



Office of State Revenue
NSW TREASURY

ABN: 77 456 270 638

Revenue Ruling No. G1

PREAMBLE

The Revenue Laws (Reciprocal Powers) Act 1987 was assented to on 12 June 1987, and commenced on 26 June 1987, by Proclamation of the Lieutenant-Governor.

The Act provides a framework for co-operation in investigations into revenue evasion and exchange of information with revenue authorities of the Commonwealth, other States and Territories. By virtue of the definition of "New South Wales revenue law" in section 3(1), it applies to the following New South Wales Acts:

- (i) the Stamp Duties Act 1920;
- (ii) the Gaming and Betting (Poker Machines) Taxation Act 1956;
- (iii) the Land Tax Act 1956;
- (iv) the Land Tax Management Act 1956
- (v) the Pay-roll Tax Act 1971;
- (vi) the Registered Clubs Act 1976;
- (vii) the Liquor Act 1982
- (viii) the Health Insurance Levies Act 1982;
- (ix) the Business Franchise Licences (Petroleum Products) Act 1987;
- (x) the Business Franchise Licences (Tobacco) Act 1987; and
- (xi) any other prescribed Act, being an Act by which a tax, fee, duty or other impost is levied and collected by the State.

The Act was drafted along the lines proposed in a report prepared by a working party of officials from Commonwealth, State and Northern Territory administrations.

This Ruling provides an explanation of the way in which the legislation will operate.

RULING

Investigations by or on behalf of other administrations

1. Part 2 of the Act governs investigations carried out in New South Wales by other administrations. Such investigations may be carried out by visiting revenue officers from other administrations or by New South Wales revenue officers on their behalf. However, such investigations may only be carried out if the relevant administration has made provision, or has agreed to make provision by law to confer on New South Wales revenue officers, powers and functions similar to those conferred on visiting officers by the New South Wales Act. The Commonwealth passed legislation to confer such powers and functions on "State taxation officers" in late 1985. Victoria passed

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corresponding legislation earlier this year, and the remaining States (including the Northern Territory) are expected to follow suit.

2. In order to activate these reciprocal investigations powers, Orders of the Governor will be promulgated to:-
 - (a) declare each revenue law of the Commonwealth or another State to be a "recognised revenue law";
 - (b) declare an office established for the purpose of administering or executing that law to be a "designated (Commonwealth or State) revenue office". [The person who occupies that office is deemed to be a "designated (Commonwealth or State) revenue officer"]; and
 - (c) declare an office established for the purpose of administering or executing the equivalent New South Wales law to be the "relevant principal New South Wales revenue office" in respect of that law.

The necessary Orders in respect of each interstate administration will be promulgated after corresponding legislation has been passed.

3. Each investigation will require approval in writing by the "principal New South Wales revenue officer", who may impose conditions on any approval, such as a requirement to provide regular reports on progress of the investigation to New South Wales officials. In the case of an investigation carried out by a New South Wales revenue officer on behalf of another administration, the "designated (interstate) revenue officer" on whose behalf the investigation is conducted may also impose conditions on the investigation, but these are subject to any conditions imposed by the "principal New South Wales revenue officer".

Access to Records and Information

4. The investigation powers which may be exercised by revenue officers in sections 6 and 7 of the Act cover such matters as full and free access, inspection of records, requiring a person to produce a statement in the English language of the contents of certain records (e.g. records stored on computer), power to make and take away copies of records, power to take away and retain records which are evidence of an offence, and search warrants. Each of these powers may only be exercised if a similar power is conferred by the interstate Act to which the investigation relates (i.e. the "recognised revenue law"). This restriction applies even if the investigation is carried out by a New South Wales revenue officer on behalf of another administration.

Seizure of Records

5. Where an authorised revenue officer reasonably believes that records or statements are evidence of an offence against a revenue law of another administration the records or statements may be taken away and kept until proceedings for the offence have been disposed of. in addition, under the

search warrant provisions in section 7, records found on premises being searched may be seized. In either circumstances, a receipt is required to be issued by the officer taking the records or statements. It should be noted, however, that if records indicate compliance with revenue laws, they may only be taken away for copying. In such circumstances, copies will be made on the premises if copying facilities are made available, so that the records do not have to be taken away.

6. Where records are taken away, they will normally be returned as soon as certified copies have been made, to reduce any inconvenience to the person from whom they were taken. It should be noted that section 15 of the Act allows certified copies to be used in all New South Wales courts and tribunals in proceedings relating to a matter arising under a New South Wales revenue law as if the copy were an original. Section 16 also enables copies to be made if a request is received from another administration. However, in some cases it may be necessary to retain the originals. For example, it may not be possible to make adequate copies, or the revenue laws of the particular administration concerned may not allow copies to be used in the particular circumstances. In such cases, administrative arrangements will be made to enable the person from whom the records were taken to have access to them if required.

