

South Australia



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ELIZABETHAE II REGINAE
A.D. 2002

GAMING MACHINES (GAMING TAX) AMENDMENT ACT 2002

No. 31 of 2002

[Assented to 7 November 2002]

An Act to amend the Gaming Machines Act 1992.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Gaming Machines (Gaming Tax) Amendment Act 2002*.
- (2) The *Gaming Machines Act 1992* is referred to in this Act as "the principal Act".

Amendment of s. 3—Interpretation

2. Section 3 of the principal Act is amended—

- (a) by inserting after the definition of "authorised person" in subsection (1) the following definition:

"beneficiary" includes an object of a discretionary trust;;

- (b) by inserting after the definition of "liquor licence" in subsection (1) the following definition:

"officer"—an officer—

(a) in relation to a body corporate—means a director or a member of the governing body of the body corporate;

(b) in relation to a trust—means a trustee;;

- (c) by inserting after the definition of "special circumstances licence" in subsection (1) the following definitions:

"trust"—a trust is considered for the purposes of this Act as a single entity consisting of the trustees and the beneficiaries;

"trust or corporate entity" means a trust or a body corporate.;

- (d) by striking out subsection (2) and substituting the following subsections:

(2) A person occupies a position of authority in a trust or corporate entity if the person—

(a) in the case of a body corporate—

(i) is a director or a member of the governing body of the body corporate;

(ii) exercises, or is in a position to exercise, control or substantial influence over the body corporate in the conduct of its affairs;

(iii) manages, or is to manage, the undertaking to be carried out under a licence;

(iv) if the body corporate is a proprietary company—is a shareholder in the body corporate; or

(b) in the case of a trust—is a trustee or beneficiary of the trust.

(3) However—

(a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not for that reason to be regarded as a person occupying a position of authority; and

(b) a charitable organisation that is a beneficiary of a trust is not for that reason to be regarded as a person occupying a position of authority.

Amendment of s. 8—Representation

3. Section 8 of the principal Act is amended by striking out paragraph (c) of subsection (1) and substituting the following paragraph:

(c) if the party is a trust or corporate entity—by an officer or employee of the entity who has obtained leave of the Commissioner to appear on behalf of the entity;.

Amendment of s. 19—Certain criteria must be satisfied by all applicants

4. Section 19 of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (1) and substituting the following paragraph:

(b) if the applicant is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding a licence of the class sought in the application.;

(b) by striking out from subsection (2) "body corporate" and substituting "trust or corporate entity".

Amendment of s. 23—Minors not to hold licence, etc.

5. Section 23 of the principal Act is amended—

(a) by striking out from subsection (1) "Subject to subsection (2), a" and substituting "A";

(b) by striking out from subsection (1)(b) "body corporate" and substituting "trust or corporate entity";

(c) by striking out subsection (2).

Insertion of s. 26A

6. The following section is inserted after section 26 of the principal Act:

How licences are to be held

26A. (1) A licence may be held jointly by two or more persons.

(2) If a licence is held jointly by two or more persons, those persons are jointly and severally liable to any civil or criminal liability that attaches to the licensee under this Act.

(3) If the trustee of a trust holds a licence for the purposes of a business conducted by the trustee under a trust—

- (a) the name of the trust is to be specified in the licence; and
- (b) the trust is to be considered as an entity holding the licence jointly with the trustee.

Amendment of s. 28—Certain gaming machine licences only are transferable

7. Section 28 of the principal Act is amended by striking out subparagraph (ii) of subsection (3)(c) and substituting the following subparagraph:

- (ii) if the applicant is a trust or corporate entity—that each person who occupies a position of authority in the entity is a fit and proper person to occupy such a position in an entity holding such a licence.

Insertion of s. 28A

8. The following section is inserted after section 28 of the principal Act:

Condition requiring payment of gaming machine surcharge

28A. If, on the Commissioner's consenting to the transfer of a gaming machine licence, any gaming machine surcharge payable under the *Stamp Duties Act 1923* in respect of the transfer of the business conducted under the licence has not been paid, it is a condition of the licence that the surcharge be paid within the period allowed under that Act.

Amendment of s. 36—Revocation or suspension of licences, etc.

9. Section 36 of the principal Act is amended by striking out paragraph (g) of subsection (1) and substituting the following paragraph:

- (g) in the case of a licensee that is a trust or corporate entity—a person who occupies a position of authority in the entity is not a fit and proper person to occupy such a position in an entity holding such a licence; or.

Amendment of s. 38—Commissioner may approve persons in authority

10. Section 38 of the principal Act is amended—

- (a) by striking out "a body corporate" and substituting "a trust or corporate entity";
- (b) by striking out "the body corporate" and substituting "the entity".

