

(Reprint No. 2)

**SOUTH AUSTRALIA**

**LAND TAX ACT, 1936**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 21 November 1991.*

*It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 18 May 1987.*

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## LAND TAX ACT, 1936

being

Land Tax Act, 1936, No. 2318 of 1936 [Assented to 26 November 1936]<sup>1</sup>

as amended by

Land Tax Act Amendment Act, 1942, No. 34 of 1942 [Assented to 26 November 1942]  
Land Tax Act Amendment Act, 1948, No. 16 of 1948 [Assented to 23 September 1948]  
Land Tax Act Amendment Act, 1952, No. 47 of 1952 [Assented to 4 December 1952]<sup>2</sup>  
Land Tax Act Amendment Act, 1961, No. 8 of 1961 [Assented to 19 October 1961]<sup>3</sup>  
Land Tax Act Amendment Act, 1965, No. 32 of 1965 [Assented to 2 December 1965]  
Land Tax Act Amendment Act, 1966, No. 39 of 1966 [Assented to 25 August 1966]  
Land Tax Act Amendment Act, 1967, No. 40 of 1967 [Assented to 28 September 1967]<sup>4</sup>  
Land Tax Act Amendment Act, 1969, No. 56 of 1969 [Assented to 4 December 1969]<sup>5</sup>  
Land Tax Act Amendment Act, 1970, No. 49 of 1970 [Assented to 10 December 1970]<sup>6</sup>  
Land Tax Act Amendment Act, 1971, No. 53 of 1971 [Assented to 23 September 1971]  
Land Tax Act Amendment Act, 1972, No. 78 of 1972 [Assented to 5 October 1972]<sup>7</sup>  
Statutes Amendment (Valuation of Land) Act, 1972, No. 79 of 1972 [Assented to 5 October 1972]<sup>8</sup>  
Rates and Taxes Remission Act, 1974, No. 16 of 1974 [Assented to 4 April 1974]<sup>9</sup>  
Land Tax Act Amendment Act, 1974, No. 109 of 1974 [Assented to 5 December 1974]  
Land Tax Act Amendment Act, 1975, No. 48 of 1975 [Assented to 10 April 1975]<sup>10</sup>  
Statutes Amendment (Rates and Taxes Remission) Act, 1975, No. 98 of 1975 [Assented to 20 November 1975]<sup>11</sup>  
Land Tax Act Amendment Act, 1976, No. 41 of 1976 [Assented to 22 October 1976]<sup>12</sup>  
Land Tax Act Amendment Act, 1977, No. 32 of 1977 [Assented to 27 October 1977]<sup>13</sup>  
Statutes Amendment (Rates and Taxes Remission) Act, 1977, No. 55 of 1977 [Assented to 15 December 1977]<sup>14</sup>  
Land Tax Act Amendment Act, 1979, No. 61 of 1979 [Assented to 8 November 1979]<sup>15</sup>  
Statutes Amendment (Valuation of Land) Act, 1981, No. 29 of 1981 [Assented to 19 March 1981]<sup>16</sup>  
Land Tax Act Amendment Act, 1982, No. 79 of 1982 [Assented to 9 September 1982]<sup>17</sup>  
Land Tax Act Amendment Act, 1983, No. 80 of 1983 [Assented to 24 November 1983]<sup>18</sup>  
Valuation of Land Act Amendment Act, 1984, No. 88 of 1984 [Assented to 29 November 1984]<sup>19</sup>  
Land Tax Act Amendment Act, 1985, No. 79 of 1985 [Assented to 22 August 1985]<sup>20</sup>  
Land Tax Act Amendment Act, 1986, No. 62 of 1986 [Assented to 6 November 1986]<sup>21</sup>

<sup>1</sup> Came into operation 7 January 1937: *Gaz.* 7 January 1937, p. 1.

<sup>2</sup> For operation and application *see* Act No. 47 of 1952, s. 18.

<sup>3</sup> For operation and application *see* Act No. 8 of 1961, s. 13.

<sup>4</sup> Came into operation 22 February 1968, being the day on which the Real Property Act Amendment (Strata Titles) Act, 1967, came into operation: *Gaz.* 22 February 1968, p. 515.

<sup>5</sup> Came into operation 21 May 1970: *Gaz.* 21 May 1970, p. 1842.

<sup>6</sup> Came into operation 30 June 1971: *Gaz.* 10 June 1971, p. 2830.

<sup>7</sup> Came into operation at midnight on 30 June 1972: s. 2.

<sup>8</sup> Came into operation 1 June 1972: s. 2.

<sup>9</sup> Came into operation 1 July 1973: s. 2.

<sup>10</sup> Came into operation 2 June 1975: *Gaz.* 22 May 1975, p. 1987.

<sup>11</sup> Came into operation 1 July 1975: s. 2.

<sup>12</sup> Came into operation 30 June 1976: s. 2.

<sup>13</sup> Came into operation 30 June 1977: s. 2.

<sup>14</sup> Came into operation 1 July 1978: s. 2.

<sup>15</sup> Came into operation 30 June 1979: s. 2.

<sup>16</sup> Came into operation 30 June 1981: *Gaz.* 4 June 1981, p. 1640.

<sup>17</sup> Came into operation (except s. 15) 30 June 1982: s. 2; s. 15 came into operation 8 December 1983: *Gaz.* 8 December 1983, p. 1616.

<sup>18</sup> Came into operation 30 June 1983: s. 2.

<sup>19</sup> Came into operation 11 July 1985: *Gaz.* 4 July 1985, p. 6.

<sup>20</sup> Came into operation at midnight on 30 June 1985: s. 2.

<sup>21</sup> Came into operation (except s. 7 and the schedule) at midnight on 30 June 1986: s. 2(1); remainder of Act came into operation 18 May 1987: *Gaz.* 23 April 1987, p. 1072.

