

STD 96/6 - Title: Classification of brushes



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Sales Tax Determination

Title: Classification of brushes

Background

From time to time a dispute between the Australian Taxation Office (ATO) and a taxpayer over the sales tax classification of goods will be determined by a Court or an Administrative Appeals Tribunal.

When the decision of a Court or AAT is final, the ATO will review its interpretation of the relevant area of the sales tax law in light of the Court or AAT decision. Changes to, or confirmation of, the ATO view will then be made via a sales tax determination.

The Full Federal Court recently considered the sales tax classification of certain household paint brushes and, in its decision, also commented on the classification of toothbrushes, nail, hair, clothes and pastry brushes.

This determination outlines the Court's decision and its impact on the classification of these brushes.

Issue

What sales tax rate applies to:

- paint brushes;
 - brushes such as shoe, nail, hair and clothes brushes;
 - cleaning brushes;
 - pastry brushes; and
 - toothbrushes?
-

Decision

- paint brushes are covered by *item 1* in *Schedule 4* to the *Sales Tax (Exemptions & Classifications) Act 1992* (E&C Act). The current *Schedule 4* sales tax rate is 22%;
- shoe, nail, hair and clothes brushes are also covered by *item 1* in *Schedule 4*;
- cleaning brushes are covered by *item 1(1)(k)* in *Schedule 2* to the E&C Act. The *Schedule 2* rate is currently 12%;
- pastry brushes are covered by *item 1(1)(s)* in *Schedule 2* to the E&C Act; and
- toothbrushes are exempt from sales tax under *item 89(1)* in *Schedule 1* to the E&C Act.

Date of effect

Except in respect of shoe brushes, this Determination confirms previous ATO advice and is effective immediately. Any person who has been acting on the basis that shoe brushes are taxable at the concessional rate (currently 12%) under *Schedule 2* to the E&C Act, has until 1 August 1996 to comply with this Determination.

Reasons

We have based our decision on the following legislative provisions:

Sales Tax (Exemptions and Classifications) Act 1992; item 89(1) in Schedule 1; Items 1(1)(k) and 1(1)(s) in Schedule 2

In *K Mart Australia Ltd v. FC of T* the taxpayer challenged the ATO view that paint brushes were covered by *item 1* in *Schedule 4* to the E&C Act. K Mart argued that paint brushes were covered by *item 1* in *Schedule 2* in that they were goods of a kind ordinarily used for household purposes and also fell within the term *brushes* which appears in *item (1)(1)(k)* in *Schedule 2*.

It was agreed by K Mart and the ATO that the paint brushes satisfied the opening words of *Schedule 2*, that is, *goods of a kind ordinarily used for household purposes*.

Therefore, the only issue before the Court was whether paint brushes were *brushes* in the context in which that expression occurs in *item 1(1)(k)*.

Item 1(1)(k) reads as follows;

'The following goods of a kind ordinarily used for household purposes:

...

(k) brooms, mops, dusters, brushes, buckets and basins;

...'

and case law:

The Court decided that the paint brushes were not covered by *item 1(1)(k)* for the following reasons;

K Mart Australia Ltd v FC of T 96 ATC 4155; (1996) 31 ATR 524

- the context in which a term appears may affect its meaning and may lead to a meaning that might not otherwise apply if the term appeared in isolation;
- the term *brushes* appears in the collocation of words that have an association or obvious use for cleaning purposes; viz: *brooms, mops, dusters, brushes, buckets and basins*; and
- if the word *paint brushes* were to be included as one of the meanings attributable to *brushes* for the purposes of *item 1(1)(k)* in *Schedule 2* it would sit uneasily with the description of the other goods listed in that item. The same conclusion would be reached in respect of a toothbrush, a nail brush, a clothes brush or a pastry brush.

The decision of the Court makes it clear that the term *brushes*, where it occurs in the context of *item 1(1)(k)*, refers to brushes used for cleaning or analogous purposes, not for activities such as personal grooming or preparing food. Accordingly, paint brushes, nail, hair and clothes brushes are taxable at the *Schedule 4* rate.

Whilst not addressed by the Court, shoe brushes are considered by the ATO to be another example of brushes that are not covered by *item 1(1)(k)*.

The Court also referred to toothbrushes and pastry brushes as examples of other *brushes* that are not covered by *item 1(1)(k)*. However, toothbrushes are exempt from sales tax under *item 89(1)* in *Schedule 1* to the E&C Act, whilst pastry brushes are taxable at the concessional rate (currently 12%) as *kitchen utensils and hardware* under *item 1(1)(s)* in *Schedule 2*.

**Communication
of the Decision**

This determination has been made available for publication by the sales tax publishing houses.

Commissioner of Taxation

1 May 1996

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