

Act 1994 No. 48

STATE REVENUE LEGISLATION (AMENDMENT) BILL 1994

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the following State revenue and other Acts, and to amend or repeal certain regulations made under those Acts, for the following purposes:

Business Franchise Licences (Petroleum Products) Act 1987 (“the Petrol Act”) and the **Business Franchise Licences (Tobacco) Act 1987** (“the Tobacco Act”)

- to extend the off-road diesel fuel scheme under the Petrol Act, so that the holder of an authority under that Act may sell diesel fuel for use in propelling a diesel-engined marine vessel on water to any person (whether or not the person is a permit holder)
- to give the Business Franchise Licence Fees (Petroleum Products) Appeals Tribunal (under the Petrol Act) and the Business Franchise Licence Fees (Tobacco) Appeals Tribunal (under the Tobacco Act) power to require a person to provide information or attend a hearing in connection with the review of a licence fee assessment
- to update references in both Acts to the Companies (New South Wales) Code to the Corporations Law and to make other consequential changes
- to provide that state revenue officers who obtain confidential information or records under the Petrol Act or the Tobacco Act are not required to disclose or produce the information or records in any court except when it is for the purposes of the execution or administration of the Act concerned.

Debits Tax Act 1990

- to validate the extension from 31 December 1992 to 31 December 1993 of the arrangement entered into between the Chief Commissioner of Stamp Duties and the Commonwealth Commissioner of Taxation for the assessment, receipt and collection of debits tax by the Commonwealth on behalf of the State
- to provide that state revenue officers who obtain confidential information or records under that Act are not required to disclose or produce the information or records in any court except when it is for the purposes of the execution or administration of that Act.

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Health Insurance Levies Act 1982

- to require payment of the monthly levy in the same month in which the liability to pay the levy accrues
- to incorporate into the Act and repeal the Health Insurance Levies Regulation 1983
- to provide consequential savings and transitional provisions
- to provide that state revenue officers who obtain confidential information or records under that Act are not required to disclose or produce the information or records in any court except when it is for the purposes of the execution or administration of that Act.

Health Insurance Levies Regulation 1983

- to repeal the Regulation as a consequence of the incorporation of its provisions into the Health Insurance Levies Act 1982.

Land Tax Management Act 1956

- to remove the requirement that the Rent Controller under the Landlord and Tenant (Amendment) Act 1948 certify to the Chief Commissioner of Land Tax that land is “rent-protected” before the Chief Commissioner is required to make a determination, under the Land Tax Management Act 1956, as to whether that land is rent-protected
- to provide that the determination of land value, for land-tax purposes, of certain land leased from the Crown is to take into account the restrictions on the disposition or use of the land attributable to the lease
- to provide allowances for subdivision (similar to those provided under section 58AB of the Valuation of Land Act 1916)
- to clarify the application of the Act to the Crown and public authorities
- to allow persons whose homes are damaged or destroyed through such an event as fire, earthquake, storm, accident or malicious damage 2 years to rebuild on the land concerned without being liable for land tax on it
- to allow the vendor of land who leases the land back to be exempted from liability for land tax on the land if the sale has been completed and the Chief Commissioner of Land Tax is satisfied that the agreement for sale was made in good faith and not for the purposes of evading land tax
- to clarify the effect of land tax certificates
- to make it clear that the Chief Commissioner of Land Tax may ascertain the value for land tax purposes of a particular parcel of land even if the land came into existence in the form of that parcel after the Bate as at which the valuation is to be ascertained

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- to make it clear that a parcel of land is eligible to have an “unutilised value allowance” ascertained (that is, an allowance for the part of its value that is attributable to the land’s being zoned or otherwise designated for the purposes of industry, commerce, residential flat buildings or residential subdivision) only if the land is used or occupied solely for the purpose of a single dwelling house
- to provide that state revenue officers who obtain confidential information or records under that Act are not required to disclose or produce the information or records in any court except when it is for the purposes of the execution or administration of that Act.

