

SOUTH AUSTRALIA



RevenueSA

Stamp Duties

Circular No. 213

**STAMP DUTIES ACT 1923
ANNUAL LICENCE
RIDER BENEFITS TAKEN IN CONJUNCTION WITH LIFE COVER**

The Stamp Duties Act 1923, (“the Act”) requires that persons who carry on insurance business in South Australia pay stamp duty on premiums received.

The Act provides the rate of stamp duty that is to be applied to premiums received in respect of life insurance (“life rate”) and the rate to be applied to general insurance business (“general rate”).

“**general insurance business**” means any assurance or insurance business not relating to life insurance policies;

“**life insurance policy**” does not include a policy covering personal accident or workers compensation or a policy complying with Part 4 of the *Motor Vehicles Act 1959*;

This circular confirms the position of this Office in respect of the application of the general rate to premiums that provide additional benefits to life policies (“Riders”).

BACKGROUND

In recent times, a view has arisen that riders attached to life policies should be subject to duty at the life rate, notwithstanding that the riders may provide a benefit that is of a general insurance nature.

Proponents of that view have argued that the decision of the Supreme Court of Western Australia in *National Mutual Life Association of Australasia Ltd v Commissioner of State Taxation* (unreported, Malcolm CJ, 10 June 1996) (“NMLA case”), establishes the principle that a life cover policy with a rider attached is one entire and inseverable contract and therefore the entire premium should be subject to stamp duty at the life rate.

However, the NMLA case was decided in a jurisdiction that attaches liability to pay duty to an instrument being the policy document or renewal.

That is not the case in South Australia

In contrast, under the Second Schedule to the Act, life and general insurance policies of themselves are not liable to stamp duty. Stamp duty is instead charged on the premiums disclosed in monthly or annual returns.

It is considered by this Office that the most relevant authority for this matter is the decision of the High Court in *National Mutual Life Association of Australasia Ltd v Federal Commissioner of Taxation* (1959) 102 CLR 29.

The premiums charged by the appellant were computed by adding to the amount payable for life cover, a further amount calculated by reference to the risk in providing disability or accident benefits. The total premium was expressed as a single annual sum. The High Court held that whether or not a single instrument had more than one character, was only relevant to statutes which were concerned with the characterisation of instruments. The court held that where the *Income Tax Assessment Act 1936* (“ITAA”) speaks of “premiums received in respect of policies of life assurance” it was not referring to the instrument recording the contract but to the contractual obligations themselves. Schedule 2 of the Act refers to the receipt or charging to the account of “premiums relating to life insurance” and therefore, is expressed in similar terms to the ITAA relating not to the policy as an instrument but to the contractual obligations themselves. The question before the Court was not the characterisation of an instrument, but whether the premiums received by NMLA were divisible and apportionable between life and general insurance. The Court concluded that, in fact, the premiums were divisible and apportionable.

The Act imposes liability on premiums received rather than on the policy document as an instrument.

RULING

Where a life policy is issued with riders of a general nature attached and a separate premium component in respect of that rider can be determined with certainty, stamp duty at the general rate is payable on that portion of the premiums attributable to the rider benefit.

Examples of rider benefits that would be liable to stamp duty at the general rate include:-

- *Total and permanent disablement benefit*
- *Crisis care benefit*
- *Enhanced crisis care benefit*
- *Recovery cover*
- *Income protection cover*

The list is not exhaustive.

PENALTY AND INTEREST AMNESTY

Where persons have paid stamp duty on rider premiums in respect of general insurance cover at life rates rather than general rates, a schedule of such amounts included in annual returns in respect of premiums received in the years ended 31 December 1994 to 31 December 1999 should be prepared in the following format and lodged with this Office by 1 July 2001.

AUDIT ACTIVITY

After the conclusion of the amnesty period, RevenueSA will conduct audits of licence applications lodged by persons who carry on insurance business in South Australia to ensure that stamp duty on premiums attributable to riders has been paid at the general rate, either in the appropriate monthly return or pursuant to the above-mentioned amnesty.

Any tax defaults not declared during the amnesty and detected after the amnesty period will attract penalty and interest at the rates prescribed in the *Taxation Administration Act 1996*.

FURTHER INFORMATION

Location

RevenueSA
Taxpayer Services
State Administration Centre
200 Victoria Square East
ADELAIDE SA 5000

Postal

Commissioner of State Taxation
RevenueSA
GPO Box 1353
ADELAIDE SA 5001

Telephone

(08) 8226 3750

Facsimile

(08) 8226 3734

Website

<http://www.treasury.sa.gov.au/revenuesa>

E-mail

revenuesa@saugov.sa.gov.au

April 2001

COMMISSIONER OF STATE TAXATION

SCHEDULE

Name of Insurer: _____

Registration No: _____

Contact: _____

Phone: _____

E-mail: _____

Year Ended 31 December	Rider Premium Received	Stamp Duty @ \$8 per \$100 or part thereof
1994		\$
1995		\$
1996		\$
1997		\$
1/1/1998 to 1/8/1998*		

Period	Rider Premium Received	Stamp Duty @ \$11 per \$100 or part thereof
1/9/1998 to 31/12/1998		\$
1/1/1999 to 31/12/1999		\$

Total Stamp Duty to declare through amnesty \$

* include only those premium amounts invoiced prior to 1/8/1998 which relate to policies of 12 months or less that commenced prior to 1 /9/1998

DECLARATION :

PRINT NAME IN BLOCK LETTERS

PERSONAL SIGNATURE

declare that the above details are true and correct.