

1991
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Treasurer)

Liquor Tax Bill 1991

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1991
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Liquor Tax Bill 1991

**A BILL
FOR**

An Act to provide for the taxing of liquor purchases

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Liquor Tax Act 1991*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

- (2) Part IV commences on 1 July 1992.

(3) The remaining provisions commence on 1 January 1992.

Interpretation

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

“Administration Act” means the *Taxation (Administration) Act 1987*;

5 “approved form” means the form approved by the Commissioner for the purposes of the provision in which the expression occurs;

“commencement day” means the day on which the provision in which the expression occurs commences;

10 “continuing licence” means a licence in force immediately before the commencement day;

“continuing licensee”, in relation to a continuing licence, means the person who immediately before the commencement day holds that licence;

15 “determined amount” means the amount determined by the Minister under subsection 99 (1) of the Administration Act for the purposes of the provision in which the expression occurs;

“determined rate” means the rate determined by the Minister under subsection 99 (1) of the Administration Act for the purposes of the provision in which the expression occurs;

20 “due date”, in any year, means 16 September, 17 December, 17 March and 16 June;

“election date”, in relation to a continuing licence, means the date on which an election in respect of that licence under section 26 takes effect;

25 “exempt sales” means liquor (whenever purchased) sold by wholesale to—

(a) a licensee;

(b) a person who, under the law of a State or another Territory, is authorised to sell liquor;

30 (c) a permit holder;

(d) a person for the purpose of the duty-free sale of the liquor by that person;

(e) a University for the purpose of sale or exposure for sale in a prescribed University building;

(f) the Canberra Theatre Trust for sale or exposure for sale in the Canberra Theatre Centre; or

(g) an exempt person;

5 "exempt wholesale licence" means an exempt wholesale licence declared under section 28;

"Liquor Act" means the *Liquor Act 1975*;

"prescribed University building" means a building which is occupied by—

(a) a University; or

10 (b) a residential college affiliated with a University under a Statute of that University;

in which the sale of liquor is authorised by a Statute of that University;

15 "quarter", in any year, means a period of 3 months ending on the last day of September, December, March or June;

"taxable purchases"—

(a) means liquor purchased for the purpose of sale or exposure for sale;

20 (b) in relation to a University, means liquor purchased for the purpose of sale or exposure for sale in a prescribed University building; or

(c) in relation to the Canberra Theatre Trust, means liquor purchased for the purpose of sale or exposure for sale in the Canberra Theatre Centre;

25 "termination date", in relation to a licence, means the date on which the licence ceases to be in force;

"transfer date", in relation to a licence, means the date on which the licence is transferred.

30 (2) Unless the contrary intention appears, an expression used in this Act has the same meaning as in the *Liquor Act*.

Incorporation of Taxation (Administration) Act 1987

4. (1) The Administration Act is incorporated and shall be read as one with this Act.

35 (2) The Administration Act applies in relation to an amount payable under Part III or IV as if the amount were tax payable under section 7.

(3) Notwithstanding subsections (1) and (2), section 35 of the Administration Act does not apply in relation to amounts paid under this Act.

Administration

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

Parts II and III not to apply

6. Parts II and III do not apply to—

- (a) a continuing licensee (unless the licensee has made an election in respect of the continuing licence under section 26);
- 10 (b) a University; or
- (c) the Canberra Theatre Trust.

PART II—LIABILITY TO TAXATION

Liability

15 7. A person is liable to pay tax in respect of liquor purchased by the person on or after the commencement day for the purpose of sale or exposure for sale.

Amount payable

8. (1) The amount of tax payable by a person in respect of a quarter is—

- 20 (a) if the purchases in the quarter relate to an exempt wholesale licence—the determined amount plus the amount calculated in accordance with the formula in subsection (2); or
- (b) in any other case—the determined amount or the amount calculated in accordance with the formula in subsection (2), whichever is
- 25 greater.

(2) For the purposes of subsection (1), the formula is—

$$(TP-ES) \times DR$$

where—

30 TP is the aggregate of amounts (including duties) paid or payable by the person for taxable purchases in the quarter;

ES is the aggregate of amounts (including duties) paid or payable by the person for exempt sales in the quarter; and

DR is the determined rate.

