



TASMANIA

TAXATION (RECIPROCAL POWERS) ACT 1993

No. 110 of 1993

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TAXATION (RECIPROCAL POWERS) ACT 1993

No. 110 of 1993

AN ACT to make provision for the reciprocal enforcement of taxation laws

[Royal Assent 23 December 1993]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Taxation (Reciprocal Powers) Act 1993*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Interpretation

3—In this Act—

“**authorized person**” means a corresponding authorized person and a State authorized person;

“**Commissioner**” means a corresponding Commissioner and State Commissioner;

“**corresponding authorized person**” means a person authorized under section 5;

“**corresponding Commissioner**” means the holder of an office under any corresponding law declared by the Minister by order to be a corresponding Commissioner;

“**corresponding law**” means a law of the Commonwealth or of another State or of a Territory declared by the Minister by order to be a corresponding law that—

(a) corresponds to this Act; or

(b) is a Commonwealth, State or Territory Taxation Act within the meaning of an Act of the Commonwealth, State or Territory;

“**investigation power**” means a power specified in section 7;

“**records**” includes any books, documents, registers, accounts or accounting records in any form or kept by any means;

“**relevant goods**” means tobacco products, petroleum products or other goods to which a corresponding law applies;

“**State authorized person**” means a person authorized under section 6;

“**State Commissioner**” means—

(a) any of the following:—

(i) Commissioner of Pay-roll Tax;

(ii) Commissioner of Stamp Duties;

(iii) Commissioner of Taxes;

- (iv) Registrar of Petroleum Products Business Franchise Licences;
- (v) Registrar of Tobacco Business Franchise Licences; and
- (b) the holder of any other office declared by the Minister by order to be a State Commissioner;

“State Taxation Act” means—

- (a) any of the following:—
 - (i) *Financial Institutions Duty Act 1986*;
 - (ii) *Land and Income Taxation Act 1910*;
 - (iii) *Pay-roll Tax Act 1971*;
 - (iv) *Petroleum Products Business Franchise Licences Act 1981*;
 - (v) *Stamp Duties Act 1931*;
 - (vi) *Tobacco Business Franchise Licences Act 1980*;
 - (vii) annual Land Tax Acts; and
- (b) any other Act declared by the Minister by order to be a State Taxation Act.

Act binds Crown

4—This Act binds the Crown in the right of Tasmania and in all its other capacities.

PART 2

INVESTIGATIONS

Investigations by corresponding Commissioners

5—(1) In relation to an investigation in this State to ascertain any person’s liability or entitlement under a corresponding law, a corresponding Commissioner may exercise any investigation power that the corresponding Commissioner may exercise under the corresponding law.

(2) A corresponding Commissioner may only exercise an investigation power—

(a) with the written approval of the State Commissioner; and

(b) while that approval is in force; and

(c) in accordance with any conditions of that approval.

(3) The State Commissioner, by notice in writing, may—

(a) give an approval subject to any condition; and

(b) vary or revoke an approval; and

(c) vary or revoke a condition of an approval.

(4) A corresponding Commissioner, by a certificate of authority, may authorize a person to exercise in accordance with this section any investigation power the corresponding Commissioner may exercise under this section.

Investigations on behalf of corresponding Commissioners

6—(1) A corresponding Commissioner, by notice in writing, may request the State Commissioner to exercise on his or her behalf or on behalf of a corresponding authorized person any investigation power that he or she may exercise under the corresponding law.

(2) The State Commissioner may only exercise a power on behalf of a corresponding Commissioner in accordance with any—

(a) conditions specified by the corresponding Commissioner at any time and approved by the State Commissioner; and

(b) conditions specified by the State Commissioner.

(3) The State Commissioner, by a certificate of authority, may authorize a person to exercise in accordance with this section any power requested to be exercised by the State Commissioner under subsection (1).

Investigation powers

7—(1) A Commissioner and an authorized person may exercise any of the following powers at any reasonable time:—

(a) to require any person to produce any records in his or her possession or under his or her control which may show whether or not the provisions of the corresponding law are being or have been complied with;

- (b) to enter and remain in any place where a Commissioner or an authorized person reasonably believes—
 - (i) there are such records; or
 - (ii) the business of selling relevant goods is carried on; or
 - (iii) the storage or custody of relevant goods or records relating to the sale or purchase of relevant goods is maintained;
 - (c) to inspect any such records;
 - (d) to make copies of, or take extracts from, any such records;
 - (e) to require any person holding a licence under a corresponding law or any person reasonably believed by a Commissioner or an authorized person to be involved in the sale, purchase or storage of relevant goods—
 - (i) to produce any records which relate to, or which a Commissioner or an authorized person reasonably suspects relate to, the sale or purchase of relevant goods and are in the possession or under the control of that person; and
 - (ii) to answer any question with respect to any such records or the sale or purchase of any relevant goods;
 - (f) by notice in writing, to require any person to—
 - (i) supply any information he or she requires; and
 - (ii) attend and give evidence before him or her; and
 - (iii) produce all records in his or her possession or under his or her control relating to a liability or entitlement under a corresponding law.
- (2) Any information or evidence may be required to be furnished or given—
- (a) on oath or affirmation; or
 - (b) orally or in writing; or
 - (c) by statutory declaration.

(3) A Commissioner or an authorized person may administer an oath or take an affirmation for the purpose of subsection (2).

(4) Any person who attends and gives evidence under subsection (1) is entitled to be paid expenses as approved by the State Commissioner.

(5) An authorized person may only exercise the powers under this section on the production of a certificate of authority given under section 5 or 6.

