

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 18 August 1992

(Minister Assisting the Treasurer)

## A BILL

FOR

### An Act relating to refunds of amounts paid as sales tax on certain swimming pools

The Parliament of Australia enacts:

#### Short title

1. This Act may be cited as the *Swimming Pools Tax Refund Act 1992*.

#### 5 Commencement

2. This Act commences on the day on which it receives the Royal Assent.

#### Interpretation

3. In this Act:

10 “**Commissioner**” means the Commissioner of Taxation;  
“**in situ pool tax**” means the tax referred to in the definition of “*in situ* pool tax provisions”;

**“in situ pool tax payment”** means an amount paid to the Commissioner in purported compliance with the requirements of the law relating to sales tax, or under an agreement, to pay *in situ* pool tax;

**“in situ pool tax provisions”** means the provisions of the *Sales Tax Assessment Act (No. 1) 1930* that, when incorporated and read as one with the *Sales Tax Act (No. 1) 1930*, would have had the effect of imposing a tax on a sale value of so much of a swimming pool as is constructed *in situ*, but which, in accordance with the judgment of the High Court in *Mutual Pools & Staff Pty Ltd v Federal Commissioner of Taxation* (1992) 104 ALR 545, were of no effect;

**“in situ pool tax refund payment”** means any payment that the Commonwealth is liable to make by way of refund of an *in situ* pool tax payment, whether the liability arose as a result of a refund agreement or otherwise;

**“refund agreement”** means an agreement having the effect that the Commonwealth is required to refund an *in situ* pool tax payment together with interest.

#### ***In situ* pool tax refund payments only to be made in certain circumstances**

**4.(1)** Except as provided by this section, the Commonwealth is not liable to make an *in situ* pool tax refund payment to a person.

**(2)** If, before the commencement of this Act or within one year after its commencement, the person has made a declaration to the Commissioner, in a form approved by the Commissioner, to the effect that:

- (a) the *in situ* pool tax concerned was not passed on to any person: or
- (b) the tax was passed on in whole or in part to another person and the person making the declaration has, before or after the commencement of this Act, refunded the whole or part (which whole or part is called **“the declared refund amount”**) of the tax passed on;

then:

- (c) in a paragraph (a) case—the Commonwealth is liable to make the *in situ* pool tax refund payment; and
- (d) in a paragraph (b) case—the Commonwealth is only liable to make so much of the *in situ* pool tax refund payment as equals the declared refund amount.

#### **Payment of interest on *in situ* pool tax refund payments**

**5.(1)** If an *in situ* pool tax refund payment is made to a person in accordance with section 4, the Commissioner is liable to pay interest to the person on the amount of the payment in accordance with this section.

(2) If the *in situ* pool tax refund payment was made because paragraph 4(2)(c) applied, the interest is payable in respect of the period beginning when the *in situ* pool tax payment concerned was made and ending when the *in situ* pool tax refund payment was made.

5 (3) If the *in situ* pool tax refund payment was made because paragraph 4(2)(d) applied, the interest is payable in respect of the period beginning when the declared refund amount was paid and ending when the *in situ* pool tax refund payment was made.

10 (4) The interest is payable at the same rate per annum as is applicable to interest in respect of the period under the *Taxation (Interest on Overpayments) Act 1983*.

(5) If the interest is not a multiple of one cent, it is to be rounded up or down to the nearest multiple of one cent (amounts ending in 0.5 cent being rounded up).

15 **Interest not payable on *in situ* pool tax payments or *in situ* pool tax refund payments**

6. If, apart from this Act, the Commonwealth would be liable, on the basis of a refund agreement or otherwise, to pay interest on any *in situ* pool tax payment or any *in situ* pool tax refund payment, then  
20 the Commonwealth is not so liable.

**Application of refund payments and interest against liabilities**

7.(1) If:

- (a) an *in situ* pool tax refund payment is, in accordance with section 4, liable to be made to a person; or  
25 (b) any interest is liable to be paid to a person under section 5; the Commissioner may apply the payment or interest in total or partial discharge of a liability of the person to the Commonwealth.

(2) If the payment or interest is so applied and the amount of the payment or interest remaining is less than 50 cents, it is not payable.

30 **General administration of Act**

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

**Information and evidence**

9.(1) For the purpose of the application of the *Taxation Administration Act 1953* in relation to declarations under section 4 of  
35 this Act, the Commissioner may, by notice in writing, require any person:

- (a) to give the Commissioner such information as the Commissioner requires; or  
40 (b) to attend and give evidence before the Commissioner or before any officer authorised by the Commissioner for the purpose; or  
(c) to produce books, documents and other papers in the custody or under the control of the person.

(2) The Commissioner may require the person to give the information or evidence on oath, and either orally or in writing. For that purpose, the Commissioner or the officer may administer an oath.

(3) If regulations for the purposes of subsection 23(3) of the *Sales Tax Assessment Act (No. 1) 1930* prescribe scales of expenses to be allowed to persons required to attend under section 23 of that Act, those scales of expenses are to be allowed to persons required to attend under this section. 5

**Access to premises etc.**

10. Section 12E of the *Sales Tax Procedure Act 1934* has effect, in addition to its effect under that Act, as if the application of the *Taxation Administration Act 1953* in relation to declarations under section 4 of this Act were a purpose of a Sales Tax Assessment Act. 10

**Secrecy**

11. Section 4A of the *Sales Tax Procedure Act 1934* applies as if this Act were part of that Act. 15