

Passed by both Houses



New South Wales

State Revenue Legislation Amendment Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

State Revenue Legislation Amendment Bill 2006

Act No , 2006

An Act to make miscellaneous amendments to certain State revenue legislation; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *State Revenue Legislation Amendment Act 2006*.

2 Commencement

- (1) This Act commences on the date of assent, except as provided by subsection (2).
- (2) The following provisions commence, or are taken to have commenced, on the dates indicated:
Section 4—30 June 2006,
Schedule 1 [14]–[16] and [24]—15 November 2005,
Schedule 1 [19]–[22]—1 July 2006,
Schedule 2 [1], [2] and [4]–[7]—31 December 2006.

3 Amendment of Acts

The Acts specified in Schedules 1–4 are amended as set out in those Schedules.

4 Repeals

- (1) The *Petroleum Products Subsidy Act 1965* is repealed.
- (2) The *Petroleum Products Subsidy Regulation 1998* is repealed.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Duties Act 1997 No 123

(Section 3)

[1] Section 23 What is the “unencumbered value” of dutiable property?

Insert after section 23 (3):

- (4) Subsection (3) does not apply to improvements made to the land for or on behalf of the transferee by the transferor.

[2] Section 50A Cancelled transfers of dutiable property

Omit section 50A (1) (b) and (c). Insert instead:

- (b) the transfer was not cancelled to give effect to a subsale.

[3] Section 55 Property vested in an apparent purchaser

Omit section 55 (1) (b). Insert instead:

- (b) a transfer of dutiable property from an apparent purchaser to the real purchaser if:
 - (i) the dutiable property is property, or part of property, vested in the apparent purchaser upon trust for the real purchaser, and
 - (ii) the real purchaser provided the money for the purchase of the dutiable property and for any improvements made to the dutiable property after the purchase.

[4] Section 55 (1A) and (1B)

Insert after section 55 (1):

- (1A) For the purposes of subsection (1), money provided by a person other than the real purchaser is taken to have been provided by the real purchaser if the Chief Commissioner is satisfied that the money was provided as a loan and has been or will be repaid by the real purchaser.
- (1B) This section applies whether or not there has been a change in the legal description of the dutiable property between the purchase of the property by the apparent purchaser and the transfer to the real purchaser.

Note. For example, if the dutiable property is land, this section continues to apply if there is a change in the legal description of the dutiable property as a consequence of the subdivision of the land.

[5] Section 71 Restrictions on eligibility—previous ownership of residential property or first home concession

Omit section 71 (6). Insert instead:

- (6) Despite the other provisions of this section, the ownership at any time of another residential property, or a previous application under the scheme, may be disregarded if the Chief Commissioner is satisfied that:
 - (a) the other residential property owned by the purchaser or transferee is or was vested in the purchaser or transferee on trust, or as an executor under a will, or the application was made by the purchaser or transferee in his or her capacity as trustee or executor, or
 - (b) the purchaser or transferee who owns or owned the other residential property, or who has previously been a party to an application, is acquiring an interest in the property that is the subject of the application solely for the purpose of assisting the eligible persons under the scheme in financing the acquisition.

[6] Section 79 Determination of applications

Omit the section.

[7] Section 92 Other provisions

Omit “Sections 76 and 79 apply to this scheme in the same way as they apply” from section 92 (1).

Insert instead “Section 76 applies to this scheme in the same way as it applies”.

[8] Section 93 The nature of the scheme

Omit “, at the discretion of the Chief Commissioner,”.

[9] Section 102 Determination of applications

Omit section 102 (1).

[10] Section 163H Acquisition statements

Omit “and whether it is an exempt transaction” from section 163H (2) (b).

[11] Section 163H (2) (e)–(h)

Omit the paragraphs.

[12] Section 163H (3)

Insert at the end of section 163H (before the note):

- (3) If the acquisition is not an exempt transaction under Part 5, the acquisition statement must also contain the following information:
 - (a) the unencumbered value of all land holdings in New South Wales of the landholder as at the date of the relevant acquisition and as at the date of acquisition of each interest acquired in the landholder during the 3 years prior to the date of the relevant acquisition,
 - (b) the unencumbered value of the property of the landholder at the date of the relevant acquisition,
 - (c) the amount of duty paid under this Act or under a law of another Australian jurisdiction in respect of each earlier acquisition of an interest referred to in paragraph (a),
 - (d) such other information as the Chief Commissioner may require.

