


IT 2095 - Income tax : assessability of unbilled gas

 This cover sheet is provided for information only. It does not form part of *IT 2095 - Income tax : assessability of unbilled gas*

There is an Addendum notice for this document.

There is an Addendum notice for this document.

TAXATION RULING NO. IT 2095

INCOME TAX : ASSESSABILITY OF UNBILLED GAS

F.O.I. EMBARGO: May be released

REF H.O. REF: J 207/404 P1 DATE OF EFFECT: Immediate
B.O. REF: Sydney DATE ORIG. MEMO ISSUED: 9 May 1984

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1117352	ASSESSABLE INCOME - UNBILLED GAS INCOME DERIVED - UNBILLED GAS	25(1)

FACTS

Following the judgment of the Federal Court of Australia in FCT v. Australian Gas Light Company & Anor, reported at 83 ATC 4800, (1983) 15 ATR 105, the Commissioner sought special leave of the High Court of Australia to appeal to that Court. The High Court, on 6 April 1984, refused the Commissioner's application.

2. The question at issue was whether the taxpayers' utility companies were assessable on the value of "unbilled gas" as at 30 June of the relevant years. "Unbilled gas" is gas which has been supplied by the taxpayers and consumed by customers but for which no account has been rendered to the customers.

3. In a joint judgment the Federal Court (Bowen C.J. Fisher and Lockhart JJ.) affirmed the earlier decision of the Supreme Court of New South Wales (Lusher J.) that in each of the relevant years of income the value of unbilled gas as at 30 June was not assessable income of that year of income within the terms of sub-section 25(1) of the Act.

4. In reaching this conclusion, the Court applied two tests: viz

- (i) Whether a recoverable debt, in the sense of a debt for which an immediate demand for payment could be made, had arisen; and
- (ii) whether the taxpayers had completed all steps they were obliged to take before becoming entitled to payment.

The Court took the view that, as a consequence of the exceptional manner in which the taxpayers operate, their claims against customers for current liabilities for gas supplied as at 30 June in each year had not matured into recoverable debts. The Court went on to examine the legislative framework in which the taxpayers operated and concluded that no debt existed in

respect of unbilled gas because the earning process was not completed as at 30 June. In particular, reference was made to sub-regulation 42(1) of the Regulations made under the Gas and Electricity Act 1935 (NSW) which provides that:

"42(1) A demand for payment for gas supplied shall not be made by a gas company or an officer of a gas company until an account therefor has been rendered".

In this regard their Honours found that the reading of the meter and the giving of accounts for gas supplied were more than mere procedures: they were conditions precedent to the making of a demand for payment.

5. In refusing the Commissioner's application for special leave to appeal against this decision, the High Court took the view that the case involved the application to particular facts of principles which are settled and that the case was not an appropriate one for the grant of special leave.

RULING

6. The High Court's comments make it clear that the Court considered that the case was one which turned on its own facts. The decision of the Federal Court does not establish any new or different principles in relation to the timing of derivation of income. The Court's decision will only have application to utility companies, such as the taxpayers, whose operations are controlled by legislation which prohibits recovery of debts until an account for the gas supplied has been rendered.

COMMISSIONER OF TAXATION
10 AUGUST 1984

<