of any determination under sub-section (3), the prescribed authority shall serve upon the proprietor such notice as may be prescribed.

vii. The amount of tax assessed under sub-section (1) or sub-section (2), less the sum if any, already paid by the proprietor in respect of the said period, shall, together with any interest determined under sub-section (3) that may be directed to be paid under the provisions of sub-section (6), be paid in the manner and within the date as may be specified in a notice by the prescribed authority for this purpose, and the date to be so specified shall not be less than thirty days from the date of service of such notice.

(Section 5)

3.4.19 Recovery as an arrear of land revenue:

Any sum due on account of entertainment tax, luxury tax or interest shall be recoverable by the State Government as an arrear of land revenue under the Bengal Public Demands Recovery Act, 1913.

(Section 7)

No entertainment tax, in relation to an entertainment in a hotel or restaurant, shall be leviable on any person under the provisions of Section 3 of the Bengal Amusements Tax Act, 1922, if such person pays entertainment tax under the provisions of this Act.

(Section 9)

Entertainment-cum-Amusement Tax Act

3.4.20 Levy and collection of tax:

(1) Every holder of a television set or sets or every holder of a video cassette recorder set or sets or every holder of a video cassette player set or sets shall pay a luxury-cum-entertainment and amusement tax at the rate given below:

- (a) rupees fifty for each year for every black and white television set;
- (b) rupees one hundred for each year for every colour television set; and
- (c) rupees (two hundred and fifty) for each year for every video cassette recorder set or for every video cassette player set held or possessed by him:

(2) No tax shall be levied and collected on and from a holder of a television set or sets under clause (a) or clause (b) of sub-section (1) for any year or part thereof subsequent to the year 1985.

(3) No tax shall be levied and collected on and from a holder of a video cassette recorder set or sets or a holder of a video cassette player set or sets under clause (c) of sub-section (1) for any year or part thereof subsequent to the year 2000.

(4) Where a person becomes a holder of a video cassette recorder set or sets or a holder of a video cassette player set or sets on any date after the 31st day of March 2000, he shall not be liable to pay tax under Section 4 in respect of the year 2000.

(Section 4)

3.4.21 Levy and collection of tax for exhibition:

(1) The holder of a video cassette recorder set or sets or a holder of a video cassette player set or sets a tax, in addition to the tax payable by him as a holder of the set where such holder makes any public performance or exhibition of film through a video cassette recorder set or a video cassette player set against payments made or to be made by persons admitted to witness such performance or exhibition at the rates specified below: -

(a) if the place of any performance or exhibition is within the area of Kolkata as described in Schedule I to the Kolkata Municipal Corporation Act, 1980 (West Ben. Act LIX of 1980):

(i).	in the case where the number of seats does not exceed 100	Rs. 900 Per week,
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(ii)	in the case where the number of seats exceeds 100 but does not exceed 200	Rs. 1,200 Per week,
(iii)	in the case where the number of seats exceeds 200	Rs. 1,500 Per week,

(b) if the place of any performance or exhibition is within the area of a municipal corporation, other than Kolkata referred to in clause (a), or a municipality or a notified area:

(i)	in the case where the number of seats does not exceeds 100	Rs. 600 Per week,
(ii)	in the case where the number of seats exceeds 100 but does not exceed 200	Rs. 900 Per week,
(iii)	in the case where the number of seats exceeds 200	Rs. 1,250 Per week,
(iv)	if the place of any performance or exhibition is within an area other than the referred to in clause (a), or clause (b)	Rs. 600 Per week

(2) Where the performance or exhibition of films is made in an omnibus registered under the Motor Vehicles Act, 1988, the tax for each year shall be at such rate, not exceeding rupees three thousand per year per set, and shall be payable within time specified by the State Government, irrespective of whether payments are separately made or not by persons witnessing such performance or exhibition.

(3) The holder of a video cassette recorder set or sets or a holder of a video cassette player set or sets shall pay a luxury-cum-entertainment and amusement tax in addition to tax payable by him as holder of the set where

(a) the holder, who is not liable to pay tax under sub-section (1), makes any performance or exhibition of films through such set or sets in a hotel having lodging facilities, at a rate not exceeding rupees twelve thousand per year per set used for such performance or exhibition;

(b) the holder of such set or sets other than the holder mentioned in clause (a), who is not liable to pay tax under sub-section (1), makes performance or exhibition of films through such set or sets in a hotel, shop, restaurant or business place, at a rate not exceeding rupees one thousand and two hundred per week per set used for such performance or exhibition;

and such tax shall be payable by such holder within time specified by the Government.

(4) Where any owner, or any person for the time being in possession, of any electrical, electronic or mechanical device, is a cable operator and receives through such device the signal of any performance, film or any other programme telecast, and thereafter such owner or person, against payment received or receivable:

(i) exhibits such performance, film or programme through cable television network directly to customers; or

(ii) transmits such signal to sub-cable operator, who in turn provides cable service for exhibition of such performance, film or programme to the

customers;

Such owner or person shall be liable to pay tax from the month in which he exhibits such performance, film or programme or transmits such signal to a sub-cable operator on the basis of his monthly gross receipt at such rate, not exceeding twenty-five per centum of the monthly gross receipt,.

By Notification No. 213-FT, dated 27.01.2000, the rate of tax payable has been made uniform at 5 per centum of monthly gross receipt of a cable operator who exhibits any performance, film or programme either through cable T.V. network directly or through the sub-cable operator with effect from 01.04.1998.

(Section 4A)

3.4.22 Meaning of video cassette recorder set or video cassette player set for the purposes of the Act:

(1) The expression “video cassette recorder set”, or “video cassette player set” means video compact disc player set or digital versatile disc player set or any other similar electrical, electronic or mechanical device set.

(2) Provision of sub-section (1) above shall apply in respect of any cinematograph exhibition where entertainment tax is leviable under section 3 of the Bengal Amusement Tax Act, 1922 (Ben. Act V of 1922)

(Section 4AA)

3.4.23 Assessment of tax, and payment thereof:

(1) Every person:

(a) who manufactures luxury-cum-entertainment product himself, or gets it manufactured by any other person, in West Bengal; or

(b) who purchases, procures or receives any luxury-cum-entertainment product from any place outside West Bengal,

and who supplies such product at the first instance in West Bengal for any valuable consideration received or receivable, shall be liable to pay a luxury-cum-entertainment and amusement tax at such rate, not exceeding five per centum of the value of supply in respect of such product.

The State Government may, in the public interest, by notification, exempt from payment of tax:

(i) on such class or classes of person; or

(ii) on such class of supply of such product; or

(iii) on such class or classes of such product, as may be specified in such notification.

