STNS 3003 - SALES TAX ITEM 63A: GOODS FOR USE BY CERTAIN UNIVERSITIES OR SCHOOLS

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TAXATION RULING NO. ST NS3003

- SALES TAX ITEM 63A: GOODS FOR USE BY CERTAIN UNIVERSITIES OR SCHOOLS

REF N.O. REF: DATE OF EFFECT: Immediate

B.O. REF: ADELAIDE/R.P.3 VALID AT: 23 AUGUST 1990

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLATIVE REFS:
I 1012291	GOODS FOR USE UNIVERSITIES AND SCHOOLS EXEMPTION CERTIFICATES	SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT; ITEM 63A, FIRST SCHEDULE.

OTHER RULINGS ON TOPIC:

ST 2169; ST 2233; ST 2266; ST 2319; ST 2338; ST 2342; ST 2422

PREAMBLE 1.1 Item 63A of the First Schedule to the Sales Tax (Exemptions and Classifications) Act, 1935 ("Exemptions and Classifications Act") provides exemption from sales tax on goods for use, and not for sale, by certain universities and schools.

1.2 This Ruling is designed to be a guide to the application of item 63A. For ease of use an index of keywords and phrases is attached at Appendix A.

THE LEGISLATION

2.1 Item 63A exempts:

> 'Goods for use (whether as goods or in some other form), and not for sale, by a university or school conducted by an organization not carried on for the profit of an individual'.

RULING 3.1 For exemption to apply the legislation requires that all of the following conditions are satisfied:

(a) a university or school exists;

(b) the university or school is conducted by an organization not carried on for the profit of an individual; and

(c) the goods are for use (and not for sale) by the university or school.

3.2 The terms 'university' and 'school' are not defined in the Sales Tax legislation. The meaning of these words taken from dictionaries and based on judicial interpretation is set out in the following paragraphs.

University

3.3 A university is:

- an institution formed for the promotion of education in the higher branches of learning, having the power of conferring degrees and similar privileges.

3.4 Universities are generally established under State or Commonwealth legislation and in practice it will usually be clear whether an institution is a university.

School

3.5 In the context of item 63A in the First Schedule to the Exemptions and Classifications Act, a school could be expected to exhibit the following characteristics:

- it has the predominant aim of imparting knowledge as an object or end in itself;

- it provides instruction in an area of knowledge or activity (especially where that knowledge or activity falls within the type taught within or associated with the general education system); and

- it provides instruction through suitably qualified people in an organized or systematic manner, on a regular or continuing basis.

3.6 A college that exhibits the above mentioned characteristics would be regarded as a school.

Conducted By An Organization

3.7 An organization means a body with a definite and systematic structure. Whilst there is no established or accepted method for determining whether a body is an organization, it is generally accepted that a written constitution provides tangible evidence that a formal structure exists.

3.8 For an organization to be conducting a school or university it is essential that it has management and control of the school or university. Management includes the control of funds and assets, either directly or indirectly, rather than the mere day to day running of the school or university.

3.9 The organization itself does not have to be a 'school' or 'university'. It may have a variety of aims or objectives one of which is the operation of a 'school' or 'university'. For example, some schools operate as a single part of a larger administrative body, such as a religious organization. As ultimate control generally rests with the administrative body, that body must satisfy the requirement of the item, that it is an organization not carried on for the profit of an individual.

Not For The Profit Of An Individual

3.10 An organization may generate a profit and still qualify for exemption under item 63A. However, any operating profit must not be for the benefit or gain of an individual or individuals. This requirement will be satisfied when profits are applied to promote and further the aims of the organization. Similarly any surplus

in the event of dissolution cannot be distributed to an individual or individuals. The constitution (or other similar document) should reflect these requirements.

3.11 In this context, a company would be considered to be an individual. Therefore an organization distributing profits or a surplus to a company would not qualify under item 63A.

Goods For Use And Not For Sale

3.12 Exemption is provided under item 63A only in relation to '... goods for use (whether as goods or in some other form), and not for sale...' by a university or school. The bracketed phrase indicates that exemption extends to goods sold to, for example, contractors, for incorporation into buildings for use by the relevant university or school.

3.13 The High Court considered the phrase 'goods for use' in D.C. of T. v. Stewart 84 ATC 4146. The following points can be gleaned from this decision:

- the goods need only be for use to a significant degree by the school or university for them to be exempt;
- provided the use by the school or university is sufficiently substantial in extent and time to give a character to the goods, then exemption may apply even where the goods are also applied to the use of another person;
- it is the projected use which is important, not the inherent quality or nature of the goods themselves, however, where the goods are in use, evidence of the actual use to which the goods have been put will be relevant.

