



# HORROR STORY

The NSW Government's economic credentials have been tarnished further by a disputed ruling on land tax.

The tax agency of the New South Wales Government, the Office of State Revenue (OSR), has been forced to withdraw a land tax ruling after claims by accounting bodies that it was unfair. In February, the OSR issued a notice saying that investors who hold property through unit trusts would no longer be eligible for a \$352,000 tax threshold. That threshold applies to investors who hold property in their own name and had, until February, applied to people investing through unit trusts. The OSR has removed a notice of the ruling from its web site and says the matter is under review.

The about-face is another indication that financial management in Morris Iemma's Government is in disarray. Iemma, who took over as Premier after the retirement of Bob Carr last July, has had to try to make the poorly planned and expensive Cross City Tunnel work better, remove the unpopular

vendor tax on property sales, extract his Government from a commitment to build an expensive desalination plant and restore confidence in the state's lagging economy.

Now the accountants are having a go at the Government. They say the OSR's ruling on land tax was unfair because it made an administrative change when legislation would have been more appropriate; that there was no notice of the change and no opportunity for public discussion; and, worst of all, that the new rule was to have applied retrospectively.

The Taxation Institute of Australia (TIA) says it received complaints from its members. Typical of the response is a statement from the Sydney accounting firm Chan & Naylor, which describes OSR's action as "incredibly unfair".

The firm estimates that 20,000 property owners would have been affected by the decision and would have had to pay an extra \$120 million in NSW land tax revenue a year.

There is no reason [the OSR's ruling] could not have applied prospectively.

MICHAEL DIRKIS



MORRIS IEMMA: Financial management in disarray

The issue came to light as a result of a High Court ruling on a tax issue in September 2005. The court considered the question of whether a holder of units in a unit trust is an "owner" of land for the purposes of the Land Tax Act. According to precedent, trust beneficiaries who have an absolute entitlement to trust property are treated as owners. Under this approach, trust beneficiaries would be entitled to the land tax threshold that applies to individuals.

The High Court ruled that where a trust deed provides



## Business Review Weekly

Thursday 16/3/2006

Page: 20

Section: Business News

Region: National Circulation: 54,443

Type: Magazines Business

Size: 405.92 sq.cms.

Published: ---T---

Page 2 of 2

unit-holders with an interest in the assets of the trust, it does not confer ownership interest in any particular asset of the trust. The result is that the unit-holder does not own the land held by the trust.

In February, the OSR announced that unit trusts would be taxed at the rate of 1.7% of the taxable value of their land holdings and that the tax would apply to the entire value and not from the \$352,000 threshold, as had been the practice in the past.

What upset the accountants most was that the ruling was to apply in the 2005-06 tax year, based on assets held at December 31, 2005. Investors were to be given no opportunity to rearrange their affairs. The OSR's justification for this was that the High Court ruling was issued in September and that once the ruling was made, the new tax rules took effect — but its announcement of the changes was not made until February.

Senior tax counsel at the TIA, Michael Dirkis, says that if the ruling had remained in place it would have had retrospective application. "The OSR would argue that its ruling had to reflect the law, as established by the High Court decision, but there is no reason its ruling could not have been applied prospectively," he says.

Critics have contrasted the NSW Government's handling of the issue with the approach taken by the Victorian Government's State Revenue Office (SRO). The SRO issued a notice on the effect of the High Court ruling in October, after consultation with the Property Council of Australia and the Law Institute of Victoria.

The SRO's approach was to give people holding land in Victoria through a trust an opportunity to nominate a beneficiary and, by doing so, avoid any additional land tax. Victorian investors have until March 31 to notify the SRO of their nomination. The SRO also listed several classes of trusts that would be excluded from any additional tax, including charitable trusts, superannuation trusts and testamentary trusts.

In NSW, the OSR has not given any indication of when its review will be complete or whether the new tax arrangement would apply in the 2005-06 tax year. ●