

REVENUE RULING NO. SD 009

GOODS, WARES OR MERCHANDISE (SEC. 41(6))

PREAMBLE

Section 41(6) of the Stamp Duties Act 1920 (N.S.W.) sets out certain requirements when an exemption for goods, wares or merchandise in an agreement for sale is sought. Section 41(6) provides:

"If the agreement comprises any goods, wares, or merchandise a claim to the exemption expressed in the Second Schedule to this Act shall not be allowed unless particulars of and the value of the goods, wares, and merchandise in respect of which the exemption is claimed and an apportionment of the purchase money in respect thereof are fully set out in the agreement. The Chief Commissioner may exercise any of the powers conferred on him by section 68 with respect to any such claim.">

It should be stressed that the exemption is available only for agreements for sale, that is, instruments of an executory nature. Consequently, it does not apply to assignments or conveyances of goods, wares or merchandise.

With respect to the definition of goods, wares or merchandise in *North Shore Gas Co. Limited v. Commissioner of Stamp Duties* (1940) 63 C.L.R. 52 Dixon J. said:

"The words were understood to include all tangible moveables; that is to say, they covered all chattels personal not being choses in action or indicia of title thereto.">

Other cases of significance are:

Abercrombie v. Wellington 73 W.N. 356;
Australian Provincial Assurance Co. Ltd. v. Coroneo (1938) 38 S.R.700;
Holland & Anor v. Hodgson & Ors (1872)L.R. 7 C.P. 328.

More importantly, the exemption does not apply to fixtures. The authorities in this area are not easy to reconcile and it is difficult to obtain a satisfactory result, given that the test as to whether the goods are fixtures depends upon the degree of annexation and the intention in respect of annexation, and yet the relevant intention is manifested by the degree and object of such annexation.

The Ruling below provides guidance as to what are considered to be items that are either in the nature of goods, wares or merchandise or items considered to be otherwise.

RULING

The practice in Victoria

In Victoria conveyance duty is payable only on transfers of real property or interests in real property and there is no separate imposition of conveyance duty on an agreement to sell property, whether real or personal and therefore no duty would be payable with respect to an agreement to sell goods, wares or merchandise. However, pursuant to the Stamps (Further Amendment) Act 1983, conveyance duty is now imposed in Victoria upon chattels (not being stock in trade held or used in connection with a business carried on or in connection with real property) which in connection with the sale of real property are "by reason of the sale of or agreement to transfer the real property or property to the transferee, are sold or transferred to the transferee" or which forms substantially one transaction with the conveyance of the real property or property (sec. 63(3), Stamps Act 1958).

The Victorian Comptroller of Stamps has issued a practice note in relation to the stamping procedures, requiring the transferor to provide a statutory declaration as to, inter alia, the value attributed respectively to the real property and to the chattels and a description and value of the individual chattels.

The Victorian Stamps Office was aware that there may be difficulties in characterising certain items as fixtures and provided a list of items as examples which the Stamps Office would regard as being chattels as well as some items which would be regarded as fixtures.

The Chief Commissioner in New South Wales accepts that the list provided below by the Victorian Comptroller of Stamps outlines some examples of those items considered to be goods, wares or merchandise as opposed to items that are considered not to be goods, wares or merchandise.

Goods, wares or merchandise

Decorative rugs or carpets (not fixed to the floor) Portable microwave oven, vertical grill, etc.

Portable clothes dryer

*Washing machine (household plug-in)

*Refrigerator (household plug-in)

Portable lamps

Portable dishwasher

Blinds

Drapes and Curtains

Portable heaters or coolers

*Detachable flywire screens (clip on)

Furniture

Non-goods, wares or merchandise

All fixed floor coverings (carpets, tiles, linoleum)

*Stove, hot plates (unless plug-in and not otherwise fixed), wall oven, range-hood, built-in microwave oven

Dishwasher - set into a wall or bench

Electric light fittings

Built-in permanently wired heating and air conditioning units

Exhaust fans

Built-in cupboards, shelves, wardrobes and other attached furniture,
attached bar stools

Bathroom fittings such as bath, shower, toiler, washbasin

** Bracketed comments added by the New South Wales
Chief Commissioner*

Agreements relating solely to the sale of goods, wares or merchandise

Where an agreement relates solely to the sale of goods, wares or merchandise and these can be identified as such and not to the sale of such items together with fixtures, the agreement does not need to apportion the purchase price between individual items as specified in sec. 41(6) in order to obtain the exemption for such agreements contained in the agreement or memorandum of an agreement head of duty in the Second Schedule to the Stamp Duties Act 1920 (N.S.W.).

Similarly, an agreement under seal which relates solely to goods, wares or merchandise would not need to have apportioned the value of the relevant goods provided it was clear that all items were other than fixtures. A nominal duty charge applies in such circumstances (see proviso to the agreement for sale head of duty in the Second Schedule).

It should be emphasised that in order to claim the concession in sec. 41(6) the apportionment details must form part of the agreement at the time of execution. The allowance cannot be granted at a later date.

A.D. CLYNE,
Chief Commissioner of Stamp Duties.
1 December, 1985

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