3.14 Goods will qualify for exemption under item 63A provided there is a use of the relevant goods by the university or school notwithstanding that there is also a use by others. Accordingly, where a university or school conducts a businesslike or profit making activity and the profits from this activity are applied for the benefit of the university or school, then item 63A would afford exemption to goods for use in this activity.

3.15 Similarly, goods which are concurrently used by both a school or university and by another person or organization will still qualify for exemption under item 63A provided the benefit obtained by the school or university is not insignificant (for example, where the school provides taxable goods such as musical instruments to students on a hire basis, the ownership and control remains with the school, and the goods are returned to the school at the end of the hiring period).

3.16 The words 'and not for sale' in item 63A emphasise that the exemption is available only on goods which will be used by the school or university, not goods sold by them. However, provided the goods were purchased without the intent to resell them and have been put to a real and substantial use by the school or university, the goods may then be sold (if, say, they become old or outmoded) without incurring any sales tax liability.

3.17 It is common practice for schools to stock stationery and other materials:

- for direct individual sales to students through bookshops, canteens/tuck-shops, offices, etc., at the schools; or

- for supply to students in return for a specific charge, fee or levy for those particular goods.

3.18 Where stationery and other taxable goods are sold directly to students by the school it follows that the goods are for sale and not for use by the school and exemption does not apply.

3.19 Where a charge is made by the school in its annual accounts, or other form of notice to parents specifying an amount or amounts charged for materials supplied (for example stationery $10, duplicating $15) exemption under item 63A will not apply to purchases of these materials.

3.20 Similarly, where a composite fee or subject fee is charged without specifying separate charges for stationery, art materials, duplicating and any other goods supplied and property in those goods passes to the student, then section 3(4) of Sales Tax Assessment Act (No. 1) 1930, operates to deem a sale to have taken place. As a deemed sale has occurred, exemption under item 63A would not apply.

3.21 Goods purchased by a school or university to raise money by conducting raffles or competitions qualify for exemption as goods for use and not for resale. However, exemption will not apply where the goods are auctioned as part of the fundraising activities.

3.22 As mentioned previously, goods incorporated into buildings or other works with property passing to the school or university for its use will be exempt. In contrast, goods for use by sub-contractors and contractors in carrying out work and labour contracts for schools and universities being merely equipment owned by or leased by the contractor for the duration of the contract, are not goods for use by the institution. Similarly, expendable items (for example, drill bits or lubricants) consumed by the contractor during the course of carrying out such contracts are not goods for use by the university or school.

3.23 Goods purchased by teachers and other employees for use in carrying out their duties at the school or university do not qualify for exemption.

Examples Of The Application Of The Ruling

3.24 In each case it is a question of fact, whether the particular body under consideration satisfies all the requirements set out in paragraph 3.1. Most practical problems revolve around whether a body has the predominant aim of imparting knowledge as an object or end in itself. In addition to schools in the general education system, examples of bodies which satisfy these requirements include:

- pre-schools and kindergartens;

- Sunday Schools;

- Bible colleges;

- correspondence schools and schools of the air;

- business secretarial colleges.

3.25 A multi-purpose children's centre will be a school where the predominant purpose of the centre is the imparting of knowledge and not the care of children. It would also be necessary for the centre to have a set curriculum, suitably qualified staff and be conducted in a regular and systematic manner by an organization not carried on for the profit of an individual. On the other hand, where a centre has the predominant aim of providing child care it will not be a school merely because it provides an educational program using qualified teachers and a set curriculum.

3.26 Bodies which would not normally be recognized as schools because they do not have the predominant aim of imparting knowledge as an end in itself include:

- Childminding centres, creches or playgroups. Their predominant aim is the care of children.

- In-house staff training centres. Their predominant aim is to maintain or enhance employees' skill levels to enable them to perform specific duties within the enterprise.

Applying For Exemption

3.27 Schools that are part of the general education system would generally qualify for exemption under item 63A and need not formally apply. However, an organization wishing to seek the opinion of the Commissioner as to whether a university or school conducted by it falls within the ambit of item 63A should provide the following information to the local branch of the Australian Taxation Office:

(i) A copy of the organization's constitution or rules, which includes:

  (a) An objects clause which is a clear and accurate reflection of its aims and purposes and indicative of its practical activities.

  (b) The machinery for the appointment of officers and calling of annual meetings.

  (c) A clause stating that all assets and funds of the organization will be used solely to further the objects of the organization and will not be distributed to members.

