

A BILL

To Impose a tax on persons departing from Hong Kong by sea or land, and on the owners of specified vehicles in respect of departures from Hong Kong of those vehicles; and to provide for related and consequential matters.

Enacted by the Legislative Council.

PART 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Boundary Facilities Improvement Tax Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury.

2. Interpretation

In this Ordinance, unless the context otherwise requires---

"authorized person" (獲授權人) means a person authorized under section 14;

"boundary crossing" (邊境關卡) means a boundary crossing located at a place specified in Schedule 2, where a person may be required to be examined under section 4(1) of the Immigration Ordinance (Cap. 115) by an immigration officer or immigration assistant before the person departs from Hong Kong through that boundary crossing;

"bus" (巴士), "goods vehicle" (貨車), "light bus" (小型巴士) and "motor vehicle" (汽車) have the meanings respectively assigned to them in section 2 of the Road Traffic Ordinance (Cap. 374);

"closed area" (禁區) means the area declared to be a closed area by the Frontier Closed Area Order (Cap. 245 sub. leg. A);

"Commissioner" (署長) means the Commissioner for Transport;

"Director" (處長) means the Director of Marine;

"function" (職能) includes power and duty;

"hire car" (出租汽車) means a private car in respect of which a hire car permit is in force;

"hire car permit" (出租汽車許可證) means a permit issued in accordance with the Road Traffic Ordinance (Cap. 374) authorizing the use of a private car for the carriage of passengers to a destination outside Hong Kong for hire or reward;

"holder" (持有人), in relation to an international circulation permit, means the person to whom the international circulation permit has been issued;

"international circulation permit" (國際通行許可證) means an international circulation permit issued under regulation 31 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E);

"land transport vehicle" (陸上交通工具) means a land transport vehicle of a class specified in Schedule 3;

"monthly ticket" (月票) means a monthly ticket issued under section 15;

"operator" (營運人)---

(a) in relation to a passenger ship, means any person for the time being having control over the management of the ship; and

(b) in relation to a land transport vehicle, means---

(i) in the case where the land transport vehicle is a bus in respect of which a passenger service licence issued under section 27 of the Road Traffic Ordinance (Cap. 374) is in force, the holder of the passenger service licence;

(ii) in the case where the land transport vehicle is a bus in respect of which a franchise is in force under the Public Bus Services Ordinance (Cap. 230), the company to which the franchise has been granted under section 5 of that Ordinance; and

(iii) in all other cases, the owner of the land transport vehicle;

"owner" (擁有人), in relation to a motor vehicle, means---

(a) in the case where there is a person in whose name the vehicle is registered under the Road Traffic Ordinance (Cap. 374), that person; and

(b) in all other cases, a holder of an international circulation permit issued in respect of the vehicle;

"the paid area" (已付車費區域) has the meaning assigned to it in by-law 2 of the Kowloon-Canton Railway Corporation By-laws (Cap. 372 sub. leg. B);

"passenger" (乘客) means any person carried or to be carried---

(a) in a passenger ship, other than a crew member of the ship and a person responsible for performing on board the ship any function of the operator of the ship under this Ordinance or carrying out any maintenance or repair work on board the ship; or

(b) in a land transport vehicle, other than a person responsible for operating the vehicle or performing on board the vehicle any function of the operator of the vehicle under this Ordinance;

"passenger ship" (客船) means---

(a) a ferry vessel within the meaning of---

(i) regulation 2 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H); or

(ii) section 2 of the Merchant Shipping (Local Vessels)(Ferry Terminals) Regulation (Cap. 548 sub. leg. B); or

(b) a ship (other than a ferry vessel referred to in paragraph (a)) in respect of which---

(i) a Passenger Ship Safety Certificate or a Passenger Certificate issued under the Merchant Shipping (Safety) (Passenger Ship Construction and Survey) (Ships Built

On or After 1 September 1984) Regulations (Cap. 369 sub. leg. AM); or

(ii) a certificate accepted by the Director under the Merchant Shipping (Safety) Ordinance (Cap. 369) as being the equivalent of either one of the certificates referred to in subparagraph (i),

is in force;

"private car" (私家車) has the meaning assigned to it in section 2 of the Road Traffic Ordinance (Cap. 374), but the reference to private car in Schedule 4 does not include a hire car;

"specified vehicle" (指明交通工具) means a vehicle of a class specified in Schedule 4;

"tax" (稅、稅款) means the boundary facilities improvement tax imposed under section 3;

"tax coupon" (稅券) means a tax coupon issued under section 15;

"through-train railway station" (直通車火車站) means a railway station where a train may depart for a destination in mainland China;

"train" (鐵路列車) means a train operated on the Kowloon-Canton Railway under the Kowloon-Canton Railway Corporation Ordinance (Cap. 372).

PART 2

Liability for and Payment of Tax

3. Imposition of tax

(1) Subject to sections 16, 17 and 18, a person who departs from Hong Kong--

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(a) by a passenger ship; or

(b) at a through-train railway station or a boundary crossing other than by a specified vehicle,

is liable, before he so departs, to pay, in accordance with this Ordinance, a boundary facilities improvement tax of the amount specified in item 1 of Schedule 1.

