

(Reprint No. 1)

**SOUTH AUSTRALIA**

**TAXATION (RECIPROCAL POWERS) ACT, 1989**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 15 January 1992.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

**SUMMARY OF PROVISIONS**

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# TAXATION (RECIPROCAL POWERS) ACT, 1989

being

Taxation (Reciprocal Powers) Act, 1989, No. 28 of 1989 [Assented to 27 April 1989]<sup>1</sup>

as amended by

Debits Tax Act, 1990, No. 79 of 1990 [Assented to 20 December 1990]<sup>2</sup>

**An Act to provide for the enforcement of taxation laws of the Commonwealth and other States; and for other purposes.**

The Parliament of South Australia enacts as follows:

## Short title

1. This Act may be cited as the *Taxation (Reciprocal Powers) Act, 1989*.

## Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

## Interpretation

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

“corresponding Commissioner” in relation to a corresponding law means the person declared under subsection (3) to be the corresponding Commissioner in relation to that law:

“corresponding law” means a law of the Commonwealth or another State declared under subsection (3) to be a law corresponding to a South Australian Taxation Act:

“premises” means any land, building, structure or vehicle:

“record” means—

(a) a documentary record;

(b) a record made by an electronic, electro-magnetic, photographic or optical process;

(c) any other kind of record:

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<sup>1</sup>Came into operation 7 September 1989: *Gaz.* 7 September 1989, p. 821.

<sup>2</sup>Came into operation 1 January 1991, being the day on which section 4A of the *Debits Tax Act 1982* of the Commonwealth came into operation: s. 2.

“the South Australian Commissioner” in relation to a law that has been declared to be a corresponding law in relation to—

(a) the *Land Tax Act, 1936*—means the Commissioner of Land Tax;

and

(b) any other South Australian Taxation Act—means the Commissioner of Stamps:

“State” includes a Territory of the Commonwealth:

“South Australian Taxation Act” means—

*Business Franchise (Petroleum Products) Act, 1979;*

*Debits Tax Act, 1990*

*Financial Institutions Duty Act, 1983;*

*Land Tax Act, 1936;*

*Pay-roll Tax Act, 1971;*

*Stamp Duties Act, 1923;*

*Tobacco Products (Licensing) Act, 1986:*

“vehicle” includes a vessel or aircraft.

(2) In sections 5, 6, 7, 8 and 9—

“South Australian Commissioner” or “Commissioner” includes a person who is exercising powers of the South Australian Commissioner under delegation.

(3) The Governor may, by proclamation—

(a) declare a law of the Commonwealth or of another State to be a law corresponding to a South Australian Taxation Act;

(b) declare that the person who, for the time being, is the holder of, or is acting in, an office the duties of which comprise or include responsibility for the administration of a corresponding law is the corresponding Commissioner in relation to that law;

and

(c) vary or revoke a proclamation made under this section.

*Note: For definition of divisional penalties see Appendix 2.*

### Investigations

4. (1) A corresponding Commissioner may make a written request to the South Australian Commissioner to undertake an investigation under this Act in relation to the enforcement of a corresponding law.

(2) Before an investigation is undertaken the South Australian Commissioner and the corresponding Commissioner must enter into a written agreement setting out the terms on which the investigation will be undertaken.

(3) An agreement made for the purposes of subsection (2) may be varied by further agreement between the parties or be terminated by either party.

**Investigatory powers in relation to records**

5. (1) For the purpose of undertaking an investigation the South Australian Commissioner may—

- (a) at any reasonable time enter premises in which the Commissioner has reason to believe records relevant to the enforcement of the corresponding law are kept and for that purpose the Commissioner may direct a person in charge of a vehicle to stop the vehicle or to move it to a place nominated by the Commissioner;
- (b) require any person on the premises to produce records kept on the premises to the Commissioner for inspection and copying and, where the premises are comprised of a vehicle, require the person in charge of the vehicle to produce records carried in the vehicle for that purpose;
- (c) require any person (by notice in writing) to produce records to the Commissioner for inspection and copying;
- (d) remove and retain records produced under paragraph (b), and retain records produced under paragraph (c), for inspection and copying;
- (e) if any record referred to in paragraphs (b) or (c) is not in English—require any person to produce for the Commissioner a written statement of the contents of the record in English.

