


ST 2442 - SALES TAX : USE OF CERTIFICATES CLAIMING EXEMPTION

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TAXATION RULING NO. ST 2442

SALES TAX : USE OF CERTIFICATES CLAIMING EXEMPTION

F.O.I. EMBARGO: May be released

REF N.O. REF: 87/1191-7 DATE OF EFFECT: IMMEDIATE

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

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1010896	EXEMPTION CERTIFICATES FALSE AND MISLEADING STATEMENTS	TAXATION ADMINISTRATION ACT; SECTIONS 8K, 8N, 8P

OTHER RULINGS ON TOPIC: ST 2130

PREAMBLE The purpose of this Ruling is to explain the position and role of exemption certificates tendered by purchasers for the purpose of claiming exemption from sales tax. While exemption certificates are accepted as evidence to support the sale of taxable goods free of sales tax that ordinarily is imposed on them, there are obligations on both the purchaser and the vendor in the tendering and acceptance of the certificates. It is important that the purchaser and vendor be aware of these obligations.

2. The First Schedule to the Sales Tax (Exemptions and Classifications) Act contains the items which cover the various classes of exempt goods and circumstances under which otherwise taxable goods are exempt.

3. Exemptions applicable to goods fall into two broad categories:-

- (a) outright exemptions - those which apply to goods irrespective of the purpose for which they are used e.g., Australian primary products; most foods; clothes for human wear; books and newspapers; drugs and medicines.
- (b) exemptions which depend on the goods being for use by an exempt body or in some other exempt circumstance of use:-
 - (i) where the goods are for use by an organisation which is entitled to exemption for goods for its use and not for sale, e.g., government departments and authorities; local government bodies; public and non-profit hospitals and public benevolent institutions; non profit schools and universities; or
 - (ii) where the goods are for use in circumstances specified in relevant items in the First Schedule, e.g., machinery, implements and apparatus for use in agricultural industry; goods for use in the mining industry in

mining operations; aids to manufacture for use in manufacturing processes; materials to form part of exempt manufactured goods.

4. The Australian Taxation Office has developed procedures whereby persons claiming exemptions in the circumstances set out in paragraph 3(b) provide to the supplier "certificates of conditional exemption" in standard forms. The supplier is required to retain the certificates as evidence that the goods have been sold for exempt use.

5. Both the person giving the certificate and the person allowing exemption have obligations in this connection. In broad terms the certificate should state clearly the exempt purpose for which the goods are obtained and the person allowing exemption should be reasonably certain that exemption genuinely applies.

6. Certificates furnished to suppliers by purchasers seeking exemption for goods purchased by them are required to be addressed to "The Commissioner of Taxation and the Commonwealth of Australia". It is important for persons giving the certificates to ensure that they do not make any statement in the certificates that is false or misleading in a material particular. There are severe penalties attached to giving statements to taxation officers which are false or misleading.

7. Sections 8K, 8N and 8P in the Taxation Administration Act set out a number of offences in relation to the making of false or misleading statements. Sections 8L and 8Q set out offences in relation to incorrectly keeping records. Sections 8M and 8R set out the penalties for relevant offences.

8. The sections covering those offences follow.

S.8K(1) A person who -

- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

is guilty of an offence.

(2) In a prosecution of a person for an offence against subsection (1), it is a defence if the person proves that the person -

- (a) did not know; and
- (b) could not reasonably be expected to have known, that the statement to which the prosecution relates was false or misleading.

S.8L(1) Where-

- (a) a person who is required under or pursuant to a taxation law to keep any accounts, accounting records or other records keeps them in such a way

that they do not correctly record and explain the matters, transactions, acts or operations to which they relate; or

- (b) a person who is required under or pursuant to a taxation law to make a record of any matter, transaction, act or operation makes it in such a way that it does not correctly record the matter, transaction, act or operation,

the person is guilty of an offence.

- (2) In a prosecution of a person for an offence against subsection (1), it is a defence if the person proves that the person -
 - (a) did not know; and
 - (b) could not reasonably be expected to have known, that-
 - (c) in the case of a prosecution for an offence against subsection (1) by virtue of paragraph (a) - the accounts, accounting records or other records to which the prosecution relates did not correctly record and explain the matters, transactions, acts or operations to which they relate; or
 - (d) in the case of a prosecution for an offence against subsection (1) by virtue of paragraph (b) - the record to which the prosecution relates did not correctly record the matter, transaction, act or operation to which the record relates.

S.8N A person who recklessly -

- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

is guilty of an offence.

S.8P A person who knowingly -

- (a) makes a statement to a taxation officer that is false or misleading in a material particular; or
- (b) omits from a statement made to a taxation officer any matter or thing without which the statement is misleading in a material particular,

is guilty of an offence.

S.8Q Where -

- (a) a person who is required under or pursuant to a taxation law to keep any accounts, accounting

records or other records recklessly or knowingly keeps them in such a way that they do not correctly record and explain the matters, transactions, acts or operations to which they relate; or

- (b) a person who is required under or pursuant to a taxation law to make a record of any matter, transaction, act or operation recklessly or knowingly makes it in such a way that it does not correctly record the matter, transaction, act or operation,

the person is guilty of an offence.

9. Under section 8M, an offence against subsections 8K(1) or 8L(1) is punishable on conviction by a fine not exceeding \$2,000 for a first offence and for a second or subsequent offence by a fine not exceeding \$4,000. Under section 8R, an offence against section 8N, 8P or 8Q is punishable on conviction by a fine not exceeding \$3,000 and for a second or subsequent offence a fine not exceeding \$5,000 or imprisonment for a period not exceeding 12 months, or both.

RULING

10. An example of a certificate provided to a supplier of goods by an exempt organization, e.g., a non profit hospital or public benevolent institution covered by item 81(1), 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 from(name of vendor) on(date) are for use and not for sale by(name of exempt body) and exemption is accordingly claimed under item 81(1) in the First Schedule to the Sales Tax (Exemptions and Classifications) Act.

Signature
Status of signatory
Address
Date"

11. An example of the general form of certificate to be completed by a user who acquires goods for his/her use in exempt circumstances is as follows -

CERTIFICATE "A"

"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 vendor) on (date) is for use in agricultural industry in (e.g., the checking of plant and seed diseases) and exemption is accordingly

claimed under item (e.g., 3(1)) in the First Schedule to the Sales Tax (Exemptions and Classifications) Act.

Signature
Address
Date"

12. A trader who purchases goods solely for resale to persons who require them for exempt purposes and who have furnished a certificate "A" to that effect, can furnish his/her supplier with a certificate in the following form:-

CERTIFICATE "B"

"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 (name of vendor) on (date) are exclusively for resale to persons who will use them in agricultural industry for (e.g., checking of plant and seed diseases) and exemption is accordingly claimed under item (e.g., 3(1)) in the First Schedule to the Sales Tax (Exemptions and Classifications) Act.

Signature
Address
Date"

13. Because there are a number of various trading and circumstances of use which call for an adaptation of the form of the declarations in the certificates, it is not practicable to cover them in length here. A person seeking advice on available exemptions and the form of certificate to be used is advised to contact the Australian Taxation Office.

14. A number of points relating to the giving of exemption certificates are -

- . a certificate may be hand written, printed or typed, should be in an approved form and must be signed by the person claiming exemption;
- . a signed certificate is a declaration to the Commissioner of Taxation stating that the goods acquired free of tax will be used for the purpose stated in the certificate;
- . false or misleading statements in the certificates may lead to prosecution under sections 8K, 8N or 8P of the Taxation Administration Act.

15. A number of points relating to acceptance of exemption certificates by suppliers who consequently supply goods tax free are -

- . where exemption is claimed to apply, suppliers should obtain from their customers and retain in their records signed exemption certificates addressed to "The

Commissioner of Taxation and the Commonwealth of Australia";

- . in each case the certificates should state precisely the exempt purpose for which the goods are required in the terms of the relevant provision under which the exemption is claimed;
- . exemption from sales tax should not be granted where vendors have cause to believe, either from their own knowledge or from other sources, that the goods are not to be used for the purposes claimed;
- . exemption from sales tax should not be granted where there is no exemption item in the law to cover the circumstances of use of the goods; (this situation can arise particularly where an exemption item is repealed by amendment of the law and no longer applies).
- . a supplier to whom a certificate is supplied seeking exemption has an obligation to take reasonable steps to ensure that the terms of the exemption provision are met before allowing exemption;
- . where an appropriate exemption certificate has not been obtained and the facts are such that the goods are not exempt from tax, the suppliers are liable to pay tax on the goods, whether or not they have charged any amount in respect of sales tax to their customers.
- . as an example, the obligations of parties to claims for exemptions under subitem 1(38A), First Schedule, for saddlery etc., for use exclusively, or primarily and principally, in carrying out agricultural operations are discussed in Taxation Ruling No. ST 2309.
- . where suppliers to consumers of goods need in turn to furnish exemption certificates to vendors to them for the supply of those goods, misleading statements in the certificates may lead to prosecution under sections 8K, 8N or 8P of the Taxation Administration Act.
- . a supplier who does not keep satisfactory records for the purpose of allowing sales tax exemptions, may be liable for prosecution under sections 8L and 8Q of the Taxation Administration Act.

16. While the system of exemption certificates is designed to enable persons entitled to exemption to claim exemption, care needs to be taken both on the part of the person tendering the certificate and the person receiving it that exemption properly applies. Where sufficient care has not been exercised in the processing of exemption certificates and it is found that exemption does not apply, the parties involved in the transaction can expect appropriate action to be taken to recover the tax underpaid.

COMMISSIONER OF TAXATION
6 October 1988