(2) Subject to sections 17 and 18, an owner of a specified vehicle is liable to pay, in accordance with this Ordinance, a boundary facilities improvement tax of the amount specified in item 2 of Schedule 1, if the specified vehicle departs from Hong Kong by its being driven (whether or not by the owner) through a boundary crossing.

4. Collection of tax

(1) The Director may by notice published in the Gazette specify---

(a) the person to whom a person liable to pay the tax under section 3(1)(a) is to pay the tax; and

(b) the manner in which it is to be paid.

(2) The Commissioner may by notice published in the Gazette specify---

(a) the person to whom a person liable to pay the tax under section 3(1)(b) is to

pay the tax; and

(b) the manner in which it is to be paid.

(3) A person liable to pay the tax under section 3(1)(a) shall pay the tax to the person specified in the notice published under subsection (1) in the manner specified in the notice.

(4) A person liable to pay the tax under section 3(1)(b) shall pay the tax to the person specified in the notice published under subsection (2) in the manner specified in the notice.

(5) Where a notice published under subsection (1) or (2) specifies that the tax shall be paid to the operator of a passenger ship or land transport vehicle, the operator shall collect the tax and pay it under section 7 to---

(a) if it is paid by a passenger of a passenger ship, the Director; or

(b) if it is paid by a passenger of a land transport vehicle, the Commissioner.

5. Records

(1) An operator of a passenger ship or land transport vehicle departing from Hong Kong or for a boundary crossing shall maintain proper records of---

(a) persons who have boarded the ship or vehicle, as the case may be;

(b) the tax paid and the tax payable by passengers to the operator; and

(c) such other information relating to the tax or the collection of the tax as the Director or Commissioner may reasonably require.

(2) The Director or Commissioner may, at any reasonable time, inspect and take copies of or seize the records maintained under subsection (1) by an operator of a passenger ship or land transport vehicle.

(3) Subsection (1) only applies to an operator of a passenger ship or land transport vehicle the passengers of which are required to pay the tax to the operator in accordance with a notice published under section 4.

6. Returns

(1) An operator of a passenger ship required to maintain records under section 5(1) shall furnish a return to the Director, in such form and by such dates as the Director may specify, giving---

(a) details of departures from Hong Kong of the ship;

(b) details of persons carried in the ship;

(c) the tax payable by passengers to the operator; and

(d) such other information relating to the tax or the collection of the tax as the Director may reasonably require.

(2) An operator of a land transport vehicle required to maintain records under section 5(1) shall furnish a return to the Commissioner, in such form and by such dates as the Commissioner may specify, giving---

- (a) details of departures from Hong Kong of the vehicle and of journeys made by the vehicle to a boundary crossing;
- (b) details of persons carried in the vehicle;
- (c) the tax payable by passengers to the operator; and
- (d) such other information relating to the tax or the collection of the tax as the Commissioner may reasonably require.

(3) Nothing in this section derogates from or affects the obligation of the operator to furnish information under any other enactment on operations of the passenger ship or land transport vehicle to the Director, Commissioner or any other person.

7. Payment of tax by operators

(1) The amount of the tax due by an operator of a passenger ship or land transport vehicle from time to time in respect of the tax payable by passengers to that operator shall be assessed---

- (a) in the case of an operator of a passenger ship, by the Director; and
- (b) in the case of an operator of a land transport vehicle, by the Commissioner.

(2) In assessing the amount of the tax under subsection (1), the Director or Commissioner is not bound by the information in any return furnished under section 6, but may use such further or other means of assessment as he thinks fit.

(3) Where a return is furnished to the Director or Commissioner under section 6(1) or (2), the operator of the passenger ship or land transport vehicle shall within the period and in the manner specified by the Director or Commissioner, as the case may be, pay to him the amount of the tax payable by the passengers of the passenger ship or land transport vehicle during the period to which the return relates.

(4) The Director or Commissioner may from time to time issue to the operator of the passenger ship or land transport vehicle a notice of demand specifying---

- (a) the amount of the tax assessed under subsection (1)(a) or (b); or
- (b) if the amount of the tax paid to the Director or Commissioner under subsection (3) in respect of the period to which the assessment relates is less than the amount of the tax assessed under subsection (1)(a) or (b) in respect of the same period, the amount of the tax that equals to the shortfall.

(5) The operator shall pay to the Director or Commissioner, as the case may be, the amount of the tax specified in the notice of demand within 14 days after the date of the notice issued by the Director or Commissioner.

8. Payment of tax by owners of specified vehicles

(1) Where an owner of a specified vehicle is liable to pay the tax under section 3(2), the Commissioner shall from time to time issue to the owner a notice of demand specifying the amount of the tax payable during the period specified in the notice.

(2) The owner shall pay to the Commissioner the amount of the tax specified in the notice of demand within 14 days after the date of the notice.

(3) Where the Commissioner is satisfied that a specified vehicle is likely to depart from Hong Kong and its owner would be liable to pay the tax in respect of the departure, the Commissioner may, before he issues a closed road permit valid for not more than 1 month in respect of the specified vehicle under regulation 49 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E), demand that the owner pay the tax by the date specified by the Commissioner.