Search warrants

8—(1) At the request of a corresponding Commissioner, a State Commissioner may apply to a magistrate for a warrant authorizing a police officer and any other person named in the warrant to do anything specified in subsection (3).

(2) A magistrate may grant a warrant if satisfied that there are reasonable grounds for believing that—

(a) there are on particular premises any records or tobacco products which are relevant to the assessment or collection of a licence fee or other amount payable under a law of another State or of a Territory corresponding to the *Tobacco Business Franchise Licences Act 1980*; and

(b) the records or tobacco products would not otherwise be available for inspection.

(3) A warrant may authorize any one or more of the following:—

(a) entry onto premises, using any force necessary for the purpose;

(b) the search of the premises and the breaking open and search of any cupboard, drawer, chest, trunk, box, package or other receptacle, whether or not a fixture in the premises;

(c) the possession of, or security against interference with, any records or tobacco products that appear to be relevant to the assessment or collection of a licence fee or other amount payable;

(d) the delivery of any records or tobacco products possessed under paragraph (c) into the possession of the State Commissioner or a State authorized person.

Possession of records and tobacco products

9—(1) A State Commissioner or State authorized person who takes possession of any records—

- (a) may make copies of or take extracts from the records; and
- (b) may retain possession of the records for any period necessary to enable them to be inspected and copies of, or extracts from, them to be made or taken by or on behalf of a corresponding Commissioner; and
- (c) is to permit a person entitled to inspect any of those records to inspect them at all reasonable times.

(2) A State Commissioner or State authorized person who takes possession of any tobacco products—

- (a) must give a receipt to the person from whom they were taken; and
- (b) within 3 days of possession of those tobacco products under section 8 (3) (c), must obtain an order from a magistrate for permission to keep those tobacco products until proceedings for an offence under a corresponding law have been heard and determined.

Production of records

10—A duty imposed under this Part to produce records includes a duty—

- (a) to produce, in a written form, records which are recorded or stored by any mechanical, electronic or other means; or
 - (b) to provide a document containing a clear reproduction in writing of the matters in the records.
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PART 3**DISCLOSURE OF INFORMATION****Disclosure of information**

11—(1) A State Commissioner and a State authorized person may disclose any information relating to the affairs of a person obtained under a State Taxation Act or this Act to any of the following:—

- (a) the Commissioner, Second Commissioner or a Deputy Commissioner under any law of the Commonwealth relating to taxation or to any person authorized by the Commissioner, Second Commissioner or Deputy Commissioner;
- (b) the Commissioner or any other officer of any State or Territory of the Commonwealth administering any law of the State or Territory relating to taxation or to any person authorized by the Commissioner or other officer;
- (c) the National Crime Authority or a person authorized by that Authority;
- (d) the Australian Securities Commission or a person authorized by that Commission;
- (e) a police officer or a member of a police force of another State or Territory of the Commonwealth;
- (f) the Australian Federal Police;
- (g) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of any State or Territory of the Commonwealth.

(2) If a State Commissioner consents to the disclosure of any information relating to the affairs of a person obtained under this Act by a corresponding Commissioner, the corresponding Commissioner and a corresponding authorized person may, subject to any terms of the consent, disclose the information—

- (a) to any person referred to in subsection (1); and
- (b) to any person to whom he or she is permitted under the corresponding law to disclose information obtained under the corresponding law.

(3) If a corresponding Commissioner consents to the disclosure of any information relating to the affairs of a person obtained under a corresponding law by a State Commissioner, the State Commissioner and a State authorized person may, subject to any terms of the consent, disclose the information—

- (a) to any person referred to in subsection (1); and
- (b) to any person to whom he or she is permitted under the State Taxation Act to disclose information obtained under the State Taxation Act.

(4) This section prevails over any provision of any State Taxation Act relating to the disclosure of information.

PART 4

MISCELLANEOUS

Confidentiality

12—Any records or information obtained under this Act or under a corresponding law are exempt from the provisions of the *Freedom of Information Act 1991*.

Offences relating to exercise of powers

13—A person must not—

- (a) fail to comply with a requirement made under this Act; or
- (b) delay, hinder or obstruct an authorized person in exercising any power under this Act; or
- (c) prevent any person from exercising any power under this Act.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 3 months, or both.

Offences relating to confidentiality

14—(1) Subject to subsection (2), a person must not—

- (a) make a record of, disclose to any person, or publish, any information or record that is obtained by the person under this Act or under a corresponding law; or
- (b) be required to produce in court any records obtained by the person under this Act or under a corresponding law; or
- (c) be required to disclose to any court any matter or thing coming under the notice of the person under this Act or a corresponding law.

Penalty: Fine not exceeding 10 penalty units.

(2) Subsection (1) does not apply to anything done—

- (a) with the consent of the person from whom information or records were obtained; or
- (b) in connection with the administration or execution of this Act, a State Taxation Act or a corresponding law that is in accordance with any consent given by the State Commissioner or the corresponding Commissioner; or
- (c) for the purpose of any legal proceedings arising out of this Act, a State Taxation Act or the corresponding law or any report of those proceedings.

Evidence

15—The production of a document purporting to be certified by a corresponding Commissioner as a copy of, or extract from, a document furnished to, or issued by, the corresponding Commissioner is, for all purposes, sufficient evidence of the matter contained in the document, without production of the original.

Immunity from liability

16—A Commissioner or an authorized person is not personally liable for an honest act or omission done or made in the exercise or purported exercise of a power under this Act or a corresponding law.

Regulations

17—(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations under this section may—

- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a daily fine not exceeding 2 penalty units.

Administration of Act

18—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990*—

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the Department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.

[Second reading presentation speech made in:—
House of Assembly on 10 November 1993
Legislative Council on 9 December 1993]

