

Revenue Rulings

Refunds

Revenue Ruling BF.004

Preamble

The refund provisions of the *Business Franchises (Tobacco) Act 1974* (the Act) were amended in 1992 as a result of the *Royal Insurance Australia Ltd v Comptroller of Stamps (1992)* and *David Securities Pty Ltd v Commonwealth Bank of Australia (1992)* cases. (Note: The refund provisions of this Act apply to both tobacco licences and petroleum products licences.) As a consequence of these amendments, any application for a refund received by the State Revenue Office on or after 15 August 1992 will have the refund limited to a maximum period of three years prior to the date of application.

Legal arguments have been raised recently that licence fee payers ("fee payers") can take action outside the statutory refund scheme to recover overpaid fees dating back more than three years. Doubts have also arisen about the interrelationship between the refund provisions and the *Limitation of Actions Act 1958* which provides a one year limit on the beginning of legal proceedings for the repayment of State taxes and charges.

To remove these uncertainties, further amendments were made to the refund provisions in 1993.

The purpose of this Ruling is to explain the changes made to the refund provisions.

Ruling

Any application for a refund received by this Office on or after 15 October 1993 must be made in accordance with the requirements specified in the *Business Franchise (Tobacco and Petroleum Products) Regulations 1992*. To assist applicants for a refund, a refund application form has been developed. This form can be obtained from the State Revenue Office.

Under Section 19 of the Act, an application for refund on grounds other than the invalidity of a provision of the Act, must be made within three years of the payment of the amount sought to be refunded.

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

A refund will not be paid to a fee payer where the cost of the fee has been recovered from another person, unless such monies are reimbursed within 90 days of the refund being made, to the person so charged. However, the Commissioner has determined that a fee payer will not be considered to have recovered duty from or to have charged another person duty merely because the cost of licence fees is built into the price charged for the tobacco or petroleum products, as the case may be. To constitute a charge on another person, the fee payer would need to directly and explicitly charge another person for licence fees (for example a wholesaler's invoice to a retailer of tobacco may contain a separate component for tobacco licence fees) or there would have to be clear documentation to indicate that the fee had been on-charged by the fee payer.

In addition, before a refund is paid in relation to overpaid licence fees, the overpaid duty will be applied to meet all other liabilities that the fee payer has to the Crown, in respect of acts administered by the Commissioner of State Revenue.

The Commissioner is required to make a decision on the application for refund within three months of receiving the application. If at the end of the three month period, the Commissioner has not made a refund to the applicant, the applicant may within three months after that period, bring proceedings for the recovery of the refund amount.

Where a decision is made by the Commissioner within three months from the date of application and the decision is to refuse the refund in part or in full, the applicant may, within three months from the date of decision, bring proceedings for the recovery of the amount of refund refused.

'Proceedings' is defined in the Act for the purposes of the refund provisions to include:

- **seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction; or**
- **seeking any order under the *Administrative Law Act 1978*.**

This Ruling is effective from 15 October 1993.

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.

Denzil Griffiths
Commissioner of State Revenue
30 September 1994

