

## SOUTH AUSTRALIA



### STATE TAXATION OFFICE

#### Stamp Duties

#### Circular No 6

#### RENTAL DUTY

The following information is provided for persons registered under the Rental Provisions of the Stamp Duties Act, 1923.

#### INCREASE IN THRESHOLD

The Stamp Duties Act Amendment Act (No. 2), 1989, No 52 of 1989 assented to on 14 September, 1989, increased the threshold for the payment of duty from \$ 15,000 to \$24,000 per annum retrospectively to 1 September 1989.

Consequently all registered persons, lodging monthly statements, may deduct from the gross rental income to be declared in the September, 1989 statement an amount of \$2,000.00 in lieu of \$ 1,250.00, previously provided in the Act.

#### CLASS OF TRANSACTIONS NOT PROHIBITED FROM PASSING ON STAMP DUTY IN ACCORDANCE WITH SECTION 31L OF THE STAMP DUTIES ACT, 1923

Section 31 L prohibits the passing on of duty by a registered person 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.

To determine whether a transaction is a "commercial leasing" transaction or other transaction of a similar nature each case will need to be considered on its merits.

On examining particular fact circumstances the following may assist:--

Stroud's Judicial Dictionary defines "commercial action" as "any cause arising out of the ordinary transactions of merchants and traders . . .". The shorter English Oxford Dictionary defines "commercial" as "... engaged in commerce, trading".

If the agreements are in relation to such dealings then they would fall within the definition. **For example**, if a company is leasing some paintings for its offices, the lease agreement would be a commercial leasing transaction. If the company were to hire the paintings this would be a ". . . commercial transaction of a similar character". However, if the same paintings were leased by a person for his/her own home, then the lease agreement would not fall within the definition.

**Another example** of a Class of Transactions which would fall within the definition is the hire of goods by a person carrying on a hire business from another such person for the purpose of sub-hire to an end-user, as such transactions commonly arise out of the ordinary course of trade between persons carrying on hire business.

For Rental Duty purposes, transactions to which the Consumer Credit & Consumer Transactions Act do not apply are:--

(i) A contract or agreement under which a body corporate takes any goods on hire or acquires by any other means the use of or benefit of any goods;

or

(ii) A leasing or hire contract or agreement where

-- (a) the consideration to be paid exceeds \$20,000

or

-- (b) the term of the contract exceeds four months;

(iii) A contract or agreement for lease of

(a) any goods by tender

or

(b) of antiques other than antique furniture

or

(c) works of art

(iv) A contract or agreement for the bailment of goods to a person who trades in goods of that description.

Accordingly, if a transaction is of one of the above four **and** it is a commercial leasing transaction or other commercial transaction of a similar character it is exempt from the prohibition from passing on duty. In all other circumstances the duty **must not be** passed on to the customer.

Any further enquiries regarding either of the above matters should be directed to the Rental Officer, telephone (08) 226 3704.

11 December, 1990

COMMISSIONER OF STAMPS