  (d) A dissolution clause that states that in the event of the organization being wound up, any remaining assets will be given only to other organizations which have been ruled to be covered by item 63A.

(ii) A copy of the university or school's program or curriculum.

(iii) A copy of the latest financial statements showing the nature of receipts and payments for the preceeding year (not a bank statement of deposits and withdrawals).

(iv) An outline of the methods used to assess student progress, whether written reports are prepared and, the frequency of those reports.

(v) Details of certifications provided to students on the achievement of a particular standard or level.

(vi) The number of students enrolled, broken down into age groups and the number of classes conducted.

(vii) The number of teachers employed and their qualifications.

(viii) The hours of attendance, and the periods that the institution closes for vacation in a calendar year.

(ix) Details of fees charged.

(x) Details of the rooms and buildings used, and an outline of the facilities available.

(xi) Copies of registration certificates received under the provisions of any State Government Education Act.

3.28 In addition, if an organization employs any of its members, the following details should be provided with its application:

. the number of members employed;

. their position within the organization;

. the reasons for the member's appointment;

. the annual salaries (including fringe benefits) and the method by which those salaries are set.

3.29 Some types of organizations should provide certain additional information. Examples are:

(i) Companies Limited by Guarantee

(a) A copy of the Memorandum of Association and where the company is taking over an existing school any documents regarding the transfer of assets.

(b) Where the company is already incorporated and its Memorandum of Association does not have a dissolution clause as set out in paragraph 3.27(i)(d), a written undertaking that any residual assets will be transferred only to other schools which have qualified for exemption under item 63A.

(c) Information on payments by the schools to members (individuals or corporate bodies) of interest and

rents.

(ii) Administrative Bodies

(a) Whether the administrative body maintains separate bank accounts and financial records for the school (copies to be provided).

(b) Where an administrative body's constitution does not contain a clause as set out in paragaph 3.27(i)(d), a written undertaking by the Board of Directors of the Administrative body that:

. In the event of the school being wound up, any assets which were purchased free of tax under item 63A, or any money which resulted from the sale of such assets in the course of winding up the school, will be given only to other schools which are covered by item 63A.

(c) A written undertaking by the Board of Directors of the administrative body that any property which is purchased free of tax under item 63A will be used to a significant degree by the school.

(iii) Other Types of Educational/Training Bodies

(a) Whether the students are required to achieve a particular standard before they can be given that certification.

(b) Whether the certification leads to higher studies or to employment, and whether the certification is recognized by any employer group.

Claiming Exemption

3.30 To claim exemption from sales tax on goods, persons acting on the behalf of the qualifying university or school should provide a written statement to the supplier. This written statement, commonly referred to as an exemption certificate, may be hand-written, typed or printed and may be incorporated into an order form. It should be in the following format:

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT

To the Commissioner of Taxation
and the Commonwealth of Australia

I hereby certify that the .....
(DESCRIPTION OF GOODS)
purchased from ..... on .....
(NAME OF VENDOR) (DATE)
is/are for use and not for sale by .....
(NAME OF UNIVERSITY OR SCHOOL)
which is conducted by an organization not carried on for the profit of an individual, and exemption is accordingly claimed under item 63A in the First Schedule to the Sales Tax (Exemptions and Classifications) Act.

Signature : .....

Name in full : .....
Status of Signatory : .....
Address : .....
.....
Date : .....

3.31 It is not unusual for goods to be purchased by persons and organizations for donation to universities and schools which qualify under item 63A. These goods may be purchased free of sales tax by the donor either by:

- obtaining a certificate from the organization as outlined in paragraph 3.30 (as evidence that the goods are for use and not for sale by the organization); or

- personally certifying that the goods are for donation to a school or university for its use. In this case, the certificate should take the following form:

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT

To the Commissioner of Taxation
and the Commonwealth of Australia

I hereby certify that the .....
(DESCRIPTION OF GOODS)
purchased by me from ..... on .....
(NAME OF VENDOR) (DATE)
is/are to be donated to .....
(NAME OF UNIVERSITY OR SCHOOL)
and exemption is accordingly claimed under item 63A in the First Schedule to the Sales Tax (Exemptions and Classifications) Act.

Signature : .....
Name and address : .....
(BLOCK LETTERS) .....
Date : .....

3.32 The vendor accepts, and keeps for record purposes, the certificate claiming exemption and then sells the goods less the sales tax component. Where the vendor has paid tax on the purchase of the goods, (ie the vendor is either an unregistered person or a registered person who has sold from a tax-paid stock) he may recover the tax paid on the purchase of those goods as set out in paragraphs 3.33 and 3.34.

