



COMMISSIONER'S PRACTICE

LT 1.1

SUPERSEDED

LAND TAX - PRIVATE RESIDENTIAL PROPERTY, TWO OR MORE LOTS OF LAND ESTABLISHED AND USED AS A SINGLE PROPERTY

Commissioner's Practice History

Commissioner's Practice	Issued	Dates of effect	
		From	To
LT 1.0	29 October 2003	29 October 2003	11 November 2010
LT 1.1	12 November 2010	12 November 2010	25 May 2017

This Commissioner's practice addresses the method of assessment of two or more lots of land established, and used by the individuals who reside there, as one integrated area that constitutes the place of residence.

Background

The *Land Tax Assessment Act 2002* ("the Act") provides for an exemption from land tax on land that is used by the owner as their primary residence, as defined in clause 1 of the Glossary to the Act ("the Glossary"), except where the land is held in trust.

The definition of "parcel", and clause 2(3) and 2(4) of the Glossary, allow the Commissioner to treat two or more lots of land as a single property for valuation and assessment, providing:

- the lots are in the same ownership;
- the lots have common boundaries; and
- the Commissioner is satisfied that the lots are established, and used by the individuals who reside there, as one integrated area that constitutes the place of residence.

The exemption for a parcel of land from land tax only applies where the Commissioner is satisfied the parcel is being used as a private residence and the parcel meets the usage criteria for a primary residence exemption.

Clause 2(5) of the Glossary sets out the factors the Commissioner may have

regard to when determining if the lot on which the residence is constructed (“home lot”) and each other lot (“other lots”) are established, and used by the individuals who reside there, as one integrated area that constitutes the place of residence.

These factors include:

- (a) the nature, extent and degree of permanence of any structures or other improvements on the other lots;
- (b) the degree of physical separation of, and the means of access between, the home lot and the other lots;
- (c) whether the appearance and physical characteristics of the home lot and the other lots, taken together, are those of one integrated area;
- (d) the extent to which the home lot and the other lots are collectively or separately provided for in terms of matters such as:
 - (i) fencing;
 - (ii) means of access and egress;
 - (iii) provision of water, power and other utilities;
- (e) the purposes for which the other lots are used and whether the use is:
 - (i) of a residential nature; and
 - (ii) of an ongoing, not temporary or transient, nature;
- (f) whether the use of the home lot and the use of the other lots, taken together, constitutes the use of all of the lots as one integrated place of residence;
- (g) how often the other lots are used and by whom;
- (h) the extent to which the activities undertaken on the other lots could be undertaken at the home lot in the absence of the other lots;
- (i) the relative size of the lots; and
- (j) any other matters the Commissioner considers relevant.

Clause 2(6) of the Glossary makes it clear that the intention of the owner of the land, the individuals residing there or any other person, in relation to all or any of the lots, is irrelevant.

Commissioner’s Practice

1. When examining each of the matters, it is unlikely that a single factor will be determinative in the Commissioner’s decision.

2. Where a residence is constructed on one lot, adjoining lots will not be considered to be part of a parcel unless the Commissioner is satisfied that they have been developed in such a manner as to form an integral part of the residence. Substantial physical structures, such as a brick garage with concrete driveway allowing access to the home lot from the road, or an underground swimming pool with landscaped gardens, are more likely to be accepted as indicative of properly integrated lots.
3. Two or more lots will not be treated as a single residential property where the other lot or lots contain a separate residence.
4. Where the other lot or lots are essentially vacant land with no substantial structural improvements, or a few easily removable items such as a swing set, barbecue or portable shed that could be quickly and easily removed, it is unlikely that the lots will be treated as a single residential property.
5. Consideration will be given as to whether the lots are separated by a dividing fence and, if so, whether there are gates or other means of ready and convenient access between the lots.
6. In some instances, it is not possible to tell from the appearance of a property that it consists of a home lot and another lot or lots. This could be due to extensive gardens and reticulation that operate across all of the lots, or other types of structures such as tennis courts, that appear to be part of a single property. In other cases, when inspecting the property, it is apparent that the lots are separate from each other, both in terms of structures and the overall look and feel of the property. In this respect, the judgement of a “reasonable person” is the factor to be used when examining the physical appearance and characteristics of a property.
7. Use merely contemplated or proposed is not relevant. For example, where plans have been submitted to a local government for construction of a shed on the other lot, the integrated use of the lot is considered to be merely contemplated or proposed.
8. The home lot and each other lot will only be treated as a parcel where the home lot and the whole of each of the other lots is established and used as one integrated place of residence. Where only a part of the other lot is so used, the home lot and the other lot will not be treated as a parcel.
9. An application for two or more lots to be treated as a single property by the Commissioner must address the factors set out in clause 2(5) of the Glossary and set out under the background section of this practice.
10. An application must be accompanied by a detailed sketch of the lots, showing the position and approximate dimensions of all buildings and their uses, all internal and external fences, paths, driveways and any other improvements. The portion of the land that is used for the owner's primary residence and any area used for any other purpose should be indicated.
11. Where necessary, the Commissioner will inspect properties and/or seek documentary evidence in order to make a determination.

12. Where a private residence is constructed so that it sits partly upon each lot, then the land will be treated as a single parcel for valuation and assessment.

Date of Effect

This Commissioner's practice takes effect from 12 November 2010.

Bill Sullivan
COMMISSIONER OF STATE REVENUE

12 November 2010

SUPERSEDED