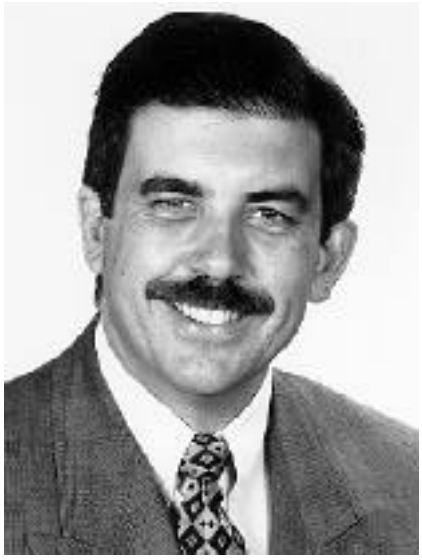

Speech by

Hon. D. HAMILL

MEMBER FOR IPSWICH

Hansard 19 November 1998

REVENUE AND OTHER LEGISLATION AMENDMENT BILL

Hon. D. J. HAMILL (Ipswich—ALP) (Treasurer) (7.50 p.m.): I move—

"That the Bill be now read a second time."

The Revenue and Other Legislation Amendment Bill makes a number of important amendments to Queensland's revenue legislation to foster equity of taxation treatment and simplicity of revenue administration. Following recommendations made by the Wallis report to encourage competition in the provision of financial services, the Commonwealth Government amended the Cheques and Payment Orders Act 1986 to extend cheque issuing rights to building societies, credit unions and their industry special services providers. At the same time, changes to Australia's banking laws are taking place to cover a broader range of deposit taking institutions than simply banks. As these institutions will be entitled to compete on an equal footing with banks in relation to the issuing of cheques, it is appropriate that they also compete on a level playing field from a State taxation perspective.

Amendment of the Debits Tax Act 1990 is therefore necessary to make debits to cheque accounts with credit unions, building societies or their special service providers and authorised deposit taking institutions under the Commonwealth's Banking Act 1959 liable to debits tax in their name, as opposed to through other banking institutions, from the same date that the Commonwealth amendments have effect. Industry has been advised that these essentially "tidying up" amendments will commence on 1 December 1998 and of the need to pay debits tax on relevant accounts under the revised format from this date.

Following a 1997 High Court decision which invalidated State licensing fees and the Commonwealth's subsequent introduction of safety net arrangements to protect States' revenues, the Fuel Subsidy Act 1997 was introduced to provide for the payment of subsidies equivalent to the fuel surcharge levied by the Commonwealth. The Government is committed to ensuring that the scheme operates as effectively and efficiently as possible. To achieve this objective, it has been necessary to implement arrangements to reduce red tape and minimise costs for fuel consumers and the Office of State Revenue, which administers the scheme. These administrative arrangements deliver significant benefits and are being given retrospective effect by this Bill.

By modifying the off-road diesel consumer's scheme, the first of these arrangements allows a person who has purchased subsidised diesel for off-road purposes to use small quantities of that diesel in an on-road vehicle in limited circumstances. This arrangement recognises that it is often very difficult to determine the volume of diesel to be used for on-road and off-road purposes at the time of purchase and that a requirement for two separate licences to be used in these circumstances would be unnecessarily onerous. Primary producers, in particular, benefit from these arrangements as they are now permitted to use diesel purchased under their off-road licences in their utility or delivery vehicle as long as the diesel is used for domestic purposes or is used for purposes associated with the business for which the off-road licence is held.

The second arrangement recognises that fuel sellers who purchase fuel at the Commonwealth surcharge inclusive price should not be financially disadvantaged by the scheme. The Fuel Subsidy Act currently implies terms of trade in contracts entered into by registered fuel distributors with manufacturers and importers. These terms defer the payment of the surcharge component of the

invoiced price of fuel until the date that subsidies are payable by the Office of State Revenue. However, these arrangements do not extend to sales by distributors to other distributors, which disadvantages those further down the distribution chain. The amendment to the Fuel Subsidy Act rectifies this by implying terms of trade in all contracts with registered distributors.

The third administrative arrangement was implemented to ensure that licensed bulk end users who fail to lodge an annual return by the due date do not automatically become unlicensed. The amendment to the Fuel Subsidy Act ensures that it is possible for the commissioner to extend the time for lodgment of the return where the commissioner is satisfied that the licensee would, if applying for a bulk end user's licence, be entitled to that licence.

Of course, there needs to be a limit on the extent to which an extension of time to lodge the return may be granted. In addition, where a person fails to lodge a return as required, the licence will be automatically cancelled from the date that the return was originally due. This ensures that a person who is no longer entitled to be licensed gains no financial advantage by failing to lodge a return by the due date.

To ensure that fuel subsidies continue to be paid on the appropriate basis, the Fuel Subsidy Act is also being amended to reflect changes made by the Commonwealth earlier this year to the classification of fuel products. While these arrangements are designed to streamline the operation of the fuel subsidy scheme, it should be noted that the scheme is costing Queensland taxpayers $60m per annum as the payments received from the Commonwealth under the temporary safety net arrangements are insufficient to meet the full cost of the scheme. It should be noted that the Commonwealth Government will discontinue these safety net arrangements on 1 July 2000 as part of its GST agenda.