(2) The prescribed authority shall, after making such enquiry as he may think necessary and after giving the person referred to in sub-section (1) a reasonable opportunity of being heard, fix the date on and from which such person shall become liable to pay tax under sub-section (1).:

(3) Every person liable to pay tax under sub-section(1):

(a) shall pay the tax in such manner, for such period, and by such date, as may be prescribed;

(b) shall get himself enrolled with the prescribed authority in the manner prescribed;

(c) shall file a return showing the amount of tax payable by him in such form, for such period, and by such date, as may be prescribed;

(d) shall be liable to pay, by way of penalty:

(i) in default of payment of tax payable by him, or

(ii) on his failure, without reasonable cause, to get himself enrolled under clause(b), or

(iii) on his failure, without reasonable cause, to furnish the return under clause (c) for any period referred to in clause (c) by the prescribed date,

an amount, not exceeding the amount of such tax payable for the period referred to in sub-section (iii) of clause(d) may be imposed by the prescribed authority at the time of assessment of tax.

Provided further that no penalty under this clause shall be imposed in respect of the same fact for which prosecution under clause(bb) of sub-section (1) of section 11A has been initiated, and no prosecution shall lie in respect of a fact for which a penalty under this clause has been imposed;

(e) shall, before he furnishes a return under clause (c), pay into a Government Treasury or the Reserve Bank of India in the prescribed manner full amount of tax due from him under this Act according to such return and shall furnish along with such return a receipt from such Government Treasury or the Reserve Bank of India showing payment of such amount.

(4) (a) If the authority to whom return is furnished is satisfied without requiring the presence of the person who submitted such return or the production by him of any evidence that a return furnished under clause (c) of sub-section (3) is correct and complete, he shall assess the tax on the basis of such return;

(b) If no return is furnished by a person liable to pay tax under sub-section (1) in respect of any period or if the prescribed authority is not satisfied that the return furnished by such person is correct or complete, the prescribed authority shall proceed in such manner as may be prescribed to assess to the best of his judgement the amount of tax due from such person in respect of such period and, in making such assessment, it shall give such person a reasonable opportunity of being heard.

(5) No assessment under this section shall be made after the expiry of four years from the end of the year in respect of which or part of which the assessment is made.

(6) In the case of failure of a person liable to make payment of tax payable after assessment made under clause (b) of sub-section (4) by the date specified in the notice of demand issued under sub-section (7) for payment thereof, the prescribed authority may, after giving such person a reasonable opportunity of being heard, impose a penalty not exceeding rupees one hundred for each month of default.

(7) The amount of tax assessed under clause (b) of sub-section (4), or the amount of penalty imposed under clause (d) of sub-section (3), or under sub-section (6), shall be paid by the person referred to therein into a Government Treasury or the Reserve

Bank of India by such date as may be specified by a notice to be issued to him in this behalf, and the date to be so specified shall not ordinarily be less than thirty days from the date of service of such notice.

(8) Every person liable to pay tax under sub-section (1) shall maintain and keep true and up-to-date accounts and records in respect of supply of luxury-cum-entertainment product in West Bengal and shall produce and explain such accounts and records before the prescribed authority as and when required by such authority.

Explanation: For the purposes of this section, “person” shall include an individual, a Hindu undivided family, a company, a firm, or any other association of persons.

In the West Bengal Act III of 2000 (724-L, dated 31.03.2000) a new Section 4BB has been introduced making a person liable to pay Luxury-cum-Entertainment and Amusement Tax with effect from 01.04.2000 for supply of the following Luxury-cum-Entertainment products on the “Value of supply” at the first instance, as detailed in Notification Nos. 918-F.T., and 919-F.T. both dated 31.03.2000. The rates of tax are as under:

- (a) Colour T.V. with screen size 29 inches or above, 5 per centum;
- (b) Colour T.V. with screen size below 29 inches; 2 per centum;
- (c) VCP, VCR and DVD; 2 per centum.

However, the tax payable @ Rs. 250/- per annum for holding VCR or VCP sets has been abolished for any year subsequent to the year.

(Section 4BB)

3.4.24 Payment of tax and penalty:

(1) Subject to the provision of sub-section (2) every holder of a television set or a video cassette recorder set or a video cassette player set shall pay the amount of tax under Section 4 due from him for any year to the prescribed authority in the prescribed manner on or before the last day of February of that year. If any holder of a television set or a video cassette recorder set or a video cassette player set fails to pay the amount of tax under Section 4 due from him on or before the aforesaid date, he shall be liable to pay a penalty, at the rate of:

- (a) rupees five per month or a part thereof for every black and white television set;
- (b) rupees ten per month or a part thereof for every colour television set, and
- (c) rupees ten per month or a part thereof for every video cassette recorder set or every video cassette player set, till the tax under Section 4 and penalty are fully paid by him,

provided that, if the State Government deems fit and proper, it may by a notification, published in the Official Gazette, extend the aforesaid last date of payment of tax for any year.

(2) Where any holder becomes liable to pay the tax under Section 4 during a year after the last day of January of that year, he shall pay in the prescribed manner the amount of tax under Section 4 due from him on or before the last day of the month succeeding the month in which he becomes so liable and on his failure to pay the amount of tax under section 4 due from him on or before the aforesaid date he shall be liable to pay a penalty, at the rate of:

- (a) rupees five per month or a part thereof for every black and white television set;
- (b) rupees ten per month or a part thereof for every colour television set; and
- (c) rupees ten per month or a part thereof for every video cassette recorder set or every video cassette player set,

till the tax under Section 4 and penalty are fully paid by him.

Provided that if in any year the holder of a television set or a video cassette recorder set or a video cassette player set becomes liable to pay the tax as specified in the first proviso to Section 4, the rate of penalty specified in this sub-section.

(3) A holder of a video cassette recorder set or a video cassette player set shall pay the amount of tax under:

- (a) sub-section (1) of Section 4A due from him for any week; and
- (b) sub-section (2) or sub-section (3) of Section 4A due from him for any year,

(4) To the prescribed authority in the prescribed manner within seven days from the end of such week or within such notified time, as the case may be. If such holder fails to pay the amount of tax under Section 4A within the aforesaid period, he shall be liable to pay a penalty at the rate rupees ten per week or part thereof per video cassette recorder set or video cassette player set till the tax under Section 4A and the penalty are fully paid by him.

(Section 5)

3.4.25 Registration of Cable Operator:

(1) Every cable operator referred to in sub-section (4a) of Section 4A who is liable to pay tax under that sub-section shall get himself registered with the prescribed authority in the prescribed manner within ninety days from the end of the month in which he has become liable to pay tax under the said sub-section or within ninety days from the date of coming into force of Section 5 of the West Bengal Finance Act, 1998, whichever is later;

(2) If a cable operator fails to get himself registered within the time specified in sub-section (1), the prescribed authority may, after giving such cable operator a reasonable opportunity of being heard, impose a penalty of a sum not exceeding five hundred rupees for each month of default;

(3) No penalty under sub-section (2) shall be imposed in respect of the same fact for which prosecution under clause (c) of sub-section (1) of Section 11A has been initiated and no such prosecution shall lie in respect of a fact for which a penalty under sub-section (2) of this section has been imposed.

(Section 5A)

3.4.26 Periodical returns and payment of tax by registered Cable Operator:

(1) Every cable operator registered under this Act shall furnish a return to the prescribed authority for each month showing his gross receipt and the amount of tax payable thereon;

(2) Before a cable operator furnishes a return referred to in sub-section (1), he shall;

(3) prescribed manner, pay into a Government Treasury or the Reserve Bank of India the full amount of tax due from him in respect of a month as per such return, and shall enclose along with such return a receipt from the Treasury or the Reserve Bank of India in proof of payment of such amount.

