

Capital Duplicators results in Limitation Amendment

The *Limitation Amendment Act* was passed during the August sittings of Parliament.

In his Second Reading Speech, the Attorney-General, Daryl Manzie, said:

"The purpose of this Bill is to amend the limitation act to provide a six month limitation period for actions for the recovery of taxes and other like charges paid under a mistake of law.

"In the High Court case of *Capital Duplicators v Australian Capital Territory* the High Court has been given the opportunity to reconsider the issue of what is an excise duty.

"The matter was argued before the high court during the week of 19 April 1993.

"The judgment of the High Court is not expected for several months.

"In the event that the High Court rules that the licensing fee structure under the franchise legislation of the states and territories is an excise (the High Court having already ruled that the constitutional prohibition against the states being able to levy duties of excise also applies to the internal territories), the potential revenue loss for the states and territories will be significant.

"In addition, a recent High Court decision (*David Securities Pty Ltd v Commonwealth Bank of Australia* [(1992) 109 ALR 57]) now makes it possible for person who have already paid fees under the franchise legislation of the states and territories to claim a refund in the event of an unfavourable decision in *Capital Duplicators* (the decision had the effect of overturning the Common Law doctrine that monies paid under a mistake of law were not recoverable).

"The Commissioner of Taxes advises that in the Northern Territory

such a refund would be in the order of \$249.7 million as at 1991-92.

"This amount does not include any interest which the Court may award or collections for the current year.

"Accordingly, it is essential to attempt to limit the potential exposure under such claims.

"Discussions are occurring at officer level between the states and territories with a view to developing options to limit the exposure under potential claims.

"...One way of limiting the potential exposure is to limit the time period within which people who have paid the invalid tax can claim a refund.

"...The *Limitation Act Amendment Bill* proposes six months.

"...Clause four inserts a new Division Five into the *Limitation Act*.

"Proposed section 35C deals with actions maintainable on the grounds of mistake of law or fact, or on restitutionary grounds, for recovery of monies paid by way of a tax, fee, charge or other statutory impost (or a purported such tax, fee, charge or other impost) where the monies were paid before the commencement of the amendment act.

"In this case the actions must be brought either at the expiration of the limitation period which would have applied if the *Limitation Amendment Act 1993* had not been enacted or the expiration of a limitation period of six months from the commencement of the *Limitation Amendment Act 1993* - whichever is the earlier.

"The section makes it clear that the limitation period does not apply where the monies, if the tax, fee, charge or other statutory impost (or purported tax, fee, charge or other impost), would be recoverable as an overpayment.

"...Proposed section 35D, which deals with actions maintainable on the grounds of mistake of law or fact or on restitutionary grounds for a recovery of such monies paid after the commencement of the *Limitation Amendment Act 1993*, provides a limitation period of six months from the date of payment of the monies.

"Again, if the proposed section does not apply where the payment of such monies would -- if the tax, fee, charge or other statutory impost (or a purported such tax, fee, charge or other impost) had been valid -- have been recoverable as an overpayment.

"...Proposed section 35E makes it clear that the limitation period provided for in proposed section 35D cannot be extended."

Other states have enacted similar legislation.

The respective limitation periods are:

New South Wales	1 year
Victoria	1 year
Queensland	1 year
South Australia	1 year
Western Australia	1 year
Tasmania proposes	6 months
ACT	left for Treasury to determine.

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The following answers to interrogatories were filed by the wife in a divorce action (in the USA):

52. Do you have a proposal to settle this case amicably?

Answer: Yes.

53. Assuming your answer to the preceding interrogatory is in the affirmative, please state such proposal.

Answer: Use a silver bullet or a wooden stake as is appropriate in these cases.