

SST 1 - Sales Tax: rulings and other advice on the Streamlined Sales Tax law.

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Taxation Ruling Sales Tax: rulings and other advice on the *Streamlined Sales Tax* law.

This document is a Ruling for the purposes of section 77 of the Sales Tax Assessment Act 1992. As a result, you may act upon the Ruling as if it had the force of law.

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Chapter 1: What this ruling is about

- 1.1 In the course of administering the tax law the Taxation Office may give either oral or written advice to the public generally or to a particular individual. All forms of written advice about the *Streamlined Sales Tax* law¹ may be relied upon as if they have the force of law.
- 1.2 This ruling describes the circumstances for *remission* (meaning release from payment) of sales tax where tax has been underpaid² as a result of a person's reliance on written advice and sets out the procedure for obtaining a private ruling.
- 1.3 Chapter 5 of this ruling explains the rules for preserving certain written advice given under the law as it operated prior to 1 January 1993. In many cases there will be no need for people to seek confirmation of advice they had previously obtained.

¹. The term *Streamlined Sales Tax* law refers to the *Sales Tax Assessment Act 1992*, the *Sales Tax (Exemptions and Classifications) Act 1992*, the *Sales Tax Amendment (Transitional Provisions) Act 1992* and the related imposition Acts and regulations.

². Where tax is **overpaid** as a result of reliance upon Taxation Office advice, a credit will usually apply: see Part 4 of the *Sales Tax Assessment Act 1992*.

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Chapter 2: Date of effect

- 2.1 This ruling applies to the Streamlined Sales Tax law which comes into operation on 1 January 1993.

Chapter 3: Oral advice

- 3.1 Sales Tax teams in Branch Offices provide oral advice on sales tax in a variety of ways. Information and advice may be given through the telephone and counter enquiry services, via seminars, through the media or in the course of field enquiries. Oral advice is an important part of the overall effort to ensure the delivery of quality service in a timely manner.

To individuals

- 3.2 Individuals requesting advice by telephone or at the enquiry counter will usually be given an oral response although decisions on the *classification* of goods (i.e. what rate of tax should be applied to the goods) will occasionally be confirmed in writing. While every care is taken to provide accurate oral advice, such advice does not bind the Commissioner to remit sales tax³.

For public information

- 3.3 Where information about a particular aspect of the law is of importance or significant interest to a large section of the community, the Taxation Office will often use public talks, seminars or the media to make the information widely known. Public seminars have been an important part of the information program supporting the introduction of Streamlined Sales Tax law. While every care is taken to provide accurate oral advice, it is not binding.

³. A "ruling" for the purposes of section 77 of the *Sales Tax Assessment Act* 1992 means any **written** ruling, decision, advice or assessment given or published by the Commissioner....

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Chapter 4: Written advice

- 4.1 All forms of written advice (*rulings*⁴) about the *Streamlined Sales Tax* law may be relied upon as if they have the force of law. If the ruling says the law applies to a person in one way and another ruling is subsequently issued advising that the law actually applies in a different way, that person will not be liable for any more tax than would have been payable under the original ruling⁵ for the period prior to the alteration.

Private rulings

What is a private ruling?

- 4.2 A letter or any other written advice given by the Taxation Office to a particular person setting out the Taxation Office's view on an aspect of that person's sales tax liability is referred to as a *private ruling*⁶. Provided a person has supplied complete and correct information⁷ to the Taxation Office when requesting a private ruling, he or she may act upon it in the knowledge that, if it is incorrect and is later altered⁸, the sales tax underpaid because the person had acted on the ruling will be remitted. The remission of tax will only apply to tax underpaid on dealings that happened before the alteration.
- 4.3 Private rulings provide certainty about the more difficult aspects of a person's taxation obligations. They are usually given in response to more complex questions which have been set out in writing. Examples of these types of questions include those requiring some detailed examination of particular facts, or those requiring the formation of an opinion by the Commissioner under a particular provision.

⁴. "Ruling" means any written ruling, decision, advice or assessment given or published by the Commissioner, including one that has been previously altered: section 77.

⁵. Note, however, that there are special rules for amendments to the law. These are discussed at paragraphs 4.20 and 4.21.

⁶. "Private ruling" means a ruling given to a particular person: sub-section 77(4).

⁷. Subsection 77 (2) requires the Commissioner to remit underpaid tax unless the Commissioner is satisfied that the taxpayer contributed to the giving or continuing of the earlier ruling by a **mis-statement or suppression of material fact**.

⁸. A private ruling may be altered by either a later public or private ruling which conflicts with it - this is the combined effect of subparagraphs 77(3)(b) and 77(3)(c).

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Who can rely on a private ruling?

- 4.4 Strictly speaking, a private ruling applies only to the person to whom it has been given⁹. However, as set out in paragraphs 4.5 to 4.7 below, certain other parties who have direct business dealings with the person who has obtained the private ruling can also rely upon that ruling. In many cases this will eliminate the need for businesses in direct dealings with the same goods to request duplicate private rulings on identical issues.
- 4.5 If a manufacturer or importer of goods is given a private ruling on the classification of goods they manufacture or import, any wholesaler of those products may then rely on that classification of those products unless and until that private ruling is altered by a subsequent public or private ruling. If the manufacturer's or importer's original ruling is subsequently altered, the Commissioner will *not* require the payment of tax from the manufacturer, importer or wholesaler for the period in which the prior ruling was in force. A wholesaler may not, however, rely on the earlier ruling after it has been altered by the later one.
- 4.6 Similarly, where one company within a group¹⁰ obtains a private ruling, another company within the group may rely upon it while that ruling remains in force providing the material facts relating to the second company's affairs are identical to those set out in the ruling. The earlier ruling may not be relied upon after its alteration or withdrawal.
- 4.7 This arrangement for broader application of private rulings does not apply to rulings requested by persons intending to use them for distribution to an unspecified audience, for example by industry representative associations for distribution to members of the association or a tax practitioner for use in relation to a number of unspecified clients. In those cases, the person requesting the ruling should advise that it is intended for wide distribution so that a public ruling, rather than a private ruling, can be prepared¹¹.

When can you get a private ruling?

- 4.8 Private rulings are an integral part of the Taxation Office's service to clients and, although there is no provision in the Sales Tax legislation requiring the Taxation Office to issue a private ruling, a serious request will not be refused without good

⁹. See subparagraph 77(3)(a).

¹⁰. For the purposes of this ruling, a group company has the same meaning as defined in section 3A, Part 3 of the *Sales Tax (Exemptions and Classifications) Act 1992*.

¹¹. See section 110: Protection of confidentiality of information. Public rulings do not refer to the particular circumstances of any individual person as this would be a breach of section 110.

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reason. Where a private ruling requested is not given, the reasons for that decision will be conveyed to the person requesting it. A decision not to issue a ruling is reviewable under the provisions of the *Administrative Decisions (Judicial Review) Act 1977*¹², although the content of the ruling is not reviewable in that way.

- 4.9 It is not necessary to seek confirmation that the terms of a public ruling apply to you unless you believe there is some reason why your particular circumstances differ from those outlined in the public ruling. However, if you seek such advice you will be given a private ruling clarifying how the public ruling applies to you.
- 4.10 You may seek a private ruling on whether the general anti-avoidance provisions apply to transactions you enter into or arrangements you undertake. In these cases you should be especially careful to explain all material facts and ensure that the arrangement (if approved) is implemented as described.
- 4.11 A private ruling will not usually be given if:
- the opinion in issue has been sought and advice given on previous occasions and the particular request is considered unnecessary;
 - the person requesting the ruling is, at the time of the request, the subject of an audit relating to the particular question being raised. (Note, however, that this will not usually prevent the person seeking clarification from the auditor); or
 - the topic to be covered is, at the time of the request, the subject of a formal dispute (for example, an objection).

How do you ask for a private ruling?

- 4.12 A request for a private ruling by, or on behalf of, a person who lodges sales tax returns can be lodged at the Branch of the Taxation Office where that person's sales tax returns are lodged or, by arrangement with that Office, at another nominated Office. Any other person¹³ should lodge their ruling request with the nearest Branch¹⁴ or, if you have had dealings with an Office previously, that Office.

¹². See Miscellaneous Tax Ruling MT 2037: administrative law: guidelines for preparing statement of reasons for decision.

¹³. Note that although subsection 77(1) refers to a "taxpayer" who has underpaid tax on the basis of a ruling, the definition of a "taxpayer" in section 5 is wider than simply a person who pays tax. "Taxpayer" means:

- (a) a person who is, has been or may be liable to pay tax;
- (b) a person who is or has been the claimant for a credit.

¹⁴. With the decentralisation of the Taxation Office, there are more than twenty five Branch Offices throughout Australia.

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4.13 A request for a private ruling should be made on the form available from your local Branch of the Taxation Office. If you are unable to use the form, you should write setting out your question and include the following information:

- your name, address and a telephone contact number (this should be a business hours number to enable us to clarify details with you quickly);
- your registration number, if you are registered for Sales Tax; and
- the facts on which your request is based (for example, if your request relates to the classification of goods, you should describe the goods, their use, whether they will be sold to a particular person or class of persons and how they will use them).

4.14 You must also state:

- whether you are aware of any private rulings given to other people on the topic;
- whether you have sought advice on this topic from another Taxation Office Branch; and
- that you are not seeking the ruling because of an audit or dispute on the issue.

4.15 Professional advisers, such as tax agents or sales tax consultants, need not use the form although they should provide the information requested above. Where professional advisers are seeking a ruling on behalf of another person, they should also state that they are authorised by that person to act on that person's behalf in relation to sales tax matters.

For general information - public rulings

4.16 All forms of written advice produced by the Taxation Office other than private rulings are known as *public rulings*¹⁵. Public rulings include:

- Commissioner's press releases or advertisements by the Taxation Office in newspapers or magazines;

¹⁵. Sub-section 77(4): "public ruling" means a ruling other than a private ruling.

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- notices in the Government Gazette or special publications of the Australian Government Printer;

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- general information booklets published by the Taxation Office; and
 - formal sales tax rulings (such as this one) or sales tax bulletins.
- 4.17 Formal sales tax rulings¹⁶ are usually circulated for comment to representatives of various professional and industry groups in the course of their development. These rulings deal with issues which either:
- relate to the sales tax obligations of a particular industry or cross section of taxpayers; or
 - potentially affect a large number of taxpayers across many or all industries.
- 4.18 Sales tax *bulletins*¹⁷ provide information or advice on specific topics. Because of their narrower scope or more urgent need, they will not usually go through a consultation process before issue.
- 4.19 *Rulings* and *bulletins* currently in force can be relied upon by persons acting in accordance with them in exactly the same way as set out in paragraph 4.2 for private rulings.

The effect of amendments to the law

- 4.20 Although a person might have a ruling on a particular subject, he or she must nevertheless make themselves aware of the legislative changes which happen after they have been given the ruling.
- 4.21 As a general principle, a later ruling dealing with an amendment does not alter the previous ruling¹⁸ and, as a result, the Commissioner is not required to remit tax on the prior ruling after the amendment. In practice this will mean that rate changes announced in a Budget, for example, will take effect from the date of the legislation enacting them even though the Commissioner might not issue a ruling on the topic until a later date.

¹⁶. Formal rulings are clearly marked as a taxation ruling and are issued as a numbered series.

¹⁷. *Bulletins* are nationally uniform documents in the nature of an advice to a particular trade and replace the *trade circulars* or *trade advices* that formerly issued from individual Branch offices.

¹⁸. Subparagraph 77(3)(d).

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Chapter 5: Preservation of rulings under the former law

- 5.1 The Streamlined Sales Tax law has consolidated the previous 27 Acts and associated regulations into a streamlined format. On the basis outlined at paragraph 4.21, all private and public rulings issued prior to 1 January 1993 could practically cease to have effect. However, while there have been a number of changes, the majority of Exemptions and Classifications provisions and the prevailing principles of the taxable value rules have not been significantly altered. As a result, this Chapter specifically provides for some categories of public and private rulings to be treated as if they continue to apply to the new law unless and until they are altered by a subsequent public or private ruling.

Private rulings

Classification

- 5.2 Unless it relates to an item under the former law listed in Appendix A, a current¹⁹, private ruling on *classification* obtained under the old sales tax law will be treated as if it remains effective until a later private or public ruling is issued conflicting with it. Although you are free to do so, it is not necessary for you to seek a new private ruling on these classifications.
- 5.3 Similarly, you need not seek confirmation of a current ruling under the former law if that ruling advised that you may purchase goods for your own use exempt from sales tax because your particular organisation meets the description of a public benevolent institution or public hospital, a university or school, or other organisation which may purchase goods for their own use exempt from tax.

