

# House of Assembly

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South Australia

## Statutes Amendment (Budget 2005) Bill 2005

A BILL FOR

An Act to amend the *Land Tax Act 1936* and the *Stamp Duties Act 1923*.

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### Contents

#### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

#### Part 2—Amendment of *Land Tax Act 1936*

- 4 Amendment of section 2—Interpretation
- 5 Amendment of section 4—Imposition of land tax
- 6 Substitution of section 5
  - 5 Exemption or partial exemption of certain land from land tax
- 7 Amendment of section 8—Scale of land tax

#### Part 3—Amendment of *Stamp Duties Act 1923* that takes effect at midnight on 30 June 2005

- 8 Amendment of section 76—Interpretation
- 9 Amendment of section 79—Mortgage securing future and contingent liabilities
- 10 Repeal of sections 81D and 81E
- 11 Repeal of section 83
- 12 Amendment of Schedule 2—Stamp duties and exemptions

#### Part 4—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2006

- 13 Amendment of section 71B—Partition or division of property
- 14 Amendment of section 82—Unregistered mortgages protected by caveats
- 15 Amendment of Schedule 2—Stamp duties and exemptions

#### Part 5—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2007

- 16 Amendment of section 31F—Lodgement of statement and payment of duty
- 17 Amendment of Schedule 2—Stamp duties and exemptions

#### Part 6—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2008

- 18 Amendment of section 31B—Interpretation

- 19 Amendment of section 31F—Lodgement of statement and payment of duty  
20 Amendment of Schedule 2—Stamp duties and exemptions

Part 7—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2009

- 21 Repeal of section 81A  
22 Amendment of Schedule 2—Stamp duties and exemptions
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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Statutes Amendment (Budget 2005) Act 2005*.

**2—Commencement**

- (1) Subject to this section, this Act will come into operation at midnight on 30 June 2005 (and if this Act is not assented to until after that date, it will be taken to have come into operation at that time).
- (2) Part 4 will come into operation on 1 July 2006.
- (3) Part 5 will come into operation on 1 July 2007.
- (4) Part 6 will come into operation on 1 July 2008.
- (5) Part 7 will come into operation on 1 July 2009.

**3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

**Part 2—Amendment of *Land Tax Act 1936***

**4—Amendment of section 2—Interpretation**

- (1) Section 2(1), definition of *land used for primary production*—delete the definition and substitute:

*land used for primary production* means land of not less than 0.8 hectare in area as to which the Commissioner is satisfied that the land is used wholly or mainly for the business of primary production;
- (2) Section 2—after subsection (2) insert:
  - (3) If—
    - (a) land is held under a tenancy in common; and
    - (b) the land is divided into separate portions and the owner of each undivided share in the land is entitled under a lease registered over the title to the land to occupy a particular portion of the land,

then the land will not be treated as a single parcel of land in multiple ownership but rather each owner of an undivided share in the land will be regarded as the owner of the portion of the land that the owner is entitled to occupy under the lease.

#### **5—Amendment of section 4—Imposition of land tax**

- (1) Section 4(1)(l)—delete paragraph (l) and substitute:
  - (l) land used for primary production other than such land that is situated within a defined rural area;
- (2) Section 4(1)(n)—after "land that is" insert:

wholly

#### **6—Substitution of section 5**

Section 5—delete the section and substitute:

#### **5—Exemption or partial exemption of certain land from land tax**

- (1) Land is wholly exempt from land tax under this section if—
  - (a) proper grounds for the exemption exist; and
  - (b) such an exemption has been granted, and remains in force, under this section.
- (2) Land is partially exempt from land tax under this section if—
  - (a) proper grounds for the partial exemption exist; and
  - (b) a partial exemption has been granted, and remains in force, under this section.
- (3) An owner of land may apply, in a form approved by the Commissioner, for an exemption or partial exemption from land tax.
- (4) A person must not make any false or misleading statement or representation in an application made, or purporting to be made, under subsection (3).

Maximum penalty: \$10 000.
- (5) The Commissioner may, if satisfied that proper grounds exist for doing so, wholly or partially exempt land from land tax (whether or not an application for exemption has been made).
- (6) The Commissioner must, on exempting land wholly or partially from land tax under this section, give notice to an owner of the land—
  - (a) stating the day (which may be antecedent or subsequent to the date on which the exemption is granted) as from which the exemption is to be effective; and
  - (b) stating the extent of the exemption; and
  - (c) setting out the grounds on which the exemption is granted.

