



Diesel Fuel Taxes Legislation Amendment Act 1982

No. 108 of 1982

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Diesel Fuel Taxes Legislation Amendment Act 1982

No. 108 of 1982

An Act relating to taxes on diesel fuel

[Assented to 5 November 1982]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Diesel Fuel Taxes Legislation Amendment Act 1982*.

Commencement

2. This Act shall be deemed to have come into operation at the hour of 8 o'clock in the evening by standard time in the Australian Capital Territory on 17 August 1982.

PART II—AMENDMENTS OF THE CUSTOMS ACT 1901

Principal Act

3. The *Customs Act 1901*¹ is in this Part referred to as the Principal Act.

Heading to Division 3 of Part VIII

4. The heading to Division 3 of Part VIII of the Principal Act is amended by omitting “*and Refunds*” and substituting “*Refunds and Rebates*”.

5. (1) After section 163 of the Principal Act the following section is inserted:

Rebate of duty in respect of diesel fuel used for certain purposes

“164. (1) A rebate is, subject to sub-sections (2) and (3) and to such conditions and restrictions as are prescribed (being conditions and restrictions that relate to goods generally, to goods included in a class of goods that includes diesel fuel or to diesel fuel only), payable to a person who purchases diesel fuel, being diesel fuel upon which duty has been paid, for use by him—

- (a) in mining operations or primary production (otherwise than for the purpose of propelling a road vehicle on a public road);
- (b) at residential premises in—
 - (i) providing food and drink for;
 - (ii) providing lighting, heating, air-conditioning, hot water or similar amenities for; or
 - (iii) meeting other domestic requirements of, residents of the premises;
- (c) at a hospital or nursing home or at any other institution providing medical or nursing care; or
- (d) at a home for aged persons.

“(2) Where a person—

- (a) purchases diesel fuel for use by him in a manner referred to in sub-section (1); and
- (b) uses the diesel fuel otherwise than in a manner referred to in that sub-section,

then—

- (c) if rebate has not been paid under sub-section (1) to the person in respect of the diesel fuel—rebate is not payable to the person in respect of the diesel fuel; or
- (d) if rebate has been paid under sub-section (1) to the person in respect of the diesel fuel—the person shall, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of rebate paid to him in respect of the diesel fuel and, if the person fails to pay to the Commonwealth the amount demanded within such period as is specified in the demand, the amount may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

“(3) Subject to sub-section (4), a Collector may refuse to consider an application for rebate under this section if—

- (a) the application does not relate to diesel fuel purchased for use in a manner referred to in paragraph (b) of sub-section (1); and

- (b) the quantity of diesel fuel in respect of which the application is made is less than 1,000 litres.

“(4) A Collector shall not refuse to consider an application made by a person for rebate under this section by reason only that the quantity of diesel fuel in respect of which the application is made is less than 1,000 litres if—

- (a) the application is the first application by the person for rebate under this section; or
- (b) a period of not less than 3 months has elapsed since the person last made an application for rebate under this section.

“(5) The rebate payable under sub-section (1) in respect of any diesel fuel is payable at the rate at which duty was paid on the diesel fuel.

“(6) Rebates payable under sub-section (1) are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

“(7) In this section—

‘agriculture’ means—

- (a) the cultivation of the soil;
- (b) the cultivation or gathering in of crops; or
- (c) the rearing of live-stock,

and includes—

- (d) viticulture, horticulture, pasturage or apiculture;
- (e) hunting or trapping carried on for the purpose of a business; or
- (f) other operations (including operations by way of pest or disease control or by way of soil or water conservation) connected with any operations referred to in paragraph (a), (b), (c), (d) or (e),

but does not include fishing operations or forestry;

‘duty’ has the same meaning as in sub-section (1) of section 163;

‘fish’ means freshwater or salt-water fish, and includes turtles, dugong, crustacea, molluscs or any other living resources of the sea or of the sea-bed;

‘fishing operations’ means—

- (a) the taking, catching or capturing of fish;
- (b) the raising of fish; or
- (c) the processing of fish on board vessels,

and includes oyster farming or pearling operations, but does not include operations conducted otherwise than for the purpose of a business;

