

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

BUSINESS FRANCHISE (TOBACCO AND PETROLEUM PRODUCTS)
(AMENDMENT) ORDINANCE (NO. 2) 1987

No. 58 of 1987

The Business Franchise (Tobacco and Petroleum Products) (Amendment) Ordinance (No. 2) 1987 ("the Ordinance") amends the Business Franchise (Tobacco and Petroleum Products) Ordinance 1984 ("the principal Ordinance") to provide for the imposition of a tax on petroleum products.

The tax is imposed by way of a licence fee on persons engaged in the wholesaling or retailing of petroleum products, with the retailers paying the fee only on sales of petroleum products on which a fee has not previously been paid by a wholesaler.

The Ordinance also provides for persons purchasing diesel fuel from a wholesaler for a use other than propelling a diesel engined road vehicle on a public road to obtain a certificate allowing them to make those purchases free of the tax.

Details of the Ordinance are as follows:

Section 1 provides that the Ordinance may be cited as the Business Franchise (Tobacco and Petroleum Products) (Amendment) Ordinance (No. 2) 1987.

Section 2 provides for the Ordinance to commence on 1 November 1987.

Sections 3 and 4 deal with interpretation.

Section 5 amends section 3A of the principal Ordinance by inserting subsection (2) to provide that a reference to a relevant period in relation to the grant or renewal of a retail tobacconist's licence or a group retail tobacconist's licence is a reference to the last preceding period of 12 months ending on 31 August; and in relation to a petroleum retailer's licence or a group petroleum retailer's licence is a reference to the last preceding period of 12 months ending on 30 June.

Section 6 inserts the heading "Division 1 - General" before section 24 in Part III of the principal Ordinance.

Section 7 amends section 25 of the principal Ordinance by omitting subsection (4). That subsection provided an exception from the offence of wholesaling petroleum products without a wholesaler's licence in the case of the holder of a petroleum retailer's licence, and was inconsistent with other provisions.

Section 8 amends section 28 of the principal Ordinance by omitting subsection (10), which contained a reference to a repealed section of the principal Ordinance, and by inserting in paragraph (13)(a) a reference to a group retail tobacconist's licence.

Section 9 amends section 31 of the principal Ordinance as follows:

- Subsection (1) is omitted and replaced by a new subsection (1) which clarifies the calculation of the fees to be paid for petroleum products licences. It provides that for the grant of a licence the fee is the specified amount; while for the renewal of a licence the fee is the specified amount plus the prescribed amount calculated in accordance with subsection (2).
- A grammatical error in subparagraphs (2)(b)(i) and (ii) is corrected.
- Paragraph (2)(c) is restricted in its application to petroleum retailers' licences for the sale prior to 1 November 1987 of petroleum products in the course of interstate trade.
- Paragraph (2)(ca) is inserted to provide for the calculation of the portion of the licence fee described as the prescribed amount, in respect of petroleum retailers' licences for the sale of petroleum products sold on or after 1 November 1987. The basis for calculation is the same as for other petroleum licences.
- Subparagraph (2)(d)(ii) is omitted and replaced so that the calculation of the prescribed amount for group petroleum retailers' licences is the same whether or not members of the group were members for the whole of the relevant period. This is consistent with the provisions relating to group petroleum wholesalers' licences.
- The reference in subsection (3A) to paragraph (2)(c) is altered to a reference to paragraphs (2)(c) and (2)(ca).
- Subsection (5) is omitted and replaced by a provision that where one petroleum wholesaler sells petroleum products sold to him or her by another petroleum wholesaler the first wholesaler is liable to pay the fee in respect of those products unless the fee in respect of them has already been paid to the Commissioner for ACT Revenue Collections ("the Commissioner"). Previously no licence fee was payable by a wholesaler in respect of petroleum sold to another wholesaler.
- A reference to paragraph (2)(ca) is inserted after the reference to paragraph (2)(c) in subsection (5A).
- Subsection (8) is restricted in its application to petroleum products sold before 1 November 1987. Also the reference to value of petroleum products in that subsection is changed to a reference to the volume of petroleum products in order to be consistent with the provisions for the calculation of fees.
- Subsections (8A) and (9) are omitted. The provisions of subsection (8A) are replaced by a new subsection (12). Subsection (9) referred to a repealed section of the principal Ordinance.

- . A new subsection (9) is inserted to provide that diesel fuel sold to the holder of a diesel fuel exemption certificate is to be disregarded in assessing the licence fee for a petroleum wholesaler.
- . A new subsection (12) is inserted to provide that the volume of petroleum products sold in the Territory (a) for delivery and consumption in a State or another Territory sold before 1 November 1987 by the holder of a petroleum retailer's licence or a group petroleum retailer's licence, (b) sold on or after 1 November 1987 by the holder of a petroleum retailer's licence or a group petroleum retailer's licence where the products were not purchased by the retailer from the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence, or (c) sold at any time by the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence, is not to be used in the calculation of licence fees if the person who sold the products has paid to the appropriate authority in the State or other Territory the fee to which he or she would have been liable if the products had been sold in that State or Territory.

