


STNS 3005 - SALES TAX GOODS FOR USE IN THE AGRICULTURAL INDUSTRY

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TAXATION RULING NO. ST NS3005

- SALES TAX GOODS FOR USE IN THE AGRICULTURAL INDUSTRY

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REFERENCE NO:	SUBJECT REFS:	LEGISLATIVE REFS:
I 1012572	EXEMPTION AGRICULTURAL INDUSTRY AIDS TO MANUFACTURE	SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT; CLAUSE 1(1), ITEMS 1-13, 18, 19, 19A, 20, 92, 97, 99, 112, 113, 113A, 113E, 113F, 117(2), 117A, 119D, 122, 148; FIRST SCHEDULE.

PREAMBLE 1.1 This Ruling looks at the exemptions available under the Sales Tax legislation for goods used in the agricultural industry.

1.2 The Taxation Office has found that most enquiries on this topic come directly from persons who are engaged in the agricultural industry (e.g. farmers), rather than specialists in sales tax matters. For this reason the Ruling is expressed in non-technical language and, where possible, areas of the legislation have been paraphrased or summarised.

1.3 The Ruling reflects a change in interpretation by the Taxation Office in several ways. Two changes of particular significance are:

- (i) the broader approach to the "aids to manufacture" provisions as they relate to the agricultural industry (see paragraphs 4.1 - 4.10) and
- (ii) the use of more general tests when determining sales tax exemption for motor vehicles and motor cycles (see paragraphs 5.6 - 5.8).

1.4 An index of topics covered in this Ruling is attached as Appendix A.

HOW DOES EXEMPTION APPLY TO THE AGRICULTURAL INDUSTRY

2.1 Sales tax is not payable on primary products such as crops and livestock as these goods are exempt. Therefore, persons engaged in the agricultural industry ("agriculturalists") do not need to register for sales tax purposes.

2.2 Many goods purchased by agriculturalists for business use will be exempt from sales tax under various

provisions of the Sales Tax (Exemptions and Classifications) Act 1935 ("the Act"). Goods exempt when used in agricultural activities will fall into one of the following categories:

- (i) as "aids to manufacture";
- (ii) goods listed in an exemption item dealing with agricultural goods; or
- (iii) goods which are unconditionally exempt.

Unconditionally exempt goods (i.e. goods which are exempt no matter who uses them or how they are used) are only mentioned in this Ruling when they are of a type likely to be used by agriculturalists.

2.3 The first two categories of exemption in paragraph 2.2 overlap. Many goods listed by the agricultural items will also qualify as aids to manufacture. As the aids to manufacture provisions apply to all manufacturers and not just agriculturalists, they are framed in general terms. The principles for determining whether goods are exempt as aids to manufacture are set out in paragraphs 4.1 - 4.11. The more commonly purchased goods that are covered by the agricultural exemption items in the First Schedule are listed alphabetically in Appendix B as a quick check as to whether exemption applies in a particular case. If the goods are not found in Appendix B they may nevertheless be exempt as aids to manufacture.

EXPLANATION OF TERMS USED IN THE LEGISLATION

3.1 In order to help readers determine whether exemption may apply in any given situation it is necessary to look at the meaning of some of the terms contained in the exemption items.

"Agricultural Industry"

3.2 Many of the exemptions available in the legislation require the goods to be used in the agricultural industry. The word "agriculture" is defined in the legislation as including;

"viticulture, horticulture, pasturage, apiculture, poultry farming, dairy farming, and other operations connected with the cultivation of the soil, the gathering in of crops and the rearing of livestock."

The terms used in this definition are given their ordinary or commonly accepted meaning. "Other operations connected with" includes activities such as aerial seeding or aerial fertilizing.

3.3 The word "industry" is not defined in the legislation but is commonly understood to refer to a trade or business. Accordingly "agricultural industry" refers to an organised commercial business whose purpose is one or more of the activities referred to in the above definition of "agriculture".

Therefore, goods used in businesses of those types will be used "in the agricultural industry". This applies whether the goods are used by the agriculturalists themselves or by employees on

their behalf.

3.4 A guide as to whether or not a person is carrying on business as an agriculturalist would be whether the Taxation Office has accepted those operations as being a business of primary production for the purposes of income tax. This would not, however, be conclusive as some areas of the Income Tax definition of "primary production" are not provided for by the Sales Tax definition of "agriculture".

