

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 17

RENTAL BUSINESS

- **RULINGS CLARIFYING LIABILITY OF CERTAIN CLASSES OF RECEIPTS**
- **STAMP DUTIES (ASSESSMENT AND FORMS) AMENDMENT ACT, 1991 No. 74 OF 1991**

Your attention is drawn to the Stamp Duties (Assessment and Forms) Amendment Act, 1991 No. 74 of 1991 ("the Amending Act") which was assented to on 12 December, 1991. These amendments have given rise to significant changes to the Rental Business provisions of the Stamp Duties Act, 1923 ("the Act").

PURPOSE OF THE AMENDMENTS

The intention of the Government in introducing the proposed amendments was to:-

- remove ambiguities present in the rental provisions of the Act and to ensure that all amounts received as rent in respect of the rental business are included in returns and amounts relating to sale of goods are excluded;
- counter situations where the owner artificially reduces rental amounts;
- redraw the Commissioner's power to make an assessment where a taxpayer has failed to lodge a statement or pay duty.

DISCUSSION

A new paragraph 31g(e) which sets out broadly the amounts to be included in a statement required to be lodged by a registered person has been added by the Amending Act to Section 31g of the Act.

"Section 31g(e)

Section 31g The amounts to be shown in any statement required to be lodged under Section 31f include:-

(d) ·

(e) amounts that, although not constituting payments in respect of the use of goods, are received by, or on behalf of, the registered person in respect of his or her rental business."

Paragraph 31i(b) has been added to Section 31i of the Act which lists amounts **not** to be included in a statement lodged by a registered person.

"Section 31i(b)

Section 31i(b) Nothing contained in Section 31f shall require a registered person to include in a statement required by that section to be lodged with the Commissioner any amount in respect of . . .

(a)

(b) the sale of any goods (other than where there is an agreement, arrangement or understanding that the person to whom goods are sold may, at a later time, sell the goods back to the registered person)."

The effect of these amendments is to levy duty on "amounts" received "in respect of . . . rental business". Thus any amounts received that are integral to the business of renting will be dutiable receipts. An optional levy offered by an owner (at the hirer's option) and paid by the hirer will not be a receipt by a rental business, while a non optional levy offered and paid will be a dutiable receipt which must be included in the return. The question of whether a receipt is integral to the business of renting or not is a question of fact relating directly to the terms and conditions set at the time of hiring the goods. However this circular gives this Office's rulings on matters normally posed to this Office.

Additionally, the Amending Act replaces the content of Section 31m of the Act with new wording. This provides the Commissioner of Stamps with the ability to raise an assessment in instances where a registered person fails to lodge a return, fails to pay duty or pays insufficient duty. This amendment does not alter the existing duties and responsibilities of a registered person in his/her dealings with the State Taxation Office.

RULINGS

Dutiable Amounts

In order to clarify the liability of registered persons in relation to receipts derived from their rental business a series of rulings are set out below.

1. Residual Payouts

Where a contract does not provide an option to purchase but the rental business accepts a payment of a residual value in order that the hirer can secure ownership, the payment is not considered to be a receipt in respect of the rental business and should not be included in returns.

2. Sale of Goods

Where a rental business derives receipts not only from the rent of goods but also from the sale of other products, the proceeds from the sale of those products are not considered to be dutiable. For example, a video hire business would not include sales made from confectionery items nor would a business which hired out sanding machines include income derived from the sale of sheets of sandpaper used by the machine.

3. Delivery

Where delivery is an addition to the terms of the agreement and is offered as an option only, no duty is payable on those receipts and they should not be included in returns. Where there is no option offered by the rental business and the customer is required to use the services of the rental business or a third party nominated by the rental business, the amounts received for the delivery are dutiable and must be included in returns. The receipts are also dutiable if the rental business does not specify a third party by name but by expertise, e.g., "a recognised computer removalist".

4 Cleaning

All receipts for cleaning costs from the hirer including extraordinary cleaning costs incurred such as the removal of hardened cement on a cement mixer are considered rent and should be included in returns. However, the costs (not necessarily the charges) incurred in carrying out this type of cleaning can be claimed as a servicing cost deduction.

5. Insurance

Where a rental business makes a charge for insurance, whether or not the item is optional, the amount so charged is considered to be additional rent unless the charge is simply one which is passed on to an insurance company and the rental business acts solely as its agent.

6. Fuel

If a charge for fuel made by the registered person is optional and the hirer can purchase the fuel at any other place, the receipt from the sale of fuel is not a rental receipt.

7. Re-hire

Where a rental business finds that it does not hold sufficient goods to meet the demand and hires those goods from another rental business in order to meet that demand, the receipts received by both parties are dutiable.

8. Erection and/or Installation of Equipment

Where a contract requires that the erection and/or installation of equipment (i.e., scaffolding, marquees, etc.) is to be carried out by the rental business then the amounts received by the registered person in respect of the costs of erection must be included in the return.

9. Damage Waiver

An amount received by a registered person as damage waiver is dutiable. Payments received from an insurer by the registered person to defray damage caused by the hirer are also dutiable, however the costs incurred could be claimed as a servicing cost deduction.

10. Damage Excess

As with damage waiver, payments received in relation to damage excess are receipts liable to duty.

11. Theft Replacement

Where a charge is levied from the hirer by the rental business for the cost of replacing the goods stolen or lost, the amounts received are considered to relate to the sale of goods and therefore are not rental receipts.

12. Replacement Cost of Scaffolding

As with theft replacement these receipts are not considered to be dutiable.

13. Replacement of Blunt or Broken Blades used by Cutting Equipment, etc.

Receipts by a rental business for these items are for the sale of goods and as such, are not considered to constitute dutiable receipts.

14. Cash Deposits

Cash deposits are not rental receipts of a rental business and hence should be excluded from calculations of rental duty. However, if these cash deposits are subsequently appropriated as rent, such amounts are dutiable and should be included in the returns.

15. Refunds of monies paid

Where amounts are received by the hirer in respect of its rental business and such amounts relate to refunds of amounts paid, i.e. stamp duty overpaid or deposits refunded on goods, such amounts are not liable for duty.

16. Insurance Payouts

Where the rental business receives from an insurance company amounts in relation to goods lost or destroyed such amounts are not liable to duty.

17. Ancillary Income

Investment income such as interest, dividends or similar receipts are not receipts received in respect of the rental business and are not liable for rental duty.

18. Stamp Duty

The Act prohibits the passing on of duty to any other person except where the transaction is a commercial leasing transaction or other commercial transaction of a

similar character to which the provisions of the Consumer Credit Act, 1972 and Consumer Transaction Act, 1972 do not apply. The application of this part of the Stamp Duties Act, 1923 was explained fully in Stamp Duties Circular No. 6.

However, in the specific instances where the Act does permit the stamp duty to be passed on to the customer, the receipt of that stamp duty is not considered to be rent and should not be included in returns.

DATE FROM WHICH RETURNS SHOULD REFLECT CHANGES

While the changes came into effect on 12 December, 1991 registered persons will have until the February return period (due on 21 March, 1992) to ensure that their returns reflect the amendment.

Any further enquiries regarding these amendments should be directed to Miss Claudia Provenzano on 226 3704

12 February, 1992

COMMISSIONER OF STAMPS

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