

Revenue | Rulings

Status of private rulings

Revenue Ruling GEN.007

Replaced by: GEN.009

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Preamble

This Ruling, which replaces Revenue Ruling GEN.05, has had some minor revisions to further clarify the status of private rulings issued by the Commissioner of State Revenue to a particular taxpayer.

The Commissioner of State Revenue issues two types of rulings – public and private. Public rulings are issued as part of the Revenue Rulings service introduced by the State Revenue Office in June 1993 as a method of publishing and disseminating decisions on the interpretation and application of legislation administered by the Office. (See Revenue Ruling GEN.01.) These rulings detail the State Revenue Office’s position or policy on a particular issue and are of general application to taxpayers. Private rulings are issued in response to specific requests by taxpayers, or their representatives, seeking advice on the interpretation of the legislation to a situation encountered by a taxpayer.

Ruling

This Ruling is to be read in conjunction with Revenue Ruling SD.020, ‘Assessment of unexecuted documents’.

The Commissioner will issue a private ruling at the request of an individual taxpayer to assist that person to comply fully with any of the Acts administered by the State Revenue Office. However, it is not appropriate for the Commissioner to provide taxpayers with private rulings which would enable them to practice tax avoidance or to exploit ambiguities in the legislation. Therefore, in some instances, requests for private rulings may be refused.

Generally, a private ruling will not be issued to a taxpayer who presents a hypothetical situation for an opinion. Nor will a private ruling be issued to evaluate alternatives and advise which option results in the least liability for tax or duty.

The Commissioner may issue a private ruling on a proposed course of action if the taxpayer is unable to decide whether to proceed without receiving advice of the State Revenue Office’s view of the tax consequences. Before a ruling will be issued in these circumstances, the taxpayer will be required to identify all parties involved by name and address, estimate the completion date for the proposed course of action and provide all material facts. In addition, the taxpayer will be required to submit a statement to the effect that there is a genuine intention to proceed with the proposed course of action unless the ruling indicates that it would be impractical to do so, or raises issues not previously addressed.

Once a ruling on a proposed course of action has been given, there is always a possibility that the Office may receive fresh legal advice or implement a change of policy which would cause the Commissioner to find that the ruling is incorrect before the taxpayer can finalise the proposal. If this occurred, the Commissioner would review all circumstances of the case before deciding whether the ruling would be withdrawn. Otherwise, the Commissioner will be bound by the private ruling issued provided that the completed course of action accords with all the information given.

To obtain a private ruling a taxpayer, or their representative, must lodge a written submission with the Office detailing the issue in question, all other parties involved and all relevant facts. The submission should also state the applicant’s views of the interpretation and application of the provisions in question to their own circumstances, the rationale for such views including arguments for and against, as well as any relevant case law. The Commissioner will review the information presented and may seek further information from the taxpayer, or third parties, before issuing a private written ruling on the matter. In no circumstances, should a person construe oral advice to be a private ruling.

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The private ruling will have application only to the taxpayer to whom it is issued and to the factual situation presented. It cannot be relied upon as a precedent by other taxpayers nor can a tax practitioner rely on a private ruling obtained for one taxpayer as a precedent for another.

The Commissioner will be bound by any private ruling issued to a taxpayer provided that:

- **the taxpayer and all relevant parties have been fully identified;**
- **the taxpayer has made a full disclosure of all material facts and information in the written submission;**
- **the circumstances to which the ruling is applied are identical to those represented to the Commissioner in the written submission; and**
- **the taxpayer acts, or has acted, in accordance with the ruling.**

When the above requirements have been satisfied, the only situations which would cause the Commissioner to depart from an issued private ruling are:

- **where the advice is subsequently overruled by a court or tribunal;**
- **where there is a legislative amendment; or**
- **where the Commissioner has determined that a particular ruling issued is incorrect.**

In such cases, the ruling will be withdrawn from the date of the decision of the court or tribunal (or such later date as the Commissioner decides is appropriate), the date of the amendment or the date of the Commissioner's determination respectively. If the withdrawal of the ruling results in a new liability for the taxpayer, tax or duty will be payable only from the date on which the ruling is withdrawn.

The Commissioner will not be bound by a private ruling where it is found that a taxpayer, or their representative, has failed to provide all material information which ought to have been provided, or has misrepresented information whilst seeking a private ruling. The ruling will be considered never to have had application and accordingly, the withdrawal of such a ruling would have both a prospective and retrospective effect. In cases where there has been a failure to provide all material information, the Commissioner will take into consideration the role of the Office in obtaining further information to determine the date of the withdrawal of the ruling. However, the onus is on the taxpayer, or their representative, to provide all material information in the first instance and to monitor all communications from this Office which advise of legislative amendments, judicial decisions and policy changes.

In some instances, it may be necessary to give a qualified ruling stating the Commissioner's current position but advising the taxpayer of the possibility of a change of opinion. This would occur when the State Revenue Office is awaiting judicial interpretation of the same issue which concerns the taxpayer and when it is known that legislative amendments are contemplated. In these situations, the onus will rest with the taxpayer to monitor the continuing validity of the private ruling.

If the facts or circumstances, as presented in the submission, change after the private ruling has been issued, the taxpayer, or their representative, is required to contact the Office to clarify whether the private ruling still applies.

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
October 1997**