Taxable (Sale) Value

- 5.4 The terminology for *sale* value under the former law is now *taxable* value. Taxable value is calculated in much the same way as sale value. A current private ruling on *sale value* obtained under the old sales tax law will be treated as if it remains effective until either a later private or public ruling is issued conflicting with it, and it is not necessary for you to seek a new private ruling on the taxable value of goods

¹⁹. Meaning that at the time of the issue of this ruling, the private ruling has not been altered by a subsequent public or private ruling.

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you manufacture, sell or apply to own use simply because the terms used in the legislation have changed. You should note, however, that SST Ruling No. 2 on Taxable Value will issue shortly and if you are unsure whether the principles in the public ruling apply in your circumstances you should seek clarification.

Rulings on other topics

- 5.5 If you have a private ruling under the old law dealing with a topic other than classification or sale (taxable) value, you will need to seek advice from the Taxation Office as to whether the same principles apply to the Streamlined Sales Tax law. In these cases you should telephone the national enquiry number (**13 2866**) and find out whether a booklet or other general ruling covering your situation has been issued with the introduction of the new law. Alternatively, you may request a private ruling if you think your circumstances should continue to be treated on the basis of your previous ruling.

Public rulings

General publications

*Australian Sales Tax*²⁰ and *Exemptions and Classifications*²¹

- 5.6 These two publications do **not** apply to the *Streamlined Sales Tax* law.

ST 2000 Series

- 5.7 As for private rulings, current rulings on the classification of goods (other than those relating to the items listed in Appendix A) and sale value in the 2000 series will be treated as if they applied to the Streamlined Sales Tax law unless varied by a subsequent public or private ruling.
- 5.8 Other ST 2000 rulings do **not** apply to the Streamlined Sales Tax law. If you are currently relying on ST 2000 series rulings on a topic other than the classification or sale (taxable) value of goods, you will need to seek advice from the Taxation Office as to whether the same principles apply to the Streamlined Sales Tax law. In these cases, you should telephone the national enquiry number (**13 2866**) and find out whether a booklet or other general ruling covering your situation has been issued with the introduction of the new law. Alternatively, you may request a private ruling if you think your circumstances should continue to be treated on the basis set out in a public ruling in the ST 2000 series.

²⁰. Published by the Australian Government Printer, 1984.

²¹. Published by the Australian Government Printer, last update 1983.

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ST (NS) Rulings

- 5.9 Since 1989, a new series of formal public rulings has taken over from the types of public rulings listed above. These *New Series* rulings replaced, altered or withdrew a number of previous publications. As these are newer products, some of their content will still be relevant to certain aspects of the Streamlined Sales Tax law.
- 5.10 ST (NS) Nos 1, 2, 3, 5 and 3005 do **not** apply to the Streamlined Sales Tax law. However, ST (NS) 4; Chapters 4 and 5 (dealing with classification and sale value) of ST (NS) 3001; and ST (NS) 3002, 3003 and 3004 will be treated as if they continue to apply unless and until subsequent public or private rulings are issued which conflict with them.

Sales Tax Bulletins

- 5.11 Sales Tax Bulletins Nos 1, 2 and 3 will be treated as if they continue to apply unless and until subsequent public or private rulings are issued which conflict with them.

Commissioner of Taxation

17 December 1992

ISSN 1039-4362

FOI Index Detail

reference no

-I 1019569

subject references

-rulings; classification of goods; taxable
value

Price \$1.30

legislative references

Sales Tax Assessment Act 1992; section 77; Part 4; section 110. *Sales Tax (Exemptions and Classifications) Act 1992*; Part 3, section 3A. *Sales Tax Amendment Act (Transitional Provisions) Act 1992*. *Sales Tax Procedure Act 1934*. *Administrative Decisions (Judicial Review) Act 1977*.

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Appendix A

All rulings relating to the Exemption and Classification item numbers listed below are withdrawn as of 1 January 1993.