(4) Where the demand under subsection (3) is not complied with, the Commissioner may refuse to issue the closed road permit.

9. Objection to notice of demand

(1) A person who is aggrieved by a notice of demand issued by the Director or Commissioner under section 7(4) or 8(1) may, within 1 month after the date of the notice, serve on the Director or Commissioner a notice of objection.

(2) The notice of objection shall state the grounds of objection and shall be accompanied by documentary evidence relied upon by the person in support of the objection.

(3) Where a person has served a notice of objection under subsection (1), the Director or Commissioner shall within 6 months after the expiration of the 1 month period referred to in subsection (1)---

(a) consider the objection and shall confirm, vary or rescind the notice of demand; and

(b) serve on the person a notice of his decision in respect of the objection.

(4) A person who has served a notice of objection under this section may withdraw the objection, at any time before a notice of decision in respect of the objection is served on him under subsection (3), by serving a notice of withdrawal on the Director or Commissioner.

(5) The service of a notice of objection under this section does not affect the operation of section 7(5) or 8(2).

10. Appeal

(1) A person on whom a notice of decision has been served under section 9 may, within 1 month after the date of the notice, appeal against the decision to the District Court.

(2) On an appeal under this section, the District Court may confirm, vary or rescind the decision and may make such consequential orders, including orders as to payment of costs, as it thinks fit.

(3) The District Court Rules Committee may make rules for the purposes of this section.

11. Additional sum payable for tax in default

(1) Where any amount of the tax is not paid within the period referred to in section 7(3) or (5) or 8(2), it is to be regarded as being in default and the Director or Commissioner, as the case may be, may order that a sum not exceeding 5 per cent of the amount in default shall be added to that amount and recovered with it.

(2) Where any amount of the tax is in default for a period of not less than 6 months from the date when it was regarded to be in default, the Director or Commissioner, as the case may be, may order that a sum not exceeding 10 per cent of the total unpaid amount of---

(a) the amount of the tax in default; and

(b) any sum added to that amount under subsection (1),

shall be added to such total unpaid amount and recovered with it.

(3) The payment by the operator or owner of any amount in accordance with subsection (1) or (2) or section 7 or 8 does not prevent---

(a) the Director or Commissioner, where it appears to him that a further amount of the tax remains payable by the operator or owner in respect of any period, from making an assessment of that amount and issuing a notice of demand under section 7(4) or 8(1) for the amount; or

(b) the operator or owner from claiming a refund of any overpayment made by him to the Director or Commissioner and proved to the satisfaction of the Director or Commissioner, as the case may be.

12. Recovery of tax

(1) The amount of the tax---

(a) payable by a person under section 3(1); or

(b) payable by an operator or owner under section 7 or 8, and any additional sum payable under section 11,

is recoverable from the person, operator or owner, as the case may be, as a civil debt due to the Government.

(2) Where the operator has appointed an agent under section 26 to perform his function under section 7, the amount of the tax or the additional sum referred to in subsection (1)(b) is recoverable from the operator or the agent or the operator and the agent jointly as a civil debt due to the Government.

(3) Proceedings for the recovery of the amount of the tax or the additional sum referred to in subsection (1)(b) may be brought in the District Court notwithstanding that the amount to be recovered is in excess of the sum mentioned in section 33 of the District Court Ordinance (Cap. 336).

(4) In any proceedings under subsection (3), the Government may claim in one action the amount of the tax payable in respect of any number of persons.

(5) A certificate purporting to be signed by the Director or Commissioner stating the number and categories of persons in respect of whom the tax is payable and the total amount of the tax assessed in respect of them is, until the contrary is proved, sufficient evidence, on its production by the Government, of the facts stated in the certificate and of the correctness of the assessment.

13. Appointment of person in lieu of operator to collect tax

(1) Without prejudice to the liability of an operator for any amount under this Ordinance, the Director or Commissioner may, if it appears to him for any reason that any tax is unlikely to be collected by an operator, appoint a person in lieu of the operator to collect that tax.

(2) Where a person is appointed by the Director or Commissioner under subsection (1), references to an operator in sections 4 and 24 shall be construed as references to the person so appointed.

14. Collecting tax by authorized persons

(1) The Director or Commissioner may authorize in writing, on such terms and conditions as he considers appropriate, a person to collect the tax from a person.

(2) Any tax collected by an authorized person shall be paid by him to---

(a) if he is authorized by the Director, the Director; and

(b) if he is authorized by the Commissioner, the Commissioner,

in the manner determined by the Director or Commissioner, as the case may be.

(3) Where the Director or Commissioner authorizes a person under subsection (1), he may determine the manner in which the tax is to be collected by that person.

(4) Where the Director or Commissioner exercises his power under subsection (1), he shall as soon as possible cause to be published in the Gazette a notice giving particulars of the authorized person.

(5) An authorized person shall maintain proper records of the tax paid to him and such other information relating to the tax or the collection of the tax as the Director or Commissioner may reasonably require.

(6) The Director or Commissioner may, at any reasonable time, inspect and take copies of or seize the records maintained by the authorized person under subsection (5).

