



Office of State Revenue
NSW TREASURY

ABN: 77 456 270 638

Revenue Ruling No. BF3

Additional Franchise Fees and Penalty Interest Payable Under Sections 46, 47, and 48 of the Business Franchise Licences Tobacco Act 1987, and Sections 45, 46, and 47 of the Business Franchise Licences Petroleum Products Act 1987

PREAMBLE

1. The following guidelines relate to the exercise of the Chief Commissioner's discretion to remit or reduce certain additional franchise fees and late payment penalties imposed by both Acts.

RULING

2. Failure to hold a licence

Where a person was required to hold a licence in respect of any period but did not do so in accordance with section 47 of the (Tobacco) Act or section 46 of the (Petroleum Products) Act, the person shall pay an amount equal to the fee which would have been payable together with an amount, by way of penalty, equal to 200% of that fee.

This penalty will be remitted in the following circumstances.

2.1 Late lodgement of application and fee

The penalty applied will be equal to 20% per annum of the fee payable, calculated from the date payment of the licence fee was due up to and including the date the application and fee were received.

2.2 No application made for a licence

The penalty applied will be 50% of the fee payable. Subsequent offences within a two year period will incur the following penalties:

- Second offence - 75% of the fee assessed
- Third offence - 100% of the fee assessed
- Fourth offence – 200% of the fee assessed

3. Incorrect Application resulting in an understatement of assessable sales

Where the fee assessed in respect of any licence was assessed incorrectly as a result of inaccurate information provided by a licensee, the Chief Commissioner may, at any time, reassess the fee in accordance with section 46 of the (Tobacco) Act or section 45 of the (Petroleum Products) Act. Where on a reassessment the fee is increased, a penalty, additional to

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the fees payable, of 200% of that fee is incurred. This penalty will be remitted to 50% of the fees payable, subject to the addition of penalties, depending upon the seriousness of the offence, detailed as follows:-

- a) deliberate attempts have been taken, either before or after commencement of official enquiries, to conceal information - a further 50%
- b) there has been a previous offence by or on behalf of the licensee - a further 100%
- c) the degree of co-operation has been less than "reasonable" or such as to cause excessive delay in the completion of official enquiries and/or there has been positive obstruction - a further 50%

4. **Late Payment of fees due as a result of assessment or reassessment**

If an amount payable under section 46 or 47 of the (Tobacco) Act or section 45 or 46 of the (Petroleum Products) Act (see points 2.2 and 3 above) is not paid before the expiration of the time allowed by or under the relevant section, interest at the rate of 20% per annum shall apply (calculated from the expiration of the time allowed for payment up to and including the date of payment.).

5 **Reduction of Penalty**

Penalties are provided to encourage compliance with the provisions of the Acts and it is expected that there will be very few cases warranting the reduction of a penalty. It is acknowledged, however, that from time to time there will be cases where the particular circumstances warrant special consideration of the reduction of a penalty. These cases should be seen as limited and exceptional, falling within the following circumstances:

- a) Ignorance of the law - but only where the licensee could not be reasonably expected to have knowledge of the law;
- b) Where the licensee has made a genuine and excusable mistake in interpretation of the law;
- c) Where it can be demonstrated that the imposition of the penalty would amount to a "ruinous imposition" having regard to the licensee's financial circumstances; or
- d) Other circumstances which were outside the licensee's control.

All requests by licensees for reduction of penalties are to be in writing to the Commissioner, Business Franchise Licences, 132 Marsden Street, Parramatta. (Postal Bag 5502, Parramatta), 2150.

A. D. CLYNE,
Chief Commissioner for Business Franchise
Licences (Tobacco) and Business
Franchise Licences (Petroleum Products).
2nd December, 1987