

MT 2036 - Bank account debits tax : building and construction industry long service payments corporation.

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TAXATION RULING NO. MT 2036 (as amended 26/3/87)

BANK ACCOUNT DEBITS TAX : BUILDING AND CONSTRUCTION
INDUSTRY LONG SERVICE PAYMENTS CORPORATION.

F.O.I. EMBARGO: May be released

REF N.O. REF: 86/9446-0 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210492	BANK ACCOUNT DEBITS TAX BUILDING AND CONSTRUCTION INDUSTRY LONG SERVICE PAYMENTS CORPORATION.	BANK ACCOUNTS DEBITS TAX ADMINISTRATION ACT 1982; SECTIONS 3 AND 11

OTHER RULINGS ON TOPIC MT 2002

FACTS

The Building and Construction Industry Long Service Payments Corporation is an authority of the NSW Government. It is a corporation established by the Building and Construction Long Service Payments Act 1986 (the Act). The affairs of the Corporation are managed by the Secretary of the NSW Department of Industrial Relations. For the purpose of any act it is a statutory body representing the Crown right in the State of New South Wales.

2. The Act makes provision for long service payments to workers in the Building and Construction Industry in New South Wales. The Corporation was established to administer the scheme. The Act replaces the Building and Construction Industry Long Service Payments Act 1974 which was repealed with effect from 1 July 1986. The essential function of the Corporation under the 1974 Act is retained by the new Act.

3. Provision for long service payments is achieved by levying compulsory long service charges based on the cost of erection of all buildings and other structures in New South Wales including civil engineering works such as roads and bridges undertaken by private contractors. The bulk of the levies collected are invested by the Corporation in securities in which the NSW State Superannuation Board is authorised to invest. The income from the investments finances the running costs of the Corporation including the payment of long service leave to established workers.

RULING

4. Sub-paragraph (a)(vii) of the definition of the term "excluded debit" in sub-section 3(1) of the Bank Account Debits Tax Administration Act sets out the circumstances in which government departments, authorities, etc. may be exempt from bank account debits tax. The first is that the department,

authority, etc. must not have as its sole or principal function the carrying on of an activity in the nature of a business. The second is that a debit to a relevant account will not be an "excluded debit" if it results from a transaction entered into in connection with an activity in the nature of a business.

5. The question of whether an activity is in the nature of a business is discussed in Taxation Ruling No. MT 2002. It is there stated that, as a general rule, an activity can be regarded as being in the nature of a business if it is one which is also carried on by non-government bodies or by individuals for profit, e.g. the operation of bus services, swimming pools, abattoirs, caravan parks, parking stations, etc.

6. The establishment of a statutory fund to provide long service leave payments to building workers is not considered to be an activity in the nature of a business. The fact that the Corporation has substantial moneys which are invested in a variety of ways to provide income does not make it a financial institution - it does not compete with or operate in the same manner as a commercial financial institution.

7. Because the Corporation's operations do not amount to the carrying on of an activity in the nature of a business it follows that debits to bank accounts operated by the Corporation are "excluded debits" for the purposes of the bank accounts debit tax. This Ruling may be applied to comparable bodies established in other States and Territories for the provision of long service payments to workers in the building and construction industry and in other industries.

COMMISSIONER OF TAXATION
19 February 1987