‘forestry’ means—

- (a) the planting or tending, in a forest or plantation, of trees intended for felling; or

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- (b) the thinning or felling, in a forest or plantation, of standing timber,

and includes—

- (c) the transporting, milling or processing, in a forest or plantation, of timber felled in the forest or plantation;
- (d) the milling of timber at a sawmill that is not situated in the forest or plantation in which the timber was felled; or
- (e) where timber is milled at a sawmill that is not situated in the forest or plantation in which the timber was felled—the transporting of the timber from the forest or plantation in which it was felled to the sawmill;

‘horticulture’ includes—

- (a) the cultivation or gathering in of fruit, vegetables, herbs, edible fungi, nuts, flowers, trees, shrubs or plants;
- (b) the propagation of trees, shrubs or plants; or
- (c) the production of seeds, bulbs, corms, tubers or rhizomes;

‘live-stock’ includes any animal reared for the production of food, fibres, skins, fur or feathers, or for its use in the farming of land;

‘minerals’ means minerals in any form, whether solid, liquid or gaseous and whether organic or inorganic;

‘mining operations’ means—

- (a) exploration, prospecting or mining for minerals; or
- (b) the dressing or beneficiation (at the mining site or elsewhere) of minerals, or ores bearing minerals, as an integral part of operations for their recovery,

and includes—

- (c) other operations connected with exploration, prospecting or mining for minerals that are carried out in, or at a place adjacent to, the area in which the exploration, prospecting or mining occurs;
- (d) where minerals, or ores bearing minerals, are dressed or beneficiated, at a place other than the mining site, as an integral part of operations for their recovery—the transporting of the minerals or ores from the mining site to the place where they are dressed or beneficiated;
- (e) the liquefying of natural gas;
- (f) where natural gas is liquefied at a place other than the mining site—the transporting of the natural gas from the mining site to that place; or
- (g) the production of common salt by means of evaporation,

but does not include quarrying operations carried on for the sole purpose of obtaining stone for building, road making or similar purposes;

‘pearling operations’ means—

- (a) the taking of pearl shell; or
- (b) the culture of pearls or pearl shell,

and includes the taking or capturing of trochus, beche-de-mer or green snails;

‘primary production’ means—

- (a) agriculture;
- (b) fishing operations; or
- (c) forestry;

‘processing’, in relation to fish, includes—

- (a) the cutting up, dismembering, cleaning, sorting or packing of fish;
- (b) the preserving or preparing of fish; or
- (c) the producing of any substance or article from fish;

‘residential premises’ means—

- (a) premises used as a house; or
- (b) other premises at which at least one person resides,

but does not include—

- (c) premises used in the business of a hotel, motel or boarding house or a similar business;
- (d) premises used as a hospital or nursing home or as any other institution providing medical or nursing care;
- (e) premises used as a home for aged persons; or
- (f) premises used as a boarding school;

‘road vehicle’ means a vehicle of a kind ordinarily used on roads for the transport of persons or goods;

‘use’, in relation to diesel fuel in relation to a person, does not include the sale or other disposal of the diesel fuel by the person to another person.”.

(2) Section 164 of the Principal Act as amended by sub-section (1) applies only in relation to diesel fuel that is entered for home consumption after the commencement of this Act.

Short paid duty, &c., may be recovered

6. Section 165 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) Where a rebate of duty has been paid to a person and the whole or a part of the rebate was not payable to him, he shall repay the whole or that part, as the case may be, of the amount of rebate paid to him on demand being made by a Collector within 12 months from the date on which the rebate was paid.”.

1. After section 214 of the Principal Act the following section is inserted:

Powers of officers for purposes of section 164

“214A. (1) For the purposes of section 164 or of regulations made for the purposes of that section, an authorized officer may, at all reasonable times, enter—

- (a) premises where diesel fuel is used or stored; or
- (b) premises where there are kept any accounts, books, or other records relating to the purchase, sale or use of diesel fuel,

and may—

- (c) inspect or take stock of any diesel fuel; and
- (d) inspect any such accounts, books, documents or other records,

and may make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records.

“(2) Where an authorized officer proposes to enter any premises under sub-section (1), he shall, if requested to do so by the occupier or person in charge of the premises, produce for inspection written evidence of the fact that he is an authorized officer and, if he fails to do so, he is not authorized to enter the premises.