(Section 5B)

3.4.27 Interest payable by Cable Operator registered under this Act and determination thereof:

(1) Where a cable operator registered under this Act fails to make full payment of tax payable under the Act within the prescribed date, he shall pay a simple interest at the rate of one per centum for each month of default from the first day of such month next following the prescribed date upto the month preceding the month of full payment of such tax, or upto the month prior to the month of assessment whichever is earlier, upon so much of the amount of tax payable by him according to the return where such return has been furnished, or according to such assessment where such return has not been furnished, as remains unpaid at the end of such month of default;

(2) Where a cable operator registered under this Act fails to make payment of tax payable within the date fixed by the prescribed authority after the assessment he shall pay a simple interest at the rate of one per centum for each month of default from the first day of the month next following the date specified in the demand notice upto the month prior to the month of full payment of such tax or upto the month preceding the month of commencement of proceedings under Section 9, whichever is earlier, upon so much of the amount of tax payable by him according to such demand notice as remains unpaid at the end of such month of default;

(3) A cable operator liable to pay interest under sub-section (1) or sub-section (2) of this section, as the case may be, shall pay into a Government Treasury through treasury link bank or the Reserve Bank of India the amount of interest payable by, or due from, him;

(4) Where as a result of an order passed under Section 10, the amount of tax payable is modified, the interest payable under sub-section (1), or sub-section (2) of this section, shall be determined or re-determined on the basis of such modified amount and the excess interest paid, if any, shall be refunded.

(5) Where the prescribed authority is satisfied that any cable operator is liable to pay interest under this section, such authority shall, in such manner as may be prescribed, determine the amount of interest payable by such cable operator.

(Section 5BA)

3.4.28 Interest payable by prescribed authority:

The prescribed authority shall pay a simple interest at the rate of one per centum for each month of delay in making refund of tax paid in excess from the first day of such month next following the date of passing of such order upto the month preceding the month in which the refund is made, upon the amount of tax refundable to the cable operator according to such order.

(Section 5BB)

3.4.29 Rounding off tax payable for calculation of interest:

In calculating the interest payable, the amount of tax in respect of which such interest is to be calculated, shall be off to the nearest multiple of rupees ten and for this purpose, where such amount is less than rupees five, it shall be ignored.

(Section 5BC)

3.4.30 Assessment of tax payable by registered Cable Operator:

Every registered cable operator liable to pay tax under the Act shall furnish monthly return in Form F within thirty days immediately after the expiry of each month before the Agricultural Income Tax Officer concerned and the return shall be accompanied by a receipted challan showing payment of tax as per return. If no return is furnished by a cable operator registered under this Act in respect of any month of a year, or if the prescribed authority is not satisfied that the return furnished in respect of any month of a year is correct and complete, the prescribed authority shall proceed in such manner as may be prescribed to assess the amount of tax due from such cable operator for such year, and in making such assessment, it shall give such cable operator a reasonable opportunity of being heard; and in the case of failure of such cable operator to furnish return for any month accompanied by a receipt as required under sub-section (2) of Section 5B by the prescribed date, the prescribed authority may, if it is satisfied that the default was without any reasonable cause, direct that such cable operator shall pay by way of penalty, in addition to the amount of tax assessed, a sum not exceeding the amount of tax so assessed:

Provided that no penalty under this section shall be imposed in respect of the same fact for which a prosecution under clause (a) of sub-section (1) of Section 11A has been instituted and no prosecution shall lie vice versa.

(Section 5C)

3.4.31 Assessment of tax payable by Cable Operator other than registered Cable Operator:

If, upon information which has come into its possession, the prescribed authority is satisfied that a cable operator liable to pay tax under this Act in respect of any month of a year has failed to get himself registered or has not been registered, the prescribed authority shall proceed to assess to the best of the judgement the amount of tax due from such cable operator in respect of such year and all subsequent years and, in making such assessment, it shall give such cable operator a reasonable opportunity of being heard:

No assessment under this section shall be made before the prescribed authority makes such enquiry as it may think necessary and, after giving the cable operator a reasonable opportunity of being heard, fixes the date on and from which such cable operator shall become liable to pay tax under the Act.

(Section 5D)

3.4.32 Maintenance of accounts, records etc:

Every cable operator shall maintain and keep true and up-to-date accounts and records of gross receipts in respect of payments received or receivable for rendering cable service through cable television network and shall produce and explain such documents before the prescribed authority as and when required.

(Section 5E)

3.4.33 Statement to be furnished by holders:

Such holder or a video cassette recorder set or a video cassette player set as may be prescribed shall furnish a statement in such form containing such particulars, by such date, in such manner, and to such authority, as may be prescribed.

(Section 6B)

3.4.34 Recovery of tax and penalty in arrears:

All arrears of tax and penalty due from the holder of a television set, a video cassette recorder set or a video cassette player set or from the person liable to pay tax under sub-section (4a) of Section 4A or from the person liable to pay tax under sub-section (1) of Section 4BB, shall, after giving such holder or such person, as the case may be, one month's notice, be recoverable as arrears to land revenue under the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

(Section 9)

3.4.35 Special mode of recovery:

(1) Notwithstanding any proceeding initiated under Section 9 for recovery of any sum due on account of arrears of tax and penalty under this Act as an arrear of revenue the prescribed authority may at any time or from time to time, by notice require any person from whom money is due or may become due from a holder of a video cassette recorder set or a video cassette player set liable to pay tax under or to an owner or person liable to pay tax under sub-section (4a) of Section 4A or to a person liable to pay tax under sub-section (1) of Section 4BB (hereinafter referred to as the defaulter), or require any person who holds or may subsequently hold money for or on account of such defaulter, to deposit into a Government Treasury or the Reserve Bank of India under the appropriate head of account, within the time specified in the notice (not being before the money become due or is held), so much of the money as is sufficient to pay the amount due from such defaulter in respect of the arrears of such tax or penalty, or the whole of the money;

(2) A notice under this section may be issued to any person who holds or may subsequently hold any money for, or on account of, the defaulter jointly with any other person and, for the purposes of this section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal;

(3) If the person to whom a notice under this section is sent fails to make payment in pursuance thereof, he shall also be deemed to be a defaulter in respect of the amount specified in the notice, and further proceedings may be taken against such person for the recovery of the amount as if it were an arrear due from him, and the notice shall have the same effect as attachment of a debt;

(4) The prescribed authority may apply to the court in whose custody there is money belonging to the defaulter for payment to him of the entire amount of such money or, if it is more than the amount of tax due, or penalty due, such amount as is sufficient to discharge the liability of the amount of tax or penalty due.

Provided that any dues exempt from attachment in execution of a decree of a Civil Court under Section 60 of the Code of Civil Procedure, 1908 (5 of 1908), shall be exempt from any payment required to be made under this section.