3.5 The following activities are not accepted as being "in the agricultural industry":

- (i) farming and other agricultural interests which are merely a hobby or pastime. For a person to be "in the agricultural industry" they must be in business (see paragraphs 3.2 - 3.4);
- (ii) fishing or fish farming. Fish are not considered to be livestock (D.C. of T. (NSW) v. Zest Manufacturing Company Pty Ltd 79 CLR) and, therefore, fish farming does not amount to the "the rearing of livestock" as required by the definition of agriculture. (However, the Sales Tax legislation contains exemption items which relate specifically to the fishing industry); and
- (iii) work such as bore sinking, fencing, professional shooting and machinery repair and maintenance undertaken by general contractors.

3.6 Goods which are supplied to an agriculturalist by any contractor during the course of the work (e.g. a windmill), will qualify for exemption in the same way as if purchased by the agriculturalist. Also sub-contractors who work exclusively for agriculturalists are entitled to exemption on goods in certain circumstances (see paragraph 4.11).

"For use"

3.7 This term does not require that the goods be used solely for the exempt purpose. Goods will be "for use" if they are intended to be used:

- (i) to a significant degree; and
- (ii) substantially in extent and time so as to give a character to the goods.

"Livestock"

3.8 Livestock means horses, cattle, sheep and other animals kept for commercial gain by agriculturalists but does not include either animals kept as domestic pets or fish.

"Of a kind"

3.9 This term requires that for goods to be exempt under an exemption item carrying this condition, they must be part of a class of goods which satisfy the wording of the item.

3.10 For example, subitem 1(28) exempts "..."

slashers of a kind used in clearing land". For exemption to apply, a slasher would need to possess the characteristics which identify it as being made for "clearing of land".

"Primarily and Principally"

3.11 Some exemption items carry this condition which relates to the extent of use that is required before exemption is available. For example, subitem 1(38A) exempts "Saddlery, ... and horse rugs" provided they are "for use exclusively, or primarily and principally, in carrying out agricultural operations".

3.12 "Primarily and principally" means the first ranking of the possible or usual uses of the goods being considered. It is not necessary that the use in question accounts for a majority of the usage, but it must exceed any other usage. In practice, primary and principal use of goods, will account for most of the use of the goods.

"Viz"

3.13 "Viz" means "namely" or "that is to say".

AIDS TO MANUFACTURE

4.1 The definition of "manufacture" in the sales tax legislation includes "production". The production of goods constituting "manufacture" for sales tax purposes refers to activities such as;

- (i) the breeding and rearing of livestock or poultry (from insemination or birth, during growth, care and maintenance right through to slaughter or removal from the farming property);

- (ii) the maintenance of livestock for dairy produce, eggs, semen etc. and

- (iii) the planting, care, maintenance and harvesting of seeds, crops, fruits, wildflowers etc.

4.2 In the agricultural industry, production is on a seasonal basis. It is the nature of the industry that considerable time and expense will be spent on the preparation of land and/or the nurturing of livestock. For example, a wheat farmer will usually only harvest his crop once a year but will need to prepare the soil and tend to the crop during the growth period. In the same way a farmer will invest considerable time and expense raising livestock prior to shearing or slaughter.

4.3 Accordingly, once a person has commenced a business which will result in "production" as set out in paragraph 4.1, he becomes a manufacturer.

4.4 Manufacturers are able to claim exemption on the purchase of most equipment used in producing the manufactured goods. This equipment is referred to as "aids to manufacture".

4.5 Subject to some exclusions (see paragraph 4.10), exemption as "aids to manufacture" is available for

machinery, implements, apparatus and materials used exclusively, or primarily and principally in manufacturing activities, including:

- (i) activities of the type listed at paragraph 4.1 above,
- (ii) bringing the manufactured goods into, or maintaining those goods in, the form or condition in which they are to be marketed or used,
- (iii) packaging or labelling the manufactured goods, but not if the packaging or labelling is carried out exclusively, or primarily and principally for delivery purposes,
- (iv) testing or checking the quality and specifications of the manufactured goods,
- (v) disposing of waste which results from manufacturing operations,
- (vi) transportation or storage of the manufactured (or partly manufactured) goods within manufacturing premises (e.g. the farming property),
- (vii) operating and cleaning manufacturing plant,
- (viii) carrying out scientific research relating to manufacturing operations, and
- (ix) constructing manufacturing equipment on site.

