

ST 2188 - SALES TAX : SSAU NOMINEES PTY LTD v. FCT DECISION OF SUPREME COURT OF VICTORIA

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TAXATION RULING NO. ST 2188

SALES TAX : SSAU NOMINEES PTY LTD v. FCT
DECISION OF SUPREME COURT OF VICTORIA

F.O.I. EMBARGO: May be released

REF H.O. REF: 83/13505 DATE OF EFFECT: Immediate

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

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1194415	ORGANISATIONS FOR PROMOTION OF INTERESTS OF UNIVERSITIES AND SCHOOLS	SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT; SUB-ITEM 63B(1), FIRST SCHEDULE SECTION 5.

PREAMBLE The decision in the abovementioned case was given by the Supreme Court of Victoria on 31 October 1985. The case involved a claim by the company (SSAU) that it was an institution or organisation established and carried on exclusively or principally for the promotion of the interests of a university or school conducted by an organisation not carried on for the profit of an individual, and thus exempted from liability for sales tax otherwise payable on goods for its own use and not for sale. Exemption in such circumstances is provided by sub-item 63B(1) of the First Schedule.

FACTS 2. The Company was established for the sole purpose of acting as Trustee of the Superannuation Scheme for Australian Universities. The scheme provides for participation by institutions and bodies within the definition of participating institution as defined in the Trust Deed. Prior to the establishment of the central scheme several universities had their own superannuation schemes but were experiencing difficulty in funding the schemes - lack of portability of benefits between schemes also inhibited movement of academic staff between universities.

3. A participating institution can include, at the discretion of the Trustee, in addition to a university or college of advanced education, a university college; any other body established for the purpose of higher education in the university sector or for some related purpose; and a corporation or association established for the purpose of higher education in the advanced education sector, or whose activities are wholly or significantly related to a university, or whose activities are wholly or significantly related to the university sector. Finally the Trustee as an employer can be a participating institution.

4. Of the 6,194 members participating in the scheme, 6108 were academic staff of universities.

5. It was argued for the Commissioner that the definition

of participating institution in the Trust Deed was so broad that the Trustee could not meet the requirement of the exemption provision that the organisation be established "... exclusively or principally for the promotion of the interests of a university or school ...".

THE DECISION OF THE COURT

6. The Court declared that the company was an institution or organisation established and carried on exclusively or principally for the promotion of the interests of a university or school conducted by an organisation not carried on for the profit of an individual and thus within the terms of sub-item 63B(1). The Court also declared that certain computer equipment was exempted from liability for sales tax by the operation of section 5 and sub-item 63B(1). In reaching these conclusions the Court relied on such factors as:

- (i) "SSAU is best described as an organisation".
- (ii) "there is neither binding nor persuasive authority which requires (the Court) to resolve this case solely on a construction of the (company's) constituent documents ... there is no authority which binds (the Court) to exclude evidence of the activities of the plaintiff company, or of the surrounding circumstances which led to the setting up of the scheme".
- (iii) "the principal purpose to be achieved by the scheme was an orderly rationalisation of what appeared to be the increasing superannuation burden of these institutions".
- (iv) "the figures clearly indicate that (the company) is 'principally ... carried on' for the promotion of the interests of universities. 6,108 out of 6,194 members ... clearly suggests an answer as to where the principal benefit and purpose lay".
- (v) "the company (was) established and (was) carried on essentially to promote the interests of universities and colleges of advanced education by ensuring the proper remuneration, in the widest sense, of the employees of these bodies ... thereby encouraging the recruitment and retention of the best available staff, especially academic staff".
- (vi) "the evidence (did not) suggest that it was likely that a private, profit-making university or college would be set up in the future, still less would it be permitted to become a participating institution of the scheme".

RULING

7. Having particular regard to the findings of the Court at sub-paragraphs (iv)-(vi) above it was decided to accept the decision of the Court and to refund sales tax which had been paid under protest.

8. The decision may be extended to societies, institutions

or organisations which provide superannuation benefits for employees of universities or schools where it is apparent from the constituent documents and from the practice of the societies etc. that the schemes are established and carried on exclusively or principally for the requisite purpose and are not carried on for the profit of an individual. In determining whether the requisite purpose exists in practice it would be proper to have regard to the factors considered by the Court in the instant case viz.

- (i) the number of non-academic or non-teaching staff should be insignificant compared with the total membership of the scheme;
- (ii) the scheme should principally be directed to coverage of employees of the university or school rather than to coverage of employees of entities which may be associated with the university or school;
- (iii) the scheme should promote the interests of the university or school by enabling the recruitment and retention of the best available staff, especially academic or teaching staff. Regard might be paid to whether the university or school contributes to the scheme as an indication that its interests are being promoted; and
- (iv) whether it is likely that employees of private, profit-making organisations may become participants in the scheme.

COMMISSIONER OF TAXATION
31 December 1985

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