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Public Ruling

First Home Owner Grant Act: RECIPIENTS OF AN EARLIER GRANT

A public ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a public ruling, the change in the law overrides the public ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this ruling is about

1. The *First Home Owner Grant Act 2000* (the FHOG Act) provides that the first home owner grant (the grant) is payable on an application if all the applicants comply with the eligibility criteria and the transaction for which the grant is sought is an eligible transaction and has been completed.¹
2. Sections 11–15 of the FHOG Act outline the five eligibility criteria that must be satisfied.
3. Under Criterion 3, an applicant is not eligible to receive the grant if²:
 - (a) the applicant or the applicant's spouse has been a party to an earlier application under this Act or a corresponding law³and
 - (b) a grant was paid on the application.
4. However, an applicant may retain their eligibility for the grant if all the following apply⁴:
 - (a) the grant was later paid back
 - (b) the basis for the repayment of the grant was a failure to satisfy s.10(1)
 - (c) any penalty amount payable under s.47 was also paid in relation to the earlier application.

¹ Section 10(1) of the FHOG Act

² Section 13(1) of the FHOG Act

³ Defined in the Schedule to the FHOG Act

⁴ Section 13(2) of the FHOG Act

5. This public ruling clarifies when applicants will be eligible for the grant in Queensland after repaying an earlier grant in another state or territory.

Ruling and explanation

6. An applicant will satisfy Criterion 3 of the FHOG Act when all the following conditions are met:
- (a) They previously received the grant.
 - (b) They repaid that grant after failing to meet the requirements of the grant under the FHOG Act or a corresponding law.
 - (c) They paid any penalty amount.⁵
7. To be eligible for a grant, the applicant must meet all other eligibility criteria and have a completed eligible transaction under the FHOG Act.

Example 1

Catherine, an applicant for the grant in Queensland, had previously purchased a property in Victoria, intending to reside in it as her principal place of residence. The applicant applied for and received the grant in Victoria. The applicant did not move into the property.

Catherine failed to meet the residency requirement in Victoria (i.e. one of the eligibility criteria for the grant) and repaid the grant. Therefore, subject to meeting all other eligibility requirements, the applicant is eligible to receive the grant in Queensland—that is, s.13 of the FHOG Act does not preclude the applicant from obtaining the grant in Queensland in these circumstances.

Example 2

David previously purchased a home in Victoria, intending to reside in it as his principal place of residence (PPR). David applied for and received the grant in Victoria. The residency requirement in Victoria's FHOG legislation is that an applicant must occupy the home as his principal place of residence for a continuous period of at least 12 months (or a lesser period approved by the Commissioner). David lived in the property for eight months. He failed to meet the residency requirement and subsequently repaid the grant in Victoria.

David has now purchased a home in Queensland and has applied for the grant for this home. Even though David satisfies s.13 of the FHOG Act, he would be precluded from obtaining the grant in Queensland because he is ineligible under s.14(4) of FHOG Act on the basis that he held a relevant interest in residential property in Victoria and used the Victorian property as his residence. The exception in s.14(5) does not apply; it only applies to earlier applications made under the Queensland FHOG Act.

⁵ *Jurd v The Commissioner of State Revenue* [2016] QCAT

Date of effect

8. This public ruling takes effect from the date of issue.

Elizabeth Goli
Commissioner of State Revenue
Date of issue: 19 May 2017

References

Public Ruling	Issued	Dates of effect	
		From	To
FHOGA013.1.1	19 May 2017	19 May 2017	2 November 2020