ST 2342 - SALES TAX : IN-HOUSE STAFF DEVELOPMENT AND TRAINING ESTABLISHMENTS

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TAXATION RULING NO. ST 2342

SALES TAX : IN-HOUSE STAFF DEVELOPMENT AND TRAINING ESTABLISHMENTS

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1210983	IN-HOUSE STAFF TRAINING ESTABLISHMENTS	SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT; ITEM 63A, FIRST SCHEDULE.

OTHER RULINGS ON TOPIC ST 2169; 2233; 2266; 2319.

PREAMBLE It is quite common for commercial enterprises to carry out staff development and training programmes. Training is often conducted on the job and is supplemented by seminars and courses designed to support, re-inforce and enhance skills and knowledge required to competently perform the duties of employment. The trainees are usually the employees of the enterprise sponsoring the training activities.

2. The development and training activities undertaken cover a wide spectrum. Examples of the topics or subjects covered include supervision, interviewing skills, counselling, communication, machine operation and maintenance, industry terminology and procedure, industry evaluation skills, customer service and promotional and marketing skills. Programmes are said to be conducted in a structured manner by qualified tutors. An award may be given at the end of a course which is in some instances recognised by other enterprises in the same industry. The duration of courses varies - they are usually of a short duration ranging from an hour to one week. Trainees attend during working hours and in general as part of the duties of employment.

3. Staff development and training programmes are commonly undertaken by a division or section within the overall operations of an enterprise. In some cases the programmes are undertaken by separately incorporated non-profit bodies promoted by the employer. The structure and content of the courses are the same. In both cases the tuition is directed primarily towards employees of the enterprise.

4. The question has arisen whether goods for use by commercial enterprises for "in-house" staff development and training programmes qualify for exemption under item 63A in the First Schedule to the Sales Tax (Exemptions and Classifications) Act. Item 63A provides exemption from sales tax for goods for use, and not for sale, by a university or school conducted by an organization not carried on for the profit of an individual. The short question is whether the programmes are schools within

the meaning of item 63A.

RULING 5. The term "school" is not one of precise meaning. Reference to decided cases and to legal dictionaries illustrates the variety of meanings that can be given to it depending upon the context in which it is used. In item 63A the term is used in the sense in which it is ordinarily understood. As it is ordinarily understood "it is a place where people, whether young, adolescent or adult, assemble for the purpose of being instructed in some area of knowledge or activity. Thus there are drama schools, ballet schools, technical schools, trade schools, agricultural schools and so on," per Barwick CJ in Cromer Golf Club Ltd. v. Downs (1972-73) ALR 1295 at p.1299; 47 ALJR 219 at p221.

6. The characterisation of staff development and training programmes arose for consideration by an Administrative Appeals Tribunal in Re Qantas Airways Ltd. and Collector of Customs, New South Wales reported in Vol.6 of Administrative Law Decisions at p.N261. The applicant in that case was seeking a refund of customs duty in respect of goods used for instructional purposes in its flight operations training centre. Refund depended upon whether the training centre was a school or other technical institution within the meaning of the relevant provisions of the Customs Act and the Customs Tariff Act.

7. The Tribunal dismissed the company's application. Its reasons are repeated here -

> "20 For the applicant it was contended that the flight operations training centre is properly described as a school within the meaning of that word in the item and the by-law or, alternatively, is aptly described as an 'other educational institution' in the sense in which that expression is there used. The main emphasis of the argument was that the centre was an educational institution. In support of that argument it was submitted that the expression 'educational institution' is of wide import and is wide enough to encompass the training centre notwithstanding that it has no legal identity independent of that of the applicant. It was said to be a clearly identifiable unit within the organization of the applicant with established premises separate from the rest of the organization and with its own instructors and support staff. Its activities were said to be kept quite distinct from the commercial, marketing and other activities of the applicant. Finally, its activities were said to be educational in the relevant sense.
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> 21 Each of the expressions 'university', 'college', 'school' and 'educational institution' is in common usage. Each is an expression of wide and general import and it is not easy to define any of them in precise and accurate language or to lay down precise criteria by the application of which one may confidently determine whether or not a particular body answers the description. The legislature has not seen fit to define the expressions and neither has the by-law essayed the task. Perhaps all that can be said is that, for the most part, one can identify a university, college, school or an educational institution when one sees it.

22 The collocation of expressions used in the item and the by-law convey, in our opinion, a definite impression that the special, and lower, rate of duty is to apply where the goods are to be used for instructional purposes in a body or institution that exists for the dominant or primary purpose of imparting knowledge as an object or end in itself. That is, so it seems to us, the thread common to each of the expressions that the item and the by-law employ and is a view that is consistent with, and indeed reflects, the underlying object and purpose which may be discerned in the provisions. They each refer to institutions or bodies that can be seen as part of the general educational system. They are not, in our view, expressions that are apt to describe an in-house training system for a commercial flying organization.

23 We are in no doubt that the flight operations training centre has, as part of its objects, the imparting of knowledge in a variety of subjects including aircraft performance, operational requirements and safety and emergency procedures and that it aspires to the highest standards in those who undertake its courses of training. But the imparting of knowledge is not, for the centre, an end in itself. The centre is but an integral and necessary part of a large commercial undertaking carrying on an international airline service. We cannot think that the function of the centre can be characterized as if it were separate from the wider organization of which it forms part. Looked at in this context, its dominant or primary purpose is to give training and instruction for the purpose of maintaining the level of skills for specific duties that employees of the applicant already perform in the conduct of the applicant's business or for the purpose of enhancing those skills to fit those employees for the carrying out of other duties that may be assigned to them within that business. This is not, of course, an exhaustive statement of the activities of the centre but it is those activities which stamp the centre with its character. The raison d'etre of the applicant is the efficient, cost-effective transportation by air of passengers and goods. The training centre exists to ensure that the staff have the necessary skills, training and experience in simulated conditions to perform their respective duties in such a way as to achieve the applicant's objective."

8. It is considered that the approach of the Tribunal should be followed in relation to item 63A. It follows that sales tax exemption is not available for goods for use by commercial enterprises for in-house staff development and training programmes whether the programmes are undertaken by divisions or sections of an enterprise or by a separate entity established by an enterprise for the purpose.

COMMISSIONER OF TAXATION
4 June 1987