15. Tax coupon and monthly ticket

(1) Without prejudice to the generality of section 14(1) or (3), the Director or Commissioner may issue, and an authorized person may with the approval of the Director or Commissioner issue, tax coupons and monthly tickets for sale for the purpose of collecting the tax from a person.

(2) A tax coupon and monthly ticket shall be in such form as the Director or

Commissioner may specify.

(3) A monthly ticket shall only be valid for the month recorded in the ticket.

(4) The Director or Commissioner or an authorized person who has obtained the Director's or Commissioner's approval to issue tax coupons and monthly tickets may, on receipt of the appropriate amount specified in item 3 or 4 of Schedule 1, issue a tax coupon or monthly ticket to a person or renew a monthly ticket issued to a person.

(5) A tax coupon or monthly ticket may be issued subject to such conditions as the Director or Commissioner may think appropriate, including but not limited to conditions in accordance with which the tax coupon or monthly ticket shall be surrendered or presented for the purposes of subsection (8).

(6) An authorized person shall maintain proper records and accounts of the tax coupons and monthly tickets issued or renewed by him.

(7) The Director or Commissioner may, at any reasonable time, inspect or take copies of or seize the records and accounts maintained by the authorized person under subsection (6).

(8) Without prejudice to any other manner in which the tax may be paid pursuant to section 4 but subject to subsection (9), a person is regarded as having paid the tax for the purposes of sections 3(1) and 4 if he---

(a) surrenders a tax coupon in accordance with the conditions subject to which it was issued;

(b) presents the valid monthly ticket issued to him, in accordance with the conditions subject to which it was issued; or

(c) pays the tax in any other manner determined by the Director or Commissioner under section 14(3) and shows evidence of such payment.

(9) Subsection (8)(b) does not apply to a person departing from Hong Kong by a ship referred to in paragraph (b) of the definition of "passenger ship" in section 2.

(10) Nothing in this section shall be construed as affecting the powers of the Director or Commissioner under section 13 or the functions of an operator under this Ordinance.

PART 3

Relief and Refund

16. Exemption for students

(1) The Director or Commissioner may, upon application, exempt a person from liability to pay the tax under section 3(1), if he is satisfied that---

(a) (i) the person's usual place of residence is in the Guangdong Province or in Macau; and

(ii) the person is a full time student of or has been enrolled as a full time

student of a primary or secondary school in Hong Kong; or

- (b) (i) the person's usual place of residence is in Hong Kong; and
- (ii) the person is a full time student of or has been enrolled as a full time student of a primary or secondary school in the Guangdong Province or in Macau.

(2) An exemption granted under subsection (1) does not have the effect of exempting a person from liability to pay the tax under section 3(1) in the case of a departure from Hong Kong by a ship referred to in paragraph (b) of the definition of "passenger ship" in section 2.

(3) An application under this section shall be---

- (a) made in such form and manner as the Director or Commissioner may determine; and
- (b) accompanied by such information or documents as the Director or Commissioner may reasonably require.

(4) The Director or Commissioner shall issue to a person exempt under subsection (1) a document evidencing the exemption.

(5) The Director or Commissioner may determine the form of a document of exemption issued under subsection (4).

(6) An exemption granted under this section is subject to such conditions as the Director or Commissioner may think appropriate.

(7) The Director or Commissioner may revoke an exemption granted under this section by notice in writing served on the person to whom the document of exemption was issued, if the Director or Commissioner is satisfied that the ground on which the exemption was granted has ceased to exist.

(8) The person on whom a notice is served under subsection (7) shall surrender the document of exemption issued to him to the Director or Commissioner within such period as may be specified in the notice.

17. Exemption for other persons

(1) A person of a description or class specified in Schedule 5 is exempt from liability to pay the tax under section 3(1).

(2) A person of a description or class specified in Schedule 6 is exempt from liability to pay the tax under section 3(2).

(3) The Chief Executive in Council may, by notice published in the Gazette, exempt any person from liability to pay the tax, or such part or proportion of the tax as is specified in the notice.

(4) This Ordinance applies to and in relation to a person who is exempt from liability to pay a part or proportion of the tax under subsection (3) as it applies to and in relation to a person who is not exempt from liability under that subsection.

18. Waiver of tax

The Chief Secretary for Administration may, where he is satisfied that payment

of the tax by a person would entail or has entailed serious hardship or that it would in any particular circumstances be inequitable or contrary to the public interest to impose the tax---

- (a) release the person liable to pay the tax from his liability; or
- (b) direct that the tax or a part or proportion of the tax be refunded to the person.

19. Refund of tax

(1) Subject to section 20, the tax paid by a person who does not depart from Hong Kong on the occasion in respect of which he has paid the tax (otherwise than under section 15(8)(b)) shall be refunded by the person to whom the first-mentioned person has paid the tax.

(2) The tax paid by an owner of a specified vehicle which does not depart from Hong Kong on the occasion in respect of which he has paid the tax shall be refunded by the Commissioner.

(3) Where a tax coupon---

- (a) is not used under section 15(8)(a);
- (b) is not damaged; and
- (c) is surrendered by any person to the Director, Commissioner or the authorized person by whom it is issued,

the Director, Commissioner or authorized person, as the case may be, shall refund to that person, either in whole or in part, the amount he has paid for the issue of the tax coupon.