Exemptions

9. (1) This Act does not apply in relation to liquor purchased for any of the following purposes:

- (a) duty-free sale;
- 5 (b) administration, dispensing or sale for medicinal purposes—
 - (i) by or under the direction of a medical practitioner registered under the *Medical Practitioners Registration Act 1930*; or
 - (ii) by a pharmacist registered under the *Pharmacy Act 1931*;
- 10 (c) sale in a naval, military or air force mess, canteen, camp or post by the permission, and under the control of, the naval, military or air force authorities;
- (d) sale, at a canteen or club established or conducted in pursuance of the Army and Air Force Canteen Service Regulations, by the Army and Air Force Canteen Service Board of Management to a person—
 - 15 (i) who is a member of the naval, military or air forces of Australia or another country;
 - (ii) who is an officer or employee of the Department of Defence;
 - 20 (iii) who is employed by the Army and Air Force Canteen Service Board of Management;
 - (iv) who is employed at a special defence undertaking within the meaning of section 6 of the *Defence (Special Undertakings) Act 1952* of the Commonwealth; or
 - 25 (v) who is in the canteen or club at the invitation of a person referred to in subparagraph (i), (ii), (iii) or (iv);
- (e) sale in Parliament House;
- (f) sale by auction by an auctioneer licensed under the *Auctioneers Act 1959*, in good faith and in the course of the auctioneer's business,
30 on account of another person.

(2) Nothing in subsection (1) shall be taken to exempt the holder of an Off Licence from the operation of this Act.

PART III—ADVANCE PAYMENTS**Generally**

- 35 10. (1) A licensee shall, on or before the due date—

(a) lodge a return in the approved form specifying—

- (i) the aggregate of amounts (including duties) paid or payable by the licensee for taxable purchases in the base quarter to which the licence relates; and
- 5 (ii) the aggregate of amounts (including duties) paid or payable by the licensee for exempt sales in the base quarter to which the licence relates; and

(b) pay the applicable amount.

(2) For the purposes of paragraph (1) (b)—

- 10 (a) if AP_{BQ} exceeds T_{BQ} —the applicable amount is calculated in accordance with the formula $T_{BQ} - (AP_{BQ} - T_{BQ})$;
- (b) if AP_{BQ} equals T_{BQ} —the applicable amount is T_{BQ} ; or
- (c) if T_{BQ} exceeds AP_{BQ} —the applicable amount is calculated in accordance with the formula $T_{BQ} + (T_{BQ} - AP_{BQ})$.

15 (3) In subsection (2)—

AP_{BQ} is the advance payment for the base quarter, being an amount equal to—

- 20 (a) where the base quarter is the quarter in which the licence is issued or transferred—the amount paid or payable by the licensee under paragraph 11 (1) (a);
- (b) where the base quarter is the quarter immediately following the quarter referred to in paragraph (a)—the amount paid or payable by the licensee under paragraph 11 (1) (b); or
- 25 (c) in any other case—the amount of tax paid or payable by the licensee for liquor purchases in the quarter that commenced 6 months before the base quarter to which the licence relates; and

T_{BQ} is the amount of tax paid or payable by the licensee in respect of liquor purchases in the base quarter to which the licence relates.

30 (4) In this section—

“base quarter”, in relation to a due date, means the quarter that commenced 3 months before the quarter in which the due date falls.

Grant or transfer of licence

11. (1) Within 14 days after the issue or transfer of a licence, the licensee or transferee, shall pay—

- (a) an amount calculated in accordance with the formula—

5
$$\text{FQTP} \times \text{DR}$$

where—

10 FQTP is the aggregate of amounts (including duties) that, in the opinion of the Commissioner, are likely to be paid or payable by the licensee or transferee for taxable purchases in the first quarter to which the licence relates; and

DR is the determined rate;

or the determined amount, whichever is greater; and

- (b) an amount calculated in accordance with the formula—

15
$$\text{SQTP} \times \text{DR}$$

where—

SQTP is the aggregate of amounts (including duties) that, in the opinion of the Commissioner, are likely to be paid or payable by the licensee or transferee for taxable purchases in the second quarter to which the licence relates; and

20 DR is the determined rate;

or the determined amount, whichever is greater.

