

South Australia



**STAMP DUTIES (MISCELLANEOUS) AMENDMENT ACT 1995**

**No. 72 of 1995**

**SUMMARY OF PROVISIONS**

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**ELIZABETHAE II REGINAE**

A.D. 1995

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No. 72 of 1995

**An Act to amend the Stamp Duties Act 1923.**

[Assented to 2 November 1995]

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Stamp Duties (Miscellaneous) Amendment Act 1995*.
- (2) The *Stamp Duties Act 1923* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Insertion of s. 42BA**

3. The following section is inserted after section 42B of the principal Act:

**Concessional rate of duty on some applications to transfer registration**

**42BA.** (1) The amount of duty payable on an application to transfer the registration of a motor vehicle where a person who is a registered owner of the motor vehicle immediately before the registration is transferred will continue to be a registered owner of the motor vehicle immediately after the registration is transferred is calculated as follows:

$$D = A \times \frac{B}{C}$$

where—

D is the amount of duty payable

A is the amount of duty that would be payable apart from this section

**B** is the number of persons that the application seeks to add to, or remove from, the register as owners of the motor vehicle, whichever is the greater

**C** is—

(a) the number of persons who are registered owners of the motor vehicle immediately before the registration is transferred; or

(b) the number of persons who will be registered owners of the motor vehicle immediately after the registration is transferred,

whichever is the greater.

(2) This section does not derogate from any other provision conferring an exemption under this Act.

(3) This section applies to applications executed after its commencement.

#### **Amendment of s. 42C—Default assessments**

4. Section 42C of the principal Act is amended by striking out from subsection (1)(a) "this Act" and substituting "the *Motor Vehicles Act 1959*".

#### **Insertion of s. 75**

5. The following section is inserted after section 74 of the principal Act (under the heading "*Leases*"):

##### **Consideration for lease**

75. (1) In this section—

"**current market rent**" for property means the consideration (including rent and any other form of valuable consideration) that a lessee might reasonably be expected to pay under a lease of the property, if it were unoccupied and offered for renting, expressed as a rate of rent per annum;

"**lease**" includes an agreement for a lease or any written document for the tenancy or occupancy of property;

"**lessee**" means the person who has the right to occupy property under a lease and includes a prospective lessee under an agreement for a lease;

"**property**" means land or a tenement.

(2) If the rent or any other consideration payable by the lessee under a lease of property cannot be ascertained or estimated at the time that the lease is lodged with the Commissioner for stamping (whether because the consideration depends on some future contingency or for any other reason), the Commissioner may assess the duty payable based on the current market rent for the property as if the current market rent were the rate or average rate of rent per annum under the lease and there were no other consideration payable under the lease.

(3) If the consideration payable by the lessee under a lease of property can be ascertained or estimated at the time that the lease is lodged with the Commissioner for stamping but the duty that may be charged on the instrument (whether as a lease or a conveyance on sale or both) apart from this section is less than the duty that would be payable based on the current market rent for the property, the Commissioner may assess

the duty payable based on the current market rent as if the current market rent were the rate or average rate of rent per annum under the lease and there were no other consideration payable under the lease.

(4) For the purposes of this section, the Commissioner may—

- (a) cause a valuation to be made of any property that is the subject of a lease for the purpose of determining the current market rent for the property; and
- (b) having regard to the merits of the case, charge the whole or a part of the expenses of, or incidental to, the making of the valuation to the person liable to pay the duty and may recover the amount charged as a debt due to the Crown.

**Amendment of schedule 2**

6. Schedule 2 of the principal Act is amended—

(a) by inserting in paragraph (a) of item 15 of the exemptions from payment of the component payable in respect of Registration appearing under the heading commencing "APPLICATION to Register a Motor Vehicle" the passage "(and not in the name of any other person)" after the passage "in the name of the applicant";

(b) by inserting after paragraph (a) of item 15 of the exemptions from payment of the component payable in respect of Registration appearing under the heading commencing "APPLICATION to Register a Motor Vehicle" the following paragraph:

(ab) the applicant satisfies the Registrar of Motor Vehicles that, immediately before the date on which the application is made, the motor vehicle was registered in the name of the applicant (and not in the name of any other person) under the law of the Commonwealth; or;

(c) by inserting in paragraph (b) of item 15 of the exemptions from payment of the component payable in respect of Registration appearing under the heading commencing "APPLICATION to Register a Motor Vehicle" the passage "(and not in the name of any other person)" after the passage "in the name of the applicant";

(d) by striking out the item commencing "LEASE (not being a lease made subsequently to and in conformity with a duly stamped agreement for a lease)" and substituting the following item:

LEASE or AGREEMENT FOR a LEASE or any other document for the tenancy or occupancy of land or a tenement—

(a) In the case of a lease made by way of an extension of an existing lease where—

- (i) the term of the extension is a period not exceeding one day; and
- (ii) the sole purpose of the extension is to vary a covenant (other than a covenant specifying the rent payable) contained in the existing lease,

..... 10.00

(b) In the case of a lease made subsequently to and in conformity with a duly stamped agreement for a lease ..... 0.50

(c) In any other case—

For every \$100 or fractional part of \$100 of one years rent calculated at the rate of rent per annum or, if an average rate of rent per annum can be ascertained or estimated, at that average rate . . . . . 1.00

*Note—*

Under section 75 the rate or average rate of rent per annum used as a basis for calculating duty may be—

- (a) the actual or estimated rate of rent charged; or
- (b) if the consideration payable by the lessee cannot be ascertained or estimated or would result in a lower duty being payable—the current market rent.

*Exemptions—*

- 1. Lease or agreement for a lease, or any written document for the tenancy or occupancy of land or a tenement, for a term not exceeding one year, where the rent reserved does not exceed the rate of \$52 per annum.
  - 2. Lease or agreement for a lease of residential premises that are or are to be occupied by the lessee or prospective lessee as a place of residence.;
- (e) by striking out the item commencing "LEASE made subsequently to and in conformity with a duly stamped agreement for a lease";
- (f) by inserting after item 3 of the exemptions under the heading commencing "MORTGAGE, BOND, DEBENTURE, COVENANT or WARRANT OF ATTORNEY to confess and enter up judgment" the following item:

4. Charge over property imposed by order made under section 8(1) of the *Enforcement of Judgments Act 1991*.;

(g) by inserting after item 24B under the heading "GENERAL EXEMPTIONS FROM ALL STAMP DUTIES" the following item:

24C. An SCH-regulated transfer of a marketable security that—

- (a) does not result in a change in beneficial ownership; and
- (b) is not chargeable with duty as a conveyance operating as a voluntary disposition *inter vivos*.;

(h) by striking out Form A.

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

B. S. HETZEL, Governor's Deputy