- (7) If the factual basis of an exemption as stated in a notice under subsection (6) is wrong or inaccurate, the owner to whom the notice is given must, within 21 days after receipt of the notice, notify the Commissioner of the error or inaccuracy.
- Maximum penalty: \$5 000.
- Expiation fee: \$315.
- (8) If—
- (a) land is exempted wholly or partially from land tax under this section; and
  - (b) circumstances change so that—
    - (i) proper grounds for an exemption cease to exist; or
    - (ii) proper grounds for an exemption continue to exist but a lesser exemption than the one actually given,the owner must forthwith inform the Commissioner in writing of that fact and, whether or not the Commissioner is so informed, the land will cease to be exempt from land tax, or the extent of the exemption will be reduced (as the case requires).
- (9) An owner of land who fails to comply with an obligation under subsection (8) is guilty of an offence.
- Maximum penalty: \$5 000.
- Expiation fee: \$315.
- (10) Proper grounds for exempting land from land tax under this section exist as follows:
- (a) land may be wholly exempted from land tax if—
    - (i) the land is owned by a natural person and constitutes his or her principal place of residence (whether or not he or she is the sole owner of the land); and
    - (ii) the buildings on the land have a predominantly residential character; and
    - (iii) no part of the land is used for a business or commercial purpose (other than the business of primary production) or the part of the land so used is less than 25% of the total floor area of all buildings on the land;
  - (b) land may be partially exempted from land tax by reducing its taxable value in accordance with the scale prescribed in subsection (12) if—
    - (i) the land is owned by a natural person and constitutes his or her principal place of residence (whether or not he or she is the sole owner of the land); and

- (ii) the buildings on the land have a predominantly residential character; and
  - (iii) a part of the land of 25% or more but not more than 75% of the total floor area of all buildings on the land is used for a business or commercial purpose;
- (c) land may be wholly exempted from land tax if the land is a supported residential facility within the meaning of the *Supported Residential Facilities Act 1992* and is licensed as such under that Act;
- (d) land may be wholly exempted from land tax if the land constitutes a caravan park;
- (e) land within a retirement village may be exempted from land tax if—
  - (i) the land constitutes a residential unit—
    - (A) occupied, under a residence contract, by a natural person as his or her principal place of residence; or
    - (B) available for occupation, under a residence contract, by a natural person as his or her principal place of residence and likely to be so occupied at some time during the ensuing 12 months; or
  - (ii) the land is appurtenant to such a residential unit; or
  - (iii) the land is a facility provided under the retirement village scheme for the exclusive use of residents (and their guests);
- (f) land within a retired persons' relocatable home park may be exempted from land tax if—
  - (i) the land constitutes the site for a relocatable home and—
    - (A) there is a relocatable home on the site owned by a natural person and occupied by the natural person as his or her principal place of residence; or
    - (B) it is likely that within the ensuing 12 months there will be a relocatable home on the site owned by a natural person and occupied by the natural person as his or her principal place of residence; or
  - (ii) the land is appurtenant to such a site; or
  - (iii) the land is a facility provided by the owner of the land for the exclusive use of residents (and their guests);

- (g) land used for primary production that is situated within a defined rural area may be wholly exempted from land tax if—
- (i) the sole owner is a natural person who is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; or
  - (ii) the land is owned jointly or in common by 2 or more natural persons at least one of whom is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business and any other owner who is not so engaged is a relative of an owner so engaged; or
  - (iii) the land is owned solely, jointly or in common by a retired person and the following conditions are satisfied:
    - (A) the retired person was, prior to his or her retirement, engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; and
    - (B) the co-owner or co-owners of the land (if any) are relatives of the retired person; and
    - (C) a close relative of the retired person is currently engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; or
  - (iv) the land is owned solely or by tenancy in common by the executor of the will, or the administrator of the estate, of a deceased person and the following conditions are satisfied:
    - (A) the deceased person was, prior to his or her death, engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; and
    - (B) the co-owner or co-owners of the land (if any) are relatives of the deceased person; and
    - (C) a close relative of the deceased person is currently engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business; or

- (v) the land is owned by a company, or by 2 or more companies, or by a company or companies and one or more natural persons, and the main business of each owner is a relevant business; or
  - (vi) the land is owned by a company and one of the following conditions is satisfied:
    - (A) a natural person owns a majority of the issued shares of the company and is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business;
    - (B) 2 or more natural persons own in aggregate a majority of the issued shares of the company and each of them is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business;
    - (C) 2 or more natural persons who are relatives own in aggregate a majority of the issued shares of the company and at least one of them is engaged on a substantially full-time basis (either on his or her own behalf or as an employee) in a relevant business.
- (11) The regulations may, however, prescribe additional criteria that must be satisfied if land is to be eligible to be exempted wholly or partially from land tax under subsection (10).
- (12) The scale for partial exemption from land tax under subsection (10)(b) is as follows:

Area used for business or commercial purpose expressed as a percentage of the total floor area of all buildings on the land	Percentage reduction in taxable value of land
More than 75%	Nil
75%	25%
70% or more but less than 75%	30%
65% or more but less than 70%	35%
60% or more but less than 65%	40%
55% or more but less than 60%	45%
50% or more but less than 55%	50%
45% or more but less than 50%	55%
40% or more but less than 45%	60%
35% or more but less than 40%	65%

30% or more but less than 35%	70%
25% or more but less than 30%	75%
(less than 25%)	(100%)

(13) In this section—

**close relative**—a person is a close relative of another if—

- (a) they are spouses; or
- (b) one is a parent or child of the other; or
- (c) one is a brother or sister of the other;

**relative**—a person is a relative of another if —

- (a) they are spouses; or
- (b) one is an ascendant or descendant of the other, or of the other's spouse; or
- (c) one is a brother or sister of the other or a brother or sister of the other's spouse; or
- (d) one is an ascendant or descendant of a brother or sister of the other or of the other's spouse;

**relevant business**—a business is a relevant business in relation to land used for primary production that is situated within a defined rural area if—

- (a) the business is a business of primary production of the type for which the land is used or a business of processing or marketing primary produce; and
- (b) the land or produce of the land is used to a significant extent for the purposes of that business;

**relocatable home** means a residence that is capable of being moved (in one or more sections) from site to site but does not include a caravan, motor home or other moveable structure that can be registered under the *Motor Vehicles Act 1959*;

**retired persons' relocatable home park** means land comprising home sites—

- (a) that are used (or to be used) for the purpose of establishing 2 or more relocatable homes; and
- (b) over which rights of occupation for that purpose are granted, by lease or licence, predominantly to persons who are over the age of 55 years and have retired from full-time employment;

**spouse** includes a de facto spouse.

## 7—Amendment of section 8—Scale of land tax

Section 8(1), table—delete the table and substitute:

Taxable value of land	Amount of tax
Not exceeding \$110 000	Nil
Exceeding \$110 000 but not exceeding \$350 000	\$0.30 for every \$100 or fractional part of \$100 over \$110 000
Exceeding \$350 000 but not exceeding \$550 000	\$720 plus \$0.70 for every \$100 or fractional part of \$100 over \$350 000
Exceeding \$550 000 but not exceeding \$750 000	\$2 120 plus \$1.65 for every \$100 or fractional part of \$100 over \$550 000
Exceeding \$750 000 but not exceeding \$1 million	\$5 420 plus \$2.40 for every \$100 or fractional part of \$100 above \$750 000
Exceeding \$1 million	\$11 420 plus \$3.70 for every \$100 or fractional part of \$100 above \$1 million.

## Part 3—Amendment of *Stamp Duties Act 1923* that takes effect at midnight on 30 June 2005

### 8—Amendment of section 76—Interpretation

Section 76, definitions of *home* and *home mortgage*—delete the definitions

### 9—Amendment of section 79—Mortgage securing future and contingent liabilities

Section 79(2), exceptions—after exception 2 insert:

- 3 If a mortgage becomes chargeable with further duty under paragraph (b), and the rate of duty payable on the mortgage has decreased since it was previously stamped, then the further duty is to be calculated by subtracting from the amount of duty calculated under paragraph (b)(ii) the amount that would have been already paid if duty had then been calculated and paid at the lower rate.
- 4 If—
  - (a) a further advance is made under—
    - (i) a mortgage that is, until the further advance, wholly exempt from duty; or
    - (ii) a mortgage that would, assuming it had been submitted for stamping immediately before the further advance, have been wholly exempt from duty; and
  - (b) in consequence of the further advance, the mortgage ceases to be of a type that is, or has become, wholly exempt from duty,

duty (or further duty) is calculated on the mortgage as if it secured only the further advance and, if duty was paid before the exemption took effect, as if no such payment had been made.