(4) Where---

- (a) a direction to refund the tax to a person is made under section 18; or
 - (b) the tax has been paid by a person of a description or class specified in sections 6, 7, 8, 9, 10 and 11 of Schedule 5,
- the tax shall be refunded by the Director or Commissioner.

(5) An overpayment made by an operator of a passenger ship or land transport vehicle or an owner of a specified vehicle under section 7, 8 or 11 to the Director or Commissioner shall be refunded by the Director or Commissioner, as the case may be.

20. Supplementary provisions relating to refund of tax

(1) For the purposes of section 19(1), a person is to be regarded as having departed from Hong Kong and accordingly no refund shall be made under that section if---

- (a) in the case of a person intending to depart from Hong Kong by a ferry vessel referred to in paragraph (a) of the definition of "passenger ship" in section 2, the person has entered the area declared to be a restricted area under paragraph 2 of the Hong Kong--Macau Ferry Terminal Restricted Area Boundaries Notice (Cap. 313 sub.

leg. M) or paragraph 1 of the China Ferry Terminal Restricted Area Boundaries Notice (Cap. 313 sub.

leg. W);

(b) in the case of a person intending to depart from Hong Kong by a ship referred to in paragraph (b) of the definition of "passenger ship" in section 2, the person has been examined under section 4(1) of the Immigration Ordinance (Cap. 115) prior to his departure;

(c) in the case of a person intending to depart from Hong Kong at a boundary crossing but subject to subsection (2), the person has entered the closed area within which that boundary crossing is located; and

(d) in the case of a person intending to depart from Hong Kong at a through-train railway station, the person has entered the paid area of the railway station.

(2) Where a person intends to depart from Hong Kong by taking a train to a boundary crossing, subsection (1)(c) does not apply and in such a case, no refund shall be made under section 19(1) if the person has left the paid area of the railway station at that boundary crossing.

(3) Subsection (1)(a), (b) and (d) does not apply if the person does not depart from Hong Kong due to a suspension or cancellation of the passenger service provided by the operator concerned.

21. Conditions of refund

(1) The Director or Commissioner may impose such conditions as he considers appropriate in respect of a refund (whether by himself or otherwise) under section 19 and the refund shall be subject to the conditions so imposed.

(2) A refund under section 19 shall be made in such manner as the Financial Secretary may, after consultation with the Director or Commissioner either generally or in any particular case, determine.

(3) No refund shall be made to any person of any payment for a monthly ticket issued under section 15(4), irrespective of whether or not the monthly ticket is used under section 15(8)(b).

PART 4

Enforcement

22. Offences

(1) A person liable to pay the tax who---

(a) fails to pay the tax in accordance with section 3(1) or 4(3) or (4);

(b) makes a false statement or representation with intent to evade payment of the tax; or

(c) in any other way, evades or attempts to evade payment of the tax, commits an offence and is liable to a fine at level 4.

(2) Where a notice published under section 4 specifies that the tax shall be paid before a person liable to pay the tax boards a passenger ship or land transport vehicle, a person who authorizes or permits the first-mentioned person not having so paid the tax to board the passenger ship or land transport vehicle commits an offence and is liable to a fine at level 4 and to imprisonment for 6 months.

(3) In proceedings for an offence under subsection (2), it is a defence to show that the accused did not know, and could not reasonably have ascertained, that at the relevant time the person---

(a) was liable to pay the tax; or

(b) had not paid the tax.

(4) A person who obstructs a person in the performance of a function under this Ordinance commits an offence and is liable to a fine at level 4 and to imprisonment for 6 months.

(5) Where section 5(1) or 6(1) or (2) is contravened, the operator and his agent appointed to perform his functions under that section commit an offence and each of them is liable---

(a) on conviction upon indictment to a fine at level 6 and, in the case of an individual, to imprisonment for 2 years; and

(b) on summary conviction to a fine at level 5 and, in the case of an individual, to imprisonment for 1 year,

and is liable in addition to a further fine of \$3,000 for every day on which the offence continues.

(6) A person who---

(a) in a return furnished under section 6 makes any statement or gives any information which the person knows to be incorrect in a material particular or recklessly makes any statement or gives any information which is incorrect in a material particular or knowingly omits any material particular from the return;

(b) makes a false statement or representation with intent to obtain a refund of the tax under section 19; or

(c) being a passenger liable to pay the tax before boarding a passenger ship or land transport vehicle, boards or attempts to board the passenger ship or land transport vehicle without having paid the tax,

commits an offence and is liable to a fine at level 4.

23. Arrest

(1) A police officer or a person authorized by the Director or Commissioner for the purposes of this section may arrest without warrant any individual reasonably suspected of committing an offence under this Ordinance.

(2) A person arrested under subsection (1) shall be taken forthwith to the nearest

police station and thereafter section 52 of the Police Force Ordinance (Cap. 232) applies.

(3) A person authorized by the Director or Commissioner for the purposes of this section may stop and require any individual reasonably suspected of committing an offence under section 22 to give his name and address and to produce any document in his possession which is or contains evidence of that information.