Insertion of s. 38A

11. The following section is inserted after section 38 of the principal Act:

Condition requiring payment of gaming machine surcharge

38A. If, on approval by the Commissioner of the assumption by a person of a position in authority in a trust or corporate entity that holds a gaming machine licence, any gaming machine surcharge payable under the *Stamp Duties Act 1923* in respect of a transaction related to the assumption by the person of the position has not been paid, it is a condition of the licence that the surcharge be paid within the period allowed under that Act.

Amendment of s. 39—Commissioner may approve agents of the Board

12. Section 39 of the principal Act is amended by striking out from subsection (3)(c) "or an object of a discretionary trust".

Amendment of s. 42—Discretion to grant or refuse approval

13. Section 42 of the principal Act is amended by striking out from subsection (4) "body corporate" and substituting "trust or corporate entity".

Amendment of s. 48—Offences relating to management of business or positions of authority

14. Section 48 of the principal Act is amended by striking out from subsection (2) "body corporate" and substituting "trust or corporate entity".

Amendment of s. 51—Persons who may not operate gaming machines

15. Section 51 of the principal Act is amended by striking out "body corporate" wherever occurring and substituting, in each case, "trust or corporate entity".

Amendment of s. 68—Certain profit sharing, etc., is prohibited

16. Section 68 of the principal Act is amended—

- (a) by striking out from subsection (1)(b) "enters into" and substituting "is party to";
- (b) by striking out from subsection (2) "body corporate" and substituting "trust or corporate entity";
- (c) by striking out from subsection (4)(c) "becomes a" and substituting "is".

Substitution of s. 72

17. Section 72 of the principal Act is repealed and the following section is substituted:

Interpretation

72. In this Part—

"**net gambling revenue**" or "NGR", in relation to the holder of a gaming machine licence and a financial year, means the total amount of all bets made on the gaming machines on the licensed premises during the year less the total amount of all prizes won on the machines during the year;

"**non-profit business**" means a business carried out under a gaming machine licence held by or on behalf of a body corporate or association, where the Minister is satisfied that the profits of the business cannot be returned to the members or shareholders of the body corporate or association;

"**prescribed gaming tax**"—

- (a) in respect of the 2002-2003 financial year, means—
 - (i) in the case of a non-profit business—the amount of tax calculated in accordance with Part 1 of the following table, as adjusted, for the 6 months from 1 January 2003 until 30 June 2003 ("the second 6 months"), by subtracting or adding (as the case requires) the adjustment amount in accordance with Part 2 of the table:

<i>Part 1</i>	
<i>Tax Threshold</i>	<i>Tax</i>
For NGR of \$399 000 or less for the financial year	20.91% of the NGR
For NGR of more than \$399 000 but equal to or less than \$945 000 for the financial year	\$83 430.90 plus 25.91% of the excess NGR over \$399 000
For NGR of more than \$945 000 for the financial year	\$224 899.50 plus 30.91% of the excess NGR over \$945 000

<i>Part 2</i>	
<i>Adjustment Threshold</i>	<i>Adjustment</i>
For NGR of \$37 500 or less for the second 6 months	subtract 20.91% of the NGR
For NGR of more than \$37 500 but equal to or less than \$199 500 for the second 6 months . . .	subtract \$7 841.25 and add 0.09% of the excess NGR over \$37 500
For NGR of more than \$199 500 but equal to or less than \$472 500 for the second 6 months . . .	subtract \$7 695.45 and add 2.59% of the excess NGR over \$199 500
For NGR of more than \$472 500 but equal to or less than \$750 000 for the second 6 months . . .	subtract \$624.75
For NGR of more than \$750 000 but equal to or less than \$1 250 000 for the second 6 months . .	subtract \$624.75 and add 6.59% of the excess NGR over \$750 000
For NGR of more than \$1 250 000 but equal to or less than \$1 750 000 for the second 6 months	add \$32 325.25 plus 16.09% of the excess NGR over \$1 250 000
For NGR of more than \$1 750 000 for the second 6 months	add \$112 775.25 plus 24.09% of the excess NGR over \$1 750 000

- (ii) in any other case—the amount of tax calculated in accordance with Part 1 of the following table, as adjusted, for the 6 months from 1 January 2003 until 30 June 2003 ("the second 6 months"), by subtracting or adding (as the case requires) the adjustment amount in accordance with Part 2 of the table:

<i>Part 1</i>	
<i>Tax Threshold</i>	<i>Tax</i>
For NGR of \$399 000 or less for the financial year	25.91% of the NGR
For NGR of more than \$399 000 but equal to or less than \$945 000 for the financial year	\$103 380.90 plus 34.41% of the excess NGR over \$399 000
For NGR of more than \$945 000 for the financial year	\$291 259.50 plus 40.91% of the excess NGR over \$945 000

