

ST 2376 - SALES TAX : SALE OF TREAD RUBBER TO TYRE RETREADERS

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TAXATION RULING NO. ST 2376

SALES TAX : SALE OF TREAD RUBBER TO TYRE RETREADERS

F.O.I. EMBARGO: May be released

REF N.O. REF: 83/5376-0 DATE OF EFFECT: Immediate

B.O. REF: DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1010148	SALE OF GOODS BY WHOLESALE DEEMED SALES	SALES TAX ASSESSMENT ACT (No. 1); SECTION 3

OTHER RULINGS ON TOPIC ST 2165, ST 2365

PREAMBLE Sub-section 3(4) of the Sales Tax Assessment Act (No. 1) deems a person to have sold goods if, in the performance of any contract (not being a contract for the sale of goods) under which he has received or is entitled to receive valuable consideration, he supplies goods the property in which (whether as goods or in some other form) passes under the terms of the contract to some other person. Sub-section 3(1) of Sales Tax Assessment Act (No. 1) defines a sale of goods by wholesale to include the supply of goods to a person for supply to some other person in the circumstances specified in sub-section 3(4).

2. The scope of sub-section 3(4) is very wide. It deems a sale to take place whenever property in goods passes from one person to another in the performance of a contract under which the former is entitled to receive valuable consideration. A sale is deemed to take place whether or not the goods lose their identity or their character as goods during the course of the operations in which the contract is performed.

3. Taxation Ruling No ST 2165 dealt with the application of sub-section 3(4) to certain service industries. The question has now arisen whether the supply of tread rubber to a tyre retreader is within the scope of sub-section 3(4) and is therefore a wholesale sale or whether the tread rubber sold to the tyre retreader is applied to the tyre retreader's own use and is therefore a retail sale.

FACTS 4. The retreading process involves a number of stages; a preparatory stage, the application of the new rubber and the curing. Used tyres are initially inspected to ensure that they are suitable for retreading. If a tyre is suitable, the surface of the tyre is buffed. All excess rubber and foreign materials are removed and a smooth surface is created. Tread rubber can then be applied to a prepared tyre by means of an orbitread machine or by a pre-curing process.

5. In Jax Tyres Pty Ltd v. Federal Commissioner of Taxation 84 ATC 4768; 15 ATR 1108, the Court decided that the retreading of tyres was a process of repair.

RULING 6. The essential purpose of the service contract for the repair

of the tyre is to restore the condition of the tyre. The attachment of the tread rubber is intended to be permanent and it is considered that the property in the tread rubber passes to the customer either when the retreaded tyre is purchased or when the retreaded casing is returned to the customer.

7. Consequently, where the tyre retreader, for valuable consideration, repairs the tyre and in the course of carrying out that repair supplies the tread rubber which becomes part of the tyre, the tread rubber so supplied is deemed by sub-section 3(4) to be sold by the tyre retreader to the customer. A deemed sale occurs whether the tyres are retreaded to the order of the customer or retreaded for stock for sale by retail.

8. The sale of the tread rubber by the supplier to the tyre retreader is a wholesale sale because the goods are deemed by sub-section 3(4) to be on-sold to the customer. As a wholesale sale, tax is payable on the price charged by the supplier for the tread compound to the tyre retreader.

COMMISSIONER OF TAXATION
3 December 1987