Rates and Land Tax Remission Act, 1986, No. 78 of 1986 [Assented to 4 December 1986]<sup>1</sup>  
 Statutes Amendment (Taxation) Act, 1987, No. 2 of 1987 [Assented to 5 March 1987]  
 Land Tax Act Amendment Act, 1987, No. 72 of 1987 [Assented to 5 November 1987]<sup>2</sup>  
 Land Tax Act Amendment Act, 1988, No. 63 of 1988 [Assented to 27 October 1988]<sup>3</sup>  
 Land Tax Act Amendment Act, 1989, No. 48 of 1989 [Assented to 31 August 1989]<sup>4</sup>  
 Land Tax Act Amendment Act, 1990, No. 44 of 1990 [Assented to 25 October 1990]<sup>5</sup>  
 Land Tax (Miscellaneous) Amendment Act 1991 No. 46 of 1991 [Assented to 21 November 1991]<sup>6</sup>

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

**An Act to consolidate the enactments relating to the imposition, assessment, and collection of taxes upon land.**

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Land Tax Act, 1936*.

\* \* \* \* \*

Interpretation

4. (1) In this Act, unless the contrary intention appears—

\* \* \* \* \*  
 \* \* \* \* \*  
 \* \* \* \* \*

“business of primary production” means the business of agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, forestry or any other business consisting of the cultivation of soils, the gathering in of crops, the rearing of livestock or the propagation and harvesting of fish or other aquatic organisms:

“the Commissioner” means the Commissioner of Land Tax or any deputy of the Commissioner of Land Tax and includes any other person while performing any of the duties or functions of the Commissioner of Land Tax:

“company” includes any corporate body:

\* \* \* \* \*  
 \* \* \* \* \*  
 \* \* \* \* \*

“defined rural area” means an area declared by the Governor under section 12c:

“determination of site value” in relation to land means a determination or assessment of site value in force under the *Valuation of Land Act, 1971*:

\* \* \* \* \*  
 \* \* \* \* \*

<sup>1</sup>Came into operation 1 April 1987; *Gaz.* 26 March 1987, p. 702.  
<sup>2</sup>Came into operation at midnight on 30 June 1987: s. 2.  
<sup>3</sup>Came into operation at midnight on 30 June 1988: s. 2.  
<sup>4</sup>Came into operation at midnight on 30 June 1989: s. 2.  
<sup>5</sup>Came into operation at midnight on 30 June 1990: s. 2.  
<sup>6</sup>Came into operation at midnight on 30 June 1991: s. 2.

“land used for primary production” means any parcel of land of not less than 0.8 hectare in area as to which the Commissioner is satisfied —

(a) that the land is used wholly or mainly for the business of primary production;

and

(b) where the land is within a defined rural area that the principal business of the owner of the land—

(i) is primary production of the type for which the land is used and the land is used to a significant extent for the purposes of that business;

or

(ii) is the business of processing or marketing primary produce and the land or produce of the land is used to a significant extent for the purposes of that business:

“land tax” means any tax imposed by this Act:

“liquidator” means a person who, whether or not appointed as liquidator, is required by law to carry out the winding up of a company:

\* \* \* \* \*

“notice” means any notice, written or printed, or partly written or partly printed:

“owner”—

(a) in relation to land alienated from the Crown by grant in fee simple means any person (other than a mortgagee of the land)—

(i) who holds;

(ii) who is entitled to;

or

(iii) who is entitled to purchase or acquire,

a legal or equitable estate of fee simple in the land or any other estate or interest (other than an estate or interest of leasehold) in the land conferring a right to possession of the land;

(b) in relation to land of the Crown subject to any agreement for sale, or right of purchase, means the person entitled to the benefit of that agreement or right of purchase;

(c) in relation to land held under perpetual lease, means the holder of that lease;

and

(d) in relation to land held under a shack site lease, means the holder of that lease:

“particular notice” means a notice served personally, or by leaving it at, or posting it addressed to, the usual or last known place of residence or business of the person to whom or to which the notice is intended to be given, or, by affixing it conspicuously on any land to which the notice relates:

\* \* \* \* \*

“retirement village” means retirement village as defined in the *Retirement Villages Act, 1987*:

“returns” includes all returns, declarations, statements, and information that are required to be furnished under this Act:

“shack site lease” means a lease for the occupation of land for holiday, recreational or residential purposes where—

(a) the land is situated on or adjacent to the banks of the River Murray, a tributary of the River Murray, or a lake or lagoon connected with the River Murray or a tributary of the River Murray;

(b) the lease was, as at midnight on 30 June, 1989, registered over the relevant land;

and

(c) the term of the lease is at least 40 years:

“site value” in relation to land has the meaning assigned by the *Valuation of Land Act, 1971*:

“tax” means land tax, all interest payable in respect of land tax, and any fine imposed under this Act:

“taxpayer” includes every person who is liable to pay any tax pursuant to this Act:

“taxpayer in a representative capacity” means a taxpayer in respect of land to which the taxpayer is not beneficially entitled:

\* \* \* \* \*

“trade” includes profession, trade, business, and avocation.

\* \* \* \* \*

\* \* \* \* \*

\* \* \* \* \*

PART II  
ADMINISTRATION

**The Commissioner and staff**

- 4a. (1) There shall be a Commissioner of Land Tax.
- (2) The Commissioner shall have such staff as is necessary for the administration of this Act.
- (3) The Commissioner and the Commissioner's staff are Public Service employees.

**Administration by Commissioner**

5. The Commissioner has the general administration of this Act.

\* \* \* \* \*

**Commissioner may act as a State taxation officer**

7. The Commissioner may perform the functions of a State taxation officer under Part IIIA of the *Taxation Administration Act 1953* of the Commonwealth.

**Secrecy**

7a. A person shall not divulge or communicate information acquired in, or in connection with, the administration of this Act, except—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration of this Act;
- (c) to—
- (i) the Commonwealth Commissioner of Taxation;
- or
- (ii) an officer of this or another State, or of a Territory, employed in the administration of laws relating to taxation;
- (d) to the Commissioner for Corporate Affairs;
- or
- (e) for the purposes of legal proceedings under this Act.

Penalty: \$10 000.