3.33 If the vendor is a registered person and has paid tax on the goods when purchased, he may claim a refund or credit directly from the Tax Office. (This may be done by making an application for a refund on the standard form or by offsetting the credit against the monthly tax payable.)

3.34 If the vendor is not registered for sales tax, he may claim from his supplier either a refund or a rebate of the tax paid when the goods were purchased. In either case the vendor gives his supplier a certificate making a declaration about the sale. The certificate is as follows:

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT

To the Commissioner of Taxation
and the Commonwealth of Australia

I hereby certify that the .....
(DESCRIPTION OF GOODS)
purchased by me from from ..... on .....
(NAME OF VENDOR) (DATE)
was sold to .....
(NAME OF UNIVERSITY OR SCHOOL)
which is an organization exempt from sales tax under item 63A of the above Act.

Signature : .....
Name and address : .....
(BLOCK LETTERS) .....
Date : .....

3.35 Usually a school or university covered by item 63A will purchase goods free of sales tax by giving a certificate at the time of purchase (see paragraph 3.30). If however, a school or university purchases goods at a price which includes sales tax, there is a special provision in the sales tax regulations allowing the Commissioner to refund the amount of tax directly to the school or university.

3.36 All persons involved in the process of giving certificates have responsibilities and obligations. The certificate should be:

- correctly completed;
- supplied by a person properly authorized to act for, and on behalf of, the organization; and
- given in good faith.

3.37 The Taxation Administration Act provides for penalties of up to $5,000 or 12 months imprisonment, or both, for persons making false or misleading statements to taxation officers. In addition, the Court may impose a penalty of up to double the amount of unpaid sales tax. The completed certificates constitute statements to a taxation officer for the purposes of this Act, even though the certificates may not be supplied directly to a Taxation Officer, for example, where they are supplied to a retailer or wholesaler.

Documents, Decisions Affected By This Ruling

4.1 This Ruling will affect previously issued documents and decisions in the following manner:

(1) Documents on the Freedom of Information Index:
All the Sales Tax related documents (including ST. Rulings) listed at Appendix B are superseded.
ST. Rulings withdrawn are highlighted by underlining.

(2) Australian Sales Tax - A.G.P.S. Canberra, 1984;
All the paragraphs listed at Appendix C are no longer applicable.

(3) Sales Tax Exemptions and Classifications - A.G.P.S. Canberra, 1983;
All rulings relating to the items in the First Schedule of the Exemptions and Classifications Act listed at Appendix C are amended to the extent that they are inconsistent with this Ruling.

(4) Private Rulings;
All private rulings previously issued in relation to universities and schools are amended to the extent that they are inconsistent with this Ruling.

COMMISSIONER OF TAXATION
3 August 1990

APPENDIX APPENDIX

APPENDIX A

INDEX OF KEYWORDS AND PHRASES

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APPENDIX

APPENDIX B

DOCUMENTS ON F.O.I. INDEX SUPERSEDED

F.O.I. REF.	DESCRIPTION	OTHER REF.
1078019	Computers and peripheral equipment - for use in schools and universities.	Head Office
83/13006-7 F83-6		(ST 2233)
		Amended by (121047
1079152	Refrigerator for use of teaching staff	CSTCM

Head Office ST 11/198 P3 | in a non-profit school - exemption from sales tax. | (CSTCM 5/1953)

1080859 Head Office ST 11/92 | Scientific instruments, apparatus and materials for use in universities and schools - interpretation of exemption item - examination papers - liability to sales tax - amended by CSTCM 33/1935. | CSTCM (CSTCM 1/1935) Amended by (1081152)

1081152 Head Office ST 11/92 | Scientific instruments and apparatus for use in universities and schools - form of certificate amends CSTCM 1/1935. | CSTCM (CSTCM 33/1935)

1081811 Head Office ST 11/92 P2 F186 | Whether goods purchased by a school and supplied to students are purchased for re-sale - cost of goods recovered by "fixed charge" - stationery, exercise books, pens etc. - deemed to be a sale. | CSTCM (CSTCM 8/1946)

1085754 Head Office ST 66/E20 | Scientific apparatus for use in schools - importation of a loom - liability for sales tax. | CSTCM (CSTCM 1/1934)

1094265 Head Office 81/12208. | Purchase of photocopier - Diamond Valley Learning Centre - exempt from tax where used solely for instructional purposes. | Vic. STOR 2917

1094286 Head Office 82/5059. | Educational Institutions - photographic and art equipment used by students - whether exemptions apply. | Head