[13] Section 163ZY

Omit the section. Insert instead:

163ZY Reporting requirements

- (1) It is a condition of registration of a wholesale unit trust scheme under this Part that the responsible entity of the unit trust scheme provides to the Chief Commissioner, within 1 month after 30 June in each year (commencing with 30 June 2007), a report in an approved form containing particulars of the following in relation to the period of 12 months ending on that 30 June:
 - (a) any acquisition by a person of any interest in the wholesale unit trust scheme that would entitle the person, in the event of an immediate distribution of all the property of the unit trust scheme, to no less than 20% of the property distributed,
 - (b) any acquisition by a person of any interest in the wholesale unit trust scheme that, when aggregated with other interests the person has in the unit trust scheme, would entitle the person, in the event of an immediate distribution of all the property of the unit trust scheme, to no less than 20% of the property distributed.

- (2) The Chief Commissioner may, as a condition of registration, impose other reporting requirements on the responsible entity of a registered unit trust scheme (whether or not a wholesale unit trust scheme).
- (3) Requirements may be imposed under subsection (2) at the time of registration or at any subsequent time by notice in writing to the responsible entity.

[14] Section 226 Payment of duty on mortgages associated with debenture issues

Insert “or a collateral mortgage that secures the same money as is secured by a mortgage referred to in subsection (2),” after “subsection (2),” in section 226 (3B).

[15] Section 226 (3C) and (3CA)

Omit section 226 (3C). Insert instead:

- (3C) For the purposes of the application of section 213 (2) to such a mortgage (and the application of section 218B to any collateral mortgage that secures the same money as the mortgage):
 - (a) the excess amount mentioned in section 213 (2) (c) is taken to be limited to the amount of the advance or further advance, and
 - (b) the mortgage is taken to have been duly stamped for the total of:
 - (i) the disclosed debenture amount, and
 - (ii) any advances or further advances made on or after the cut-off date in respect of which duty has been paid under this Chapter.
- (3CA) A mortgage executed before the cut-off date that is not liable to duty under subsection (2) and in respect of which no further advances have been made on or after the debenture concession closure date is taken, for the purposes of the application of section 218B to any collateral mortgage, to have been duly stamped.

[16] Section 226 (4A)

Insert “on or after 1 January 1975 and” after “executed”.

[17] Section 236 Circumstances in which duty is payable by the insured person

Omit “an insurer (not being a registered insurer) or insurance intermediary” from section 236 (2).

Insert instead “the person who is not a registered insurer”.

[18] Section 236 (5)

Insert after section 236 (4) (before the note):

(5) In this section:

premium means any amount paid in connection with insurance to a person who is not a registered insurer that would be a premium under this Part if the person to whom it was paid was a registered insurer.

[19] Section 243 What duty is payable?

Insert “, other than a group term insurance policy,” after “term insurance policy” in section 243 (2).

[20] Section 243 (2A)

Insert after section 243 (2):

(2A) **Group term insurance policies**

The amount of duty chargeable on a group term insurance policy is:

- (a) 5% of the first year’s premium on the policy, and
- (b) 5% of the amount of the premium (if any) payable in any succeeding year in respect of each additional life covered by the insurance policy (that is, each life that was not covered during the previous year).

[21] Section 243 (5)

Insert after section 243 (4):

(5) In this section:

group term insurance policy means a term insurance policy that applies in respect of the lives of a specified group of persons, being a group the membership of which may change during the term of the policy.

[22] Section 253 Monthly returns and payment of duty

Omit section 253 (a) (v). Insert instead:

- (v) the total amount of all first year's premiums for temporary or term life insurance received by or on behalf of the registered insurer in the preceding month, and all additional premiums referred to in section 243 (2A) (b) (other than premiums for insurance that is exempt from duty by Part 5), and

[23] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[24] Schedule 1, clause 57

Insert "Accordingly, section 226, as in force immediately before the debenture concession closure date, continues to have effect in relation to those advances or further advances." after "closure date." in clause 57 (1).