\* \* \* \* \*

PART III  
THE TAXES ON LAND

**Exemption from land tax**

10. (1) Taxes are imposed on all land in the State, with the following exceptions:

(a) land of the Crown that is not subject to—

(i) a perpetual lease;

or

(ii) an agreement for sale or right of purchase;

(b) park land, public roads, public cemeteries, and other public reserves;

(c) land used solely for religious purposes, or used solely for the purposes of a hospital subsidized by the Government of the State, or used by any institute under the *Libraries Act, 1982*;

(d) land that is—

(i) owned by an association whose objects are or include the supplying to necessitous or helpless persons of living accommodation, food, clothing, medical treatment, nursing, pre-maternity or maternity care, or other help, either without cost to such persons or in return for payments or services the amount or value of which is in the Commissioner's opinion substantially less than the value of the accommodation, food, clothing, treatment, nursing, care or help supplied;

and

(ii) solely or mainly used for all or any such purposes;

(e) land that is—

(i) owned by an association which receives an annual grant or subsidy from money voted by Parliament;

and

(ii) in the Commissioner's opinion, solely or mainly used for the purposes for which the grant or subsidy is made;

(f) land that is let to or occupied by an association of the kind mentioned in paragraph (d) or (e), and that is used solely or mainly for purposes mentioned in those paragraphs, and for which the association pays either no rent or other sum or a rent or other sum that in the Commissioner's opinion is a nominal one;

(fa) land that—

(i) is owned by an association whose object is, or whose objects include, the conservation of native fauna and flora;

and

(ii) is in the opinion of the Commissioner used, without profit to the association or any other person, solely or mainly as a reserve for the purpose of conserving native fauna or flora;



- (g) land that is owned or occupied without payment by any person or association carrying on an educational institution otherwise than for pecuniary profit, and that is occupied and used solely or mainly for the purposes of such an institution (but this exemption does not extend to land or buildings held as an investment and not being the site or grounds of the institution);
- (h) land that is owned by—
- (i) a municipal or district council;
  - (ii) a controlling authority established under Part XIX of the *Local Government Act, 1934*;
- or
- (iii) the Renmark Irrigation Trust;
- (i) land that is owned by an association that is established for a charitable, educational, benevolent, religious or philanthropic purpose (whether or not the purpose is charitable within the meaning of any rule of law) and is declared by the Commissioner to be exempt from land tax on the ground—
- (i) that the land is or is intended to be used wholly or mainly for that purpose;
- or
- (ii) that the whole of the net income (if any) from the land is or will be used in furtherance of that purpose;
- (ia) land that is owned by—
- (i) an association that holds the land wholly or mainly for the purpose of playing cricket, football, tennis, golf or bowling or other athletic sports or exercises;
  - (ii) an association that holds the land wholly or mainly for the purpose of horse racing, trotting, dog racing, motor racing or other similar contests;
  - (iii) an association of ex-servicemen or of dependants of ex-servicemen that holds the land for the social or recreational purposes of its members;
  - (iv) an association of employers or employees, registered under a law of the Commonwealth or of the State relating to industrial conciliation and arbitration that occupies the land for the purposes of the association;
  - (v) an association that holds the land wholly or mainly for the recreation of the local community;
  - (vi) an association that holds the land for the purpose of agricultural shows, and exhibitions of a similar nature;
  - (vii) an association that holds the land for the purpose of preserving buildings or objects of historical value on the land;
- or
- (viii) a prescribed association or an association of a prescribed kind,

and is declared by the Commissioner to be exempt from land tax on the ground that the whole of the net income (if any) from the land is used in furtherance of the objects of the association and not for securing a pecuniary profit for the association or any of its members;

(j) land used for primary production;

(k) land that is owned by a prescribed body and used for the benefit of the Aboriginal people;

(l) land that is exempt from land tax under section 10a.

(2) The taxes so imposed will be raised and levied pursuant to this Act in aid of the General Revenue of the State for every financial year.

(3) The taxes so imposed for a particular financial year will, subject to this Act, be calculated as at midnight on the thirtieth day of June immediately preceding that financial year on the basis of circumstances then existing.

(4) Land of the Crown, subject to any agreement for sale or right of purchase, is liable to taxation, whether that agreement or right is absolute or conditional, and whether it is capable of completion or exercise immediately or at any future time.

(5) Nothing in this Act interferes with any exemption, by special legislation, of land from taxation.

#### **Exemption of certain residential land from land tax**

**10a.** (1) Land is exempt from land tax under this section if—

(a) proper grounds exist for exempting the land from land tax;

and

(b) the land has been exempted from land tax in pursuance of this section and the exemption is, for the time being, in force.

(2) Where proper grounds exist upon which that land may be exempted from land tax in pursuance of this section an owner of the land may apply to the Commissioner for an exemption in respect of that land.

(3) A person shall not make any false or misleading statement or representation in an application made, or purporting to be made, under this section.

Penalty: \$1 000 or imprisonment for 3 months.

(4) The Commissioner may, if satisfied that proper grounds exist for doing so, exempt land from land tax (whether or not an application for exemption has been made).

(5) The Commissioner must, on exempting land from land tax under this section, give notice in writing to an owner of the land setting out the grounds on which the exemption is made.

(6) Where—

(a) a notice of exemption under subsection (5) contains a statement purporting to be—

(i) a statement of fact;

and

(ii) a ground on which the exemption is made;

and

(b) the statement is inaccurate in any respect,

the owner to whom notice of the exemption was given shall, within 21 days after the date of receipt of the notice, notify the Commissioner of the inaccuracy.

Penalty: \$500.

(7) Where—

(a) land has been exempted from land tax in pursuance of this section;

and

(b) in the opinion of the Commissioner, proper grounds for the exemption do not, or have ceased to, exist,

the Commissioner may revoke the exemption.

(8) Where land has been exempted from land tax in pursuance of this section, and proper grounds for the exemption cease to exist, the owner of the land shall forthwith inform the Commissioner in writing of that fact and (whether or not the Commissioner is so informed and whether or not the exemption is revoked) the land will cease to be exempt from land tax.

(9) If an owner of land fails to comply with subsection (8), the owner is guilty of an offence.

Penalty: \$500.

(10) An exemption granted in pursuance of this section is effective from a day (which may be antecedent or subsequent to the day on which it was granted) determined by the Commissioner.