“(3) The occupier or person in charge of premises referred to in paragraph (a) or (b) of sub-section (1) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under sub-section (1).

Penalty: \$500.

“(4) An authorized officer may, by notice signed by him, require a person whom he believes to be capable of giving information that is relevant to the operation of section 164 or of regulations made for the purposes of that section and relates to the purchase, sale or use of diesel fuel to attend before him at the time and place specified in the notice and there to answer questions and produce to him such accounts, books, documents or other records in relation to the purchase, sale or use of diesel fuel as are referred to in the notice.

“(5) An authorized officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced in pursuance of sub-section (4).

“(6) A person is not excused from answering a question or producing any accounts, books, documents or other records when required to do so under sub-section (4) on the grounds that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate him or make him liable to a penalty, but his answer to any such question or the production by him of any such accounts, books, documents or other records is not admissible in evidence against him in proceedings other than proceedings for an offence against paragraph (c) of sub-section (9) or an offence against paragraph (b), (e) or (f) of section 234 in relation to a rebate under section 164.

“(7) An authorized officer may examine, on oath or affirmation, a person attending before him in pursuance of sub-section (4) and, for that purpose, may administer an oath or affirmation to that person.

“(8) The oath or affirmation to be made by a person for the purposes of sub-section (7) is an oath or affirmation that the answers he will give to questions asked him will be true.

“(9) A person shall not, without reasonable excuse, refuse or fail—

- (a) to attend before an authorized officer;
- (b) to make an oath or an affirmation; or
- (c) to answer a question or produce an account, book, document or other record,

when so required in pursuance of this section.

Penalty: \$1,000.

“(10) In this section, ‘authorized officer’ means a Collector or an officer appointed by a Collector to be an authorized officer for the purposes of this section.”.

Review of decisions

8. Section 273GA of the Principal Act is amended by inserting after paragraph (1) (h) the following paragraph:

“(ha) a refusal by a Collector to pay a rebate under section 164;”.

PART III—AMENDMENTS OF THE EXCISE ACT 1901

Principal Act

9. The *Excise Act 1901*² is in this Part referred to as the Principal Act.

Heading to Part VIII

10. The heading to Part VIII of the Principal Act is amended by inserting “, REBATES” after “REFUNDS”.

11. (1) After section 78 of the Principal Act the following section is inserted:

Rebate of duty in respect of diesel fuel used for certain purposes

“78A. (1) A rebate is, subject to sub-sections (2) and (3) and to such conditions and restrictions as are prescribed (being conditions and restrictions that relate to goods generally, to goods included in a class of goods that includes diesel fuel or to diesel fuel only), payable to a person who purchases diesel fuel, being diesel fuel upon which duty has been paid, for use by him—

- (a) in mining operations or primary production (otherwise than for the purpose of propelling a road vehicle on a public road);
- (b) at residential premises in—
 - (i) providing food and drink for;

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- (ii) providing lighting, heating, air-conditioning, hot water or similar amenities for; or
- (iii) meeting other domestic requirements of, residents of the premises;
- (c) at a hospital or nursing home or at any other institution providing medical or nursing care; or
- (d) at a home for aged persons.

“(2) Where a person—

- (a) purchases diesel fuel for use by him in a manner referred to in sub-section (1); and
- (b) uses the diesel fuel otherwise than in a manner referred to in that sub-section,

then—

- (c) if rebate has not been paid under sub-section (1) to the person in respect of the diesel fuel—rebate is not payable to the person in respect of the diesel fuel; or
- (d) if rebate has been paid under sub-section (1) to the person in respect of the diesel fuel—the person shall, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the amount of rebate paid to him in respect of the diesel fuel and, if the person fails to pay to the Commonwealth the amount demanded within such period as is specified in the demand, the amount may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

“(3) Subject to sub-section (4), a Collector may refuse to consider an application for rebate under this section if—

- (a) the application does not relate to diesel fuel purchased for use in a manner referred to in paragraph (b) of sub-section (1); and
- (b) the quantity of diesel fuel in respect of which the application is made is less than 1,000 litres.