Section 10 inserts section 32 into the principal Ordinance. The section provides that if petroleum products sold in the Territory for delivery and consumption in a State or another Territory, are subsequently re-sold in that State or Territory and as a result of that resale a person has paid a fee under a corresponding law, the Commissioner shall refund any fee paid under the principal Ordinance in respect of the sale of those products in the Territory. Application for a refund must be made in writing.

Section 11 amends section 36 of the principal Ordinance by inserting references to a group retail tobacconist's licence and a group petroleum wholesaler's licence.

Section 12 inserts a new Division after section 36 in Part III of the principal Ordinance. The Division is headed "Division 2 - Diesel fuel exemption certificates". The Division is comprised of the following new sections.

- . Section 36A provides that diesel fuel is used for an exempt purpose if it is used for a purpose other than propelling a diesel engined road vehicle on a public road.
- . Section 36B provides that an application for a diesel fuel exemption certificate may be made to the Commissioner by a person who uses the fuel for an exempt purpose. The application is to include a description of the use of the diesel fuel and the quantity which the applicant anticipates purchasing pursuant to the certificate.
- . Section 36C provides that if the Commissioner is satisfied that the applicant uses diesel fuel for an exempt purpose he or she shall issue an exemption certificate on which is endorsed an identifying number.

- . Section 36D provides that the Commissioner may revoke an exemption certificate if the holder fails to keep records as required under the Ordinance, if the holder is convicted of an offence against the principal Ordinance or the Taxation (Administration) Ordinance 1987 or the Commissioner is satisfied that the holder has ceased to use diesel fuel for an exempt purpose.
- . Section 36E provides that subject to other provisions, an exemption certificate remains in force until 31 October next following its issue. A certificate may be renewed in accordance with section 36F.
- . Section 36F provides that if application is made within one month before the expiration of an exemption certificate the Commissioner shall renew the certificate for 12 months from the day on which the certificate would have expired.
- . Section 36G provides that the Commissioner may issue a copy of an exemption certificate to the holder if the original has been lost or destroyed.
- . Section 36H provides that the holder of an exemption certificate who purchases diesel fuel from the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence shall keep a record of the particulars of each purchase. These include the name and address of the licensee from whom it was purchased, the volume purchased, the price and the date.
- . Section 36I provides that the holder of an exemption certificate who purchases diesel fuel pursuant to the certificate from the holder of a petroleum wholesaler's licence or a group petroleum wholesaler's licence shall, not later than 7 November next following the date of purchase, furnish a return to the Commissioner setting out the name and address of the person from whom the diesel was purchased, the volume purchased, the date, and the volume used for other than exempt purposes.
- . Section 36J provides that the holder of an exemption certificate is liable to pay to the Commissioner in respect of diesel fuel used for other than an exempt purpose the determined amount set for the purposes of subparagraphs 31(a)(ii) and (b)(ii) in respect of licence fees for petroleum wholesalers and retailers selling diesel fuel.
- . Section 36K provides that it is an offence for the holder of an exemption certificate to sell diesel fuel purchased pursuant to the certificate.

Section 13 amends section 37 of the principal Ordinance as follows.

- . Paragraphs (1)(da) and (db) are inserted to provide that refusal to issue an exemption certificate and revocation of an exemption certificate are included in the decisions of which the Commissioner must give notice.

- Paragraph (1)(g) is inserted to provide that notice of the decision to refuse to issue an exemption certificate shall be given to the applicant.
- Paragraph (1)(h) is inserted to provide that notice of a decision revoking an exemption certificate is to be given to the holder of the certificate.

Section 14 amends section 38 of the principal Ordinance by inserting paragraphs (e) and (f) to provide that application may be made to the Administrative Appeals Tribunal for review of a decision of the Commissioner to refuse to issue an exemption certificate or to revoke an exemption certificate.

Section 15 amends section 38A of the principal Ordinance by omitting the penalty set out at the foot of the section. Penalties for failure to lodge returns are provided by the Taxation (Administration) Ordinance 1987. It also inserts subsection (2) to provide that the holder of a petroleum retailer's licence or a group petroleum retailer's licence who in any month, purchases petroleum from a person who is not a licensed petroleum wholesaler shall, within 7 days of the end of the month furnish a return to the Commissioner. The return is to include the name and address of the person from whom the petroleum was purchased, the date of the purchase, the volume purchased, the grade of motor spirit purchased and the value of the products purchased.

Section 16 is a saving provision which provides that amendments to the definition of "petroleum wholesaler's licence" made in the Business Franchise (Tobacco and Petroleum Products) (Amendment) Ordinance 1987 shall not take effect until 1 November 1987.

Issued by authority of the Minister of
State for the Arts, Sport, the
Environment, Tourism and Territories.