Identification of Revenue Officers

7. A visiting revenue officer carrying out an investigation in New South Wales will be required to have the following documentation, and will present it to any person who is the subject of an investigation or who is required to provide access to records or to answer questions in relation to an investigation:
 - (a) an identity card showing that the person has been appointed for the purpose of or in connection with the administration of the interstate Act (i.e. a "recognised revenue law") to which the investigation relates; (e.g. a revenue officer appointed under the Victorian Stamps Act);
 - (b) a written authorisation from the "designated (interstate) revenue officer" (e.g. the Victorian Comptroller of Stamps in respect of a Victorian Stamp Duties matter) to exercise any power conferred by section 6 or 7 of the Revenue Laws (Reciprocal Powers) Act; the powers in the Revenue Laws (Reciprocal Powers) Act which may be exercised are only those powers which may be exercised under the relevant interstate Act to which the investigation relates;
 - (c) a written approval, including any conditions imposed, by the "relevant principal New South Wales revenue officer" (e.g. the Chief Commissioner of Stamp Duties) authorising the relevant (interstate) revenue officer" (e.g. the Victorian Comptroller of Stamps) to carry out the particular investigation.

8. A New South Wales Revenue Officer carrying out an investigation on behalf of another administration will be required to have the following documentation, and will present it to any person who is the subject of the investigation or who is required to provide access to records or to answer questions in relation to an investigation:
 - (a) an identity card showing that the person has been appointed for the purpose of or in connection with the administration of a New South Wales revenue law;
 - (b) a written request from a "designated (interstate) revenue officer" to exercise on his or her behalf, a power or powers conferred by section 6 or 7, including any conditions imposed by the interstate officer;
 - (c) a written approval, including any conditions imposed, by the "relevant principal New South Wales revenue officer" (e.g. the Chief Commissioner of Stamp Duties) authorising the revenue officer to exercise those powers; again, the powers in the Revenue Laws (Reciprocal Powers) Act which may be exercised are only those powers which may be exercised under the relevant interstate Act to which the investigation relates.

Powers to Obtain Information and Evidence

9. An investigation conducted in accordance with sections 4 and 5 will normally proceed in the initial stages using the powers specified in sections 6 and 7. However, sections 9 and 10 specify additional powers which revenue officers may use to obtain evidence if the officer has been unable to obtain information or explanations, particularly due to lack of co-operation, or in cases where there are discrepancies in the evidence obtained under sections 6 and 7. In contrast to the powers in sections 6 and 7, the use of the powers in sections 9 and 10 do not depend on similar powers being present in the interstate legislation to which the investigation relates.
10. Section 9 applies where a matter has been referred by another administration, in accordance with section 5, for investigation on its behalf by a principal New South Wales revenue officer. Under section 9, a New South Wales revenue officer may require any person, by notice in writing, to provide information, to attend an interview and answer questions, and to produce records, for specified purposes. Answers to questions may be required to be given on oath and either orally or in writing, or by statutory declaration.
11. Section 10 applies where a principal New South Wales revenue officer has authorised an investigation by an interstate revenue officer under section 4. Under section 10, an interstate revenue officer may exercise similar powers to those which a NSW revenue officer may exercise under section 9.

Offences

12. It is an offence under section 8 for any person to hinder or obstruct an authorised revenue officer, or any person properly assisting such an officer in the exercise of any of the powers conferred by section 6 or 7. It is also an offence to fail or refuse to comply with a requirement made by an authorised revenue officer under section 6. The maximum penalty which may be imposed by the Courts for these offences is \$1000 or imprisonment for three months.
13. However, it is a defence against a prosecution if:
 - (a) the authorised revenue officer did not identify himself or herself;
 - (b) in the case of hindrance or obstruction of an officer in the exercise of any power conferred by section 6 or 7, the person was not informed by the officer, and did not otherwise know, that the officer was empowered to exercise the particular power concerned;
 - (c) in the case of a failure or refusal to comply with a requirement made under section 6, the person was not warned that a failure or refusal to comply with the requirement was an offence.
14. These defences mean, in effect, that a person cannot be required to comply with a requirement of an authorised officer in accordance with section 6 or 7 unless the officer produces proper identification, advises the person of the powers he or she is authorised to exercise, and warns the person that failure to comply is an offence.
15. A further defence against prosecution for failure or refusal to comply with a requirement to answer a question is that the person satisfies the Court that he or she did not know, and could not with reasonable diligence have ascertained, the answer to the question.
16. It is an offence for any person to fail or refuse to comply with any requirement made of that person by either a New South Wales revenue officer or an interstate revenue officer, if such a requirement is made in accordance with section 9 or 10. The maximum penalty which may be imposed by the Courts for such an offence is \$20,000.
17. It should be noted, however, that a person is not guilty of an offence if the Court is satisfied that the person could not, by the exercise of reasonable diligence, have complied with the requirement, or that the person complied with the requirement to the extent of the person's ability to do so.
18. A person is not excused from complying with a requirement under Section 9 or 10 to give information or answer a question on the grounds of self-incrimination. However, such answers or information may not be used in criminal proceedings in New South Wales. Furthermore, a person is excused from giving self-incriminating information or answers to questions if the law

of another administration to which the investigation relates (or the law corresponding to the Revenue Laws (Reciprocal Powers) Act] does not contain provisions which prevent the use of the information or answers in criminal proceedings against that person.