(4) A person who fails to comply with a requirement made under subsection (3) commits an offence and is liable to a fine at level 4.

24. Evidence of payment of tax etc.

(1) A person liable to pay the tax under section 3(1) or exempt under section 16 or 17(1) to pay the tax shall produce on demand---

(a) by the Director or Commissioner;

(b) by an authorized person; or

(c) if the person is a passenger of a passenger ship or land transport vehicle, by the operator of the passenger ship or land transport vehicle or a person authorized by the operator for the purposes of this subsection, evidence of having paid the tax or of his exemption.

(2) Where a person fails to produce evidence to the satisfaction of the operator or a person authorized by the operator in accordance with subsection (1), the operator or the person authorized by the operator for the purposes of that subsection may, if the person is required to pay the tax before boarding a passenger ship or land transport vehicle pursuant to a notice published under section 4, refuse to allow the person to board the passenger ship or land transport vehicle.

(3) Where a person exempt under section 16 or 17(1) fails to produce evidence in accordance with subsection (1) to the satisfaction of the Director, Commissioner, authorized person, operator or the person authorized by the operator for the purposes of that subsection, the person is liable to pay the tax under section 3(1) as if he were not so exempt, and the provisions of this Ordinance (including section 22) shall apply accordingly.

(4) In relation to a person exempt under section 16, it is not sufficient evidence of his exemption for the purposes of this section unless he produces the document of exemption issued to him under section 16(4).

25. Refusal to issue port clearance, vehicle licence etc.

(1) Where---

(a) any amount of the tax in respect of a passenger who departed from Hong Kong by a passenger ship is regarded to be in default under section 11; or

(b) any additional sum in respect of that amount remains unpaid,
the Director may---

- (c) refuse to grant a port clearance for that passenger ship; or
- (d) prohibit that passenger ship from entering or leaving a terminal.

(2) Where---

- (a) any amount of the tax payable by an operator of a land transport vehicle or by an owner of a specified vehicle is regarded as being in default under section 11; or
- (b) any additional sum in respect of that amount remains unpaid, the Commissioner may refuse to issue or renew a vehicle licence or international circulation permit in respect of---
- (c) that specified vehicle or any other motor vehicle the owner of which is the owner of that specified vehicle; or
- (d) that land transport vehicle or any other motor vehicle the owner of which is the owner of that land transport vehicle.

(3) In this section---

"additional sum" (附加款項), in relation to an amount of the tax which is regarded as being in default under section 11, means---

- (a) a sum added to that amount of the tax under section 11(1); or
- (b) a sum added under section 11(2) to the total unpaid amount of that amount of the tax and the additional sum referred to in paragraph (a);

"port clearance" (出港證) means a port clearance referred to in section 15(1) of the Shipping and Port Control Ordinance (Cap. 313) or section 28(1) of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548);

"terminal" (終點碼頭) means a terminal within the meaning of regulation 2 of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H);

"vehicle licence" (車輛牌照) means a vehicle licence issued under regulation 21(8) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E).

PART 5

Miscellaneous

26. Appointment of agent

(1) An operator may, and if the operator is a corporation which does not have a place of business in Hong Kong, shall, appoint an agent in Hong Kong to perform the functions of the operator under this Ordinance on his behalf.

(2) An operator shall not appoint an agent to perform any of the functions of the operator under section 5(1), 6(1) or (2) or 7 without the prior approval of the Director or Commissioner.

(3) Where an operator has appointed an agent to perform any of the functions of the operator under section 5(1), 6(1) or (2) or 7, he may only revoke the appointment

by notice in writing to the agent and to the Director or Commissioner, as the case may be.

(4) An operator shall not appoint more than one agent to perform the functions of the operator under sections 5(1), 6(1) and (2) and 7.

(5) Where an agent is appointed under subsection (1) to perform the operator's functions under section 7, the operator and the agent shall be jointly and severally liable for the amount of the tax payable by the operator under section 7 and any additional sum payable by the operator under section 11, and for the purposes of those sections and section 12, a notice of demand issued under section 7(4) to either the operator or the agent shall be deemed to be a notice of demand issued to both.

(6) The Director and the Commissioner may appoint an agent to perform a function of the Director or Commissioner under this Ordinance on his behalf.

27. Collection fee

(1) The Financial Secretary may authorize the payment to an operator of a fee for collection of the tax.

(2) A fee referred to in subsection (1) shall be paid to the operator in such manner as the Financial Secretary may determine.

28. Liability of an employer

(1) Notwithstanding any term express or implied in any contract of employment, whether entered into before or after the commencement of this Ordinance, but subject to subsection (2), an employer is not liable to pay on behalf of an employee the tax payable by the employee or by any member of the employee's family under this Ordinance, nor to reimburse to the employee any such tax that has been paid, and no action lies against an employer in respect of the failure by the employer to so pay or reimburse any such tax.

(2) Subsection (1) does not apply where a contract of employment provides for payment of the tax expressly by reference to this Ordinance.

(3) In this section, the term "employer" (僱主) includes the Government.

29. Power to require information

(1) The Director or Commissioner may by notice in writing served on a person, whether or not the person is an operator of a passenger ship or land transport vehicle, require the person to supply such information as he may reasonably require for the performance of his functions under this Ordinance.

