

REVENUE RULING NO. SD 023

LEASES - LUMP SUM PAYMENTS OF RENT IN ADVANCE (FRAZIER'S CASE)

PREAMBLE

Judgment has been given in the case of **Frazier v. Commissioner of Stamp Duties** 85 ATC 4735 concerning the question of whether a sum of money, viz. \$30,998, expressed as "rent in advance as a lump sum" in the lease of a home unit in a retirement village was rent" or "premium" for the purposes of the **Stamp Duties Act** 1920 (N.S.W.).

The question which had to be determined by the Supreme Court was whether the payment was a consideration, that is, a premium, fine or

foregift for the granting of the lease, or whether it was a payment for the use of the land.

FACTS

In giving his decision on 25 November 1985, **Lee J.** referred to specific clauses of the lease.

Clause 1(a) stated that the unit was thereby leased for a term of twenty years upon the payment by the lessee of the rent in advance as a lump sum for the grant of the lease.

Clause 2(a) incorporated in the lease the covenants, with some modifications, set out in sections 84 and 85 of the **Conveyancing Act**.

Section 84(1)(a) provides the covenant to pay rent with the proviso for abatement in the event of premises becoming unfit for occupation by reason of Fire, Flood, etc.

Clause 5 dealt with the circumstances in which the lease could be surrendered, e.g. by the death of the lessee, and the method of compensation to be used for the rent payable in advance for the unexpired term of the lease.

Clause 7 dealt with the possibility of a further lease on expiration of the term.

The terms of Clause 1(a), standing alone, would in the opinion of the Court, point to the payment as being made for the grant of the lease and therefore a premium. However, the Court was also of the view that the whole of the circumstances were to be looked at in order to determine the question.

Having regard to the terms of the other clauses mentioned above, it was

ruled that the payment was in the nature of rent and not a premium for stamp duty assessment purposes.

RULING

In instances where lump sum payments are made, especially those expressed to be rent, it will be necessary to consider all the circumstances of the lease in order to determine whether or not the payment falls within the classification accorded by this decision. As a general rule, if provision is made for a refund, rebate or compensation of a lump sum rent payment in advance relative to an unexpired period of a lease in respect of early termination, the lease rate of duty could be expected to be applied.

(Departmental reference: T.I. 128)

A. D. CLYNE,
Chief Commissioner of Stamp Duties.
28 APRIL 1986

Last Updated: 20-Sep-2001