(Section 9A)

CHAPTER – V
Exemptions and Refund
Amusement Tax Act

3.5.1 Exemptions:

The State Government may, for social educational or scientific purposes, by general or special order, exempt fully or partly the entertainment tax or show tax payable under this Act for any entertainment or class of entertainment.

(Section 8)

West Bengal Act XXV of 2003 (No. 2098-L, dated 15.12.2003) enhanced the exemption limit for theatrical performance and jatra held in an auditorium, hall to Rs. 60/- only.

3.5.2 Entertainments and Luxuries Tax Act:

No entertainment tax, in relation to an entertainment in a hotel or restaurant, shall be leviable on any person under the provisions of Section 3 of the Bengal Amusements Tax Act, 1922, if such person pays entertainment tax under the provisions of this Act.

(Section 9)

3.5.3 Entertainment-cum-Amusement Tax Act:

Where tax is payable under Section 4A by a holder of a video cassette recorder set or a video cassette player set for public performance or exhibition referred to in that section, no entertainment tax, surcharge or additional surcharge shall be leviable or payable under the Bengal Amusements Tax Act, 1922 (Ben. Act V of 1922), in respect of such performance or exhibition.

(Section 4B)

3.5.4 Exemptions:

(1) No tax under this Act shall be payable by the Central Government or any State Government, or the Corporation of Kolkata or any Municipality, Zilla Parishad, Panchayat Samiti or Gram Panchayat.

(2) No tax shall be leviable in respect of any television set, video cassette recorder set or video cassette player set owned and used by an educational institution, which is recognized by the State Government or by any officer authorized by the State Government and which, on an application being made to the prescribed authority is exempted by such authority, from payment of the tax, subject to such terms and conditions as may be prescribed.

(3) The prescribed authority, on a application being made to it in the prescribed form by a dealer or a manufacturer of television sets, video cassette recorder sets, or video cassette player sets who keeps such sets for the purpose of trade, may grant, on such terms and conditions as may be prescribed, to such dealer or manufacturer a certificate in the prescribed form to the effect that during the period the certificate is in force the dealer or the manufacturer, as the case may be, shall not be liable to pay any tax:

Provided that before granting such certificate the prescribed authority shall make such enquiry as it deems necessary.

(Section 6)

3.5.5 Exemption from penalty:

Where any tax payable under Section 4 by any holder of video cassette recorder set or video cassette player set in respect of any year or years or part of any year falling during the period commencing on the first date of his liability to pay such tax and ending on the 31st day of December, 1992, has not been or is not paid by the time specified in sub-section (1) or sub-section (2) of Section 5, no penalty shall, notwithstanding anything contained in sub-section (1) or sub-section (2) of Section 5, be payable by such holder, provided that he pays, in the prescribed manner, the entire amount of such tax in respect of such year or years or part of any year, as the case may be at a time to the prescribed authority on or before the 31st day of December, 1992.

(Section 6A)

3.5.6 Refund:

The prescribed authority shall refund to any holder of a television set, a video cassette recorder set or a video cassette player set, or to an owner or person liable to pay tax under sub-section (4a) of Section 4A or to a person liable to pay tax under sub-section (1) of Section 4BB who paid any excess tax or penalty and who, on an application made, satisfies such authority that:

- (i) he stands exempted from payment of tax under any of the provisions of Section 6 and the penalty so paid, or
- (ii) he has paid the tax or penalty in excess of the amount due from him under this Act.

(Section 7)

CHAPTER – VI

Inspection, Search and Seizure

3.6.1 Inspection, search and seizure:

The Collector, the Commissioner of Entertainment Tax or any other officer authorised by the State Government may, require any proprietor-

(a) to produce before him any accounts, books, records, registers, unsold tickets and counterfoils of sold thickets or other documents relating to any entertainment;

(b) to furnish any information relating to any entertainment as may be deemed necessary for the purposes of this Chapter.

If the Collector, the Commissioner of Entertainments Tax or any other officer authorised by the State Government has reason to believe that any person liable to pay any entertainment tax under this Chapter is attempting to evade such payment he may, seize such accounts, registers, books, records, unsold tickets and counterfoils of sold tickets and other documents as may be necessary and shall grant a receipt for the same and shall retain the same for such period as may be necessary for examination thereof.

The Collector or the Commissioner of Entertainments Tax may forward to the Bureau of Investigation constituted under Section 7 of the West Bengal Sales Tax Act, 1994, any case of alleged or suspected evasion of entertainment tax as well as malpractices connected therewith for investigation and enquiry and the said Bureau of Investigation shall send a report in respect thereof to the Collector or the Commissioner of Entertainments Tax, as the case may be.

The Collector, the Commissioner of Entertainment Tax and every officer authorised under this section shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

In the West Bengal Act VI of 2004 (No. 1304-L, dated 20.08.2004) a new Section 11XA has been inserted. By virtue of this new Section, the Director of Economic Offences Investigation Cell shall carry out investigation or hold enquiry into any case of evasion of tax and the malpractices connected therewith and the Bureau of Investigation referred to in clause (b) of sub-section (4) of Section 11 of the Act shall cease to exercise power under that section with effect from 01.09.2004.

(Section 11)

3.6.2 Inspection, search and seizure by the Director of Economic Offence Investigation Cell:

(1) The Director of Economic Offence Investigation Cell may, on information or of his own motion or when the State Government so direct, carry out investigation or hold inquiry into any case of alleged or suspected evasion of tax as well as malpractices connected therewith..

(2) On receipt of the report referred to in sub-section (2), the State Government may send such report to the Commissioner of Entertainments Tax or the Collector, as the case may be, for taking such action as may be deemed necessary.

(Section 11XA)

Entertainments and Luxuries Tax Act:

3.6.3 Inspection:

Any officer not below the rank of Agricultural Income Tax Inspector appointed by the State Government to assist the Commissioner of Agricultural Income Tax, in Kolkata and Sub-Deputy Collector in a district, authorised by the State Government for the purpose, may enter any hotel or restaurant at any reasonable time with a view to seeing whether the provisions of this Act or the rules made thereunder are being complied with.

(Section 8)

Entertainment-cum-Amusement Tax Act:

3.6.4 Power of search:

The prescribed authority or such other officers as the State Government may, by notification in the Official Gazette, appoint may search any building, premises or place in which it has reason to believe that any television set, video cassette recorder set or video cassette player set, the holder of which is liable to pay tax, is kept or concealed and ask the person or persons in whose building, premises or place the television set, video cassette recorder set or video cassette player set, is found, necessary questions for determination of the liability to pay tax.

(Section 8)

3.6.5 Seizure:

If the prescribed authority or such other authority as the State Government may, by notification in the Official Gazette, appoint, has reason to believe, upon information or otherwise, that any cable operator liable to pay under sub-section (4a) of Section 4A-

- (a) fails to get himself registered under this Act within the prescribed period; or
- (b) fails to submit a return to the prescribed authority under Section 5B for each month showing his gross receipt and the amount of tax payable thereon in such manner, and within such time, as may be prescribed; or
- (c) is evading any tax or is attempting to evade payment of any tax, or has failed to deposit any tax, as the case may be.