(11) For the purposes of this section, proper grounds for exempting land from land tax exist if—

(a) the land is owned by—

(i) a natural person for whom the land constitutes his or her principal place of residence (whether or not he or she is the sole owner of the land);

(ii) a company entitled to the benefit of this section in respect of the land;

or

(iii) a person entitled to the benefit of this section pursuant to subsection (12a);

and

(b) the criteria for the time being in force under subsection (13) are satisfied.

(12) Where—

(a) the whole of the land owned by a company consists of a group of dwellings and land appurtenant to those dwellings;

(b) all the issued shares of the company are owned by shareholders who acquire exclusive rights to occupy land of the company by virtue of their shareholdings in the company;

and

(c) each dwelling owned by the company is occupied by a shareholder in the company or a person deriving rights of occupancy from a shareholder in the company,

the company is entitled to the benefit of this section in respect of any of its land that is occupied by a shareholder (being a natural person) as his or her principal place of residence.

(12a) The owner of land comprising a retirement village is entitled to the benefit of this section in respect of so much of the land as consists of—

- (a) a residential unit occupied, pursuant to a residence contract, by a natural person (alone or with any other person) as his or her principal place of residence;
- (b) the land appurtenant to any such unit;
- or
- (c) a facility provided pursuant to the retirement village scheme for the exclusive use of the residents (and their guests).

(13) The Governor may, by regulation, determine criteria for the purposes of subsection (11)(b).

(14) A notice under this section may be given personally or by post.

(15) Where an owner of land contravenes or fails to comply with a provision of this section, and, in consequence, land tax is not assessed in respect of that land during a financial year for which land tax is payable upon the land, the Commissioner may assess the land tax upon the land for that financial year at a rate not exceeding double the rate that would otherwise have been applicable.

**Taxable value of land**

11. (1) Subject to this Act, the site value of land is its taxable value.

(2) Land tax in respect of a particular financial year is calculated on the basis of determinations of site value in force under the *Valuation of Land Act, 1971*, as at midnight on the thirtieth day of June immediately preceding the commencement of that financial year (whether the determination is actually made before, on or after that date).

(3) Where a determination of site value as in force at the date referred to in subsection (2) is corrected or amended under the *Valuation of Land Act, 1971* (whether in pursuance of an objection, review or appeal or otherwise), the determination of site value, as corrected or amended, must be used for the calculation of land tax.

\* \* \* \* \*

**Scale of land tax**

12. (1) Subject to this section, land tax is calculated in accordance with the following table:

Taxable Value of Land Subject to Tax	Amount of tax
Not exceeding \$80 000 .....	Nil
Exceeding \$80 000 but not exceeding \$300 000 .....	For every \$100 or fractional part of \$100 of the excess over \$80 000 of the value ... \$0.35
Exceeding \$300 000 but not exceeding \$1 000 000 .....	\$770 plus \$1.50 for every \$100 or fractional part of \$100 of the excess over \$300 000 of the value
Exceeding \$1 000 000 .....	\$11 270 plus \$2.30 for every \$100 or fractional part of \$100 of the excess over \$1 000 000 of the value.

\* \* \* \* \*

(3) Except as otherwise provided by this Act, land tax is calculated on the basis of the aggregate taxable value of all land owned by the taxpayer.

(4) Where a taxpayer is liable to pay land tax in respect of land included in more than one land tax assessment, the land tax is (subject to any additional levy that affects portion only of that land) apportioned to and chargeable on the land included in the various assessments in the proportions that the taxable value of the land included in each separate assessment bears to the aggregate taxable value of all the land.

\* \* \* \* \*

### Defined rural areas

12c. The Governor may, by proclamation—

(a) declare any part of the State to be a defined rural area for the purposes of this Act;

or

(b) vary or revoke any such declaration.

### Minimum tax

13. Where the total amount of land tax payable by any taxpayer in respect of any year would, apart from this section, be less than \$5, no land tax is payable.

\* \* \* \* \*

### Tax in case where there are two or more owners

15. (1) Subject to subsection (1a), where two or more persons are the owners of land, the same amount of land tax is payable in respect of that land as if only one person were the owner.

(1a) Subsection (1) does not affect the operation of any provisions of this Act under which the value of land is aggregated, for the purpose of the assessment of tax, with the value of other land.

(2) Subject to subsections (3) and (4), where two or more persons are the owners of land, the value of that land will not be aggregated, for the purpose of the assessment of tax, with the value of—

(a) any land owned by any one of those persons solely in that person's own right;

or

(b) any land—

(i) owned by those persons together with some other person;

or

(ii) owned by one or more of those persons together with some other person.



## PART IV

## LIABILITY AND DISTRIBUTION OF LIABILITY

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*Liability to Tax***Liability to land tax**

31. Subject to this Act, an owner of land is liable for land tax levied in respect of that land.

**Change of ownership**

32. (1) Subject to this Act, no land and no person assessed for land tax is relieved of a charge or liability for land tax in respect of a particular financial year by reason of a change in the ownership of the land, or any other event, occurring after the commencement of the financial year.

(2) The Commissioner may refuse to recognize any change in the ownership of any land until the amount of the tax on that land, together with fines and interest (if any), have been paid.

(3) The Commissioner may refuse to recognize any change in the ownership of any land where notice of that change of ownership has not been given as required by the regulations.

(4) Where the Commissioner refuses to recognize a change in the ownership of any land, the person who is recognized by the Commissioner as the owner of the land remains the taxpayer in respect of the land.

**Taxpayers representative capacity**

33. (1) Subject to this Act, the following are taxpayers in their representative capacity:

- (a) an agent of a person permanently or temporarily absent from the State;
- (b) a trustee, executor, administrator, guardian, manager or receiver.

(2) Subject to this Act, a person who is a taxpayer in a representative capacity is, in respect of land that is held or managed by the person in that capacity, liable under this Act as if that person were the beneficial owner of the land.

*Distribution of Burden of Taxation*

**Liability for tax to be joint and several**

34. Where there are two or more taxpayers in respect of the same land, they are jointly and severally liable to pay land tax in respect of that land.

**Distribution of burden**

35. (1) The burden of the land tax will be distributed between the taxpayers in the relative proportions of the value of their interests in the land taxed.

(2) A taxpayer who has paid land tax in respect of land is entitled to recover from every other taxpayer in respect of the same land a proper proportion of the amount paid.

