

PARKING SPACE LEVY ACT 2009

ORDER UNDER SECTION 12(1)(b)

GUIDELINES AS TO THE UNUSED CASUAL PARKING SPACE EXEMPTION

1. These Guidelines are made by the Chief Commissioner of State Revenue with the approval of the Minister for Transport pursuant to Section 12(1)(b) of the Parking Space Levy Act 2009.
2. Clause 7(3) of the Parking Space Levy Regulation 2009 provides an exemption for an unused casual parking space. These are Guidelines as to whether, in particular circumstances, a parking space is, or is not, to be exempted from the calculation of the parking space levy as an unused casual parking space.
3. Clause 7(3) states that a parking space on leviable premises in a Category 1 or Category 2 area is an exempt parking space while it is an unused casual parking space.

Clause 7(4)(a) defines an unused casual parking space as a parking space that is set aside for use by the public for the parking of motor vehicles but remains unused for that purpose.

4. Accordingly, the definition of "unused casual parking space" has two elements. To satisfy the definition, a parking space must:
 - be set aside for use by the public for the parking of motor vehicles; and
 - remain unused for that purpose.

The first element of the definition effectively describes what a "casual parking space" is, for the purposes of the exemption.

First element - when is a parking space set aside for use by the public for the parking of motor vehicles?

5. A parking space is considered to be a casual parking space, that is, set aside for use by the public for the parking of motor vehicles, if it is an unreserved parking space, generally available to members of the public.
6. The Chief Commissioner will consider the terms of any agreement or arrangement as to the use of a parking space in determining whether it is a casual parking space and, in particular, will consider:
 - if the space is generally available for use by a member of the public;
 - if a person may use it as a parking space at any time when it is not occupied by a motor vehicle; and
 - if the space is subject to any agreement or arrangement for its reservation.

The Chief Commissioner is not precluded from considering other relevant matters.

7. A parking space set aside for the parking of a motor vehicle under an arrangement (usually, a lease or licence) which gives a person the use of it to the exclusion of any other parker (a reserved parking space) is not a casual parking space.
8. A parking space set aside as a reserved parking space is not a casual parking space merely because it is not yet the subject of a current lease or licence to a person for its exclusive use. However, a parking space that was previously set aside as a reserved parking space is not precluded from becoming a casual parking space if it is subsequently set aside as such.

Second element - when is a casual parking space an unused casual parking space?

9. A casual parking space will only be an exempt parking space while it is unused. Whether a casual parking space is unused will be a question of fact in each case.
10. The exemption for an unused casual parking space is worked out and applied on a daily basis. Accordingly, an owner or operator wishing to claim an exemption for unused casual parking spaces must keep the following records for each day for which they wish to claim an exemption:
- the total number of liable spaces;
 - the total number of spaces set aside as casual parking spaces; and
 - the total number of casual parking spaces unused on that day.

The records must be retained for a minimum of five years from the date an exemption is claimed in a return lodged with the Chief Commissioner.

11. Whether or not a casual parking space has been used on a particular day must be determined at the time of maximum daily usage. Until a determination is made in accordance with the following 2 paragraphs, the Chief Commissioner accepts 1pm as being the time of maximum daily usage.
12. The Chief Commissioner may at any time by notice in writing require an owner or operator within a period of 3 months following the issue of the notice to:
- undertake counts of unused casual parking spaces no more than 3 times a day, at times specified by the Chief Commissioner, during a typical 2 week period;
 - provide records of the counts to the Chief Commissioner; and
 - report to the Chief Commissioner which of the 3 specified times has the maximum usage, as indicated by the counts.

For car spaces located in a car park, the counts can only be taken on days when the car park is open for business, and a single time of maximum daily usage is to be reported for the whole car park.

13. Unless some other approach is approved or required by the Chief Commissioner, the time reported as the time of maximum usage following the 2 week trial will be regarded as the time of maximum daily, and a count must be undertaken at that time of day for every day after the expiry of the 3 month period for which an exemption for casual parking is claimed, until a further determination is made.
14. In the absence of adequate records, including when no daily count has been made, the Chief Commissioner may determine the total number of unused casual parking spaces on a particular day or days based on information that he has from any source.
15. Where a parking space is a reserved parking space for only certain days of the week, the parking space is not a casual parking space for those days, but may qualify as a casual parking space for the remaining days of the week. Also, a reserved space that is only used occasionally on a casual basis is not a casual parking space.
16. Because the unused casual parking space exemption applies, on a daily basis, to parking spaces set aside for use by the public, it cannot be claimed for a parking space in a car park for any day on which the car park, or the part containing the relevant space, is not open for business for at least 3 hours (whether or not consecutive hours) during that day.

A car park will not be regarded as open for business during a part of a day when it is closed to the public at large, just because a regular customer issued with an access card or an electronic access device may be able to enter it during that part of the day.

Examples of where the exemption would apply

17. A car park has 500 parking spaces. From Monday to Sunday, 100 spaces are set aside as reserved parking spaces and 400 spaces are set aside as casual parking spaces. An exemption may be claimed for any day that any of the 400 spaces remains unused.
18. A car park has 500 parking spaces. From Monday to Friday, 100 spaces are set aside as reserved parking spaces and 400 spaces are set aside as casual parking spaces. On Saturday and Sunday, all 500 spaces are set aside as casual parking spaces. An exemption may be claimed on a daily basis for any of the 400 spaces unused between Monday and Friday, and for any of the 500 spaces unused on Saturday or Sunday.
19. A car park has 500 parking spaces. From Monday to Friday, 100 spaces are set aside as reserved parking spaces and 400 spaces are set aside as casual parking spaces. On Saturday, all 500 spaces are set aside as casual parking spaces. The car park is closed on a Sunday. An exemption may be claimed on a daily basis for any of the 400 spaces unused between Monday and Friday, and for any of the 500 spaces unused on a Saturday. No exemption may be claimed for any spaces on a Sunday.
20. A council has 100 metered off-street parking spaces available for use with a 2 hour time limit. All 100 spaces are set aside as casual parking spaces. An exemption may be claimed for any of the 100 spaces that remain unused on any day.

Examples of where the exemption would not apply

21. A building has 100 parking spaces, all of which are set aside from Monday to Sunday as reserved parking spaces. None of the spaces are casual parking spaces. No exemption can be claimed.
22. A building has 100 parking spaces, all of which are set aside from Monday to Friday as reserved parking spaces. The spaces are not available for parking on Saturday or Sunday. As none of the spaces are set aside as casual parking spaces on any day, no exemption can be claimed.
23. A business has 100 parking spaces, all of which are set aside for employee parking. Only 50 of the spaces are ever used by employees, with the remaining 50 spaces unused. As none of the spaces are set aside as casual parking spaces, no exemption can be claimed.
24. A person has a parking space they use once a week. The parking space remains unused for the remainder of the week. As the space is not set aside for casual parking, no exemption can be claimed.

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