(Section 8A)

CHAPTER – VII

Offences and Penalties

3.7.1 Offences and penalties:

- (1) If the proprietor of any entertainment:
- (a) admits to any entertainment any person liable to pay entertainments tax except in compliance with the provisions of Section 4; or
 - (b) fraudulently evades the payment of any entertainment tax or show tax due under this Chapter; or
 - (c) fails to furnish the returns prescribed under this Chapter and the rules made thereunder; or
 - (d) contravenes any other provisions of this Chapter or the rules made thereunder,
- he shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to three thousand rupees or with both and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.
- (2) If any person prevents or obstructs the entry of the Collector, the Commissioner of Entertainment Tax or any other officer into any place of entertainment he shall, in addition to any other punishment to which he is liable under any law for the time being in force, be liable on conviction before a Judicial Magistrate of the first class to a fine not exceeding two hundred rupees.
- (3) (a) The Collector or the Commissioner of Entertainment Tax, may at any time accept from any person who has committed an offence punishable under this Chapter or the rules made thereunder by way of composition of such offence, a sum of money not exceeding rupees one thousand or double the amount of the tax payable, whichever is greater;
- (b) On payment of the sum compounded under clause (a) no prosecution for any offence punishable under this Chapter, or the rules made thereunder, shall be instituted or proceeded with in respect of the same fact for which composition of such offence has been made under that clause.

(Section 11A)

3.7.2 Cognizance of offence:

No court shall take cognizance of any offence under the Act, or the rules made thereunder, except with the previous sanction of the Collector, or the Commissioner of Entertainment Tax and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try such offence.

(Section 11B)

3.7.3 Offences to be cognizable and bailable:

The offences punishable under the WBEAT Act shall be cognizable and bailable.

(Section 11C)

Entertainments and Luxuries Tax Act:

3.7.4 Penalty:

(1) If any person fails to pay the entertainment tax or the luxury tax within the prescribed period he shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees and where the offence is a continuing one, with a further fine not exceeding five rupees for every day during which the offence continues.

(2) A person who is convicted for an offence under sub-section (1) shall, in addition to the fine, be liable to pay the tax which was payable by him under the Act.

(Section 6)

Entertainment-cum-Amusement Tax Act:

3.7.5 Offences and penalties:

(1) Whoever being liable to pay tax under sub-section (4a) of Section 4BB:

(a) fails to pay for more than three months the full amount of tax payable in accordance with the provisions of sub-section (2) of Section 5B, or

(b) submits willfully false declaration under sub-section (5) of Section 4A, or

(bb) contravenes the provisions of clause (b) of sub-section (3) of Section 4BB, or

(c) contravenes the provisions of sub-section (1) of Section 5A,

shall be punishable with simple imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both, and when the offence is a continuing one, with a daily fine not exceeding one hundred rupees during the period of continuance of the offence.

(2) Whoever obstructs or tries to prevent the prescribed authority or any person appointed under sub-section (2) of Section 3 from searching any building, premises or place in accordance with the provisions contained in sub-section (1), or sub-section (2), of Section 8 shall be punishable with simple imprisonment which may extend to one year or with fine not exceeding five thousand rupees or with both.

(3) No court shall take cognizance of any offence under this Act or the rules made thereunder except with the previous sanction of the prescribed authority, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate shall try any such offence.

(4) All offences under this Act shall be cognizable and bailable.

(Section 11A)

CHAPTER – VIII
Appeal and Review
Amusement Tax Act

3.8.1 Appeal and review:

(1) Any proprietor in relation to an entertainment, may prefer an appeal against any order of assessment under the Act or any other order made under the Act, within thirty days from the receipt of a notice of demand or order in respect thereof, or such further period as may be allowed by the appellate authority for cause shown to his satisfaction.

Provided that no appeal shall be entertained by the said authority unless it is satisfied that such amount of entertainment tax, surcharge or additional surcharge as the appellant may admit to be due from him, has been paid.

Schedule	
Agricultural Income Tax Officer	Assistant Commissioner, Agricultural Income Tax referred to in clause (2) of rule (1) of the Bengal Tax Rules, 1941
Sub-divisional Officer	Collector or Deputy Commissioner of the respective Districts or Additional Collector or Additional Commissioner if so directed by the Collector or Deputy Commissioner

(2) Subject to such procedures as may be prescribed by rules, made under this Act, the appellate authority in disposing of any appeal under sub-section (1), may confirm, cancel or modify any order of assessment under Section 8A or any other order made under the Act.

(3) Subject to the rules as may be made under this Act, in respect of any assessment made or order passed by the prescribed authority, the prescribed authority may, upon application made within thirty days from the date of receipt of demand notice or order, or on its own motion, within four years from the date of such assessment or order and after giving the proprietor an opportunity of being heard, review such assessment or order passed earlier under the Act.

(Section 11E)

3.8.2 Second appeal to Commissioner of Entertainment Tax:

Any proprietor, in relation to an entertainment, if aggrieved by an order made under the Act by the appellate authority, may, in such manner as may be prescribed by rules made under this Act, prefer an appeal to the Commissioner of Entertainment Tax against such order within thirty days from the date of communication of the order or such further period as may be allowed by the said authority for cause shown to his satisfaction.

(Section 11EA)

3.8.3 Suo motu revision by Commissioner of Entertainments Tax:

The Commissioner of Entertainment Tax may, on his own motion, call for the record of any proceedings under this Act in which an order has been passed by an authority subordinate to him and after making such enquiry, may revise the order so passed or may pass such order as he thinks fit.

Provided that the Commissioner of Entertainment Tax shall not pass an order under this section, which is prejudicial to the interest of the proprietor without giving him a reasonable opportunity of being heard:

Provided further that Commissioner of Entertainment Tax shall not, on his own motion, revise an order under this Section after expiry of three years from the date of the order sought to be revised.

(Section 11EB)

3.8.4 Bar of suits in civil Courts:

Except as otherwise provided in this Act, the decision of the prescribed authority shall be final and no civil court shall have jurisdiction to decide or deal with any question which by or under this Act or the rules made thereunder is required to be dealt with by the prescribed authority or to set aside or modify any order made under this Act or the rules made thereunder.

(Section 11F)

Entertainments and Luxuries Tax Act

3.8.5 Appeal and review:

(1) A proprietor aggrieved by an order made under this Act or the rules made thereunder may appeal to such authority and in such manner as may be prescribed within sixty days from the date on which he receives an intimation of such order or within such further period as may be allowed by such authority for cause shown to his satisfaction;

(2) The appellate authority shall dispose of the appeal in manner prescribed;

(3) The prescribed authority may, of its own motion or upon application, review an assessment made or order passed under this Act or the rules made thereunder within two years from the date of making such assessment or passing such order:

No assessment shall be revised or reviewed without giving the proprietor a reasonable opportunity of being heard.

The prescribed authority may, on application or on its own motion, review, or on before the 31st day of March, 1996, any assessment made, on or before the 31st day of March, 1994, under sub-section (2) of Section 5 of the tax payable by a proprietor under clause (b) of Section 4.