(2) The person shall supply the information within such time and in such manner as the Director or Commissioner may reasonably require.

(3) A person who fails to comply with subsection (2) commits an offence and is liable to a fine at level 3.

30. Delegation of function

(1) The Director or Commissioner may delegate any person to perform any of his functions under this Ordinance.

(2) Where the Director or Commissioner delegates a function under subsection (1), he may specify the manner in which that function is to be performed.

31. Notice not subsidiary legislation

A notice published under section 4, 14(4) or 17(3) is not subsidiary legislation.

32. Amendment of Schedules

(1) The Legislative Council may by resolution amend Schedule 1 or 4.

(2) The Commissioner may by notice published in the Gazette amend Schedule 2 or 3.

(3) The Chief Executive in Council may by order published in the Gazette amend Schedule 5 or 6.

PART 6

Consequential Amendments

33. Consequential amendments

The enactments specified in Schedule 7 are amended as set out in that Schedule.

SCHEDULE 1 [ss. 3, 15 & 32]

Boundary Facilities Improvement Tax

1. For a person departing from Hong Kong, for each occasion \$18
2. For a specified vehicle departing from Hong Kong, for each occasion \$100
3. For issue of a tax coupon \$18
4. For issue or renewal of a monthly ticket \$270

SCHEDULE 2 [ss. 2 & 32]

Boundary Crossings

1. Lo Wu
2. Lok Ma Chau
3. Man Kam To
4. Sha Tau Kok

SCHEDULE 3 [ss. 2 & 32]

Land Transport Vehicles

1. Train
2. Bus
3. Light bus
4. Goods vehicle
5. Hire car

SCHEDULE 4 [ss. 2 & 32]

Specified Vehicles

1. Private car

SCHEDULE 5 [ss. 17, 19 & 32 & Sch. 6]

Persons Exempt from Liability to Pay Tax
under Section 3(1) of this Ordinance

1. Children under 12 years of age.
2. Persons departing from Hong Kong by a passenger ship who are crew members of the ship or are responsible for performing on board the ship any function of the operator of the ship under this Ordinance or carrying out any maintenance or repair work on board the ship.
3. Persons departing from Hong Kong by a land transport vehicle who are responsible for operating the vehicle or performing on board the vehicle any function of the operator of the vehicle under this Ordinance.
4. Persons who---
 - (a) arrive in Hong Kong on board a passenger ship not destined for Hong Kong; and
 - (b) subsequently depart from Hong Kong by the ship when the ship leaves Hong Kong.
5. Persons who---
 - (a) arrive at the Hong Kong International Airport ("the airport") by air only for the purpose of onward travel from Hong Kong by a passenger ship which regularly conveys passengers between the airport and any part of China other than Hong Kong and which is approved by the Airport Authority of Hong Kong to berth at the airport;
 - (b) subsequently depart from Hong Kong by the ship for the purpose of their onward travel; and
 - (c) before their onward travel remain at all times within the Restricted Area of the airport specified pursuant to section 37 of the Airport Authority Ordinance (Cap. 483).
6. Persons who---
 - (a) arrive in Hong Kong on board a passenger ship solely by reason of distress, emergency or adverse weather; and
 - (b) subsequently depart from Hong Kong as soon as practicable.
7. Persons departing from Hong Kong by a passenger ship or land transport vehicle being used at the time of departure---
 - (a) for official or ceremonial purposes of the Government;
 - (b) for military, diplomatic or ceremonial purposes of the government of any country; or
 - (c) for official or diplomatic purposes of the United Nations or any specialized agency of the United Nations.

8. Persons who are entitled to be accorded exemption from the tax by operation of---
- (a) the International Organizations and Diplomatic Privileges Ordinance (Cap. 190);
 - (b) the Consular Relations Ordinance (Cap. 557);
 - (c) the International Organizations (Privileges and Immunities) Ordinance (Cap. 558);
 - (d) the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities in Schedule 5 to the Promulgation of National Laws 1997 (L.N. 379 of 1997); or
 - (e) the Regulations of the People's Republic of China Concerning Consular Privileges and Immunities in Schedule 3 to the Promulgation of National Laws (No. 2) 1997 (L.N. 386 of 1997).
9. Persons who---
- (a) are members of the Chinese People's Liberation Army or are civilians sponsored by the Ministry of Defence of the Central People's Government; and
 - (b) are present in Hong Kong with or in connection with the Chinese People's Liberation Army,
- and members of their families forming part of their households, if their journeys of departure have been sponsored by the appropriate authority or with the approval of the appropriate authority, as evidenced by a certificate issued by or on behalf of the Commander of the Hong Kong Garrison.
10. Personnel of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region and members of their families forming part of their households, if their journeys of departure have been sponsored by it.
11. Personnel of the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region and members of their families forming part of their households, if their journeys of departure have been sponsored by it.

SCHEDULE 6 [ss. 17 & 32]

Persons Exempt from Liability to Pay Tax
under Section 3(2) of this Ordinance

- 1. The Government.
 - 2. A person of a description or class specified in section 8 of Schedule 5.
 - 3. Owners of specified vehicles being used at the time of their departure for an official purpose of---
- (a) the Chinese People's Liberation Army;
 - (b) the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region; or

(c) the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region.