(2) Records taken by the Commissioner under this section must not be taken out of South Australia without the written permission of the owner of the records.

(3) A person who would have been entitled to inspect a record if it had not been taken by the Commissioner under this section is entitled to inspect it while it is in the Commissioner's possession.

(4) Nothing done under this section prejudices a lien on a record.

**Investigatory powers in relation to goods**

6. (1) For the purposes of undertaking an investigation the South Australian Commissioner may—

- (a) at any reasonable time enter premises in which the Commissioner has reason to believe there are goods that are relevant to the enforcement of a corresponding law and for that purpose the Commissioner may direct a person in charge of a vehicle to stop the vehicle or to move it to a place nominated by the Commissioner;
- (b) require any person on the premises to produce the goods for inspection and, where the premises are comprised of a vehicle, require the person in charge of the vehicle to produce the goods carried in the vehicle for inspection;
- (c) if the Commissioner has reasonable grounds to suspect that an offence has been committed against the corresponding law, remove and retain the goods—
  - (i) where the corresponding law imposes a tax in relation to petroleum or tobacco products—for the purpose of inspection or as evidence in a prosecution for an offence against the corresponding law;
  - or
  - (ii) in any other case—for the purpose of inspection;

(d) if the corresponding law imposes a tax in relation to petroleum or tobacco products—require any person on the premises to answer any question and, where the premises are comprised of a vehicle, require the person in charge of the vehicle to answer any question.

(2) Goods removed under this section must be dealt with as follows:

(a) if the corresponding law does not impose a tax in relation to petroleum or tobacco products the goods must be returned after inspection;

(b) if the corresponding law imposes a tax in relation to petroleum or tobacco products the goods must be returned if—

(i) the Commissioner determines that they should be returned;

(ii) a prosecution for the suspected offence or some other offence against the corresponding law is not commenced within three months of the date of removal;

(iii) such a prosecution is commenced within that time but—

(A) the defendant is acquitted;

(B) the prosecution is withdrawn or lapses;

or

(C) the court determines that the circumstances of the offence are trifling and do not justify forfeiture of the goods;

or

(iv) the Supreme Court directs that the goods be returned.

(3) The Supreme Court may direct the return of the goods if satisfied on the application of the owner of the goods that proper grounds for removal of the goods did not exist.

#### **Investigatory powers that may be exercised pursuant to a warrant**

7. (1) When undertaking an investigation the following powers may be exercised by the South Australian Commissioner pursuant to a warrant—

(a) the forcible entry of premises;

(b) the searching of premises for records or goods (including the forcible opening of any container or place in which records or goods might be kept or concealed).

(2) A justice may issue a warrant authorizing the Commissioner to use force to enter premises or to conduct a search on premises if satisfied by an affidavit or other sworn evidence that reasonable grounds for issuing the warrant exist.

(3) If the Commissioner has reason to suspect that urgent action is required in order to prevent destruction of evidence of an offence against a corresponding law, the Commissioner may exercise powers under subsection (1) without a warrant.

#### **General investigatory powers**

8. (1) For the purposes of undertaking an investigation the South Australian Commissioner may—

(a) require any person (by notice in writing) to appear before the Commissioner at a place in South Australia to answer questions;

(b) require any person (by notice in writing) to furnish the Commissioner with such information as the Commissioner requires.

(2) The Commissioner may require the evidence or information to be given on oath or affirmation (administered by the Commissioner) or to be verified by statutory declaration.

(3) A person appearing before the Commissioner pursuant to subsection (1) is entitled to be paid by the Commissioner an allowance equivalent to allowances payable to witnesses in local courts.

#### **General provisions relating to investigations**

9. (1) A person undertaking an investigation under delegation must, if requested to do so, produce to a person in relation to whom he or she proposes to exercise any of the powers under this Act—

(a) a certificate signed by the corresponding Commissioner stating that the investigator is entitled to exercise those powers and a certificate signed by the South Australian Commissioner stating that those powers have been delegated to the corresponding Commissioner by the South Australian Commissioner;

or

(b) a certificate signed by the South Australian Commissioner stating that the investigator is entitled to exercise those powers.