Equity requires that all taxpayers pay the same amount of tax where their situations are the same and that any opportunities for avoidance of tax be eliminated. If it were otherwise, complying taxpayers would be at a clear disadvantage compared with their non-compliant counterparts. For this reason, the early closure of avoidance opportunities is essential. In this regard, there have been three recent judicial decisions raising stamp duty avoidance opportunities which are being addressed in this Bill.

The first of these arose following the decision of the Queensland Court of Appeal in Barob Pty Ltd v Commissioner of Stamp Duties. Under the Stamp Act 1894, conveyance stamp duty is charged on a contract for the sale of property, but a refund of duty may be made where a contract is rescinded. However, no refund should apply where one contract is replaced by another contract if the arrangement effects a subsale by the first purchaser. This is because duty is properly payable on both sales—from the vendor to the first purchaser and from the first purchaser to the final purchaser. Collapsing both contracts into a single contract should not change that result.

Section 54(8) of the Stamp Act is directed at rescission of this type and was thought to preclude a refund on the first sale. However, the Court of Appeal in the Barob case held that the provision only applies in limited circumstances. That is, a subsale may be effected with the payment of duty on only one of the transactions as long as the first contract does not specifically mention the possibility of its rescission and replacement with another contract. To overcome this anomaly, section 54 of the Stamp Act is being amended so that duty will continue to be payable on a contract if it is terminated as part of an arrangement that the property be transferred to another person, alone or with the original purchaser, and the original purchaser gains a financial benefit from the arrangement.

A financial benefit received by the first purchaser will include an indirect financial benefit. For example, the purchaser under the first contract may arrange for the replacement purchaser to purchase the property for payment of the same amount as that under the first contract and for a fee or some other consideration for the first purchaser agreeing to terminate the first contract. If the fee or consideration were paid to the first purchaser's spouse, family trust or related company, the first purchaser would have received an indirect financial benefit and duty would remain chargeable on the first contract.

The requirement that the first purchaser obtains some financial benefit will ensure that no duty will be payable where the new contract is made to modify the purchasers rather than to effect a subsale. For example, a refund of duty would be made for a contract by a wife to purchase a house when the contract is replaced by a contract with the husband and wife as joint purchasers or with the couple's family trust.

The second issue arose following the Queensland Court of Appeal's decision in Thakral Fidelity Pty Ltd v Commissioner of Stamp Duties. Under the Stamp Act, conveyance stamp duty is payable under section 56B on the transfer, allotment or redemption of a unit in a unit trust scheme unless the trust is a public unit trust scheme. A unit trust scheme will be regarded as public where certain conditions are satisfied, including spread of ownership requirements. As it is not possible for unit trust schemes to meet these requirements from the outset, a unit trust scheme will be regarded as public where the commissioner is satisfied that units will be issued to the appropriate extent within 12 months

of the approval of the deed under the Corporations Law. However, the Court of Appeal's decision highlighted that this concession does not prevent disposition of units other than to the public within the 12-month period.

This deficiency in section 56B(1A) is being rectified by conferring public unit trust scheme status on a unit trust scheme from immediately before the first issue to the public if the spread of ownership requirements are met within 12 months after the issue and all dispositions in the 12-month period relate to units held by, or to be issued to, the public. This Bill will also change the definition of the commencement of the 12-month period so that it will now begin from the first issue to the public. This change is necessary following removal of the approved deed requirements by the Commonwealth's Managed Investments Act.

Thirdly, the Victorian Court of Appeal's decision in Coles Myer Ltd v Commissioner of State Revenue held that share buyback transfers under the Corporations Law are not liable for stamp duty as there is no dutiable transfer of shares. Before this decision, share buyback transfers were subject to conveyance duty in Queensland and most other jurisdictions. However, the decision opens up the possibility of changing company ownership without paying conveyance duty. To address this opportunity for avoidance, the Stamp Act is being amended to ensure that transfers effecting share buyback agreements continue to attract stamp duty, as was previously the case. A number of other jurisdictions are in the process of enacting similar legislation, some retrospectively.

An important concession which this Bill delivers to Queensland investors is the provision of an exemption from stamp duty on the transfer of the Series 2 Suncorp-Metway Exchanging Instalment Notes which were offered to the public on 8 October this year. These notes provide Queenslanders with the opportunity to receive a competitive, Government-guaranteed return for three years and to invest in Suncorp-Metway. The Beattie Labor Government is committed to using the proceeds from the offer as part of its job creation strategy by reinvesting funds in major new capital projects and new capital assets which will provide a boost to economic growth and the development of the State.

Unlike the southern States, the on-market transfer of these notes would have been liable for Queensland stamp duty when an order for the sale or purchase of the notes was placed with a Queensland broker. To ensure that smaller Queensland investors in particular were not disadvantaged, the public offer document noted that an exemption would be provided for the on and off market transfer of these notes from the date of their first trade. This Bill gives effect to that arrangement.

Finally, the Office of State Revenue is currently remaking the regulations under the Stamp Act, Payroll Tax Act 1971 and Land Tax Act 1915 pursuant to the Statutory Instruments Act 1992. This Bill ensures the preservation of the existing legislative schemes for these taxes by continuing the effect of provisions where the existence of regulation making powers is in doubt.

As I have mentioned, this Bill is important for the continuing integrity of Queensland's taxation arrangements as it ensures their efficient and effective operation and addresses avoidance opportunities. I commend the Bill to the House.