



LIMITATION OF ACTIONS (RECOVERY OF TAXES AND SUBSTANTIVE LAW) AMENDMENT ACT 1994

No. 41 of 1994

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ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 41 of 1994

An Act to amend the Limitation of Actions Act 1936.

[Assented to 2 June 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Limitation of Actions (Recovery of Taxes and Substantive Law) Amendment Act 1994*.

(2) The *Limitation of Actions Act 1936* is referred to in this Act as "the principal Act".

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on assent.

(2) Sections 3, 5 and 6 will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended by inserting after the definition of "land" the following definition:

"limitation law" means—

- (a) a law of this State (including this Act) that provides for the limitation or exclusion of liability, or the barring of a right of action, if an action is not commenced within a particular time limit;
- (b) a law of another State or a Territory of the Commonwealth, or of New Zealand, that provides for the limitation or exclusion of liability, or the barring of a right of action, if an action is not commenced within a particular time limit.

Amendment of s. 38—Limitation on actions for recovery of money**4. Section 38 of the principal Act is amended—**

(a) by striking out subsection (2) and substituting the following subsection:

(2) If money paid by way of a tax or purported tax is recoverable because of the invalidity of the tax, an action for the recovery of that money must (whether the payment was made voluntarily or under compulsion) be commenced—

- (a) if the payment was made after the commencement of the *1994 amending Act* or within four months before its commencement—within six months after the date of the payment; or
- (b) if the payment was made more than four months before the commencement of the *1994 amending Act*—within the limitation period that would have been applicable if that Act had not been enacted or two months after the commencement of that Act (whichever first expires),

(but this subsection does not apply to the recovery of an amount that would, assuming that the tax or purported tax had been valid, have nevertheless represented an overpayment of tax).;

(b) by inserting after subsection (3) the following subsections:

(3a) An action for recovery of money paid by way of a tax or purported tax may be maintained only to the extent the person bringing the action satisfies the court that recovery of the money would not result in a windfall profit.

(3b) The recovery of money paid by way of a tax or purported tax would result in a windfall profit to the extent the person bringing the action for recovery of the money—

- (a) has passed on the burden of making the payment to another person; and
- (b) has not paid back, or entered into an enforceable agreement to pay back, the amount of the payment.;

(c) by inserting before the definition of "tax" in subsection (4) the following definition:

"1994 amending Act" means the *Limitation of Actions (Recovery of Taxes and Substantive Law) Amendment Act 1994*.

Substitution of s. 38A

5. Section 38A of the principal Act is repealed and the following section is substituted:

Limitation laws are substantive laws

38A. (1) A limitation law of the State is a substantive law of the State.

(2) A limitation law of another State or a Territory of the Commonwealth, or of New Zealand, is to be regarded as a substantive law of that place and applied accordingly.

(3) If a court in this State applies a limitation law of another State or a Territory of the Commonwealth, or of New Zealand, a discretion conferred by that law is to be exercised, as far as practicable, in the same way as courts in that other place exercise the discretion in comparable cases.

Application of substituted s. 38A

6. The amendments made by section 5 (substituting section 38A of the principal Act) extend to a cause of action that arose before the commencement of that section unless court proceedings based on the cause of action had been started before the commencement of that section.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor