


ST 2438 - SALES TAX : DEFENCE MESSES/CANTEENS

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TAXATION RULING NO. ST 2438

SALES TAX : DEFENCE MESSES/CANTEENS

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1010849	DEFENCE MESSES/CANTEENS	SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT; ITEM 74, FIRST SCHEDULE

PREAMBLE 1. The purpose of this Ruling is to replace Ruling ST 2370 which dealt with the sales tax position of taxable foodstuffs supplied to members of the Defence Force as part of their Defence service.

2. Item 74 in the First Schedule to the Sales Tax (Exemptions and Classifications) Act exempts from sales tax goods for official use, and not for sale, by a department of the Government of the Commonwealth or of a State or of the Northern Territory.

3. In ST 2370 the question was raised whether sales tax is payable on taxable beverages and foodstuffs, e.g., biscuits, purchased for supply to members of the Defence Force as part of rations and quarters provided by the Commonwealth in relation to Defence Force personnel or whether the goods are exempt under item 74.

FACTS 4. Taxable goods such as flavoured milk, fruit juice beverages and biscuits are purchased by the Department of Defence and are included in meals that are supplied to Defence Force personnel. These meals are either supplied as an adjunct to the provision by the Commonwealth of accommodation on a full board basis or are supplied on presentation of a meal ticket.

5. In the case of supply on a full board basis a charge known as rations and quarters is deducted from the member's pay. The rations and quarters charge is a fixed charge calculated by reference to the rank of the member.

6. Meal tickets can be purchased by any person authorised to use the canteens. A fixed charge is paid for the ticket which allows the holder to select food and beverages from the range available.

RULING 7. As indicated in Ruling ST 2370, on the basis of advice received from the Attorney General's Department, it was ruled that taxable foodstuffs supplied to members of the Defence Force as part of their service did not qualify for exemption under item 74, First Schedule, being regarded as goods for sale by the Defence Force. However, following further consideration of the matter, the Attorney General's Department has now reviewed its

advice.

8. To maintain the view that exemption under item 74 has no application because the taxable products are supplied by way of sale, it is necessary that the products be supplied to the members of the Defence Force pursuant to a contract of some kind. In *Commonwealth v Quince* (1943-44) 68 CLR 227 the High Court held that the relationship between the Crown and a member of the armed services is not contractual. The obligations of the member arising from his enlistment are derived from statute and common law, and on the part of the Crown the relationship is entirely voluntary - see also *The Commonwealth v Welsh* (1947) 74 C.L.R. 245; *Coutts v The Commonwealth* (1985) 59 A.L.R. 699 at p. 719-720. This rule applies not only to the service itself but to the incidents of that service - see *Quince* at p. 242 per Rich J. The provision of full board by the Commonwealth for members of the Defence Force is part of the terms and conditions of service on which the member is engaged, as is the deduction of a rations and board allowance from the member's remuneration. They are therefore, not matters of contract.

9. From this the Attorney General's Department has concluded that the supply of taxable foodstuffs as part of the meals provided to members receiving full board does not constitute a sale for the purpose of item 74 of the First Schedule to the Sales Tax (Exemptions and Classification) Act. As no sale has occurred, exemption for the taxable foodstuffs can continue to be claimed by the Department of Defence where they are provided to members as part of their Defence service.

10. This position, however, does not apply where members or visitors are provided with meals on a casual basis in Defence Force establishments and the meals are either paid for on a running account or on a meal ticket system. These meals are not provided as part of the terms and conditions of service but rather in a situation where a sale of goods takes place. In these circumstances sales tax is payable on the goods purchased by the Commonwealth, being goods for sale. An apportionment will therefore be required by the various Defence Force messes at the time of purchase of taxable foodstuffs according to quantities of such foodstuffs being for supply to members as part of their service as opposed to quantities supplied on a casual meal basis.

11. The reason for the lack of a contractual basis for employment of Defence force personnel arises due to the unique nature of service required by members of the Defence service. Most other public servants are employed under a contract of employment and the provision of meals or other services to them for a fee or other charge will not be affected by this Ruling.

12. This Ruling replaces Ruling ST 2370.

COMMISSIONER OF TAXATION
22 September 1988