Schedule 2 Amendment of Land Tax Management Act 1956 No 26

(Section 3)

[1] Section 10S Tax liability in respect of certain housing schemes

Omit the definition of *eligible owner* from section 10S (1).

[2] Section 10S (2) and (3)

Omit section 10S (2)–(4). Insert instead:

- (2) Land is exempt from taxation under this Act if the land is eligible land.
- (3) This section applies in respect of the year commencing 1 January 2006 and any succeeding year.

[3] Schedule 1A Principal place of residence exemption

Insert after clause 2 (4):

- (5) The principal place of residence exemption is subject to the restrictions set out in Part 4.

[4] Schedule 1A, clause 8

Insert after clause 8 (3):

- (4) Any period during which a person is in full time care is not to be counted toward the maximum period referred to in subclause (2). Accordingly, a person who is in full time care may continue to be taken to use and occupy his or her former residence as his or her principal place of residence during any period in which he or she is in full time care.
- (5) For the purposes of this clause, a person is in *full time care* during any period in which the person:
 - (a) resides at a hospital or mental hospital as a patient of the hospital, or
 - (b) resides at an aged care establishment (within the meaning of section 10R) while being provided with residential care, or respite care, or
 - (c) resides with another person (a *carer*) who is eligible for a carer payment under the *Social Security Act 1991* of the Commonwealth because the carer provides care to the person.

[5] Schedule 1A, clause 8 (9)

Insert after clause 8 (8):

(9) In this clause:

hospital means an institution at which relief is given to sick or injured people through the provision of care or treatment.

mental hospital means an institution conducted principally for the treatment of mentally ill persons, and includes a hospital within the meaning of the *Mental Health Act 1990*.

[6] Schedule 1A, clause 9

Omit clause 9 (2) and (3). Insert instead:

(2) Subclause (1) operates only until whichever of the following happens first:

(a) a period of 12 months expires after the date of the deceased person's death,

(b) the land is transferred to any person (other than the deceased person's personal representative, or a beneficiary of the deceased person's estate).

(3) The Chief Commissioner may extend (and further extend) the period of 12 months referred to in subclause (2) (a) if:

(a) the land has not been leased to any person since the date of the deceased person's death, and

(b) the land has not been transferred to any person (other than the deceased person's personal representative), and

(c) the Chief Commissioner is satisfied that:

(i) a person is using and occupying the land as his or her principal place of residence, and

(ii) that person is likely to be a person in whom the deceased's interest in the land vests pursuant to the administration of the deceased's estate.

[7] Schedule 1A, clause 10

Insert "or with the permission of any other person to whom the land is transferred following that death" after "conferred by the will of that owner" in paragraph (b).

[8] Schedule 1A, clause 11

Omit “the land is owned by a company, unless the land is owned” from clause 11 (1) (a).

Insert instead “the land is owned, or jointly owned, by a company, unless the land is owned or jointly owned”.

[9] Schedule 1A, clause 11 (6)

Insert after clause 11 (5):

- (6) This clause does not prevent the principal place of residence exemption applying to land owned by a company if a provision of this Act deems a natural person to be the owner of the land, to the exclusion of the company.

Note. Section 21A provides that a company title unit is not to be regarded as being owned by the company in which the relevant shares are held. Section 26 provides for circumstances in which a purchaser or vendor of land (including a company purchaser or vendor) is to be regarded as the owner of the land when the purchase is not complete.

[10] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1A (1):

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[11] Schedule 2, Part 18

Insert at after Part 17:

Part 18 Provisions consequent on enactment of State Revenue Legislation Amendment Act 2006

39 Application of amendments

- (1) Section 10S, as in force immediately before the amendments made by the *State Revenue Legislation Amendment Act 2006*, continues to apply in respect of the land tax payable in the year commencing 1 January 1991 or any subsequent year before the year commencing 1 January 2006.
- (2) The amendments made to clauses 9 and 10 of Schedule 1A by the *State Revenue Legislation Amendment Act 2006* apply to the assessment of liability for land tax payable in the year commencing 1 January 2007 or any subsequent year, even if the owner of the land died before the commencement of the amendments.