- (2) In subsection (1)—

“first quarter”, in relation to a licence, means the quarter in which the licence is issued or transferred;

25 “second quarter”, in relation to a licence, means the quarter immediately following the first quarter.

Termination of licences

12. (1) Within 14 days after a licence ceases to be in force (except by virtue of its suspension), the former licensee shall—

- 30 (a) lodge a return in the approved form specifying—

- (i) the aggregate of amounts (including duties) paid or payable by the former licensee for taxable purchases in the final period to which the licence relates; and

- (ii) the aggregate of amounts (including duties) paid or payable by the former licensee for exempt sales in the final period to which the licence relates; and

5 (b) pay the amount of tax outstanding (if any) in respect of liquor purchases to which the licence relates.

(2) Where—

(a) a licence ceases to be in force (except by virtue of its suspension); and

10 (b) the former licensee has overpaid the amount of tax payable in respect of liquor purchases to which the licence relates;

the Commissioner shall, within 14 days after receiving a return in accordance with paragraph (1) (a), refund the overpaid amount.

(3) In this section—

15 “base quarter”, in relation to a due date, means the quarter that commences 3 months before the quarter in which the due date falls;

“final period” means—

20 (a) if the termination date occurs on or before a due date—the period beginning on the day on which the base quarter commences and ending on the termination date; or

(b) if the termination date occurs after a due date—the period beginning on the day on which the quarter immediately following the base quarter commences and ending on the termination date.

25 **Transfer of licences**

13. Where a licence is transferred, the transferee shall, within 14 days after the transfer date, pay the amount that would have been payable if—

(a) the licence had ceased to be in force on that date; and

(b) section 12 applied.

30 **PART IV—TRANSITIONAL PAYMENTS**

Division 1—Continuing Licensees

Interpretation

14. In this Division—

“base quarter”, in relation to a due date, means the quarter that commenced 12 months before the quarter in which the due date falls.

Quarterly payments

- 5 15. (1) A continuing licensee shall, on or before the due date—
- (a) lodge a return in the approved form specifying—
- (i) the aggregate of amounts (including duties) paid or payable by the continuing licensee for taxable purchases in the base quarter to which the continuing licence relates; and
- 10 (ii) the aggregate of amounts (including duties) paid or payable by the continuing licensee for exempt sales in the base quarter to which the continuing licence relates; and
- (b) pay—
- (i) if the purchases in the base quarter relate to an exempt wholesale licence—the determined amount plus the amount calculated in accordance with the formula in subsection (2); or
- 15 (ii) in any other case—the determined amount or the amount calculated in accordance with the formula in subsection (2), whichever is greater.
- 20

(2) For the purposes of subsection (1), the formula is—

$$(BQTP - BQES) \times DR$$

where—

- 25 BQTP is the aggregate referred to in subparagraph (1) (a) (i);
- BQES is the aggregate referred to in subparagraph (1) (a) (ii); and
- DR is the determined rate.

Termination payments

- 30 16. (1) Where, on or after the commencement day, a continuing licence ceases to be in force (except by virtue of its suspension), the former continuing licensee shall, within 14 days after the termination date—
- (a) lodge a return in the approved form specifying—

- 5 (i) the aggregate of amounts (including duties) paid or payable by the former continuing licensee for taxable purchases in the final period to which the continuing licence relates; and
- (ii) the aggregate of amounts (including duties) paid or payable by the former continuing licensee for exempt sales in the final period to which the continuing licence relates; and

(b) pay—

- 10 (i) if the purchases in the final period relate to an exempt wholesale licence—the determined amount plus the amount calculated in accordance with the formula in subsection (2); or
- (ii) in any other case—the determined amount or the amount calculated in accordance with the formula in subsection (2), whichever is greater.