(2) A person who—

(a) hinders the South Australian Commissioner in the exercise of powers under this Act;

(b) fails without reasonable excuse to comply with a requirement made or direction given by the Commissioner under this Act;

or

(c) fails to answer a question put by the Commissioner to the best of his or her knowledge, information or belief,

is guilty of an offence.

Penalty: Division 4 fine.

(3) Subject to subsection (4), a person may not decline on the grounds of self-incrimination to answer a question put by the Commissioner under this Act.

(4) A person may decline to answer such a question if the answer could be used against him or her in a criminal prosecution under the corresponding law or any other law in force in the same jurisdiction as the corresponding law.

(5) The answer to such a question will not be admissible in criminal proceedings in this State except in proceedings for an offence against this section.

#### **Self-incriminating answers, etc., not admissible**

10. Where in the course of an investigation in another State in relation to the enforcement of a South Australian Taxation Act a person is required to answer a self-incriminating question or provide self-incriminating information, the answer or information is not admissible in proceedings in this State for an offence against that Act or any other law of the State.

**Evidentiary**

11. (1) A document that purports to have been certified by a corresponding Commissioner to be a true copy of the original will, in proceedings relating to the enforcement of a South Australian Taxation Act and in the absence of proof to the contrary, be taken to be a true copy of the original.

(2) A document referred to in subsection (1) is admissible in proceedings relating to the enforcement of a South Australian Taxation Act.

**Delegation**

12. (1) The South Australian Commissioner may delegate to a corresponding Commissioner or to any other person any of the South Australian Commissioner's powers under this Act.

(2) A corresponding Commissioner may, with the South Australian Commissioner's consent, delegate to any person any power delegated to him or her under subsection (1).

(3) A delegation under this section may be conditional or unconditional.

(4) A delegation under this section may be varied or revoked at will by the delegator and does not prevent the exercise of any power by the delegator.

**Disclosure of information**

13. (1) A person must not divulge or communicate information acquired—

(a) in the course of an investigation under this Act;

or

(b) in the course of an investigation under a law of the Commonwealth or of another State that corresponds to this Act relating to the enforcement of a South Australian Taxation Act,

except in accordance with this section.

Penalty: Division 4 fine.

(2) A person may divulge or communicate such information—

(a) with the consent of the person from whom the information was obtained;

(b) in connection with the investigation or for the purposes of the administration of the corresponding law or the South Australian Taxation Act to which the investigation related;

(c) for the purposes of legal proceedings under this Act, a law of the Commonwealth or of another State that corresponds to this Act, a corresponding law or a State Taxation Act;

or

(d) pursuant to subsection (3).

(3) A person may, with the approval of the South Australian Commissioner, divulge or communicate such information to—

(a) an officer of the Commonwealth or a State who administers a law relating to taxation;

(b) the national Companies and Securities Commission or a person authorized by that Commission;

(c) the National Crime Authority or a person authorized by that Authority.



**Immunity from civil liability**

14. If the South Australian Commissioner or a person who is exercising powers of the South Australian Commissioner under delegation—

(a) acts honestly in the exercise of powers conferred by this Act;

or

(b) acts in the honest but mistaken belief that the act is authorized by this Act,

no civil liability attaches to the Crown in right of South Australia, the Commissioner or other person in respect of the act.

**Summary offences**

15. An offence against this Act is a summary offence.

**Regulations**

16. The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

**APPENDIX 1**

## Legislative History

Section 3(1):

definition of "South Australian Taxation Act" amended by 79, 1990, s. 21

**APPENDIX 2**

## Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

| Division | Maximum imprisonment | Maximum fine |
|----------|----------------------|--------------|
| 1        | 15 years             | \$60 000     |
| 2        | 10 years             | \$40 000     |
| 3        | 7 years              | \$30 000     |
| 4        | 4 years              | \$15 000     |
| 5        | 2 years              | \$8 000      |
| 6        | 1 year               | \$4 000      |
| 7        | 6 months             | \$2 000      |
| 8        | 3 months             | \$1 000      |
| 9        | —                    | \$500        |
| 10       | —                    | \$200        |
| 11       | —                    | \$100        |
| 12       | —                    | \$50         |

*Note: This appendix is provided for convenience of reference only.*