

Objections Lodged Out of Time

Revenue Ruling TAA.004

Revenue Ruling TAA.004 has been ceased in September 2012 due to the issue of Revenue Ruling TAA.004 (Version 2)

Preamble

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

Section 99 of the TAA requires that objections must be lodged within 60 days of the service of the notice of assessment or notice of decision. In general, this provision must be complied with for an objection to be valid. However, section 100 provides that the Commissioner of State Revenue has a discretion to consider an objection lodged outside the 60 day period.

The purpose of this Ruling is to advise taxpayers and their advisers of factors which the Commissioner of State Revenue will take into account when determining whether to exercise the discretion to consider objections which are lodged outside the 60 day period. All requests received will be considered on their merits, but due regard will be given to the general guidelines set out below.

Any decision made by the Commissioner of State Revenue, including refusal of the application, is 'non-reviewable'. This means that it is not possible for a taxpayer to seek judicial or administrative review of the Commissioner of State Revenue's decision in relation to the application.

Ruling

Procedure

Objections lodged outside the 60 days time limit should be considered as invalid objections

The Commissioner of State Revenue will consider that all objections lodged later than the 60 day time limit are invalid unless there are sufficient reasons for the Commissioner of State Revenue to exercise this discretion to accept a late objection.

This approach is consistent with section 99 of the TAA which imposes a 60 day time limit from the service of the notice of assessment or notice of decision, on lodging objections. It should not be assumed by any taxpayer or their agent that the Commissioner of State Revenue will exercise the discretion in their favour.

Applications for Extension of Time

An application for the Commissioner of State Revenue to exercise the discretion to consider an objection lodged out of time must be in writing. The application must state fully and in detail the circumstances concerning, and the reasons for, the failure by the taxpayer (or their agent) to comply with the statutory time limit for lodging objections. The Commissioner of State Revenue, in considering the application, may refuse to exercise the discretion, exercise the discretion, or exercise the discretion subject to conditions.

Taxpayers or their agents should not seek to rely on verbal undertakings or advice concerning the likely success of an application given by SRO staff in the course of any telephone discussion or meetings. The TAA provision requires due consideration of a written application before a decision can be made.

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¹ 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*.

Evidence in Support of Application

The Commissioner of State Revenue may request that an applicant provide evidence or information in support of any claims made in the application. This information may include copies of medical certificates or a statutory declaration.

Notice of Decision

The Commissioner of State Revenue's decision in relation to the application to lodge an objection outside the 60 day period will be conveyed to the taxpayer in writing.

Consideration of Applications

Extent of the Delay in Lodging the Objection

The extent of the time delay between the last date for lodgement of an objection and the date on which the taxpayer sought permission to lodge a late objection will be a factor considered.

The Commissioner of State Revenue will consider the time the taxpayer took to respond to the initial decision, determination or assessment to which the objection relates.

In considering whether the delay was reasonable, the Commissioner of State Revenue will also have regard to whether the grounds of objection are complex. If the issue is novel or obscure, the Commissioner of State Revenue is more likely to consider the application favourably.

That a taxpayer cites ignorance of the law relating to objections would not of itself be considered sufficient. Relevant information is well publicised through information bulletins, Revenue Rulings, seminars and the objections form. It is always open to a taxpayer who is uncertain about the process to contact SRO staff.

The SRO has had a practice of accepting that objections lodged by post have been received within the 60 day period, if received by the SRO no later than two (2) days after the expiration of the 60 day period. This practice will continue.

Delays caused by circumstances outside the taxpayer's control

The Commissioner of State Revenue will look favourably on the application where the delay was caused by circumstances outside the taxpayer's control. This will include situations such as:

- **changes to applicable taxation laws which directly result from court decisions;**
- **postal or delivery delays due to strikes or natural disasters (but not where the taxpayer could have arranged other means of delivery because of knowledge of the likelihood of a delay);**
- **fires, floods or other natural disasters;**
- **unavailability of key personnel because of sudden resignation, ill-health or death; and**
- **computer system breakdowns, including third party systems.**

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
February 1998