“(4) A Collector shall not refuse to consider an application made by a person for rebate under this section by reason only that the quantity of diesel fuel in respect of which the application is made is less than 1,000 litres if—

- (a) the application is the first application by the person for rebate under this section; or
- (b) a period of not less than 3 months has elapsed since the person last made an application for rebate under this section.

“(5) The rebate payable under sub-section (1) in respect of any diesel fuel is payable at the rate at which duty was paid on the diesel fuel.

“(6) Rebates payable under sub-section (1) are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

“(7) In this section, ‘mining operations’, ‘primary production’, ‘residential premises’, ‘road vehicle’ and ‘use’ have the same respective meanings as in section 164 of the *Customs Act 1901*.”.

(2) Section 78A of the Principal Act as amended by sub-section (1) applies only in relation to diesel fuel that is entered for home consumption after the commencement of this Act.

Recovery of overpayment of refunds, rebates and drawbacks

12. Section 80 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) Where a rebate of duty has been paid to a person and the whole or a part of the rebate was not payable to him, the person shall, on demand in writing made by a Collector, pay to the Commonwealth an amount equal to the whole or that part, as the case may be, of the amount of rebate paid to him and, if the person fails to pay to the Commonwealth the amount demanded within such period as is specified in the demand, the amount may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.”.

13. After section 99 of the Principal Act the following section is inserted:

Powers of officers for purposes of section 78A

“99A. (1) For the purposes of section 78A or of regulations made for the purposes of that section, an authorized officer may, at all reasonable times, enter—

- (a) premises where diesel fuel is used or stored; or
- (b) premises where there are kept any accounts, books, or other records relating to the purchase, sale or use of diesel fuel,

and may—

- (c) inspect or take stock of any diesel fuel; and
- (d) inspect any such accounts, books, documents or other records,

and may make and retain copies of, or take and retain extracts from, any such accounts, books, documents or other records.

“(2) Where an authorized officer proposes to enter any premises under sub-section (1), he shall, if requested to do so by the occupier or person in charge of the premises, produce for inspection written evidence of the fact that he is an authorized officer and, if he fails to do so, he is not authorized to enter the premises.

“(3) The occupier or person in charge of premises referred to in paragraph (a) or (b) of sub-section (1) shall provide the authorized officer with all reasonable facilities and assistance for the effective exercise of his powers under sub-section (1).

Penalty: \$500.

“(4) An authorized officer may, by notice signed by him, require a person whom he believes to be capable of giving information that is relevant to the

operation of section 78A or of regulations made for the purposes of that section and relates to the purchase, sale or use of diesel fuel to attend before him at the time and place specified in the notice and there to answer questions and produce to him such accounts, books, documents or other records in relation to the purchase, sale or use of diesel fuel as are referred to in the notice.

“(5) An authorized officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced in pursuance of sub-section (4).

“(6) A person is not excused from answering a question or producing any accounts, books, documents or other records when required to do so under sub-section (4) on the grounds that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate him or make him liable to a penalty, but his answer to any such question or the production by him of any such accounts, books, documents or other records is not admissible in evidence against him in proceedings other than proceedings for an offence against paragraph (c) of sub-section (9) or an offence against paragraph (vb), (vii) or (viii) of section 120 in relation to a rebate under section 78A.

“(7) An authorized officer may examine, on oath or affirmation, a person attending before him in pursuance of sub-section (4) and, for that purpose, may administer an oath or affirmation to that person.

“(8) The oath or affirmation to be made by a person for the purposes of sub-section (7) is an oath or affirmation that the answers he will give to questions asked him will be true.

“(9) A person shall not, without reasonable excuse, refuse or fail—

- (a) to attend before an authorized officer;
- (b) to make an oath or affirmation; or
- (c) to answer a question or produce an account, book, document or other record,

when so required in pursuance of this section.

Penalty: \$1,000.

“(10) In this section, ‘authorized officer’ means a Collector or an officer appointed by a Collector to be an authorized officer for the purposes of this section.”.

Offences

14. Section 120 of the Principal Act is amended by inserting after paragraph (va) the following paragraph:

“(vb) Obtain any rebate which is not payable;”.

