



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. LT 2

Issue of a Certificate by the Chief Commissioner under Section 47(1) of the Land Tax Management Act 1956

New Rules to Apply from 1 August, 1986

Ruling history

| Ruling no. | Issued date | Dates of effect | | Status |
|------------|--------------|-----------------|------------------|-----------------------------------|
| | | From | To | |
| LT 2 | 02 July 1986 | 01 August 1986 | 19 December 1991 | Replaced by LT 35 |

Preamble

- Under Sec. 47(1) of the Land Tax Management Act 1956, land tax is a first charge upon each and every parcel of land on which land tax is payable, in priority over all other encumbrances. A charge remains so long as the land tax remains unpaid notwithstanding any disposition of the land or any part of it, unless, at the time of purchase a bona fide purchaser for value made due inquiry in the prescribed manner but had no notice of land tax liability.
- A bona fide purchaser for value is deemed to have made due inquiry when an application has been made by the purchaser in or to the effect of the form prescribed under the Land Tax Regulations, and a New South Wales duty stamp of an amount equal to the prescribed fee (currently \$5) is affixed.
- Sec. 47(l) provides that the Chief Commissioner shall, on application of the purchaser of any land and on payment of the prescribed fee, issue a certificate showing if there is any land tax charged on the land described in the application.

Previous Departmental Practice

- In the past, the Department's practice, in accordance with the legislation, has been to issue a certificate upon an application nominating a bona fide purchaser. Advice was also issued to mortgagees, endorsed as follows:

"Section 47 of the said Act does not cover enquiries by mortgagees, and this advice does not relieve the mortgagees from the effect of any charge for land tax subsequently found to have been payable."

Ruling

Change in Departmental Practice for Section 47 Certificates

- In order to speed up turn-around times for Sec. 47 applications, and to reduce administrative costs, it has been decided changes in Departmental practice are desirable. These changes have been decided upon following discussions with the New South Wales Law Society.
- The most important change will be the addition of a "Statement by Vendor/Owner" which is reproduced below. From 1 August 1986 vendor/owners will be required to fill out the statement. It is recommended that solicitors for the vendor have the form filled out and signed at the same

time as the contract of sale is signed by the vendor for the purpose of exchange. The question of who lodges the application is a matter for the parties to decide.

- 7 On the basis of the vendor/owner's statement, the Department will process the straightforward applications promptly, and speed up those applications which require further investigation regarding a possible outstanding land tax liability on the land. It is anticipated that up to 70 per cent of applications will fall in the former category, and should be able to be processed within 24 hours of receipt.
- 8 The Department will carry out random checks and any persons who make a false statement, or who knowingly aid in the making of a false statement, leave themselves open to criminal prosecution.
- 9 The new green application forms will be available from the Land Tax Division of the Department of Finance and from Local Courts, at which time old forms should be discarded.
- 10 Sec. 47 certificates issued on application by vendors will be able to be relied upon **by any purchaser** of the land, whether or not the purchaser is described in the certificate, and will be binding upon the Chief Commissioner. It is the intention to seek amendments to the legislation to reflect this change.
- 11 However, there will be no change in regard to the position of advices to mortgagees.

Limitation of Section 47 Certificates

- 12 It should be remembered that a certificate only provides a statement of the land tax liability as at the date of the certificate. As a new liability for land tax potentially arises on each 31 December, a vendor will need to make an application for a new certificate after the commencement of each new land tax year (i.e. 31 December).

Principal Place of Residence

- 13 Residential land or a strata lot used and occupied as a principal place of residence, is exempt from land tax in the following circumstances:-
 - Residential land or a strata lot must be used and occupied by the owner, or one of several joint owners, solely for residential purposes since the 1 July preceding the tax year. The building must have been built or adapted for residential purposes.
 - The letting of one room for residential purposes will not affect the exemption.
 - In the case of residential land, if the area of land exceeds 2100m² then in most circumstances only the first 2100m² is exempt. However, if subdivision of the land is prevented by an environmental planning instrument, then the first two hectares is exempt.
 - A person can have only one principal place of residence.
 - In general, the exemption does not apply where land is owned by, or jointly with, a company.

"Statement by Vendor/Owner

Name of beneficial owner, if different from 'Owner' above.

A land tax return * has been lodged in N.S.W. by me

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has not us

or on my behalf during the last 5 years in respect of any land in which

our

* I have held any beneficial interest, whether solely or otherwise.

We

* *(Delete as required. If a return has been lodged complete Part A.*

If no return lodged complete Part B)

Part A

Year of last return _____ Taxpayer file No. _____

Part B

Write Yes or No

1. Was this property your principal place of residence on 31 December last? _____

2. Was this property used for primary production at 31 December last? _____

3. Was this property otherwise exempt from land tax? _____

4. If answer to 3 was yes, reason for exemption _____

I declare these details to be correct.

Signature of Vendor(s)/Owner(s)"

A D Clyne
Chief Commissioner of Land Tax.
2nd July 1986