4.6 In the past, the Taxation Office has taken a more limited view of manufacturing than that described in paragraphs 4.1 - 4.3, with the result that exemption for aids to manufacture did not apply to machinery etc. used prior to the actual creation of goods. Whilst a harvester was an aid to manufacture (because of its direct connection to the crop), a seeder was not. From the date of effect of this Ruling we take the view that subparagraph (a)(iii) and paragraph (d) of the "aids to manufacture" definition also provide exemption for machinery, implements, apparatus and materials used exclusively or primarily and principally in preparatory agricultural activities. These preparatory activities bring the goods produced into the form or condition in which they are to be marketed or used.

4.7 The aids to manufacture provisions give exemption to the machinery, implements, apparatus and materials commonly used in the course of agricultural activities. Seeders, artificial insemination equipment, harvesters, milking machines and shearing equipment are examples of goods which would be exempt as aids to manufacture (many of these goods will also be exempt under specific items in the First Schedule - see paragraphs 5.1 and 5.2).

4.8 Two areas of frequent enquiry, concern whether hand tools and ammunition qualify for exemption. Hand tools will qualify as aids to manufacture where they are primarily and principally used in the activities referred to in paragraph

4.5. Where they are primarily and principally used to repair or maintain goods which qualify as "aids to manufacture", they will be exempt under subitem 113E(1) of the First Schedule.

4.9 Ammunition may also qualify as an "aids to manufacture" depending on the use to which it is put. As an example, ammunition would qualify under point (v) of paragraph 4.5 where it is used to dispose of surplus livestock. The rifle that fires the ammunition will be exempt as an auxiliary to an aid to manufacture where it is primarily and principally used to dispose of livestock.

4.10 There are a number of goods which are specifically excluded from the "aids to manufacture" definition. Exclusions of particular importance to the agricultural industry include;

- (a) road vehicles of the kinds ordinarily used for the transport of persons or the transport or delivery of goods (but note that some vehicles are exempt under subitem 13(1) (see paragraphs 5.6 - 5.8)), and
- (b) lubricants.

Aids to manufacture available to a sub-contractor

4.11 A change to the sales tax legislation (effective from 4 October 1989) has made it possible for exemption to be claimed by a sub-contractor on goods used to carry out work on behalf of a manufacturer. A sub-contractor will be able to claim exemption on the purchase of goods provided that:

- (i) exemption as an aid to manufacture would have been available to the agriculturalist in respect of those goods had he acquired and used the goods to carry out the contracted activities, and
 - (ii) the goods are used exclusively by the contractor for such activities on behalf of one or more agriculturalists.
- THE FIRST SCHEDULE (AGRICULTURAL EXEMPTION ITEMS)

5.1 Apart from the general "aids to manufacture" provisions, the First Schedule sets out agricultural exemption items under the following headings:

- Item 1 - Agricultural machinery, implements and apparatus for use in the agricultural industry
- Item 2 - Agricultural equipment and materials
- Item 3 - Equipment, preparations and materials for use in the agricultural industry for the checking or eradication

of diseases or pests

- Item 4 - Plants, seeds and fertilizers
- Item 5 - Livestock imported solely for breeding purposes
- Item 6 - Goods for use in the maintenance of livestock
- Item 7 - Dairying machinery, equipment and materials
- Item 8 - Equipment and materials for use in the fruit-growing industry
- Item 9 - Equipment and materials for use in the dried fruit industry
- Item 10 - Equipment and materials for the handling or treatment of fruit
- Item 10A- Vegetable grading, sorting and cleansing machines
- Item 10B- Tractors for use in the timber-getting industry in the hauling of log timber
- Item 11 - Imported poultry, food for poultry and poultry farmers equipment
- Item 12 - Imported bees and bee-keepers equipment
- Item 13 - Machinery, implements and apparatus of a kind used in the agricultural industry

5.2 Other exemption items affecting agriculturalists include:

- Items 18, 19, 19A and 20 - Irrigation, Water Supply, Drainage and Sewerage Equipment
- Item 92 - Bags and sacks used for fertilizers or chaff
- Item 97 - Sewing twine
- Item 99 - Wool Packs
- Item 112- Machinery and plant used in the bulk handling of grain
- Item 117(2) - Horseshoes and horseshoe nails

Item 117A - Imported Horses

Item 119D - Transport equipment used in prescribed areas.

Item 122- Wire netting, barbed wire, and iron or steel wire of gauge 6 or lighter

Item 148- Cranes and winches (for attachment to motor vehicles) for use in the timber-getting industry

5.3 Examples of goods exempt under the items listed at paragraphs 5.1 and 5.2 are set out at Appendix B. Some of these items exempt goods unconditionally while others exempt the goods conditionally. The explanation to Appendix B shows how to tell which goods are unconditionally exempt and which are not.

