

**Reprint
as at 6 November 2012**



**Commodity Levies (Pipfruit)
Order 2006**

(SR 2006/338)

Commodity Levies (Pipfruit) Order 2006: revoked, on 6 November 2012, by section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 6th day of November 2006

Present:

His Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Agriculture, makes the following order.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Pipfruit) Order 2006.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

Order: confirmed, on 27 November 2007, by section 8(a) of the Subordinate Legislation (Confirmation and Validation) Act 2007 (2007 No 103).

3 Interpretation

In this order, unless the context otherwise requires,—

apples means fruit of all species of the genus *Malus*, and all varieties of those species

collection agent means a person whose business is or includes—

- (a) buying pipfruit from a grower for resale or export; or
- (b) selling or exporting pipfruit on behalf of a grower

grower, in relation to a levy year, means the occupier of land—

- (a) that is used in that levy year for growing pipfruit; and
- (b) from which there was harvested at least 1 000 kilograms of pipfruit during the 12 months ending with the previous 31 October

GST means goods and services tax payable under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 4

levy money means the money paid under this order as a levy

levy year means,—

- (a) for the first levy year, the period starting on the commencement of this order and ending on 31 October 2007; and
- (b) for every other year, a period of 12 months starting on 1 November and ending on 31 October

mediator means a person appointed under clause 22 to resolve a dispute

occupier means—

- (a) a person who has the right to occupy land under a tenancy granted for a term of 12 months or more; or
- (b) if paragraph (a) does not apply, the owner of the land

pears means fruit of the species *Pyrus bretschneideri* and *Pyrus communis*, and all hybrids of each species

pipfruit means apples and pears

PNZI means the industry organisation that, on the commencement of this order, was known as Pipfruit New Zealand Incorporated.

4 Levy imposed

- (1) A levy is imposed on all pipfruit grown in New Zealand by growers and—
 - (a) sold for consumption as whole fresh fruit; or
 - (b) sold for resale as whole fresh fruit; or
 - (c) exported as whole fresh fruit.
- (2) The levy is payable to PNZI.

Payment of levy

5 Growers primarily responsible for paying levy

The grower of pipfruit is primarily responsible for paying the levy on the pipfruit.

6 Responsibility of collection agents to pay levy

- (1) A collection agent must pay any levy on pipfruit that the collection agent—
 - (a) buys from a grower (other than through another collection agent); or
 - (b) sells on a grower's behalf; or
 - (c) exports on a grower's behalf.
- (2) A collection agent who has paid the levy in accordance with this clause may recover from the grower the total amount of—
 - (a) the levy; and
 - (b) any GST paid on the levy.

- (3) The collection agent may recover the total amount—
 - (a) by deducting it from any amount the collection agent owes the grower; or
 - (b) as a debt due to the collection agent from the grower.
- (4) A collection agent who pays the levy may deduct from the payment a collection fee of—
 - (a) no more than 4% of the amount of the levy (exclusive of GST); and
 - (b) any GST payable on the fee.

Rate of levy

7 Levy to be paid at single rate

The levy is to be paid at a single rate.

8 Basis of calculation of levy

The levy payable by a grower in a levy year is to be calculated on the basis of the number of kilograms of pipfruit sold or exported in that year.

9 Maximum levy rate

The maximum levy rate is 1.5 cents per kilogram of pipfruit (exclusive of GST).

10 Fixing of levy rate

- (1) PNZI must fix the levy rate for the first levy year at a special general meeting called for that purpose, and the meeting may be held before the commencement of this order.
- (2) PNZI must fix the levy rate for each later levy year—
 - (a) at an annual general meeting; or
 - (b) at a special general meeting called for that purpose.

11 Previous rate to apply

If PNZI does not fix the levy rate before the start of a levy year, the levy rate for that year is the rate most recently fixed under clause 10.

12 Notification of levy rate

- (1) As soon as practicable after fixing a levy rate for a levy year, PNZI must notify the rate and the year to which it applies in—
 - (a) *Pipfruit Newz*; and
 - (b) the *Gazette*.
- (2) If *Pipfruit Newz* ceases to be published, the levy rate must be notified in—
 - (a) any publication that replaces it; or
 - (b) if no publication replaces it, a publication specified for the purposes of this order by the Minister of Agriculture by notice in the *Gazette*.