19. It is an offence for a person to knowingly give a false or misleading answer to a question put to that person by an authorised revenue officer under the Act. It is also an offence if any person, in providing information in accordance with the Act, makes any statement or representation that is false or misleading in a material particular. The maximum penalty which may be imposed by the Courts for such offences is \$5000 or imprisonment for 12 months.

Legislation

20. Revenue officers will carry copies of the relevant legislation, including Acts, Regulations, and Orders of the Governor, in case any person who is asked to provide information or access to records pursuant to an investigation, wishes to check that the revenue officer is acting in accordance with the legislation.

Disclosure of Information

21. Section 12 of the Act authorises disclosure of information obtained under the Revenue Laws (Reciprocal Powers) Act or one of the New South Wales revenue laws listed in the preamble to this Ruling, to certain Commonwealth, State and Northern Territory officers and authorities. The New South Wales revenue officer prescribed for the purposes of each New South Wales revenue law, and any person authorised by that person, may authorise the release of information. The following officers were prescribed by the Revenue Laws (Reciprocal Powers) Regulation 1987, which was gazetted on 26 June 1987:

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| 1. the Stamp Duties Act 1920: | the Chief Commissioner of Stamp Duties |
| 2. the Gaming and Betting (Poker Machines) Taxation Act 1956: | the secretary of the Liquor Administration Board |
| 3. the Land Tax Act 1956 and the Land Tax Management Act 1956: | the Chief Commissioner of Land Tax |
| 4. the Pay-roll Tax Act 1971: | the Chief Commissioner of Pay-roll Tax |
| 5. the Registered Clubs Act 1976: | the secretary of the Liquor Administration Board |
| 6. the Liquor Act 1982: | the secretary of the Liquor Administration Board |
| 7. the Health Insurance Levies Act 1982: | the Chief Commissioner for Health Insurance Levies |
| 8. the Business Franchise Licences (Petroleum Products) Act 1987: | the Chief Commissioner for Business Franchise Licences (Petroleum Products) |
| 9. the Business Franchise Licences (Tobacco) Act 1987: | the Chief Commissioner for Business Franchise Licences (Tobacco). |

22. The persons or authorities to whom information may be released, and the specified purposes, are as follows:
23. The persons and authorities listed in paragraph 22 above may pass on information to other persons only if a prescribed officer listed at paragraph 21 consents to its release.

Person to whom information may be released	Specified purpose
1. A Commonwealth or State revenue officer, or a person designated by such an officer	administration or execution of a law of the Commonwealth, or of the State concerned, providing for the levying and collection of a tax, fee, duty or other impost.
2. The NCSC or a delegate i.e. a State Corporate Affairs body.	administration or execution of a law that is: (i) a relevant Act for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth; or (ii) a relevant Code for the purposes of a law of a State corresponding to that Act.
3. The National Crime Authority, or a person authorised by that Authority.	for the purposes of the administration or execution of: (i) the National Crime Authority Act 1984 of the Commonwealth; or (ii) a law of a State that makes provision for the operation of that Authority in that State.
4. The Commissioner of the Australian Federal Police, or a member designated by the Commissioner.	enforcing a law of the Commonwealth that creates an offence.
5. The Official Receiver in Bankruptcy.	administration or execution of the Bankruptcy Act 1966 of the Commonwealth.
6. The New South Wales Ombudsman	in accordance with a requirement imposed under the Ombudsman Act 1974.

24. Information may also be released to any person if the person who provided the information agrees to its release. In addition, the Archives Authority may be authorised to release information and records which have been in existence for 30 years or more.
25. Information obtained by New South Wales revenue officers in the course of an interstate investigation, under a law of another administration which corresponds to the Revenue Laws (Reciprocal Powers) Act, may not be disclosed or published except as provided by section 13 of the New South Wales Act. Section 13 authorises disclosure:
- (a) with the consent of officers of that administration or as

authorised by the corresponding law;

- (b) in connection with the administration or execution of the New South Wales revenue law to which the investigation related (including legal proceedings).

- 26. The Archives Authority may be authorised by the "relevant principal New South Wales revenue officer" to release information which has been in existence for 30 years or more, subject to any restrictions imposed by the interstate administration which provided the information.

Penalty for Unauthorised Disclosure

- 27. It is an offence for any person to disclose information or publish a record without proper authorisation. The maximum penalty for such an offence is \$10,000.

A. D. CLYNE,
Chief Commissioner.
8 January 1988