\* \* \* \* \*  
\* \* \* \* \*

**Indemnity to taxpayer in representative capacity**

40. A taxpayer who pays tax in a representative capacity is entitled—

- (a) to recover the amount paid from those beneficially entitled to the land;
- or
- (b) to retain the amount of the payment from money that comes into his or her hands in the representative capacity.

\* \* \* \* \*

**Contracts, etc., to evade land tax**

42. (1) Where a contract, agreement or arrangement entered into in writing or verbally (whether before or after the commencement of the *Land Tax Act Amendment Act, 1977*) has or purports to have the purpose (whether as the main or a subsidiary purpose) of in any way directly or indirectly—

- (a) altering the incidence of land tax;
- (b) relieving any person from liability to pay land tax, or reducing any such liability;

or

- (c) defeating, evading or avoiding any obligation or liability imposed by this Act,

the Commissioner may, by notice in writing given personally or by post to the parties treat that contract, agreement or arrangement as void for the purposes of this Act.

(2) Where the Commissioner has, in pursuance of this section, treated a contract, agreement or arrangement as void for the purposes of this Act, it will be presumed, in any legal proceedings, in the absence of proof to the contrary, that the purpose of the contract, agreement or arrangement is such as would attract the operation of this section.

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\* \* \* \* \*



PART VI  
COLLECTION AND RECOVERY OF TAX

*Time for Payment*

**Time for payment of tax**

**56.** (1) Land tax is due and payable 30 days after the service of a particular notice showing the amount payable.

(2) When the Commissioner has reason to believe that a taxpayer may leave Australia before the tax for which the taxpayer is, or is to be, liable will be due and payable, the tax becomes due and payable on such date as the Commissioner fixes and notifies to the taxpayer.

\* \* \* \* \*

**Request for detailed statement of tax claim**

**56a.** The Commissioner must, upon receipt of a request in writing made by a taxpayer, render a full and detailed statement of the taxpayer's liability to pay the amount of tax shown in a particular notice.

**Power of Commissioner to extend time for payment**

**57.** The Commissioner may, if sufficient reason is shown, postpone the day upon which any land tax will become due and payable.

**Fines for unpaid land tax**

**58.** (1) If land tax is unpaid after it falls due, the amount of the land tax will be increased as follows:

- (a) if the land tax is unpaid at the expiration of 30 days from the date on which it fell due—by a fine of 5 per cent of the amount in arrears;
- (b) if the land tax is unpaid at the expiration of 6 months from the date on which it fell due—by a fine of 10 per cent of the amount of arrears, in addition to the fine specified in paragraph (a);
- (c) if the land tax is unpaid at the expiration of 12 months from the date on which it fell due—by a fine of 10 per cent of the amount of arrears, in addition to the fines specified in paragraphs (a) and (b).

(2) For the purposes of subsection (1), the amount of any fine under this section increasing unpaid land tax is to be disregarded in determining the amount of land tax in arrears.

(3) The Commissioner may, for any proper reason, remit a fine under this section wholly or in part.

**Postponement and remission of tax in cases of hardship**

**58a.** (1) Where the Commissioner is satisfied upon application by a taxpayer that the payment of land tax in respect of any financial year would cause hardship to that taxpayer the Commissioner may postpone the payment of that land tax or any portion of that land tax.

(2) The Commissioner may, if of the opinion that by reason of any change in the financial circumstances of a taxpayer land tax of which payment has been postponed under this section may be paid without hardship, require the taxpayer forthwith to pay the land tax or a portion of it.

(3) Any land tax of which payment has been postponed under this section remains a first charge upon the land taxed and is recoverable forthwith by the Commissioner, in the event of any change in the ownership of the land, from any person liable to pay the tax, and, in the event of the death of the taxpayer, from the personal representatives of the taxpayer.

(4) No penalty for late payment of tax is incurred in respect of any period for which payment of the tax has been postponed.

\* \* \* \* \*

#### *Recovery of Taxes*

#### **Recovery of land tax as a debt**

59. (1) If tax is in arrears, it may be recovered as a debt due to the Commissioner.

(2) The taking of proceedings for the recovery of tax under subsection (1) does not prevent the Commissioner from proceeding under any other provision of this Act for the recovery of the tax.

(3) If it appears from a valuation roll under the *Valuation of Land Act, 1971*, that the defendant in proceedings for the recovery of tax under this Act was the owner of the land in respect of which the tax was assessed, it will be presumed in the absence of proof to the contrary that the defendant is liable to pay the tax.

\* \* \* \* \*

#### **Power to collect tax from persons owing money to taxpayer**

61. (1) The Commissioner may by notice in writing (a copy of which must be forwarded to the taxpayer to the last place of address known to the Commissioner) require—

- (a) any person from whom money is due or may become due to a taxpayer;
  - (b) any person who holds, or may subsequently hold, money for or on account of a taxpayer;
  - (c) any person who holds or may subsequently hold money on account of some other person for payment to a taxpayer;
- or
- (d) any person having authority from some other person to pay money to a taxpayer,

to pay forthwith, or upon the money becoming due or being held, or within such further time as the Commissioner allows the money or so much of it as is sufficient to pay the land tax due by the taxpayer and the interest and costs (if any) imposed by this Act or any court in respect of any omission or offence against this Act.

(2) A person who fails to comply with a notice under this section is guilty of an offence.

Penalty: \$100.

(3) Where the amount payable by a person to whom a notice under subsection (1) has been given is less than the amount of land tax and interest due by the taxpayer, that person shall pay to the Commissioner in reduction of that tax and interest the amount payable by that person to the taxpayer.

(4) A person making a payment under this section is entitled to indemnity from the taxpayer in respect of that payment.

(5) If the land tax and interest are paid before any payment is made under this section, the Commissioner must forthwith give notice of the payment to the person to whom the notice under subsection (1) was given.

#### Notice of intention to let or sell

62. (1) If land tax is in arrears for six months or more, the Commissioner may have a notice published in the *Gazette*—

(a) specifying the land in respect of which the tax is payable;

(b) specifying the amount of the tax in arrears;

and

(c) stating that if the tax is not paid within three months of the date of the notice the Commissioner will let the land, or apply to the Supreme Court for an order for sale of the land.