(Section 5A)

Entertainment-cum-Amusement Tax Act

3.8.6 Appeal and rectification of mistakes:

(1) Any holder of television set, a video cassette recorder set or a video cassette player set or any person aggrieved by the notice served on him under Section 9 or by an order made under this Act or the rules made thereunder, may appeal to such authority and in such manner as may be prescribed within thirty days from the date on which he receives such notice or an intimation of such order or within such further period as may be allowed by such authority for cause shown to its satisfaction;

(2) The appellate authority shall dispose of the appeal in the prescribed manner;

(3) Subject to such rules as may be prescribed, the prescribed authority may, of its own motion or upon application, rectify any mistake in the notice referred to in section 9 and issue a revised notice.

(Section 10)

3.8.7 Indemnity:

No suit, prosecution or other legal proceeding shall lie against any officer of the State Government for anything which is in good faith done or intended to be done in the discharge of his duties under this Act or the rules made thereunder.

(Section 11)

CHAPTER – IX

Registers and Records maintained

3.9.1 Registers/Returns maintained:

A. Registers:

- (1) Demand Collection and Balance Register in respect of cinema houses;
- (2) Demand Collection and Balance Register in respect of hotels/restaurants;
- (3) Blueprint Register in respect of hotels and restaurants provided with luxury;
- (4) Stamp Register;
- (5) Challan Register;
- (6) Show Tax Register;
- (7) Surcharge Register;
- (8) Security Deposit Register;
- (9) Refund Register;
- (10) Exemption Register;
- (11) Inspection Register;
- (12) Penalty Register;
- (13) Case Register;
- (14) Register of cinema houses;
- (15) Appeal Register;
- (16) Register of cable operators;
- (17) Register of hotels and restaurants/amusement parks etc;
- (18) General Index Register;
- (19) Process Register;
- (20) Daily Collection Register;
- (21) Certificate Register;
- (22) Casual Show Register;
- (23) Enrolment Register of manufacturers/purchasers of luxury-cum-entertainment products;
- (24) Assessment Records.

B. Returns:

- (1) Weekly return of amusement tax;
- (2) Weekly return of surcharge;
- (3) Weekly return of show tax;
- (4) Monthly return of stamps;

- (5) Return in respect of casual shows;
- (6) Periodical returns furnished by the Cable Operators/Sub-cable Operators, Video Hall Owners/Hotel & Restaurant owners/ Amusements Parks;
- (7) Statement of accounts in respect exempted shows;
- (8) Statement of accounts in respect of football, cricket and hockey matches;
- (9) Statement of accounts submitted by the stewards in respect of each race for assessment of totalisator tax;
- (10) Statement of accounts submitted by the licensed book-maker in respect of each race for assessment of betting tax;
- (11) Statement of accounts in respect of sale of tickets in respect of hotel, bar & restaurant for each entertainment;
- (12) Statement furnished by the holders of video Cassette Recorders/Players.

CHAPTER – X

Scope of Audit and Audit Checks

3.10.1 Scope of Audit:

The revenues realised from various kind of entertainment under different Tax Acts may fall under the following categories:

- (a) Taxes;
- (b) Penalties realised for contravening the provisions of the Acts and Rules;
- (c) Fees levied for appeals etc.

The audit of receipts from entertainment consists in seeing that the:

- (i) various kinds of taxes and fees leviable under the Entertainment Tax Acts have been levied correctly at the prescribed rates;
- (ii) the penalty leviable under the law had been levied or considered for levy but not levied for reasons recorded;
- (iii) the various kinds of taxes have been realised correctly on all payments for admission to entertainment, from all proprietors and organisers of the entertainment;
- (iv) the procedures followed in assessment and collection of revenue were adequate and ensured correctness in assessment, refund, penalties etc.

In order to discharge these functions efficiently the auditor must be thoroughly conversant with the processes and procedures relating to assessment, levy and collection of taxes and the laws and rules regulating the imposition of taxes and fees.

3.10.2 Audit Checks:

The primary duty of audit is to see that:

- (i) all assessments have been done correctly in accordance with the law;
- (ii) demands have been raised in time and collected promptly;
- (iii) receipts have been credited into Government Account without delay; and
- (iv) rules and regulations framed for the assessment and collection of revenue are adequate.

The nature of checks will depend on the procedure for raising demand, mode of collection of revenue and its remittance into Treasury for crediting into Government Account.

The demands are raised against the organizations of entertainments, proprietors of hotels and restaurants, stewards, licensed book-makers of races and cable operators on the basis of returns furnished by them as provided in various rules and orders. Audit would review the returns and registers maintained by the departments to see that the demands have been raised as per rules. Audit would test check the individual cases to see that various kinds of taxes and fees realisable under the acts and rules have been correctly imposed.

Audit would further see that:

- (a) there is an effective monitoring system to ensure that all returns due from the proprietors have been received in time, the returns are correct and the taxes

and fees payable on the basis of returns have been paid;

- (b) there is an effective system of reconciliation of receipts and its remittance into treasury;
- (c) audit may take an exercise of cross verification of income tax return of the proprietor of a cinema/theatre, if the income of the cinema/theatre hall are prima-facie too meager in comparison with for an economic working of a cinema/theatre;
- (d) the departmental instructions, if any, to check evasion of duty have been duly observed by the Inspectors/Assessing Authorities; and
- (e) there is no irregularities in renewal of cinema licences.

3.10.3 Registers:

3.10.3.1 Register of demand and collection:

A register is required to be maintained showing the position of revenue demanded, revenue realised and revenue in arrears. Each page of this register is to be set apart for each cinema house, hotel and restaurant etc.

The Audit will see that:

- (a) a complete list of places of entertainment liable for the tax is maintained upto date and all these places have been recorded in the register;
- (b) assessed revenue has been properly entered in the register;
- (c) realisation of revenue has been noted with supporting treasury Challan no. and date;
- (d) arrear of revenue have been stuck out properly.

3.10.3.2 Blueprint Register of Hotels and Restaurants:

The Register contains the details of floor area of the hotels/restaurants which is provided with air conditioning.

The Audit will see that:

- (a) The floor area stated in the return has been properly measured by the technical experts as provided in rules and supported by the certificates thereof;
- (b) Luxury tax has been calculated with reference to floor area mentioned in the prescribed Register and the same is realised at the end of each quarter;
- (c) Floor area is inspected by the assessing officer at regular interval and any charge in air-conditioning of the floor area has been noted correctly and necessary revision of tax has been made.

An attempt may be made to test check the floor area adopted by the assessing authorities with the information that may be available with the municipal authorities with the assistance of the Local Fund Audit Branch.

3.10.3.3 Stamp Register:

The Register contains issue of various denominations of stamps to cinema houses from time to time.

The Audit will see that:

- (a) stamps are issued on application made in Form No.5;
- (b) numbers of stamp of different denominations are entered into the register against the date of issue;
- (c) the balance of stamps in each cinema houses are checked with reference to weekly returns submitted by cinema houses;
- (d) periodical inspections of the cinemas are conducted during which it is verified that no tickets are issued without the requisite stamps being affixed;
- (e) if there is any system of test purchase of tickets, the system is properly implemented so as to cover all the cinemas.