*Time for payment of levy***13 When levy payable**

- (1) The due date for payment of any levy is,—
 - (a) for pipfruit sold in New Zealand by a grower, the date of sale by the grower;
 - (b) for pipfruit exported by a grower, the earlier of—
 - (i) the date of sale by the grower;
 - (ii) the date on which the pipfruit is loaded on an international carrier for export.
- (2) However, the due date for payment of any levy is,—
 - (a) for pipfruit sold by a grower to a collection agent who resells the pipfruit in New Zealand, the date of sale by the collection agent;
 - (b) for pipfruit sold by a grower to a collection agent who exports the pipfruit, the earlier of—
 - (i) the date of sale by the collection agent;
 - (ii) the date on which the pipfruit is loaded on an international carrier for export;
 - (c) for pipfruit sold in New Zealand by a collection agent on behalf of a grower, the date of sale by the collection agent;
 - (d) for pipfruit exported by a collection agent on behalf of a grower, the earlier of—
 - (i) the date of sale by the collection agent;
 - (ii) the date on which the pipfruit is loaded on an international carrier for export.

- (3) The latest date for payment of the levy is 90 days after the due date for payment.

14 Additional levy payable if levy not paid in time

If any amount of the levy has not been paid by the close of the latest day for payment (the **original amount**), the following amounts of additional levy must also be paid:

- (a) 5% of the original amount; and
- (b) 2% of any part of the original amount that remains unpaid, for each month that the part remains unpaid after the latest date for payment.

Expenditure of levy money by PNZI

15 Levy money must be spent by PNZI or subsidiary

PNZI, or any subsidiary of PNZI, must—

- (a) spend all levy money paid to PNZI; and
- (b) invest all levy money until it is spent.

16 Purposes for which levy money may be spent

PNZI, or any subsidiary of PNZI, may spend levy money for the following purposes relating to pipfruit or growers:

- (a) product research and development, including the development of new varieties:
- (b) production research and development:
- (c) market research and development, including the development of access to markets:
- (d) education and training:
- (e) provision and application of technology:
- (f) promotion of pipfruit:
- (g) quality assurance programmes:
- (h) development of a central registration system and database:
- (i) development and maintenance of an industry website:
- (j) representation of the views of growers:
- (k) day-to-day administration of PNZI.

*Information and record-keeping requirements***17 Confidentiality of information**

- (1) No officer, employee, or agent of PNZI may disclose any information obtained—
 - (a) under or because of this order; or
 - (b) under the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not prevent the disclosure of information—
 - (a) to another officer, employee, or agent of PNZI; or
 - (b) with the consent of the person who provided the information, and of every identifiable person to whom it relates; or
 - (c) for statistical or research purposes, if the information is in a form that does not identify any person; or
 - (d) that is required by law.
- (3) Subclause (1) does not affect or prevent the disclosure of information for the purposes of—
 - (a) enforcing this order, including collection of the levy; or
 - (b) complying with section 17(1) or 25 of the Commodity Levies Act 1990; or
 - (c) giving evidence in any legal proceedings taken under or in relation to this order.

18 Information to be provided to PNZI

- (1) PNZI may make a written request for information from any of the following persons for the purpose of enabling or assisting the determination of any amount of levy payable:
 - (a) a grower; or
 - (b) a collection agent; or
 - (c) a person who exports pipfruit from New Zealand.
- (2) The information must be provided to PNZI in writing as soon as reasonably practicable after the request is received.

19 Records

- (1) A grower must, for every levy year, keep records of—
 - (a) all matters that the grower provides information about under clause 18; and

- (b) each amount of levy that the grower pays to PNZI, and the date of payment; and
 - (c) the number of kilograms of pipfruit to which the levy applies that the grower—
 - (i) sells for consumption or resale in New Zealand;
 - (ii) exports or sells for export.
- (2) A collection agent must, for every levy year, keep records of—
 - (a) all matters that the collection agent provides information about under clause 18; and
 - (b) each amount of levy that the collection agent pays to PNZI, and the date of payment; and
 - (c) the number of kilograms of pipfruit to which the levy applies that the collection agent—
 - (i) buys from each grower to resell for consumption or further resale in New Zealand;
 - (ii) actually resells for consumption or further resale in New Zealand (after purchase from each grower);
 - (iii) buys from each grower to export or to resell for export;
 - (iv) actually exports or resells for export (after purchase from each grower);
 - (v) sells on behalf of each grower for consumption or resale in New Zealand;
 - (vi) exports on behalf of each grower, or sells on behalf of each grower for export; and
 - (d) the full name and contact details of each grower referred to in paragraph (c).
- (3) A grower or collection agent must record weights separately for each type of transaction specified in subclauses (1)(c) and (2)(c), and must record those weights for apples and separately for pears.
- (4) A grower or collection agent must retain the records for at least 7 years after the end of the levy year the records relate to.
- (5) PNZI must, for every levy year, keep records of—
 - (a) each amount of levy money paid to it and, in relation to each amount,—
 - (i) the date on which it was received; and
 - (ii) the person who paid it; and