(2) If at the expiration of three months from the date of a notice published under subsection (1) any part of the tax remains in arrears the Commissioner may—

(a) let the land;

or

(b) apply to the Supreme Court for an order for the sale of the land.

(3) The Supreme Court may, on an application under subsection (2)(b)—

(a) make an order for the sale of the land;

and

(b) give directions as to how the proceeds of sale are to be dealt with.

(4) Subject to any directions of the Supreme Court under subsection (3), where land is leased or sold in pursuance of this section the proceeds will be applied by the Commissioner towards the payment of the arrears of tax and the costs of proceeding under this section and any surplus must be paid to the person beneficially entitled to the land or, if the land has been sold, to the person who was beneficially entitled to the land prior to the sale.

\* \* \* \* \*

#### Transfer of land to the Crown

65. Where land is unencumbered except by a liability to pay land tax, the Commissioner may, on behalf of the Crown, accept a transfer of an estate in fee simple in the land in satisfaction of the liability for land tax.

#### Land tax to be a first charge on land

66. Subject to this Act, tax is, until payment, a first charge on the land subject to the tax.

**Certificates in respect of liability to land tax**

**66a.** (1) Upon application by the purchaser of any land, or the purchaser's agent, and payment of the prescribed fee, the Commissioner may issue a certificate showing the amount (if any) of tax that is, or will be, payable under this Act in respect of the land on a specified date ("the relevant date").

(2) Where the Commissioner is unable to calculate exactly the amount referred to in subsection (1), the Commissioner may make an estimate of that amount.

(3) Where the land in respect of which an application is made under this section is only part of the land included in a land tax assessment, the certificate referred to in subsection (1) must relate to the whole of the land comprised in the assessment.

(4) Where—

(a) the amount (if any) stated in a certificate given under this section is paid within a period specified in the certificate;

or

(b) the certificate indicates that no amount is or will be payable,

the purchaser and the purchaser's successors in title are released from any liability to land tax that accrued in respect of the land before the relevant date, and no such liability is or remains a charge upon the land after it becomes vested in the purchaser.

**No statute of limitation to apply**

**67.** No statute of limitation bars or affects any action or remedy for recovery of tax.

**Alterations to valuations or assessments of tax**

**68.** (1) The right of the Commissioner to recover tax under this Act is not suspended or delayed by an objection, review or appeal in relation to a valuation under the *Valuation of Land Act, 1971*, and the Commissioner may recover tax on the assumption that the valuation is correct, but if any alteration to a valuation affecting the amount of land tax payable in respect of any land is made under that Act (whether in consequence of an objection, review or appeal, or otherwise) the Commissioner must refund to the taxpayer any excess tax recovered, or may recover any additional tax, recoverable on the basis of the altered valuation, as arrears.

(2) Subject to this section, the Commissioner may (whether or not an application for amendment of the assessment has been made) amend an assessment of tax by making such alterations or additions as are necessary to ensure its completeness and accuracy.

(3) An amendment may be made under this section—

(a) where an application by a taxpayer under this section is made within three years after the service of notice of the assessment or an amendment to the assessment and the taxpayer has supplied to the Commissioner within that period or such further period as the Commissioner may allow all information required for the purpose of deciding the application—at any time;

(b) where the Commissioner is of the opinion that a taxpayer has attempted to evade the payment of land tax—at any time;

(c) in any other case—within three years after the service of notice of the assessment or of an amendment to the assessment.

(4) Where an amendment to an assessment has been made in accordance with this section and a period of more than three years has elapsed since the service of notice of the original assessment, any further amendment of the assessment must, subject to this section, be limited to the subject matter of the prior amendment.

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(5) Where the amendment to an assessment has the effect of imposing any fresh liability, or increasing an existing liability, the taxpayer is liable to pay the difference between the tax (if any) already paid under the assessment and the tax that is to be paid according to assessment as amended.

(6) Where an alteration in an assessment has the effect of reducing the taxpayer's liability the Commissioner must refund any tax overpaid.

PART VII  
MISCELLANEOUS**Objections**

**68a.** (1) A person who is aggrieved by—

(a) a decision of the Commissioner as to whether land is or is not land used for primary production;

(b) any decision of the Commissioner under section 10;

or

(c) a decision of the Commissioner under section 42 to treat a contract, agreement or arrangement as void for the purposes of this Act,

may, within 30 days after receiving notice of the decision of the Commissioner, lodge with the Treasurer an objection in writing that sets out in detail the grounds of the objection.

(2) The Treasurer may, after consideration of the grounds of an objection under this section—

(a) uphold the decision of the Commissioner and dismiss the objection;

or

(b) reverse or vary the decision of the Commissioner.

(3) A decision of the Treasurer under this section is final and without appeal, and may not be called in question in any legal proceedings.

**Appeal**

**68b.** (1) Subject to this section, a person who is aggrieved by a decision of the Commissioner, under section 42, to treat a contract, agreement or arrangement as void for the purposes of this Act, may appeal against that decision to a Local Court of Full Jurisdiction.

(2) An appeal under subsection (1) must be instituted within 30 days after the appellant receives notice, either personally or by post, of the decision of the Commissioner.

(3) An appeal under subsection (1) is limited to a decision of the Commissioner which involves a question of law.

(4) In any appeal under subsection (1), the Local Court may—

(a) dismiss the appeal;

(b) reverse or vary the decision appealed against;

(c) make any order as to costs or any other matter that the justice of the case requires.

(5) A decision of the Local Court under this section is final and without appeal and may not be called into question in any legal proceedings.

**Tax recoverable**

**68c.** (1) The right of the Commissioner to recover any land tax under this Act is not suspended or delayed by an objection or appeal under this Act.

(2) Where the amount of any land tax is reduced or increased in consequence of an objection or appeal under this Act, the Commissioner must refund to the taxpayer any excess paid, or may recover from the taxpayer any additional tax payable, as the case may require.

\* \* \* \* \*

### **Powers of inspection and inquiry**

73. (1) The Commissioner or a member of the Commissioner's staff may, for the purposes of this Act—

- (a) enter premises and inspect and take extracts from, or make copies of, any books or documents in the premises that appear relevant to the assessment of land tax;
- (b) require the occupier of any land to disclose the name of the owner of the land.

