

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

**Taxation (Administration) (Amendment)
Bill (No. 2) 1993**

**A BILL
FOR
An Act to amend the *Taxation (Administration) Act
1987***

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

- 5 **1.** This Act may be cited as the *Taxation (Administration) (Amendment) Act (No. 2) 1993*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

- 10 **3.** In this Act, "Principal Act" means the *Taxation (Administration) Act 1987*.¹

Review of decisions

4. Section 91 of the Principal Act is amended—

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- (a) by omitting from paragraph (1) (a) "or";
- (b) by adding at the end of paragraph (1) (b) "or";
- (c) by adding at the end of subsection (1) the following paragraphs:
 - 5 (c) that a person has charged to, or recovered from, or will charge to, or recover from, another person an amount paid in respect of the whole or any part of a revenue amount under paragraph 95C (1) (a); or
 - (d) that a person has not repaid an amount charged to, or recovered from, another person."; and
- 10 (d) by omitting from subsection (2) "or 90 (4)" and substituting ", 90 (4) or 95C (2)".

Notification of decisions

5. Section 92 of the Principal Act is amended by omitting from subsection (1) "or 90 (4)" and substituting ", 90 (4) or 95C (2)".

15 Insertion

6. After section 95 of the Principal Act the following Part is inserted:

PART XIIA—REFUND OR RECOVERY OF REVENUE AMOUNTS

Interpretation

- 20 "95B. In this Part, unless the contrary intention appears—
- 'revenue amount' means an amount of money paid voluntarily or under compulsion as—
- (a) a tax, licence fee or duty imposed, or purportedly imposed, under an Act; or
 - 25 (b) penalty tax in relation to such a tax, licence fee or duty.

Limitation of refunds of revenue amounts

"95C. (1) The Commissioner shall not refund a revenue amount unless the person claiming the refund (in this section called 'the claimant') satisfies the Commissioner that—

- 30 (a) he or she has not charged to, or recovered from, and will not charge to, or recover from, any other person an amount paid in respect of the whole or any part of the revenue amount; or
- (b) if the claimant has so charged or recovered any such amount—he or she has repaid the amount.

“(2) If the Commissioner is not satisfied about the matters referred to in paragraph (1) (a) or (b) in relation to the claimant the Commissioner shall give the claimant notice in writing of his or her decision.

5 **Recovery of revenue amounts following non-legislative change in law**

“95D. (1) A revenue amount paid before a non-legislative change of the law is not recoverable from the Territory on a ground of invalidity if the ground came into existence because of the change of law.

10 “(2) Subsection (1) does not apply to an action for recovery of an amount that would have been recoverable as an overpayment if the purported tax, licence fee or duty had been valid.

“(3) In this section—

- 15 (a) a reference to a non-legislative change of the law shall be read as a reference to a change of the law or of legal principles, or a change in what is generally perceived to be the state of the law or of legal principles, but shall not be read as including a change made by legislation;
- (b) a reference to the Territory shall be read as including a reference to an officer, a Minister or an authority of the Territory; and
- 20 (c) a reference to a ground of invalidity shall be read as a reference to—
- (i) the ground of invalidity of a tax law;
- (ii) the ground of mistake (whether law or a fact) as to the validity or invalidity of a tax law; or
- 25 (iii) any other restitutionary ground relating to the validity or invalidity of a tax law.

Characterisation

“95E. (1) This Part is part of the substantive law of the Territory.

30 “(2) Nothing in subsection (1) shall be taken to affect the characterisation of any other provision in this Act.”

NOTE

1. Reprinted as at 31 March 1992. See also Act No. 30, 1992; Nos. 18, 44 and 55, 1993.