OLD ITEM/ REFERENCE	COMMENTARY	NEW ITEM/ REFERENCE
definition of "livestock"	Food for guide dogs and for animals kept in animal shelters is exempt; however, pet food used by breeders of domestic pets, and by greyhound breeders and trainers, boarding kennels and catteries is usually taxable at 20%.	163, Schedule 1 and definition of "livestock"
6(13), 1st	Instruments, appliances and materials ordinarily used by veterinary surgeons and preparations ordinarily prescribed by veterinary surgeons for the treatment of animals are exempt.	166, Schedule 1
18(4), 1st	Domestic hot water tanks, water tanks for sewerage systems and water tanks for motor vehicles are specifically excluded from the general exemption for water tanks. Hot water tanks and sewerage tanks are generally taxable at the rate of 10%. Water tanks for motor vehicles are generally taxable at 20%.	53, Schedule 1
27(10), 1st	The specific exemption for dried hops is removed. Dried hops are only exempt if they are dried naturally or if they are to be used in certain ways, for example as ingredients in the commercial production of beer.	no item, but see 18(2), Schedule 1
35A, 1st	There are two main changes to the sales tax treatment of tea, coffee, chocolate, cocoa, malt and drinking preparations. Firstly, substitutes for these goods are exempt. Secondly, manufactured ready-to-drink beverages are specifically excluded from the exemption.	69, Schedule 1
38, 1st	In view of the strict Government regulations about the marketing of goods as drugs and medicines for human use, exemption is now based on how the goods are marketed.	78, Schedule 1
41, 1st	Goods such as dispensing plant, drip feed lamps, eye droppers, scales and staining bottles now qualify for exemption if they are marketed principally as surgical instruments or appliances and are of a kind ordinarily used in hospitals or by medical practitioners.	81, Schedule 1
50, 1st	All gases except for carbon dioxide, refrigerant gases and gases marketed principally for inflating balloons are exempt.	176, Schedule 1
68, 1st	All works of art are exempt.	115, Schedule 1
74, 1st	It is not a requirement that State and Territory governments enter into agreements to pay tax on goods sold by their trading enterprises before they can claim exemption on goods for their own use.	126, Schedule 1
78B, 1st	Exemption is given for <i>machinery, implements and apparatus</i> for use for earth-moving in the course of carrying out a contract with a local government authority.	37, Schedule 1
89A(2), 1st	Substances used in a plastic or fluid condition as raw materials in the construction of roads, paths, buildings or fixtures are exempt, regardless of the composition of those substances.	47(2), Schedule 1
89B(1), 1st	The exemption for glass is extended to include substitutes for glass which are of a kind ordinarily used as raw materials in building work.	39(1)(k), Schedule 1

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90C, 1st	Sensors, thermostats and other goods used to control electrical appliances are specifically excluded from the exemption for electrical fittings, accessories and materials. They are generally taxable at the rate of 20%.	43(2)(k), Schedule 1
90C(3), 1st	The specific exemption for switch lampholders is removed and these goods are only exempt if they are used for an exempt purpose.	no item but see 18(2), Schedule 1
104, 1st	Water marketed as mineral water is exempt from tax if it has not been subject to a manufacturing process (other than filtration and bottling).	174, Schedule 1
120(5), 1st	Plastic and rubber sheeting will only be exempt if it is to be used in certain ways, e.g. as raw materials in the manufacture of other goods.	150, Schedule 1
120(8)(c), 1st	Any yarns or threads marketed principally for knitting, weaving, crocheting, embroidery, sewing or mending, rug-making or tapestry will be exempt.	151, Schedule 1
139(2)	Appliances for use with insecticides are only exempt if they are for use exclusively in the course of business or industrial operations.	22, Schedule 1
1(b), 3rd	Crockery, glassware and other goods only attract the concessional rate of 10% if they are used in cooking, preserving, storing, preparing, serving or consuming of food or beverages (and are of a kind ordinarily used for household purposes).	1(b), Schedule 2
18, 3rd	Containers for take away food will generally be taxable at 20%. Some containers for take away food which are of a kind ordinarily used for household purposes in connection with preparing, serving or consuming food or beverages (for example, paper cups) remain taxable at 10%.	no new item
45, 2nd	Radio receivers of the kind used in conducting public commercial telecommunications services will now be taxable at 20%. These are radio receivers which have characteristics particularly adapted to use in public commercial telecommunication services.	12(1)(b), Schedule 5