3.10.3.4 Challan Register:

The Register contains challan no. and date of deposit of revenue into treasury. Audit will test check the challans for the selected period and cross verify with the treasury records. Audit will ensure that necessary reconciliation is done by the department with the departmental receipt and treasury figures.

3.10.3.5 Show Tax and Surcharge Register:

The Audit will see that:

- (a) assessment of show tax and surcharge has been correctly made at the prescribed rate with reference to no. of persons admitted into a cinematograph exhibition;
- (b) show tax is realised promptly from the proprietors of cinema houses and deposited promptly into the Government Treasury;
- (c) necessary action has been taken against realisation of arrear show tax from the proprietors;
- (d) realisation of show tax are noted showing the details of challan no. and date.

3.10.3.6 Exemption Register:

This Register contains the details of exemptions granted by the competent authority from time to time. The case files should be reviewed by audit to see that:

- (a) the conditions prescribed in granting the exemptions are obeyed in accordance with the laws and the guide lines issued by the State Government;
- (b) the accounts were received within stipulated period and scrutinised;
- (c) conditions laid down in granting the exemptions are shown to have been observed that is, the authority granting the exemption has satisfied himself that the conditions had been observed by the beneficiaries;
- (d) necessary demand of tax has been raised against the defaulting cases viz. non-submission of accounts, violation of the conditions of exemption etc.

3.10.3.7 Security Deposit Register:

The Register contains details of security deposits received from different

parties before holding casual shows/shows exempted from payment of amusement tax.

The Audit will see that:

- (a) the security deposit is adequate in relation to the value of tickets proposed to be sold;
- (b) the security money has been deposited into treasury before according permission for holding shows by the competent authority;
- (c) the deposit in question is authenticated as correct;

Note: Audit may also check the principle of fixation of security deposit with reference to some case records.

- (d) suitable action for forfeiture of security deposit is taken against defaulting parties who had not submitted statement of accounts in time or had not fulfilled the conditions of exemption.

3.10.3.8 Inspection Register:

The Audit will see that:

- (a) Inspections are conducted by the inspecting staff at regular intervals at the place of entertainment to verify that all tickets issued bear the requisite stamps and no one has been admitted to the show without a duly stamped receipts;

Note: The number of inspection made by the inspecting staff in any period may be reviewed to verify the adequacy of checks and also to see that there is recorded evidence to the effect that the inspector exercises these checks properly.

- (b) action has been taken on the irregularities mentioned in the inspection reports particularly in the case of persistent irregularities.

3.10.3.9 Refund Register:

This Register is maintained showing every amount of refund for which certificate of refund was issued.

The Audit will see that:

- (a) calculation of the amount of refund of tax has been correctly made with reference to the statement of accounts of entertainment furnished by the party;
- (b) that the whole of the net proceeds of an entertainment are devoted to philanthropic, religious or charitable purposes and that in calculating the net proceeds not more than twenty five per cent of the gross proceeds have been deducted on account of expenses of the entertainment;
- (c) necessary notes of refunds along with refund certificates has been made against the item noted in the deposit register to avoid double payments;
- (d) the refund payment order has been encashed within its validity period.

3.10.3.10 Case Register:

The register is maintained showing the cases of defaulting parties reported to the Collector for initiating recovery proceedings as required under Section 10 of the Bengal Amusement Tax Act, 1922, Sec. 7 of the West Bengal

Entertainment and Luxuries (Hotels and Restaurants) Act, 1972 and Section 9 of the West Bengal Entertainment-cum-Amusement Tax Act, 1982.

Audit will see that:

- (a) the assessing officer had reviewed the register from time to time and taken up cases of inordinate delays in realisation of tax with the appropriate authorities;
- (b) the particulars of defaulting parties viz., address etc., nature of irregularities committed have been noted in the Register so as to identify the parties.

Audit will see that service charges realized has been shown in the books of accounts of cinema hall owners and properly utilized to the satisfaction of the competent authority.

Audit will also check all other Registers maintained for different purposes to see that they are being maintained properly with due observances to the provisions of Entertainment Acts and Rules and any deviations therefrom may be pointed out during local inspection.

3.10.4 Returns:

The various types of returns are filed by the proprietors or organisers of the entertainments from the basic records against which the assessment is made. In order to verify the correctness of the assessment, scrutiny of returns by audit is essential. The following will be the procedure for checking these returns in regard to:

3.10.4.1 Weekly return of amusement tax, surcharge and show tax:

The Audit will see that:

- (a) the returns are submitted in time;
- (b) the returns bear evidence of checking by assessing officer with reference to various classes of admission tickets sold and requisite value of entertainment tax stamps used according to the class of admission as mentioned in Sec. 3 (a) of the Act;
- (c) opening and closing balance in respect of different denomination of stamps were verified from the stamp register;
- (d) tickets issued for admission tally with three sets of returns viz. Amusement Tax, Surcharge and Show tax;
- (e) show tax realisable under Section 3A of the Act from proprietor is deposited into Treasury within the stipulated period. (The entries relating to payment of tax may be traced in Demand, Collection and Balance Register as well as Challan Register),
- (f) accuracy of returns has been checked by the amusement tax inspectors with regular interval with reference to counter foils of tickets preserved in cinema houses.

3.10.4.2 Monthly Return of Stamps:

The proprietors of cinema houses submits a monthly return of stamps showing denomination wise opening balance, nos. of stamps purchased/borrowed during the

month, closing balance, details of admission tickets sold during the month classwise. Audit will see that entries in this return have been checked with reference to periodical returns submitted by the proprietor in order to ensure that tax has been collected properly on all admission tickets issued during the month.

3.10.4.3 Statement of accounts in respect of totalisator tax and betting tax:

The Audit will see that:

- (a) the return is submitted in time stipulated in the relevant rules, by the stewards and respective licensed book-makers;
- (b) the tax in respect of each race events according to statement of accounts has been deposited into Government Treasury within the stipulated period mentioned in the rules and a copy of Treasury Challan in support of deposit of money is attached to the statement;
- (c) the accuracy in the statement of accounts had been checked by the assessing officer with reference to register and relevant records maintained by the stewards and licensed book-makers;

Note: It may be ensured that the checks exercised by the assessing officer in this account are adequate.

- (d) the assessment made is in consonance with the provisions of Acts and Rules thereunder;
- (e) the deposits made into the treasury have actually been credited to Government.

3.10.4.4 Statement of accounts of different sports, viz., football, cricket, hockey etc.:

The Audit will see that:

- (i) the accounts certified by a Chartered Accountant are submitted in time;
- (ii) a copy of treasury challan depositing tax is enclosed along with the statement;
- (iii) the statement of accounts has been checked with reference to sold and unsold tickets by the amusement tax inspectors;
- (iv) deposit of tax is verified with reference to entries in challan register and the treasury records.