Schedule 3 Amendment of Pay-roll Tax Act 1971 No 22

(Section 3)

[1] Section 3AD Inclusion of grant of shares and options as wages

Omit section 3AD (3) and (4). Insert instead:

- (3) For the purposes of this section, the *relevant day* is the date on which the share or option is granted to the employee, or the vesting date, whichever date the employer elects to treat as the date on which the wages are paid or payable.
- (4) A share or option is *granted* to a person in the following circumstances:
 - (a) in the case of a share—if the person acquires the share (within the meaning of section 139G of the *Income Tax Assessment Act 1936* of the Commonwealth) or in the circumstances prescribed by the regulations,
 - (b) in the case of an option—if the person acquires a right (within the meaning of section 139G of the *Income Tax Assessment Act 1936* of the Commonwealth) to the share to which the option relates or in the circumstances prescribed by the regulations.
- (4A) The *vesting date* in respect of a share is the date on which the share vests in the employee (that is, when any conditions applying to the grant of the share have been met and the employee's legal or beneficial interest in the share cannot be rescinded).

[2] Section 3AD (5) (b)

Omit the paragraph. Insert instead:

- (b) the date on which the employee exercises a right under the option to have the share the subject of the option transferred to, allotted to or vest in him or her.

[3] Section 3AD (6)

Omit “an option”, “the option” and “that option” wherever occurring.

Insert instead “a share or an option”, “the share or option” and “that share or option” respectively.

[4] Section 3AD (6A)

Insert after section 3AD (6):

- (6A) If the grant of a share or option is withdrawn, cancelled or exchanged before the vesting date for any valuable consideration (other than the grant of other shares or options), the following provisions apply:
- (a) the date of withdrawal, cancellation or exchange is taken to be the vesting date of the share or option,
 - (b) the market value of the share or option, on the vesting date, is taken to be the amount of the valuable consideration (and, accordingly, that amount is the amount paid or payable as wages on that date).

[5] Section 3AD (7)

Omit the subsection. Insert instead:

- (7) If an employer grants a share or an option to an employee and the value of the grant of the share or option is nil or, if the employer were to elect to treat the date of grant as the relevant day, the wages constituted by the grant would not be liable to pay-roll tax, the employer is taken to have elected to treat the wages constituted by the grant of that share or option as being paid or payable on the date on which the share or option was granted.

[6] Section 3AD (8)

Omit "by the employer".

[7] Section 3AE Value of shares and options

Omit "for the grant of" from section 3AE (1).

Insert instead "in respect of".

[8] Section 3AE (3A)

Insert after section 3AE (3):

- (3A) Section 9 does not apply to the grant of a share or option that constitutes wages, even if it constitutes a fringe benefit.

[9] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

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[10] **Schedule 6, Part 12**

Insert after Part 11:

**Part 12 Provisions consequent on enactment of
State Revenue Legislation Amendment Act
2006**

21 Amendments relating to employee share schemes

- (1) The employee share scheme amendments have effect as if those amendments had commenced on 1 July 2005, subject to this clause.
- (2) An employer who included the grant of a share in the taxable wages for the employer for the financial year commencing 1 July 2005 is taken to have elected to treat the grant date of the share as the date on which the wages constituted by the grant of that share are paid or payable.
- (3) Liability for pay-roll tax in respect of any shares or options granted by an employer on or after 1 July 2003, but before 1 July 2005, is to be determined in accordance with this Act as amended by the employee share scheme amendments, if the employer so elects.
- (4) Anything done or omitted to be done on or after 1 July 2003 and before the date of assent to the *State Revenue Legislation Amendment Act 2006*, that would have been validly done or omitted if the employee share scheme amendments had been in force at the time that it was done or omitted, is taken to have been validly done or omitted.
- (5) In this clause:
employee share scheme amendments means the amendments made to sections 3AD and 3AE by the *State Revenue Legislation Amendment Act 2006*.

**Schedule 4 Amendment of Taxation Administration
Act 1996 No 97**

(Section 3)

Section 82 Permitted disclosures—to particular persons

Insert after section 82 (k) (xi):

- (xia) the Director-General of the Department of State and Regional Development,