15 (2) For the purposes of subsection (1), the formula is—

$$(FPTP-FPES) \times DR$$

where—

FPTP is the aggregate referred to in subparagraph (1) (a) (i);

20 FPES is the aggregate referred to in subparagraph (1) (a) (ii); and

DR is the determined rate.

25 (3) Where a former continuing licensee pays an amount under subsection (1) following the cancellation of the licence, and the cancellation is set aside after the payment, the Commissioner shall refund that amount to that person.

(4) In this section—

“final period” means—

- 30 (a) if the termination date occurs on or before a due date—the period beginning on the day on which the base quarter commenced and ending on the termination date; or
- (b) if the termination date occurs after a due date—the period beginning on the day on which the quarter immediately following the base quarter commenced and ending on the termination date.
- 35

Transfer payments

17. Where, on or after the commencement day, a continuing licence is transferred, the transferee shall, within 14 days after the transfer date, pay the amount that would have been payable if—

- 5 (a) the licence had ceased to be in force on that date; and
 (b) section 16 applied.

Payments on election

18. Where an election date falls on or after the commencement day, the continuing licensee who made the election shall, within 14 days after the election date, pay the amounts that would have been payable if—

- 10 (a) the continuing licence had been transferred on that date; and
 (b) sections 11 and 17 applied.

Division 2—Other persons**Application**

15 19. This Division applies to—

- (a) a University; and
 (b) the Canberra Theatre Trust.

Payments by Universities etc.

20 20. (1) A person to whom this Division applies shall, on or before the due date—

- (a) lodge a return in the approved form specifying the aggregate of amounts (including duties) paid or payable for taxable purchases in the base quarter; and
 (b) pay an amount calculated in accordance with the formula—

25 $BQTP \times DR$

 where—

 BQTP is the aggregate referred to in paragraph (a); and

 DR is the determined rate;

 or the determined amount, whichever is greater.

30 (2) In subsection (1)—

 “base quarter”, in relation to a due date, means the quarter that commenced 6 months before the quarter in which the due date falls.

PART V—RECORDS OF PURCHASES**Division 1—Generally****Requirement to keep records**

- 5 21. (1) For the purposes of this Act, a licensee shall keep a record of each purchase of liquor for sale or exposure for sale to which the licence relates, specifying—

- (a) the date of the purchase;
- (b) the name and address of the person from whom the liquor was purchased;
- 10 (c) the quantity of liquor purchased; and
- (d) the amount (including duties) paid for the liquor.

- (2) The holder of an Off Licence shall keep a record of each exempt wholesale liquor sale specifying—

- (a) the date of the sale;
- 15 (b) the name, address and licence number (if any) of the person to whom the liquor was sold;
- (c) the quantity of liquor sold;
- (d) the amount (including duties) paid by the holder of that Off Licence for the liquor; and
- 20 (e) the amount (including duties) paid to the holder of that Off Licence for the liquor.

- (3) The holder of an Off Licence who sells liquor by wholesale shall keep a record of every retail sale of liquor made to which the licence relates, showing—

- 25 (a) the date of the sale;
- (b) the name, address and licence number (if any) of the person to whom the liquor was sold;
- (c) the quantity of liquor sold;
- (d) the amount (including duties) paid to the holder of that Off Licence for the liquor; and
- 30 (e) the sales docket number.

- (4) A licensee shall keep any other records required by the Commissioner.

(5) A licensee shall keep a record made pursuant to this section for a period of not less than 6 years after the date of the relevant transaction.

(6) A licensee shall not, without reasonable excuse, contravene subsection (1), (2), (3), (4) or (5).

5 Penalty for contravention of subsection (6): \$2,000.

Division 2—Certificates of liquor transactions

Interpretation

22. In this Division—

10 “prescribed period”, in any year, means the period beginning on 1 July and ending on 1 August.

Annual lodgment

23. (1) On or before 1 August in each year, a licensee shall lodge a certificate in the approved form specifying—

- 15 (a) the aggregate of amounts (including duties) paid or payable by the licensee for taxable purchases in the previous financial year to which the licence relates; and
- (b) the aggregate of amounts (including duties) paid or payable by the licensee for exempt sales in the previous financial year to which the licence relates.