Review of decisions

15. Section 162C of the Principal Act is amended—

- (a) by omitting from paragraph (1) (d) “and” (last occurring); and

(b) by adding at the end of sub-section (1) the following word and paragraph:

“; and (f) a refusal by a Collector to pay a rebate under section 78A.”.

Regulations

16. Section 164 of the Principal Act is amended by adding at the end thereof “and, in particular, prescribing penalties not exceeding a fine of \$250 for an offence against the regulations”.

PART IV—AMENDMENT OF THE DIESEL FUEL TAXATION (ADMINISTRATION) ACT 1957

Principal Act

17. The *Diesel Fuel Taxation (Administration) Act 1957*³ is in this Part referred to as the Principal Act.

Rebate of duty

18. Section 5 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) Sub-section (1) does not apply in relation to diesel fuel that is entered for home consumption (within the meaning of the *Customs Act 1901* or the *Excise Act 1901*, as the case requires) after the commencement of the *Diesel Fuel Taxes Legislation Amendment Act 1982*.”.

PART V—MISCELLANEOUS

Application of paragraph 126(j) of the Customs Regulations

19. Paragraph 126(j) of the Customs Regulations does not apply in relation to diesel fuel that is entered for home consumption (within the meaning of the *Customs Act 1901*) after the commencement of this Act.

Application of paragraph 50(1)(m) of the Excise Regulations

20. Paragraph 50(1)(m) of the Excise Regulations does not apply in relation to diesel fuel that is entered for home consumption (within the meaning of the *Excise Act 1901*) after the commencement of this Act.

Making of regulations for the purposes of section 164 of the Customs Act 1901

21. Regulations made under the *Customs Act 1901* for the purposes of section 164 of that Act within the period of 6 months after the day on which this Act comes into operation may be expressed to have taken effect from the commencement of this Act.

Making of regulations for the purposes of section 78A of the Excise Act 1901

22. Regulations made under the *Excise Act 1901* for the purposes of section 78A of that Act within the period of 6 months after the day on which

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this Act comes into operation may be expressed to have taken effect from the commencement of this Act.

NOTES

1. No. 6, 1901, as amended. For previous amendments, see No. 21, 1906; Nos. 9 and 36, 1910; No. 19, 1914; No. 10, 1916; No. 41, 1920; No. 19, 1922; No. 12, 1923; No. 22, 1925; No. 6, 1930; Nos. 7 and 45, 1934; No. 7, 1935; No. 85, 1936; No. 54, 1947; No. 45, 1949; Nos. 56 and 80, 1950; No. 56, 1951; No. 108, 1952; No. 47, 1953; No. 66, 1954; No. 37, 1957; No. 54, 1959; Nos. 42 and 111, 1960; No. 48, 1963; Nos. 29, 82 and 133, 1965; No. 28, 1966; No. 54, 1967; Nos. 14 and 104, 1968; Nos. 12 and 134, 1971; No. 162, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 28 and 120, 1974; Nos. 56, 77 and 107, 1975; Nos. 41, 91 and 174, 1976; No. 154, 1977; Nos. 36 and 183, 1978; Nos. 19, 92, 116, 155, 177 and 180, 1979; Nos. 13, 15, 110 and 171, 1980; Nos. 45, 61, 64, 67, 152 and 157, 1981; and Nos. 48 and 51, 1982.
2. No. 9, 1901, as amended. For previous amendments, see No. 26, 1918; No. 8, 1923; No. 44, 1934; No. 16, 1942; No. 88, 1947; No. 46, 1949; No. 55, 1952; No. 10, 1957; No. 49, 1958; No. 37, 1962; No. 49, 1963; No. 139, 1965; No. 93, 1966; Nos. 15 and 105, 1968; No. 23, 1972; Nos. 24 and 145, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 29, 1974; No. 91, 1976; Nos. 36 and 110, 1978; Nos. 11, 19, 50, 155 and 165, 1979; Nos. 42 and 70, 1980; Nos. 61 and 65, 1981; and No. 51, 1982.
3. No. 98, 1957, as amended. For previous amendments, see No. 62, 1965; No. 93, 1966; No. 216, 1973 (as amended by No. 20, 1974); and No. 63, 1980.