

SOUTH AUSTRALIA



STATE TAXATION OFFICE

LAND TAX

Circular No. 117

RE: EXEMPTION FOR PRINCIPAL PLACE OF RESIDENCE

1 INTRODUCTION

The Land Tax Act, 1936 provides that exemption from land tax may be granted where the Commissioner is satisfied that land owned and occupied by a natural person constitutes that person's principal place of residence.

The regulations under the Act specify relevant criteria to ensure that the exemption does not apply where the property is used to a significant extent for business or other commercial purposes.

This circular has been issued as a general guide to assist persons who are land holders to determine their eligibility to qualify for the exemption.

2 WHEN DOES THE EXEMPTION APPLY?

The exemption came into operation on 1 July, 1980.

As land tax is calculated as at the 30 June before the financial year for which it is payable, it is necessary for the conditions for exemption to be satisfied at 30 June of each year.

Therefore, if a house property, which was not exempt from land tax as at the preceding 30 June, is purchased and occupied by the new owner after that date, or if a home is built on an owner's land and occupied by him or her after that date, that land is not eligible for exemption until the next following 30 June.

3 WHO IS ELIGIBLE FOR EXEMPTION?

A land owner who falls within one of the following categories and who is able to meet the conditions set out at part 4 below is eligible for exemption. The categories are:-

3.1 An Individual Owner who is:-

(a) a natural person (as distinct from a corporate body) whose home is built on the land;

or

(b) a natural person who, as a shareholder in a home-unit company, has an exclusive right to occupy a particular unit in a group of home units owned by that home-unit company.

3.2 Joint Owners (two or more) who:-

(a) are natural persons (as distinct from corporate bodies) for whom the home on the land is the principal place of residence of at least one of the joint owners;

or

(b) are natural persons jointly owning a multiple residential building(s) on the land (for example home-units or maisonettes) who are entitled to occupation of a particular residential unit.

Where land is owned by a home-unit company, the criteria set out at part 4 below must be satisfied by each shareholder in respect of the unit occupied by him or her before exemption can be granted for that unit.

3.3 A Beneficial Owner who:-

occupies a home on the land as his or her principal place of residence where that person is:-

(a) the holder of a life interest in the land (not being a lessee);

or

(b) is entitled to the ownership of the land (for example, a beneficiary under a will).

Any beneficial owner who wishes to be recognised as an owner for land tax purposes should seek advice from the Land Tax Office of details of evidence which must be produced to establish such ownership.

4 CONDITIONS WHICH MUST BE SATISFIED BEFORE EXEMPTION IS GRANTED

Each of the following conditions must be satisfied before the land will be exempted from tax:-

4.1 Principal Place of Residence

The home on the land must be the owner's principal place of residence, i.e. it is necessary for an owner to be in actual occupation of the residence on the land in the sense that the residence is the principal place where the owner lives and sleeps.

4.2 Other Criteria

- All buildings on the land must be designed, constructed or adapted for use as a private dwelling or as outbuildings ordinarily used in connection with a private dwelling. Caravans or tents are not regarded as buildings for the purposes of these criteria.
- No part of the home or any other building on the land may be let to any person other than a parent, grandparent, child or grandchild of the owner of the land. A person who is merely boarding or lodging with the owner is not considered to be renting the premises.
- The land and all buildings on the land must be used solely or principally for residential purposes and not:-
 - (a) for the purpose of any *trade*¹. However an owner may engage in primary production or a *home activity*² without affecting the exemption;
 - or

¹*trade* - includes every profession, trade, business or avocation.

²*home activity* - means an activity carried on in a dwelling or in any outbuilding ordinarily used in connection with a private dwelling by a resident for the purpose of which:-

- no assistance is offered other than by a person resident in the dwelling;
- the floor area used (whether temporarily or permanently) does not exceed 28 square metres; and
- no goods are displayed whether in a window or otherwise.

- (b) as a *boarding house*³;
- or
- (c) to any significant extent other than for residential purposes.

If an owner has any doubt whether a use of land or buildings for other than residential purposes may affect his or her exemption, he or she should advise the Land Tax Office of the matter in writing and a ruling will be given by the Commissioner.

Historical Use Only

³*boarding house* - means a dwelling or any outbuilding ordinarily used in connection with a private dwelling in which more than five persons are boarded or lodged for hire or reward.

