

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 101

STAMP DUTIES ACT 1923 - SECTION 71b CONVEYANCE FOR THE PARTITION OR DIVISION OF ANY PROPERTY

The Stamp Duties Act 1923, ("the Act") provides:-

"71b (1) Where upon the partition or division of any property any consideration exceeding in amount or value two hundred dollars is paid or given, or agreed to be paid or given, for equality, the instrument by which the partition or division is effected shall be charged with duty as if it were a conveyance on sale and that consideration were equal to the value of the property.

(2) A person who executes, or is otherwise engaged or concerned in the preparation or certification of, an instrument effecting the partition or division of any property and who, upon submission of the instrument to the Commissioner for stamping, does not disclose the total consideration (if any) paid or given, or agreed to be paid or given, for equality shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(3) It is a defence to a charge under subsection (2) that the defendant did not know and could not reasonably be expected to have known the total consideration required to be disclosed by that subsection.

(4) This section applies only in relation to a conveyance for the partition or division of property between members of a family group.

(5) In this section -

"family group" has the meaning assigned to that expression by Section 71(15)."

Relief is consequently provided from ad valorem duty when conveyances fall within Section 71b.

This Office has been requested to issue a Ruling in the situation where there is no commonality of interests. For example, does the partitioning exemption apply where A, B and C are owners of one piece of property and A and B are owners of another piece of property and it is desired to partition both properties without payment by way of equality, so that in respect of the first piece of property it is conveyed to A and C and in respect of the second piece of property it is conveyed to B (assuming equality of value in all cases).

The Second Schedule to the Act states in part:-

CONVEYANCE for the partition or division of any property, being a conveyance of the kind referred to in Section 71b(4), where the consideration for equality does not exceed \$200 or where there is no consideration for equality\$10.00

A prerequisite for partition of property is that one should have an interest in that property before the partition, such interest being joint and undivided. Once the property is partitioned, the concept of partition implies that the parties have interests separately over parts of the former property.

RULING

This Office has provided relief under the following circumstances in the past and will continue to do so where there is a commonality of interests. The instances are:-

A and B jointly own two separate properties and after "partition" A becomes the sole owner of one while B the sole owner of the second; or,

A, B and C jointly own properties P, Q and R and after "partition" A, B and C become sole owners of properties P, Q and R respectively.

This Office does not believe that the partition exemption extends to apply to situations where there is no commonality of interests.