## 10—Repeal of sections 81D and 81E

Sections 81D and 81E—delete the sections

## 11—Repeal of section 83

Section 83—delete the section

## 12—Amendment of Schedule 2—Stamp duties and exemptions

- (1) Schedule 2, clause 11(1)(a)(ii) & (iii)—delete subparagraphs (ii) and (iii) and substitute:
  - (ii) if the secured liability exceeds \$6 000—\$10 plus \$0.45 for every \$100 or fractional part of \$100 over \$6 000,
- (2) Schedule 2, clause 11(2)—after exemption 2 insert:
  - 2a. A mortgage securing a loan that has been, or is to be, applied wholly for home acquisition or improvement.
  - 2b. A mortgage to secure a loan that has been, or is to be, applied wholly for refinancing purposes.
- (3) Schedule 2, clause 11—after subclause (2) insert:
  - (3) **Partial exemptions**
    - 1 A mortgage securing a loan that has been, or is to be, applied in part for home acquisition or improvement and in part for other purposes is liable to duty as if it secured only so much of the loan as is to be applied for the other purposes.
    - 2 A mortgage securing a loan that has been, or is to be, applied in part for refinancing purposes and in part for other purposes is liable to duty as if it secured only so much of the loan as is to be applied for the other purposes.
- (4) **Definitions**

A loan secured by a mortgage is applied for *home acquisition or improvement* to the extent that it is used for one or more of the following purposes:

  - (a) purchasing land on which residential premises have been, or are to be, built that the mortgagor (or, if there are 2 or more mortgagors, at least one of them) intends to occupy as his or her sole or principal place of residence;
  - (b) building, or making additions or improvements to, residential premises that the mortgagor (or, if there are 2 or more mortgagors, at least one of them) occupies or intends to occupy as his or her sole or principal place of residence;

- (c) repaying a loan previously taken out for one or more of the above purposes.

A loan secured by a mortgage is applied for *refinancing purposes* to the extent that the loan has been, or is to be, applied to paying out the outstanding balance of a debt secured by an earlier mortgage on which duty has been paid (or which is exempt from duty) if the following conditions are satisfied:

- (a) the borrower under the loan transaction must be the person liable for the debt secured by the earlier mortgage; and
  - (b) at least some of the mortgaged property must be common to both mortgages; and
  - (c) the earlier mortgage must be fully discharged before, or as soon as practicable after, the first payment of loan money to, or for the benefit of, the borrower under the loan transaction secured by the later mortgage.
- (4) Schedule 2, clause 16—after exemption 26 insert:
- 27 An instrument of discharge or partial discharge of a mortgage or charge.

## **Part 4—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2006**

### **13—Amendment of section 71B—Partition or division of property**

Section 71B—after subsection (1) insert:

- (2) If the consideration for equality is (in amount or value) two hundred dollars or less, the instrument by which the partition or division is effected is entirely exempt from duty.

### **14—Amendment of section 82—Unregistered mortgages protected by caveats**

Section 82(1) & (2)—delete subsections (1) and (2) and substitute:

- (1) A caveat under the *Real Property Act 1886* to protect an interest arising under an unregistered mortgage is, if the unregistered mortgage is liable to stamp duty and has not been produced for stamping, liable to stamp duty.
- (2) The amount of duty chargeable on a caveat to which subsection (1) applies is the same as would be payable on the mortgage if produced for stamping.

### **15—Amendment of Schedule 2—Stamp duties and exemptions**

- (1) Schedule 2, clause 2(1)(c)—delete paragraph (c) and substitute:

- (c) if the application is not exempt from duty but the amount of the duty would, apart from this paragraph, be less than \$5, the component in respect of registration is to be \$5.

- (2) Schedule 2, clause 2(2)—after exemption 18 insert:
- 19 An application to register a motor vehicle in, or to transfer the registration of a motor vehicle into, the name of a beneficiary of the estate of a deceased person in order to give effect to the provisions of a will or the rules of intestacy.
- (3) Schedule 2, clauses 5 to 9—delete clauses 5 to 9 (inclusive)
- (4) Schedule 2, clause 16—after exemption 27 insert:
- 28 A conveyance (other than a conveyance operating as a voluntary disposition inter vivos) for effectuating the appointment of a new trustee or the retirement of a trustee.
- 29 A conveyance of a kind for which no specific charge, or basis for charging duty, is fixed by this Schedule.
- 30 A deed or transfer of a kind for which no specific charge, or basis for charging duty, is fixed by this Schedule.