SCHEDULE 7 [s. 33]

Consequential Amendments

Magistrates Ordinance

1. Offences to which defendant may plead guilty by letter

The Third Schedule to the Magistrates Ordinance (Cap. 227) is amended by adding---

"18. Boundary Facilities Improvement Tax

Any offence against the Boundary Facilities Improvement Tax Ordinance

(of 2003).".

Shipping and Port Control (Ferry Terminals) Regulations

2. Returns by owners or masters

Regulation 8(c) of the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H) is repealed.

3. Embarkation fee

Regulation 34 is repealed.

4. Fees

The Schedule is amended by repealing Part 3.

Merchant Shipping (Local Vessels)(Ferry Terminals) Regulation

5. Returns by owners, agents or coxswains

Section 8(c) of the Merchant Shipping (Local Vessels)(Ferry Terminals)

Regulation (Cap. 548 sub. leg. B) is repealed.

6. Embarkation fee

Section 29 is repealed.

Explanatory Memorandum

The object of this Bill is to impose a tax on persons departing from Hong Kong by sea or land, and on owners of specified vehicles in respect of departures from Hong Kong of those vehicles.

2. Clause 1 states the short title of the Bill and provides for its commencement.

3. Clause 2 sets out the definitions necessary for the interpretation of the proposed Ordinance.

4. Clause 3 imposes the boundary facilities improvement tax ("tax") in accordance with the scale set out in Schedule 1.

5. Clause 4 provides for the payment of the tax.

6. Clause 5 requires an operator of a passenger ship or land transport vehicle departing from Hong Kong or for a boundary crossing to maintain proper records of passenger departures and the tax paid to the operator.

7. Clause 6 provides for periodic returns of passenger departures and other

information to be furnished by the operator to the Director of Marine ("Director") or the Commissioner for Transport ("Commissioner").

8. Clause 7 provides that where a return is furnished, the operator must pay the tax to the Director or Commissioner within specified period. The Director or Commissioner may issue a notice of demand to the operator if the tax is not paid or the tax paid is less than the amount of the tax assessed.

9. Clause 8 provides for the payment of the tax by owners of specified vehicles.

10. Clause 9 provides for the procedures for objection to a notice of demand for the tax. Clause 10 provides for appeal against the decision of the Director or Commissioner on an objection to a notice of demand for the tax.

11. Clause 11 empowers the Director and the Commissioner to impose a surcharge on an operator of a passenger ship or land transport vehicle or an owner of a specified vehicle if the operator or the owner defaults in payment of the tax.

12. Clause 12 provides for recovery of the tax as a civil debt due to the Government.

13. Clause 13 empowers the Director and the Commissioner to appoint a person to collect the tax in place of an operator if the tax is unlikely to be collected by the operator.

14. Clause 14 empowers the Director and the Commissioner to authorize a person to collect the tax from a person.

15. Clause 15 provides for payment of the tax by way of tax coupons or monthly tickets.

16. Clauses 16 and 17 provide for exemptions. Clause 16 empowers the Director and the Commissioner to exempt a student from liability to pay the tax if certain conditions are met. Clause 17 provides for exemptions for other classes of persons.

17. Clause 18 empowers the Chief Secretary for Administration to waive payment of the tax by a person in case of hardship or where the public interest so requires.

18. Clauses 19 to 21 provide for refund of the tax.

19. Clause 22 creates a number of offences in connection with the failure to pay the tax, the evasion of the payment of the tax, the failure by an operator to maintain records or furnish returns, etc.

20. Clause 23 deals with the arrest of persons suspected of committing offences relating to the tax.

21. Clause 24 provides for the duty of a person to produce evidence of having paid the tax or of his exemption from liability to pay the tax. The clause also empowers an operator and a person authorized by the operator to refuse to allow a passenger to board the passenger ship or land transport vehicle if the passenger is liable to pay the tax before boarding.

22. Clause 25 empowers the Director to refuse to grant a port clearance and the Commissioner to refuse to issue or renew a vehicle licence or international

circulation permit if any amount of the tax is in default.

23. Clause 26 empowers an operator to appoint an agent to perform the functions of the operator under the proposed Ordinance. An agent, if appointed, will be jointly and severally liable for the tax otherwise payable by the operator.

24. Clause 27 empowers the Financial Secretary to pay a fee to an operator for collection of the tax.

25. Clause 28 provides that an employer is not liable to pay on behalf of an employee the tax payable by the employee unless the contract of employment between them provides for payment of the tax expressly by reference to the proposed Ordinance.

26. Clause 29 provides for the power of the Director and the Commissioner to require a person to supply information for the purpose of performing their functions under the proposed Ordinance.

27. Clause 30 provides for delegation of functions by the Director or Commissioner.

28. Clause 31 provides that a notice published under the proposed section 4, 14(4) or 17(3) is not subsidiary legislation.

29. Clause 32 provides for amendment of the Schedules.

30. Clause 33 and Schedule 7 provide for the consequential amendments to other enactments.