Pay-roll Tax Act 1971

- to make certain amendments that are consequential on the enactment of the Charitable Fundraising Act 1991 and the Local Government Act 1993
- to make it clear that pay-roll tax is not payable on any wages for services performed or rendered wholly in another State during the relevant calendar month
- to ensure that wages that are paid or payable to an employee during any period in which the employee was a volunteer bush fire fighter are not subject to pay-roll tax
- to provide that State instrumentalities are excluded from the operation of certain exemptions from the requirement to pay pay-roll tax
- to ensure that the “aggregate fringe benefits amount” as defined in section 136 of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth is used to calculate the value of fringe benefits
- to enable the Chief Commissioner of Pay-roll Tax to accept or reject a designated group employer nominated by a group of employers for the purposes of the Act
- to provide that state revenue officers who obtain confidential information or records under that Act are not required to disclose or produce the information or records in any court except when it is for the purposes of the execution or administration of that Act.

Revenue Laws (Reciprocal Powers) Act 1987

- to provide general delegation powers for the various officers who exercise powers and functions under the Act (currently the Act provides only for the delegation of certain specific powers and functions)
- to amend the definitions of “Commonwealth revenue officer”, “New South Wales revenue officer” and “State revenue officer” to include persons engaged in the administration or execution of the revenue law concerned (currently the definitions relate to persons holding particular “offices” under the revenue law concerned)
- to provide that state revenue officers who obtain confidential information or records under that Act are not required to disclose or produce the information or records in any court except when it is for the purposes of the execution or administration of that Act.

Stamp Duties Act 1920

Financial Institutions Duty (“FID”)

- to insert into Division 29 of Part 3 of the Act (which deals with financial institutions duty) new definitions of “excluded person” (i.e. a person who is not treated as a financial institution for the purposes of the Division), “finance contract”, “foreign exchange hedging agreement”, “group return”, “hiring arrangement”, “pastoral finance company”, “Protective Commissioner”, “retailer” and “rollover” and to replace the existing definitions of “designated person”, “designated receipts” and “short term dealing”
- to exempt from financial institutions duty the receipt by a financial institution of cheques which, having been dishonoured, are never re-presented to the institution
- to exempt from financial institutions duty amounts credited to an account kept by a financial institution in respect of financial institutions duty and debit tax that has been debited to customers' accounts
- to exempt from financial institutions duty receipts comprising the rollover of a term deposit (except a rollover from a short term dealing into a non-short term dealing)
- to exempt from financial institutions duty certain receipts of the Protective Commissioner
- to exempt from financial institutions duty certain receipts of financial institutions where the receipts relate to transactions that are entirely outside the control of the account holders concerned
- to allow the Chief Commissioner of Stamp Duties to exempt a retailer or pastoral finance company from the payment of financial institutions duty in certain specified circumstances and to reduce, refund or adjust the amount of duty paid or payable by a financial institution whose main business is not that of providing finance
- to allow a member of a group approved by the Chief Commissioner to lodge group returns on behalf of all the members of the group with respect to the receipts of those members that are liable to financial institutions duty
- to enable the Chief Commissioner to refuse to certify a person as a short term dealer if the person fails to enter into an undertaking to use the person's account as a dealer only for making certain specified payments and to keep the account in credit at all times
- to enable the Chief Commissioner to enter into arrangements for the payment of stamp duty with short term dealers who are not “prescribed” short term dealers but who are members of a group
- to exempt from financial institutions duty transactions involving the clearing and settlement accounts operated by FTS (NSW) Pty Ltd (a company wholly owned by the Australian Association of Permanent Building Societies and some of its members) in respect of amounts directly credited or debited to building society accounts
- to exempt from financial institutions duty receipts to the stamp duty account of ASX Settlement and Transfer Corporation Pty. Limited in respect of transactions effected through the Clearing House Electronic Subregister System

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- to make fresh arrangements for dealing with the extent to which “designated persons” (such as financial institutions) can pass stamp duty on to their customers and other persons from whom they receive receipts that are liable to financial institutions duty.