(2) A person who—

- (a) hinders the Commissioner or a member of the Commissioner's staff in the exercise of powers conferred by subsection (1);

or

- (b) refuses or fails to disclose the name of the owner of land or intentionally gives an incorrect name when required to disclose the name under subsection (1),

is guilty of an offence.

Penalty: \$200.

### **Commissioner may cause a person to be examined before a local court**

74. (1) A local court constituted of a magistrate may, on the application of the Commissioner, summon a person—

- (a) to appear for examination before the court on a question relevant to the administration of this Act;

or

- (b) to produce documents or other records before the court.

(2) A person summoned to appear for examination under subsection (1)(a) is liable to answer all questions relevant to the matter under investigation put by or on behalf of the Commissioner.

\* \* \* \* \*

(4) Any person who wilfully gives false evidence on being examined under this section is guilty of perjury.

(5) The proceedings under this section must be conducted privately.

### **Evidence**

75. (1) The production of the *Gazette* containing—

- (a) a notice purporting to be published by the Commissioner under this Act;

or

- (b) a notice of the appointment of an officer under this Act,

is conclusive evidence of that publication or appointment.

(2) In any proceedings for the recovery of tax, an apparently genuine document purporting to be under the hand of the Commissioner and to certify that—

(a) the Commissioner is satisfied that a notice in specified terms showing the amount of tax payable by the defendant was posted to the defendant at a specified address;

and

(b) in the ordinary course of post the notice would have reached the address to which it was posted on or before a specified day,

is conclusive evidence of the service of the notice on the defendant on the day so specified unless the defendant proves—

(c) that the notice was sent to an incorrect address;

and

(d) that—

(i) the Commissioner had notice of the correct address;

or

(ii) the fact that the Commissioner did not have notice of the correct address was not attributable to any wrongful act or omission on the defendant's part.

**Summary procedure**

76. The offences constituted by this Act are summary offences.

**Prosecution may be commenced within three years**

77. A prosecution for any offence against this Act may be commenced at any time within three years after the date on which the offence is alleged to have been committed.

\* \* \* \* \*

**Regulations**

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

(2) Any such regulation may impose a penalty not exceeding \$100 for breach of a regulation.

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## APPENDIX

## Legislative History

The *Land Tax Act, 1936*, repealed the following Acts:

*Taxation Act, 1927*  
*Taxation Amendment Act, 1927*  
*Taxation Act Amendment Act, 1929*  
*Taxation Act, 1930*  
*Land Tax Act, 1931*  
*Taxation Act, 1933*  
*Taxation Act, 1934*  
*Taxation Act, 1935*

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of *The Public General Acts of South Australia 1837-1975* at page 575.

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 18 May 1987. A schedule of these alterations was laid before Parliament on 6 August 1987.

Section 1:	amended by 62, 1986, s. 7 (Sched.)
Sections 2 and 3:	repealed by 62, 1986, s. 7 (Sched.)
Section 4(1):	amended by 62, 1986, s. 7 (Sched.) definition of "business of primary production" amended by 79, 1982, s. 3; definition of "the Commissioner" substituted by 62, 1986, s. 7 (Sched.) definition of "contribution" repealed by 62, 1986, s. 7 (Sched.) definition of "contributor" repealed by 62, 1986, s. 7 (Sched.) definition of "declared rural land" substituted by 41, 1976, s. 3; repealed by 29, 1981, s. 9(a) definition of "determination of unimproved value" repealed and definition of "determination of site value" inserted in its place by 29, 1981, s. 9(b) definition of "improvements" repealed by 29, 1981, s. 9(c) definition of "liquidator" amended by 62, 1986, s. 7 (Sched.) definition of "the metropolitan area" substituted by 80, 1983, s. 3; repealed by 44, 1990, s. 3 definition of "owner" amended by 62, 1986, s. 7 (Sched.); 48, 1989, s. 3(a), (b) definition of "particular notice" amended by 62, 1986, s. 7 (Sched.) definition of "regulation" deleted in pursuance of the <i>Acts Republication Act, 1967</i> definition of "retirement village" inserted by 72, 1987, s. 3 definition of "returns" amended by 62, 1986, s. 7 (Sched.) definition of "shack site lease" inserted by 48, 1989, s. 3(c) definition of "site improvements" repealed and definition of "site value" inserted in its place by 29, 1981, s. 9(d) definition of "Treasurer" repealed by 62, 1986, s. 7 (Sched.) definition of "unimproved value" repealed by 29, 1981, s. 9(e)
Section 4(2):	repealed by 29, 1981, s. 9(f)
Section 4a:	substituted by 62, 1986, s. 7 (Sched.)
Section 6:	repealed by 62, 1986, s. 7 (Sched.)
Section 7:	substituted by 2, 1987, s. 4
Section 7a:	inserted by 2, 1987, s. 4
Sections 8 and 9:	repealed by 62, 1986, s. 7 (Sched.)
Section 10(1):	amended by 41, 1976, s. 4; 32, 1977, s. 3(a)-(c); 61, 1979, s. 3(a); 79, 1982, s. 4; 62, 1986, ss. 3, 7 (Sched.)
Section 10(3):	repealed by 32, 1977, s. 3(d); inserted by 61, 1979, s. 3(b)
Section 10(4) and (5):	amended by 62, 1986, s. 7 (Sched.)
Section 10a:	inserted by 61, 1979, s. 4
Section 10a(4) and (5):	substituted by 62, 1986, s. 7 (Sched.)
Section 10a(6):	amended by 62, 1986, s. 7 (Sched.)
Section 10a(9):	substituted by 62, 1986, s. 7 (Sched.)
Section 10a(10):	amended by 62, 1986, s. 7 (Sched.)
Section 10a(11):	amended by 79, 1982, s. 5(a), (b); 62, 1986, s. 7 (Sched.); 72, 1987, s. 4(a)
Section 10a(12):	amended by 62, 1986, s. 7 (Sched.)
Section 10a(12a):	inserted by 79, 1982, s. 5(c); substituted by 72, 1987, s. 4(b)
Section 11:	substituted by 61, 1979, s. 5; amended by 29, 1981, s. 10; substituted by 62, 1986, s. 4
Section 11a:	amended by 61, 1979, s. 6; 29, 1981, s. 11; repealed by 62, 1986, s. 4
Section 11b:	repealed by 41, 1976, s. 5
Section 12:	amended by 41, 1976, s. 6; 32, 1977, s. 4; 79, 1985, s. 3; substituted by 62, 1986, s. 5
Section 12(1):	substituted by 63, 1988, s. 3(a); 48, 1989, s. 4(a); 44, 1990, s. 4(a); amended by 46, 1991, s. 3
Section 12(2):	repealed by 44, 1990, s. 4(a)
Section 12(5):	substituted by 72, 1987, s. 5; 63, 1988, s. 3(b); 48, 1989, s. 4(b); repealed by 44, 1990, s. 4(b)
Section 12a:	amended by 32, 1977, s. 5; 61, 1979, s. 7; 29, 1981, s. 12; 79, 1982, s. 6; 79, 1985, s. 4; repealed by 62, 1986, s. 6
Section 12c:	amended by 41, 1976, s. 7; 32, 1977, s. 6; 29, 1981, s. 13; substituted by 62, 1986, s. 7 (Sched.)
Section 13(1):	amended by 79, 1985, s. 5(a); redesignated as s. 13(1) in pursuance of the <i>Acts Republication Act, 1967</i>
Section 13(2):	amended by 79, 1985, s. 5(b); repealed by 78, 1986 (Sched. 5)
Section 15(1):	amended by 79, 1982, s. 7(a); substituted by 62, 1986, s. 7 (Sched.)
Section 15(1a):	inserted by 79, 1982, s. 7(b)
Section 15(2):	substituted by 79, 1982, s. 7(c); amended by 62, 1986, s. 7 (Sched.)