<i>Part 2</i>	
<i>Adjustment Threshold</i>	<i>Adjustment</i>
For NGR of \$37 500 or less for the second 6 months	subtract 25.91% of the NGR
For NGR of more than \$37 500 but equal to or less than \$199 500 for the second 6 months . . .	subtract \$9 716.25 and add 1.59% of the excess NGR over \$37 500
For NGR of more than \$199 500 but equal to or less than \$472 500 for the second 6 months . . .	subtract \$7 140.45 and add 2.59% of the excess NGR over \$199 500
For NGR of more than \$472 500 but equal to or less than \$750 000 for the second 6 months . . .	subtract \$69.75
For NGR of more than \$750 000 but equal to or less than \$1 250 000 for the second 6 months . .	subtract \$69.75 and add 6.59% of the excess NGR over \$750 000
For NGR of more than \$1 250 000 but equal to or less than \$1 750 000 for the second 6 months	add \$32 880.25 plus 16.09% of the excess NGR over \$1 250 000
For NGR of more than \$1 750 000 for the second 6 months	add \$113 330.25 plus 24.09% of the excess NGR over \$1 750 000

(b) in respect of the 2003/2004 financial year and each successive financial year, means—

(i) in the case of a non-profit business—the amount of tax calculated in accordance with the following table:

<i>Tax Threshold</i>	<i>Tax</i>
For NGR of \$75 000 or less for the financial year	nil
For NGR of more than \$75 000 but equal to or less than \$399 000 for the financial year	21% of the excess NGR over \$75 000
For NGR of more than \$399 000 but equal to or less than \$945 000 for the financial year	\$68 040 plus 28.5% of the excess NGR over \$399 000
For NGR of more than \$945 000 but equal to or less than \$1 500 000 for the financial year	\$223 650 plus 30.91% of the excess NGR over \$945 000
For NGR of more than \$1 500 000 but equal to or less than \$2 500 000 for the financial year	\$395 200.50 plus 37.5% of the excess NGR over \$1 500 000
For NGR of more than \$2 500 000 but equal to or less than \$3 500 000 for the financial year	\$770 200.50 plus 47% of the excess NGR over \$2 500 000
For NGR of more than \$3 500 000 for the financial year	\$1 240 200.50 plus 55% of the excess NGR over \$3 500 000

(ii) in any other case—the amount of tax calculated in accordance with the following table:

<i>Tax Threshold</i>	<i>Tax</i>
For NGR of \$75 000 or less for the financial year	nil
For NGR of more than \$75 000 but equal to or less than \$399 000 for the financial year	27.5% of the excess NGR over \$75 000
For NGR of more than \$399 000 but equal to or less than \$945 000 for the financial year	\$89 100 plus 37% of the excess NGR over \$399 000
For NGR of more than \$945 000 but equal to or less than \$1 500 000 for the financial year	\$291 120 plus 40.91% of the excess NGR over \$945 000
For NGR of more than \$1 500 000 but equal to or less than \$2 500 000 for the financial year	\$518 170.50 plus 47.5% of the excess NGR over \$1 500 000
For NGR of more than \$2 500 000 but equal to or less than \$3 500 000 for the financial year	\$993 170.50 plus 57% of the excess NGR over \$2 500 000
For NGR of more than \$3 500 000 for the financial year	\$1 563 170.50 plus 65% of the excess NGR over \$3 500 000

Amendment of s. 72A—Gaming tax

18. Section 72A of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) The holder of a gaming machine licence must pay to the Treasurer, for each financial year, the prescribed gaming tax on the net gambling revenue derived in respect of the licensed premises in the financial year.;

(b) by inserting after subsection (3) the following subsection:

(3aa) The Minister may, by further notice in the *Gazette*, vary or revoke a notice under subsection (3).;

(c) by striking out from subsection (4) (a) "\$2.5 million" and substituting "\$3.5 million";

(d) by striking out from subsection (4) (b) "\$3 million" and substituting "\$4 million";

(e) by striking out from subsection (4) (c) "\$19.5 million" and substituting "\$20 million";

(f) by striking out subsections (6) to (10) (inclusive).

Amendment of s. 73C—Community Development Fund

19. Section 73C of the principal Act is amended by inserting after subsection (3) the following subsection:

(4) Despite subsection (3), at least \$500 000 must be applied from the Fund in each financial year towards programs that will be of benefit to the live music industry.

Substitution of s. 85

20. Section 85 of the principal Act is repealed and the following section is substituted:

Vicarious liability

85. (1) If a body corporate that holds a licence is guilty of an offence against this Act, any person occupying a position of authority in the body corporate and any approved gaming machine manager for the licensed premises are each guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the offence by the body corporate.

(2) If the trustee of a trust that holds a licence is guilty of an offence against this Act, any other person occupying a position of authority in the trust and any approved gaming machine manager for the licensed premises are each guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the person could not, by the exercise of reasonable care, have prevented the commission of the principal offence.

Amendment of s. 86—Evidentiary provision

21. Section 86 of the principal Act is amended by striking out from subsection (1)(f) "body corporate" and substituting "trust or corporate entity".