Transfer of Marketable Securities

- to provide for the payment of stamp duty on transfers of marketable securities regulated by the securities clearing house (that is, through the use of the Clearing House Electronic Subregister System (CHESS) which is controlled by a wholly owned subsidiary of the Australian Stock Exchange)
- to provide that the relevant nexus for off market share transactions for stamp duty purposes is the place of incorporation of the company whose shares are transferred
- to close a loophole (referred to as “the Thomas shuffle’,) whereby shares can be transferred without payment of ad valorem duty by changing registers.

Exemptions from and Reductions in Duty

- to clarify the provisions for exemption of conveyances between married couples
- exempt from stamp duty the transfer of property from a trustee in bankruptcy to the former bankrupt
- to provide that a transfer from a trustee to a beneficial owner is not liable to duty
- to provide amended offset provisions for hiring arrangement duty
- to clarify the exemption from loan security duty for refinancing by primary producers
- to exempt from stamp duty the refinancing of certain home loans
- to exempt from stamp duty the trading in the underlying securities of warrants
- to exempt from stamp duty certain agreements under the Income Tax Assessment Act 1936 of the Commonwealth regarding assignment of tax losses, capital losses and foreign tax credits, effective from 1 February 1992
- to exempt from stamp duty leases to the Home Care Service of New South Wales
- to restrict the provisions of the First Home Purchase Scheme to persons who do not own any other real property.

Miscellaneous

- to amend the land rich company provisions to close a loophole whereby the transfer of a company title home unit may be effected without the payment of duty
- to change the rate of duty on company title dwellings on rented land
- to specify the method of calculating periods of time for the purposes of determining when duty must be paid or when a fine is incurred under the Act
- to delete obsolete provisions concerning bills of exchange
- to ensure that documents that effect put and call options attract the conveyance rate of stamp duty
- to specify the manner in which documents in court proceedings may be served on the Chief Commissioner

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- to enable documents relating to certain death duty files in the keeping of the Archives Authority to be disclosed by the Authority
- to widen the powers of inspectors and authorised officers relating to the inspection of documents to enable them to have access to documents for the purposes of exercising functions under the provisions of the Act and the regulations, including the carrying out of routine inspections to ensure compliance with those provisions
- to provide that state revenue officers who obtain confidential information or records under the Act are not required to disclose or produce the information or records in any court except when it is for the purposes of the execution or administration of the Act
- to make other minor amendments and amendments by way of statute law revision
- to enact savings and transitional provisions as a consequence of the amendments made by the proposed Act.

Stamp Duties (Financial Institutions Duty) Regulation 1982

- to repeal those provisions of the Regulation that are being incorporated into the Stamp Duties Act 1920.

Stamp Duties Regulation 1991

- to repeal a provision of the Regulation consequent upon the repeal of section 96B of the Stamp Duties Act 1920.

Valuation of Land Act 1916

- to replace obsolete references to resumptions with references to compulsory acquisitions under the Land Acquisition (Just Terms Compensation) Act 1991
- to clarify the time at which, and the way in which, valuations of land in subdivisions are to be made under section 27B of the Act
- to identify the persons entitled to allowances for subdivision under section 58AB of the Act, and to specify the date as at which those allowances are to be determined.

Clauses 1–15 are machinery provisions specifying the short title of the proposed Act, providing for its commencement and giving effect to the Schedules to the proposed Act that contain the amendments to the various State revenue and other Acts and to the clauses that repeal or amend certain regulations made under those Acts.

Clause 16 is a transitional provision that applies the amendment made to each State revenue Act concerning the disclosure of information to information or records obtained by state revenue officers both before and after the date of assent to the proposed Act.

Clause 17 makes it clear that the explanatory notes contained in the Schedules do not form part of the proposed Act.

The proposed Act contains Schedules 1–13 which amend various Acts. The amendments are explained in detail in the explanatory notes set out in the Schedules.