20 Penalty: \$2,000.

(2) If a licence is transferred, or ceases to be in force, in a prescribed period, the transferor or former licensee is not required to lodge a return in respect of that licence under subsection (1) for the financial year immediately preceding that period.

25 **Transfer or termination of licences**

24. (1) Within 14 days after a licence—

- (a) is transferred; or
- (b) ceases to be in force (except by virtue of its suspension);

30 the transferor or former licensee (as the case requires) shall lodge a certificate in the approved form specifying—

- (c) the aggregate of amounts (including duties) paid or payable by the transferor or former licensee for taxable purchases in the final period to which the licence relates; and

- (d) the aggregate of amounts (including duties) paid or payable by the transferor or former licensee for exempt sales in the final period to which the licence relates.

Penalty: \$2,000.

5

- (2) In subsection (1)—

“final period”, in relation to a licence, means—

- 10 (a) where the licence is transferred or terminated in a prescribed period—the period beginning on 1 July in the financial year immediately preceding the prescribed period and ending on the transfer date or termination date; or
- (b) in any other case—the period beginning on 1 July in the financial year in which the transfer date or termination date falls and ending on that date.

Universities etc.

15

25. (1) This section applies to—

- (a) a University; and
- (b) the Canberra Theatre Trust.

- 20 (2) On or before 1 August in each year, a person to whom this section applies shall lodge a certificate in the approved form specifying the aggregate of amounts (including duties) paid or payable for taxable purchases in the previous financial year.

Penalty for contravention of subsection (2): \$2,000.

PART VI—MISCELLANEOUS

Election by continuing licensees

25

26. (1) A continuing licensee may, by notice in writing given to the Commissioner, elect to bring the continuing licence within the operation of Parts II and III.

- (2) An election takes effect on the date specified in the notice.

30

- (3) On and after the election date Parts II and III apply, and Part IV ceases to apply, to the continuing licensee in respect of that licence.

Tax payable by unlicensed persons**27. Where—**

- 5 (a) in the opinion of the Commissioner, a person purchases liquor for the purpose of sale or exposure for sale without the appropriate licence; and
- (b) the Commissioner assesses the amount of tax payable by the person in respect of a quarter (in this section called the “relevant quarter”);

that amount shall be taken to have been payable on—

- 10 (c) if, in the opinion of the Commissioner—
- (i) the person purchased liquor for that purpose in 2 or more consecutive quarters; and
- (ii) the relevant quarter is—
- 15 (A) the first or second quarter in which the liquor was purchased—the day that, in the opinion of the Commissioner, was the first day on which liquor was purchased in the first quarter; or
- (B) the third or subsequent quarter in which the liquor was purchased—the due date that immediately precedes the relevant quarter; or
- 20 (d) if, in the opinion of the Commissioner, the person did not purchase liquor for that purpose in consecutive quarters—the day that, in the opinion of the Commissioner, was the first day on which liquor was purchased in the relevant quarter.

25 Exempt wholesale licences

28. The Minister may, by notice published in the *Gazette*, declare an Off Licence held by a person to be an exempt wholesale licence.

Suspension and cancellation**29. (1) Where a licensee fails to pay—**

- 30 (a) an amount payable under this Act; or
- (b) an amount of penalty tax;

on or before the date for payment, the licence is, by force of this subsection, suspended.

(2) Where a licensee fails to pay an amount referred to in paragraph (1) (a) or (b) within 30 days after the date for payment, the licence is, by force of this subsection, cancelled.

(3) In this section—

5 “date for payment”—

(a) in relation to an amount referred to in paragraph (1) (a), means—

(i) the last day on which the amount is required to be paid in accordance with this Act; or

10 (ii) where the Commissioner allows further time for payment—the last day so allowed; or

(b) in relation to an amount referred to in paragraph (1) (b), means the last day on which the amount is payable in accordance with the Administration Act.

15 Regulations

30. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

(a) required or permitted by this Act to be prescribed; or

20 (b) necessary or convenient to be prescribed for giving effect to this Act.