

REVENUE RULING NO. SD 272

LOAN SECURITY REFINANCING EXEMPTION

PREAMBLE

1. Section 84CAA of the Stamp Duties Act was amended by the State Revenue Legislation Amendment Act 1996 to exempt from loan security duty refinancing loan securities entered into on or after 1 June 1996.
2. Since the introduction of the legislation certain issues have arisen in relation to the operation of the exemption.
3. The State Revenue Legislation (Miscellaneous Amendments) Act 1996 has substantially amended Section 84CAA retrospectively from 1 June 1996.
4. This Ruling will detail these amendments as well as the criteria which must be met where the exemption is sought. The evidence required to obtain the exemption is also outlined.

RULING

5. THE STATE REVENUE LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 1996 INSERTS A NEW SECTION 84CAA WITH THE FOLLOWING PRINCIPLES

- (i) the borrower, not necessarily the provider of the security, under a refinancing must be the same as the borrower under the previous financing;
- (ii) the exemption will be granted to a refinancing loan security if that refinancing loan security secures the same property in New South Wales, or substantially the same property in New South Wales, or part of the same property in New South Wales, used to secure an earlier advance;
- (iii) only one security given to a lender in respect of a refinancing is to be deemed under section 84CAA to be stamped with ad valorem loan security duty, and other refinancing loan securities (collateral) will be marked as collaterals with no ad valorem duty chargeable. Collateral securities executed at a later date will be stamped \$10 under section 84B;
- (iv) where there is a refinancing of an advance with more than one lender, the refinancing loan security given to each lender to secure the advance made by that lender is deemed to be duly stamped in respect of a proportion of the maximum amount secured by the previous loan security based on the following formula:

AMOUNT SECURED BY THE

REFINANCING LOAN SECURITY MAXIMUM AMOUNT
 ----- X SECURED BY PREVIOUS
 TOTAL OF ALL THE AMOUNTS LOAN SECURITY
 SECURED BY THE REFINANCING
 LOAN SECURITIES GIVEN TO
 THE NEW LENDERS

To qualify for the exemption the refinancing may be with the same lender or a different lender.

Where the refinancing security or securities are granted to a trustee who holds that security or those securities for one or more lenders, the trustee will be treated as one new lender for the purposes of deeming the loan security to be duly stamped up to the maximum amount previously secured.

(v) the section will allow for further collaterals, which are not refinancing loan securities to be stamped \$10 under Section 84B;

(vi) the term "maximum amount secured" in section 84CAA means the highest aggregate amount of advances secured at any time;

(vii) as a general rule, a refinancing loan security will be treated as being over "substantially the same property" as a previous loan security if there is only a minor difference such as slight changes to improvements or boundaries.

6. EXAMPLES

- | 1. Same property secured | Duty outcome |
|--|---|
| (i) same, substantially the same or part of same property used as security for earlier advance | exempt to maximum amount previously secured {sub section (3)} |
| (ii) collaterals - same property exempt {subsection (6)(b)} as secured by earlier (collateral) advance | |

2. Additional property secured

- | | |
|---|---|
| additional property
- not secured by earlier advance | minimum \$10
collateral: Section 84B |
|---|---|

See Section 84CAA(7)(a)-(b)

3. More security - after refinancing

- | | |
|--|---|
| (i) further collaterals after refinancing. | minimum \$10
entitled to concession under Section 84B. |
|--|---|

7. When a refinancing loan security is lodged at the Office of State Revenue for stamping, the following information must be furnished to obtain the refinancing exemption:

Statutory declaration

A statutory declaration by the borrower, the borrower's solicitor, the new lender or the new lender's solicitor containing the following information:

(i) confirmation that the transaction evidenced by the documents lodged for stamping is a refinancing of an amount secured under an earlier loan security (the previous loan security);

(ii) details of **all** the loan securities (including collateral securities) which secure the advance made under the earlier loan facility;

and

details of **all** the loan securities (including collateral securities) which secure the advance the subject of or to be the subject of the refinancing;

(iii) identification of all the property in New South Wales used as security for the advance made under the earlier loan facility with the property in New South Wales used as security for the advance made or to be made under the refinancing;

(iv) the names of **all** the borrowers of the advances secured directly or indirectly by the earlier loan security;

and

the names of **all** the borrowers of the advances secured directly or indirectly by the refinancing loan security;

(v) the maximum amount secured or to be secured by the refinancing loan security. Where an advance is refinanced with more than one lender, it will be necessary to advise the maximum amount secured by **each** refinancing loan security given to each lender.

Instruments

It will be necessary to produce originals of, or copies of all the loan securities used to secure the advance made under the previous loan facility. Production of extracts of registered copies obtained from the Land Titles Office will be permitted. The copies must be legible enough to ascertain the maximum amount secured or duty paid, the property used as security and the borrower.

Where an advance is refinanced with more than one lender, it will also be necessary to furnish copies of each refinancing loan security given to each lender.

B Buchanan
Chief Commissioner of Stamp Duties
9 April 1997

Last Updated: 20-Sep-2001