3.10.4.5 Statement of accounts in respect of hotels and restaurants:

The Audit will see that:

- (i) the return in respect of each entertainment is received within the period prescribed in Rule 4 of the Luxury Tax Rules along with the copy of treasury challans of revenue remitted into treasury;
- (ii) the accounts and relevant registers of the hotels and restaurants were checked by the assessing officer before completing final assessment;
- (iii) the rate of tax realised is in no case below the prescribed limit as provided in provision to Section 3 of the Act;
- (iv) the deposit of tax is verified with reference to entries in challan register and the records of the treasury;

(v) necessary action for ex-parte (best judgement) assessment was taken against the defaulting parties;

(vi) system of inspection in respect of each hotel and restaurant conducted by the assessing authority is adequate to guard against any evasion of tax.

Besides the checking of registers and returns as stated above audit will also review some case files selected from cinema register, hotel and restaurant register, exemption register etc. to ensure that assessment and collection of taxes were done correctly and that there is nothing illegal, irregular or improper in the assessments, exemptions or refunds.

CHAPTER – XI

Internal Control

3.11.1 Introduction:

Internal Audit System is designed for examination of the effectiveness of internal control prevailing in the management and recommend improvement. Internal Control is an integral process that is affected by an entity's management and is designed to provide reasonable assurance to the management that the following general objectives are being achieved:

- (i) fulfilling accountability obligations;
- (ii) complying with applicable Laws and Regulations;
- (iii) executing orderly, ethical, economical, efficient and effective operations;
- (iv) safeguarding resources against loss.

The Directorate of Agricultural Income Tax, West Bengal under the control of the Finance (Revenue) Department has set up Internal Audit Wing for audit of receipts from Amusement Tax since June, 2006.

3.11.2 Role of Internal Audit:

The Internal Audit Wing is responsible for giving reasonable assurance to the management that the activities of the organisation including the Internal Control are functioning efficiently and effectively as per rules and regulation framed thereunder. The role of Internal Audit is to see that the records maintained at different levels and various reports submitted to the management for smooth as well as methodical functioning of the office/management is in time and all the information required are incorporated as per as per set up and this Wing should watch the application and maintenance of different forms introduced for enforcing Internal Control mechanism within the Directorate and other offices concerned.

3.11.3 Role of Internal Audit in enforcement of Internal Control:

As there is Internal Audit System prevailing in the Directorate, the Department is in a position to obtain feed back regarding effectiveness of Internal Control prevailing in the subordinate offices. Accordingly, for enforcement of internal control in the Directorate and its smooth functioning, Internal Audit Wing has the overall responsibility for the design, implementation and proper functioning of the Internal Control System. Internal Audit Wing as part of the Internal Control System should monitor the effectiveness of Internal Control.

Monitoring internal control *inter alia*, includes policies and procedures which ensure that the findings of audits and other reviews are adequately and promptly resolved.

Managers are to:

- (i) promptly evaluate findings from audits and other reviews including those showing deficiencies and recommendations reported by auditors;
- (ii) determine proper actions in response to findings and recommendations from audits reviews; and
- (iii) complete, within established time frames all actions that correct or otherwise resolve the matters brought to their attention.

Internal auditors may be a valuable educational and advisory resources on Internal Control. In addition to its role of monitoring the organization Internal Control, an adequate internal audit can contribute to the efficiency of the external audit efforts by providing direct assistance to the external auditor. A strong internal audit unit can reduce the audit work of the Supreme Audit Institution (SAI) and avoid needless duplication of the work.

3.11.4 Role of Supreme Audit Institutions (SAI):

In addition to Internal Audit Wing in the Directorate; SAI have also a greater responsibility to discharge. They should encourage and support the establishment of effective internal control in the Directorate by highlighting lacunae in the Acts, Rules System failure or System deficiency and recommending remedial measures in course of audit/review in the auditee units.

Thus SAI may play a strategic role in the development of the Internal Control Systems directly/indirectly depending on their legal mandate and management structure of the organisation.

3.11.5 Role of Audit against possible Fraud and Corruption:

3.11.5.1 Introduction:

Fraud is deliberate misrepresentation of facts and/or significant information by one or more individual among the management, staff or third parties while corruption involves behavior on the part of officials in the office in which they improperly and unlawfully enrich themselves by misusing the position in which they are placed.

The role of audit in addressing fraud and corruption has come under critical scrutiny in the wake of increasing cases of fraud and corruption in both Government offices and other sectors. Auditors as such need be more vigilant to and alert for situations, control weakness, inadequacies in record keeping, cross and unusual transactions or results, which could be indicative of fraud, improper or unlawful expenditure, unauthorised operations, waste, inefficiency or lack of probity. Supreme Audit Institution (SAI) should endeavor to create an environment that is unfavorable to fraud and corruption for which they need be given adequate mandates that enable them to effectively contribute to the fight against fraud and corruption.

3.11.5.2 Extent of Fraud/Corruption:

Fraud and corruption are mostly interlinked. So, while fraud and corruption should be perceived independently for their numerous implications, the auditor is required to be well aware of the complex co-relation between the two. Attention should be drawn to the possibility of separate treatment, wherever the situation so warrants.

3.11.5.3 Fraud and corruption may involve:

- (i) intentional misrepresentation of financial information;
- (ii) manipulation, falsification and alteration of records;
- (iii) misappropriation of money/assets;
- (iv) willful suppression or omission of the effects of transactions from records;
- (v) recording of transaction without substance;
- (vi) misapplication of accounting policies;

- (vii) misuse of office for private gain;
- (viii) offer to solicit an offer of inducement or reward as benefit for performance of an official act;
- (ix) attempt to camouflage;
- (x) willful misinterpretation of the provisions of Acts and Rules.

3.11.5.4 Audit Checks to prevent fraud and corruption:

While conducting audit on the accounts of receipts from amusements tax, audit is entrusted with the following checking:

- (a) whether records are being maintained properly; if any basic record is not maintained or discontinued, impact thereof on annual collection with reference to that of prior to discontinuation should be carefully investigated and commented upon;
- (b) whether assessment of dues have been properly made taking into account correct rates prevailing during the accounting period. If there are recurring instances of underassessment, reason thereof need be carefully investigated;
- (c) whether the taxes and other dues have been properly realised and duly credited to Government account;
- (d) audit should make a thorough checking of receipts and verify challans to ensure that amounts have duly been credited to Government account;
- (e) stock accounts of different kinds of forms to be checked with special care;
- (f) exemption/remission cases are to be checked with reference to the provisions of Acts, Rules and orders;
- (g) taxes etc. are levied properly and exemptions are allowed by the competent authority as per provisions of the Acts and Rules;
- (h) audit should make a comparative study of revenue of the year taken up for audit with that of the previous years. If any alarming shortfall comes into notice the reasons thereof need be investigated and commented upon;
- (i) whether the provisions of Acts, Rules and Orders issued from time to time have been properly interpreted. It is to be seen if there is any misinterpretation for personal gain;
- (j) whether there is any manipulations/falsifications/alterations of records;
- (k) whether periodical verifications of the basic records exhibiting collection of revenue are regularly made by the competent authorities.

Audit should, above all, extend its responsibility to provide assurance to make the management aware of the weakness in the Internal Control System. It may submit proposals and recommendations to the auditee offices where controls are found to be inadequate / absent. Thus audit can be a significant influence in reducing fraud and corruption.