- (b) how and when PNZI, or any subsidiary of PNZI, invested any levy money; and
 - (c) how and when PNZI, or any subsidiary of PNZI, spent all levy money.
- (6) PNZI must retain its records for at least 7 years after the end of the levy year the records relate to.
- (7) This clause does not require any person to keep a nil record.

Miscellaneous

20 Conscientious objectors

- (1) A grower or collection agent who objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive must pay the amount to PNZI.

21 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 is to be remunerated by PNZI at a rate determined by the Minister of Agriculture after consultation with PNZI.

Mediation of disputes

22 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any party to a dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked under subclause (2), the President (or a person authorised by the President) may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 29.

23 Remuneration of mediators

- (1) A mediator is to be paid remuneration (by way of fees and allowances) agreed to by the parties to the dispute.
- (2) If the parties to the dispute cannot agree on a mediator's remuneration, the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (or a person authorised by the President) must—
 - (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator any amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

24 Conference to resolve dispute

- (1) A mediator may organise and preside at 1 or more conferences between the parties to a dispute to try to resolve the dispute.
- (2) Every conference is to be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

25 Conference to be held in private

Only the mediator and the parties to a dispute may attend a conference, unless clause 26 applies.

26 Representatives

A mediator may allow a representative of any party to a dispute to attend a conference, if the mediator is satisfied that it is appropriate to do so in all the circumstances.

27 Right to be heard

The following persons may be heard at a conference:

- (a) every party to the dispute; and
- (b) every representative of a party allowed by the mediator to attend the conference.

28 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference to verify the evidence by statutory declaration.

29 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the dispute is not resolved at a conference; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) A mediator who resolves a dispute under subclause (1) must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the mediator's decision.

30 Costs of mediation

Each party to a dispute must pay its own costs in relation to the mediation.

31 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 29 may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing a notice of appeal—
 - (a) within 28 days after the decision is made; or
 - (b) within any longer time that a District Court Judge allows.
- (3) The Registrar of the court must—
 - (a) fix the time and place for the hearing of the appeal; and
 - (b) notify the time and place to the appellant and the other parties to the dispute; and
 - (c) serve a copy of the notice of appeal on every other party to the dispute.

- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the mediator's decision.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the mediator's decision.

32 Revocation

- (1) The Commodity Levies (Pipfruit) Order 2000 (SR 2000/258) is revoked.
- (2) Amounts of levy that became payable under the Commodity Levies (Pipfruit) Order 2000 before 4 December 2006 continue to be due and payable as if that order had not been revoked.

Rebecca Kitteridge,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order comes into force on the 28th day after the date of its notification in the *Gazette*. It replaces the Commodity Levies (Pipfruit) Order 2000, which expires at the close of 3 December 2006.

This order imposes a levy on all pipfruit grown in New Zealand by growers and—

- sold for consumption or resale as whole fresh fruit; or
- exported as whole fresh fruit.

The order defines **grower** as the occupier of land—

- that is used in a levy year for growing pipfruit; and
- from which there was harvested at least 1 000 kilograms of pipfruit during the 12 months ending with the previous 31 October.

The levy is payable to Pipfruit New Zealand Incorporated.

The order expires 6 years after it is made, by virtue of section 13(1) of the Commodity Levies Act 1990, unless it is revoked or extended before then.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 9 November 2006.

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Notes

1 *General*

This is a reprint of the Commodity Levies (Pipfruit) Order 2006. The reprint incorporates all the amendments to the order as at 6 November 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Subordinate Legislation (Confirmation and Validation) Act 2007 (2007 No 103): section 8(a)

Commodity Levies Act 1990 (1990 No 127): section 13(1)