Section 15(3) - (6):	inserted by 79, 1982, s. 7(c)
Section 16:	repealed by 79, 1982, s. 8
Section 19:	repealed by 62, 1986, s. 7 (Sched.)
Section 32(1):	amended by 79, 1982, s. 9; substituted by 62, 1986, s. 7 (Sched.)
Section 32(2):	amended by 62, 1986, s. 7 (Sched.)
Section 33:	amended by 79, 1982, s. 10; substituted by 62, 1986, s. 7 (Sched.)
Section 34:	substituted by 79, 1982, s. 11
Section 35(2):	substituted by 62, 1986, s. 7 (Sched.)
Section 36:	amended by 79, 1982, s. 12; repealed by 62, 1986, s. 7 (Sched.)
Sections 37 - 39:	repealed by 62, 1986, s. 7 (Sched.)
Section 40:	substituted by 62, 1986, s. 7 (Sched.)
Section 41:	amended by 79, 1982, s. 13; repealed by 62, 1986, s. 7 (Sched.)
Section 42:	substituted by 32, 1977, s. 7
Section 42(1):	amended by 62, 1986, s. 7 (Sched.)
Sections 43 and 44:	repealed by 32, 1977, s. 7
Section 56(1a) and (1b):	repealed by 29, 1981, s. 14
Section 56(2) and (3):	redesignated as s. 56(1) and (2) respectively in pursuance of the <i>Acts Republication Act, 1967</i>
Sections 56a and 57:	amended by 62, 1986, s. 7 (Sched.)
Section 58:	substituted by 62, 1986, s. 7 (Sched.); 46, 1991, s. 4
Section 58a(1), (2) and (4):	amended by 62, 1986, s. 7 (Sched.)
Section 58b:	amended by 55, 1977, s. 9; repealed by 78, 1986 (Sched. 5)
Section 59:	substituted by 62, 1986, s. 7 (Sched.)
Section 61(1):	amended by 62, 1986, s. 7 (Sched.)
Section 61(2) and (4):	substituted by 62, 1986, s. 7 (Sched.)
Section 61(5):	amended by 62, 1986, s. 7 (Sched.)
Section 62:	substituted by 62, 1986, s. 7 (Sched.)
Sections 63 and 64:	repealed by 62, 1986, s. 7 (Sched.)
Section 65:	substituted by 62, 1986, s. 7 (Sched.)
Section 66:	amended by 79, 1982, s. 14; substituted by 62, 1986, s. 7 (Sched.)
Section 66a:	came into operation 8 December 1983: <i>Gaz.</i> 8 December 1983, p. 1616
Section 66a:	inserted by 79, 1982, s. 15
Section 66a(4):	amended by 62, 1986, s. 7 (Sched.)
Section 68(1):	amended by 88, 1984, s. 8(1) (Sched. Pt. I)
Section 68(2):	substituted by 79, 1982, s. 16; 62, 1986, s. 7 (Sched.)
Section 68(3) and (4):	substituted by 79, 1982, s. 16
Section 68(5):	inserted by 79, 1982, s. 16; amended by 62, 1986, s. 7 (Sched.)
Section 68(6):	inserted by 79, 1982, s. 16
Section 68a:	inserted by 32, 1977, s. 8
Section 68a(1):	amended by 62, 1986, s. 7 (Sched.)
Sections 68b and 68c:	inserted by 32, 1977, s. 8
Sections 69 - 72:	repealed by 62, 1986, s. 7 (Sched.)
Section 73:	substituted by 62, 1986, s. 7 (Sched.)
Section 74(1) and (2):	substituted by 62, 1986, s. 7 (Sched.)
Section 74(3):	repealed by 62, 1986, s. 7 (Sched.)
Section 75(1):	substituted by 62, 1986, s. 7 (Sched.)
Section 75(2):	inserted by 41, 1976, s. 8; amended by 62, 1986, s. 7 (Sched.)
Section 76:	substituted by 62, 1986, s. 7 (Sched.)
Section 77:	amended by 62, 1986, s. 7 (Sched.)
Sections 78 and 79:	repealed by 62, 1986, s. 7 (Sched.)
Section 80:	substituted by 62, 1986, s. 7 (Sched.)
Section 81:	repealed by 62, 1986, s. 7 (Sched.)
The first schedule:	repealed by 62, 1986, s. 7 (Sched.)