## **Part 5—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2007**

### **16—Amendment of section 31F—Lodgement of statement and payment of duty**

- (1) Section 31F(1)(a)(iii) and (iv)—delete subparagraphs (iii) and (iv) and substitute:
- (iii) the amount representing the component referable to equipment financing arrangements entered into on or after 1 October 2003 but before 1 July 2007 (*new equipment financing component No 1*); and
- (iv) the amount representing the component referable to equipment financing arrangements entered into on or after 1 July 2007 (*new equipment financing component No 2*); and
- (v) the amount representing the component referable to other kinds of rental business based on contracts entered into before 1 July 2007 (*general rental business component No 1*); and
- (vi) the amount representing the component referable to other kinds of rental business based on contracts entered into on or after 1 July 2007 (*general rental business component No 2*); and
- (2) Section 31F(1)(b)(ii) and (iii)—delete subparagraphs (ii) and (iii) and substitute:
- (ii) 0.75% of new equipment financing component No 1; and
- (iii) 0.5% of new equipment financing component No 2; and
- (iv) if general rental business component No 1 exceeds a fraction of \$6 000 calculated by dividing general rental business component No 1 by the aggregate of the general rental business components—1.8% of the amount of the excess; and

- (v) if general rental business component No 2 exceeds a fraction of \$6 000 calculated by dividing general rental business component No 2 by the aggregate of the general rental business components—1.2% of the amount of the excess.

### **17—Amendment of Schedule 2—Stamp duties and exemptions**

Schedule 2, clause 11(1)(a)(ii)—delete subparagraph (ii) and substitute:

- (ii) if the secured liability exceeds \$6 000—\$10 plus \$0.30 for every \$100 or fractional part of \$100 over \$6 000,

## **Part 6—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2008**

### **18—Amendment of section 31B—Interpretation**

Section 31B, definition of *dutiable rental business*—after paragraph (e) insert:

but does not include such business arising from contracts, agreements or arrangements entered into on or after 1 July 2009;

### **19—Amendment of section 31F—Lodgement of statement and payment of duty**

- (1) Section 31F(1)(a)(iii) to (vi)—delete subparagraphs (iii) to (vi) (inclusive) and substitute:
  - (iii) the amount representing the component referable to equipment financing arrangements entered into on or after 1 October 2003 but before 1 July 2007 (*new equipment financing component No 1*); and
  - (iv) the amount representing the component referable to equipment financing arrangements entered into on or after 1 July 2007 but before 1 July 2008 (*new equipment financing component No 2*); and
  - (v) the amount representing the component referable to equipment financing arrangements entered into on or after 1 July 2008 but before 1 July 2009 (*new equipment financing component No 3*); and
  - (vi) the amount representing the component referable to other kinds of rental business based on contracts entered into before 1 July 2007 (*general rental business component No 1*); and
  - (vii) the amount representing the component referable to other kinds of rental business based on contracts entered into on or after 1 July 2007 but before 1 July 2008 (*general rental business component No 2*); and
  - (viii) the amount representing the component referable to other kinds of rental business based on contracts entered into on or after 1 July 2008 but before 1 July 2009 (*general rental business component No 3*); and

- (2) Section 31F(1)(b)(ii) to (v)—delete subparagraphs (ii) to (v) (inclusive) and substitute:
- (ii) 0.75% of new equipment financing component No 1; and
  - (iii) 0.5% of new equipment financing component No 2; and
  - (iv) 0.25% of new equipment financing component No 3; and
  - (v) if general rental business component No 1 exceeds a fraction of \$6 000 calculated by dividing general rental business component No 1 by the aggregate of the general rental business components—1.8% of the amount of the excess; and
  - (vi) if general rental business component No 2 exceeds a fraction of \$6 000 calculated by dividing general rental business component No 2 by the aggregate of the general rental business components—1.2% of the amount of the excess; and
  - (vii) if general business component No 3 exceeds a fraction of \$6 000 calculated by dividing general rental business component No 3 by the aggregate of the general rental business components—0.6% of the amount of the excess.

## **20—Amendment of Schedule 2—Stamp duties and exemptions**

Schedule 2, clause 11(1)(a)(ii)—delete subparagraph (ii) and substitute:

- (ii) if the secured liability exceeds \$6 000—\$10 plus \$0.15 for every \$100 or fractional part of \$100 over \$6 000,

## **Part 7—Amendment of *Stamp Duties Act 1923* that takes effect on 1 July 2009**

### **21—Repeal of section 81A**

Section 81A—delete the section

### **22—Amendment of Schedule 2—Stamp duties and exemptions**

- (1) Schedule 2, clause 11—delete clause 11
- (2) Schedule 2, clause 16—after exemption 30 insert:
  - 31 A mortgage, bond, debenture, covenant or warrant of attorney to confess and enter up judgment.