

## Refunds

### Revenue Ruling TAA.002

#### Preamble

The *Taxation Administration Act 1997* (TAA) came into effect on 1 July 1997 and consolidates the administrative provisions of the *Pay-roll Tax Act 1971*, *Financial Institutions Duty Act 1982* and the *Debts Tax Act 1990*. These Acts are defined as 'taxation laws'<sup>1</sup> under the TAA. The purpose of the TAA is to provide a consistent approach to the administration of these taxes and duties in Victoria.

This Ruling outlines the circumstances and process under which a refund will be made under the TAA. The ruling clarifies under what circumstances the Commissioner of State Revenue must make a refund, the rights of a taxpayer if the Commissioner of State Revenue refuses a refund and the requirement to pass on a refund in certain circumstances.

Taxpayers seeking information regarding refunds under taxation legislation not covered by the TAA should refer to refund rulings specifically relating to those revenue lines.

#### Ruling

Any application for a refund received by the State Revenue Office from 1 July 1997 must be made in accordance with the requirements specified in Part 4 of the TAA.

An application for refund will only be considered where the application is made by the relevant taxpayer (as defined in section 3 of the TAA) or by an agent duly authorised to act on behalf of the taxpayer.

Claims for a refund on the basis that tax has been overpaid under a taxation law need to be in a form approved by the Commissioner of State Revenue. This form can be obtained from the State Revenue Office.

An application for a refund on grounds other than the invalidity of a provision under a taxation law must be made within three (3) years<sup>2</sup> of the payment of the amount sought to be refunded.

Before a refund is paid in relation to overpaid duty or tax, the overpayment will be applied to meet all other liabilities that the taxpayer has to the Crown under Acts administered by the Commissioner of State Revenue. The Commissioner of State Revenue will refund any portion of the overpayment which is not so applied. (See TAA s.20(d)(ii))

#### Windfall Gains

A refund will not be paid to a taxpayer where the tax or duty has been recovered from another person unless the taxpayer undertakes to reimburse any such person within 90 days after receiving the refund. The taxpayer is then obliged to notify the Commissioner of State Revenue in writing, within seven (7) days of the end of this period, that the amounts were reimbursed.

#### Taxpayer Rights

The Commissioner of State Revenue is required to make a decision on any application for a refund within three (3) months of the application being lodged. If at the end of the three (3) months, the Commissioner of State Revenue has not made a refund the applicant may, within three (3) months after that period, bring proceedings for the recovery of the amount overpaid.

Where the Commissioner of State Revenue gives a written determination, within three (3) months from the date of lodgement, refusing the refund in part or in full, the applicant may, within three (3) months from the date of decision bring court proceedings for the recovery of the amount refused.

#### Refunds (Limitations)

If a refund is claimed by reason of the invalidity of a provision under a taxation law, recovery action is subject to the provisions of the Limitation of Actions Act 1958. In such cases, court proceedings for the recovery of tax paid must begin within 12 months of the payment of the amount sought to be refunded.

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<sup>1</sup> The definition of 'taxation laws' in the TAA also includes the *Congestion Levy Act 2005*, the *Duties Act 2000*, the *Land Tax Act 2005* and the *Payroll Tax Act 2007*.

<sup>2</sup> Victoria has moved from a three-year period to a five-year period for refunds from 1 July 2007 as part of the payroll tax harmonisation initiative.

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## Refunds (Objections)

A taxpayer cannot apply for a refund of an amount paid in satisfaction of a 'Notice of Assessment' which the Commissioner of State Revenue has served on the taxpayer.

A taxpayer who wishes to pursue a refund in relation to an assessment issued by the Commissioner of State Revenue must use the objection and appeal provisions contained in Part 10 of the TAA.

In cases where a taxpayer's objection is allowed in whole or in part, or a taxpayer's review or appeal is upheld, the Commissioner of State Revenue must refund any amount paid in excess of the tax payable under the relevant taxation law.

In instances where an objection is allowed in part or in full, or a review or appeal is upheld, the Commissioner of State Revenue must pay interest on the amount overpaid on a daily basis from the date of overpayment or the date on which the assessment was made (whichever is the later) until the date the amount is refunded.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Revenue Ruling GEN.01.

**Commissioner of State Revenue**

**November 1997**