5 HOW EXEMPTION WILL BE GRANTED

5.1 Notices to Owners

A notice of exemption will be issued by the Commissioner to owners where departmental records indicate that a property is eligible for exemption.

Although the Commissioner may issue a notice of exemption, there will be instances where the Commissioner will be unaware of individual circumstances at the time of the issue of the notice that prevent the fulfilling of the eligibility criteria. For example, an owner may have let the premises or may be conducting a business at home or the property may have been sold.

In these cases the owner is required by the Act to notify the Commissioner of any inaccuracy in the notice *within 21 days* after the date of receipt of the notice. A section for completion by the owner is included in the notice for that purpose.

5.2 APPLICATIONS FOR EXEMPTION

5.2.1 General

An application for exemption will not be required where the Commissioner has issued a notice of exemption. However, where it appears that the land may be eligible for exemption but there is insufficient information in departmental records of the nature of the occupation and use of the land, an application form will be sent, for completion, to the owner.

Eligible owners at 30 June who have not received a notice of exemption or an application form by the next following 30 September should contact the Land Tax Office and they will be advised if an application is necessary. Contact should also be made if a notice for payment of tax is received in respect of property which is eligible for exemption.

5.2.2 Multiple Residential Properties

- Home-unit companies

A natural person who, as a shareholder in a home-unit company, has an exclusive right to occupy (and does occupy) a particular unit in a group of home units owned by a home unit company should contact the Land Tax Office for details of the requirements necessary to obtain exemption for that particular unit.

- Multiple residential properties owned jointly

A separate application in respect of each residential unit must be made by the occupier/owner where there are multiple residential building(s) on land (for example home-units or maisonettes) jointly owned by natural persons who are each entitled to occupation of a particular residential unit.

Application forms are obtainable from the Land Tax Office.

5.3 PENSIONERS

Pensioners who qualify for a remission of water, sewer and council rates would generally be entitled to obtain the principal place of residence exemption. Where the criteria at part 4.2 cannot be fully met, contact should be made with this Office to determine whether or not a land tax remission can be granted.

6 OBLIGATIONS OF OWNERS OF EXEMPTED LAND

The Act imposes the following obligations on owners of land:-

- Notice of exemption sent to an eligible owner:-

As set out in paragraph 5.1 an owner who receives a notice of exemption which is inaccurate (for example where any of the grounds for exemption do not exist), must notify the Commissioner within 21 days after the date of receipt of the notice.

- If grounds for exemption cease to exist:-

The Commissioner must be notified forthwith *in writing* if any of the grounds for exemption cease to exist; for example if the land ceases to be the principal place of residence, if it is sold, or if the land or the buildings are used for a purpose which does not satisfy the criteria for exemption.

When notifying the Commissioner, the owner should use the portion of the notice of exemption provided for that purpose and give full particulars including (if applicable) the date of sale and date the property was vacated. In the event of the sale of exempted land *and the purchase of another property* which will become the principal place of residence, the identity of the new property should be advised so that consideration can be given to its exemption.

7 PENALTIES

The Act provides severe penalties where:-

- false or misleading statements are made in an application;
- the owner fails to notify the Commissioner that the notice of exemption is inaccurate;
- the owner fails to inform the Commissioner that the grounds for exemption have ceased to exist.

8 FURTHER INFORMATION

If you would like more information or help on any matter relating to the exemption of the principal place of residence from land tax, do not hesitate to write to, telephone or call at the Land Tax Office at the address below:

Se voi volete avere piu particolari informazioni e aiuto su qualunque soggetto riguardante il principale posto di residenza concernente la tassa sul terreno (Land Tax) non esitate di scrivere, telefonare oppure venire personalmente all'Ufficio del Land Tax al seguente indirizzo:

Il proprietario di un terreno che è esente dalla Land Tax (Land Tax), può richiedere un'assistenza o un'informazione presso l'Ufficio del Land Tax Office al seguente indirizzo:

Location

State Taxation Office
Taxpayer Services Section
Ground Floor
State Administration Centre
Victoria Square East
ADELAIDE SA 5000

Postal

Commissioner of Land Tax
Box 2250 GPO
ADELAIDE SA 5001

Telephone

(08) 226 3730