1095367 Head Office 81/12071. | Motor vehicles for use in student driver education programmes - exempt - subject to certain conditions. | Head Vic. STOR 2990 WA. STOR 416

APPENDIX

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DOCUMENTS ON F.O.I. INDEX SUPERSEDED

F.O.I. REF.	DESCRIPTION	OTHER REF.
1095577	Royal Australian Institute of Architects - Education Division - not accepted as a school for the purposes of item 63A - reference to 80 ATC Case M11; 23 CTBR (NS) Case 79.	Head Office 80/5106. Vic. STOR 2989 WA. STOR 415
1117801	Schools - education allowance scheme - goods purchased by schools for supply to students - liability to taxation.	Head Office 76/9824. Vic. STOR 2444 WA. STOR 279
1119669	Motor vehicles used by non-profit schools - pre-driver education - supplied to schools on loan basis - classification for sales tax purposes.	Head Office 78/12160. Vic. STOR 2534
1119816	NSW Road Transport Industry Training Committee Ltd. - operated as a non-profit instructional body - conducts and regulates its own courses - distinguished from advisory bodies - liability to taxation.	Head Office 81/5229. Vic. STOR 2994 Qld, QSTO 1/83
1120412	Australian Institute of Sport - Not a school for purposes of item 63A.	Head Office ST11/ 198 P5. Vic. STOR 3015. WA. STOR 4 Qld.. QSTO 5/83
1120777	Art materials for use in schools - whether school qualifies for exemption on purchase where students pay levy or fee for use of material - implied or deemed sale.	Head Office 75/12239. Vic. STOR 2326 WA. STOR 222 Qld. QSTO 43/75 NSW. STCM 525
1123248	Non-profit schools - schools controlled by companies - criteria for acceptance of non-profit status.	Head Office ST11/ 198 P12 F133-140 NSW. STCM 561 Qld. QSTO 73/76

1125630	Goods used in Sunday Schools -	Head Office
	duplicator - for use in Sunday School	69/12229.
	or other purposes - Liability to	Vic. STOR 2152
	sales tax.	WA. STOR 43
1128143	Motor vehicles for the use of	Head Office
	schools - requirements for sales	ST11/192 P2
	tax exemption.	Vic. STOR 1873

APPENDIX

APPENDIX B

DOCUMENTS ON F.O.I. INDEX SUPERSEDED

F.O.I. REF.	DESCRIPTION	OTHER REF.
1128185	Motor vehicles for use in schools -	Head Office
	cases where motor vehicles used	ST11/194 P.3
	to a minor extent in non-school	Vic. STOR 1876
	activities - whether exempt from	NSW. STCM 102
	sales tax.	QLD. QSTO 12/64
1128731	Correspondence Sunday Schools	Head Office
	- set courses of study -	ST11/198 P.5
	whether sales tax exempt.	Vic. STOR 1788
1183742	Provision by schools, universities	Head Office
	etc of stationery and other	88/1764-2 F38-39
	requisites to students -	(ST 2422)
	liability to sales tax.	
1191193	Kalamunda Learning Centre -	WA. STOR 379B
	whether exempt.	
1191729	Ethnic Community Schools -	Head Office
	whether exempt.	82/5017
		WA. STOR 400G
1191918	Schools - goods purchased for	Head Office
	sale at cost to students -	79/12078
	whether exempt.	WA. STOR 336D
1209691	Goods purchased by universities	Head

Office and schools - used in business
84/53462 F65-7
activities conducted by (ST
2266)
universities and schools -
whether exempt.

1210471 Computer and scientific Head
Office apparatus used in universities
84/59096 F81-82
and schools. (ST
2319)

1210983 In-house staff development Head
Office and training establishments
84/1011-9
whether exempt from tax on (ST
2342)
goods for own use -
whether a school.

1218478 Drawing and drafting equipment Head
Office for use in universities and
86/2308
schools - liability to taxation (ST
2338)
Item 63 First Schedule, Item 63A
First Schedule.

APPENDIX

APPENDIX C

ITEM 63A
PARAGRAPHS SUPERSEDED IN AUSTRALIAN SALES TAX
A.G.P.S. CANBERRA 1984

PARA	TOPIC
1324-1332	Schools and universities

SALES TAX EXEMPTIONS AND CLASSIFICATIONS
A.G.P.S. CANBERRA 1983
RULINGS SUPERSEDED

Item 63A

ERRATUM

TAXATION RULING NO. ST (NS) 3003

FOI Embargo : May be released

Delete paragraph 3.35 on page 11.

COMMISSIONER OF TAXATION
20 September 1990