Subitem 13(1)

5.4 Unlike most other agricultural exemption items, subitem 13(1) does not refer to a specific class of goods or agricultural activity. It is expressed in general terms.

5.5 Exemption is provided under subitem 13(1) for machinery, implements and apparatus which satisfy the following requirements:

(i) they must be for use in the agricultural industry, and

(ii) they must be, in the opinion of the Commissioner, goods of a kind used exclusively, or primarily and principally, in that industry (see paragraphs 3.9 - 3.12).

The most common application of subitem 13(1) is to motor vehicles and motor cycles.

5.6 The Taxation Office has in the past been approached on a regular basis to determine whether a particular make/model of motor vehicle or cycle qualifies as conditionally exempt under subitem 13(1). We have now determined that where motor vehicles and motor cycles possess the following characteristics they will qualify for conditional exemption under subitem 13(1), when used in the agricultural industry:

Motor vehicles

(i) four wheel drive motor vehicles with the following body types - jeep, platform, pick-up or utility.

Motor cycles

(i) a heavy duty rear carrier fitted,

(ii) no passenger footrests and seat strap, and

(iii) a front mudguard position which allows high clearance.

5.7 Manufacturers of motor vehicles and motor cycles which satisfy the requirements of paragraph 5.6 are not required to request confirmation that a particular make or model of vehicle is "of a kind" used primarily and principally in the agricultural industry.

5.8 In the unlikely event that a vehicle or cycle which does not meet the descriptions above is nevertheless thought to be of a kind used exclusively, or primarily and principally, in the agricultural industry, the manufacturer may contact the local Taxation Office for a ruling.

HOW TO CLAIM EXEMPTION

6.1 In the Sales Tax legislation there are two types of exemption which may apply to goods; unconditional exemption and conditional exemption.

6.2 As stated in paragraph 2.2, unconditional exemption means that the goods are exempt regardless of who uses the goods or the purpose for which they are used. An example would be item 10A which exempts "vegetable grading machines"; the legislation does not stipulate any conditions on usage of the machines before exemption can apply.

6.3 Conditional exemption, on the other hand, means that exemption is available provided certain conditions, as set out in the particular exemption item, are met. For example item 10B exempts; "Tractors (and covers therefor) for use in the timber-getting industry in the hauling of log timber". For a tractor to be exempt from sales tax under item 10B it must meet the condition of being "for use in the timber-getting industry in the hauling of log timber".

6.4 The "aids to manufacture" provisions are conditional as the goods must be used for one of a number of manufacturing uses before exemption is available (as set out in paragraph 4.5).

6.5 Persons claiming exemption from sales tax on conditionally exempt goods should provide a written statement to their suppliers at time of purchase. This written statement, commonly referred to as an exemption certificate, may be hand written, typed, printed or 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 ...(Name of Supplier)... on.....(Date).
is/are for use(State Nature of Use).... and exemption

is accordingly claimed under item(Item Number).

in the First Schedule to the above Act.

Signature :
Name (Block Letters) :
Address :
Date :

6.6 Agriculturalists claiming exemption for goods used as "aids to manufacture" should quote 113A as the item number; sub-contractors should use 113F (see paragraph 4.11). Where exemption is being claimed under one of the "agricultural exemption items", the reader should refer to Appendix B for the appropriate item number. Persons giving exemption certificates should ensure that they are filled in correctly and the information provided is given in good faith.

6.7 The supplier accepts the certificate claiming exemption, keeps it for record purposes, and then sells the goods less the tax component.

DOCUMENTS, DECISIONS AFFECTED BY THIS RULING

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

- (a) The Sales Tax rulings listed at Appendix C are withdrawn.
- (b) Other documents on the Freedom of Information Index: All the Sales Tax related documents listed at Appendix D are superseded.
- (c) Australian Sales Tax - A.G.P.S. Canberra, 1984: All the paragraphs listed at Appendix E no longer apply.
- (d) Sales Tax Exemptions and Classifications - A.G.P.S. Canberra, 1983: All rulings relating to the items in the First Schedule to the Sales Tax (Exemptions and Classifications) Act, 1935 listed at Appendix E are amended to the extent that they are inconsistent with this Ruling.
- (e) Private Rulings: All private rulings previously issued in relation to the agricultural industry are amended to the extent that they are inconsistent with this Ruling.

COMMISSIONER OF TAXATION
21 March 1991

APPENDIX FOR APPENDICES SEE HARD COPY