


STNS 3002 - SALES TAX SUBITEM 81(1): GOODS FOR USE BY CERTAIN HOSPITALS, PUBLIC BENEVOLENT INSTITUTIONS AND PUBLIC ORGANIZATIONS FOR THE RELIEF OF THE UNEMPLOYED

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TAXATION RULING NO. ST NS3002

- SALES TAX SUBITEM 81(1): GOODS FOR USE BY CERTAIN
HOSPITALS, PUBLIC BENEVOLENT INSTITUTIONS AND PUBLIC
ORGANIZATIONS FOR THE RELIEF OF THE UNEMPLOYED

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| I 1012239 | EXEMPTION HOSPITALS PUBLIC BENEVOLENT INSTITUTIONS PUBLIC ORGANIZATIONS FOR THE RELIEF OF THE UNEMPLOYED EXEMPTION CERTIFICATES | SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) ACT; ITEMS 60A, 74A, 78, 81; FIRST SCHEDULE. INCOME TAX ASSESSMENT ACT; PARAGRAPH 78(1)(a) |

OTHER RULINGS ON TOPIC:

ST 2134; ST 2151; ST 2169; ST 2188; ST 2238; ST 2327;
ST 2346; ST 2442; IT 2259; IT 2281; IT 2345; IT 2386;
IT 2438; MT 2002

PREAMBLE 1.1 There is no provision in the sales tax law which affords exemption for either 'non-profit' or 'charitable' organizations as such. Only organizations which are covered by an item in the First Schedule to the Sales Tax (Exemptions & Classifications) Act, 1935 ("Exemptions and Classifications Act") may purchase goods for their own use free of sales tax.

1.2 Goods for use, and not for sale, by certain hospitals, public benevolent institutions and public organizations established for the relief of the unemployed, qualify for exemption from sales tax under subitem 81(1) in the First Schedule to the Exemptions & Classifications Act.

1.3 This ruling is designed to be a guide to the application of subitem 81(1). For ease of use an index of keywords and phrases is attached at Appendix A.

THE LEGISLATION

2.1 Subitem 81(1) exempts:

'Goods for use (whether as goods or in some other form),
and not for sale, by -

(a) a public hospital;

(b) a hospital which is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association;

(c) a public benevolent institution; or

(d) a public organization which the Commissioner is satisfied is established and maintained for the relief of unemployed persons'.

RULING 3.1 The types of organizations described in subitem 81(1) are not defined in the Sales Tax legislation. In order to interpret these terms their ordinary or common meaning must be used.

Hospitals

3.2 A hospital is:

- . an institution for the medical care and treatment of sickness, disease or injury in human beings where the provision of accommodation is integral to the provision of such care and treatment.

A hospital may also treat non-residential patients through an out-patients department, as an adjunct to these services.

3.3 The 'accommodation' is not limited to overnight accommodation. 'Day surgeries' where beds are provided for patients to recover after surgery will not be excluded from the definition.

3.4 However, some clinics (for example Sports medicine clinics) which are normally concerned only with the examination and treatment of ambulatory patients who return to their homes after each visit, do not fall within the definition of a hospital.

3.5 Although it will generally be clear whether an institution is a hospital there are some institutions which warrant specific mention.

3.6 Nursing homes, which are concerned primarily with the provision of nursing care to the sick, aged or infirm will not fall within the definition of a hospital, although they may form part of a hospital or qualify as public benevolent institutions. A hospital may, however, be located within the grounds of the nursing home as part of the services available.

3.7 Hospices for the terminally ill, on the other hand, will generally be a 'hospital'.

3.8 In assessing whether an institution is a hospital the following factors may be relevant:

- . whether the institution employs (or retains) medical staff;
- . the qualifications of the medical staff;
- . whether the institution provides surgical facilities;
- . whether the institution's purpose is primarily to provide medical care as opposed to nursing care for sick or injured persons;
- . whether the provision of beds is integral to the service

provided.

3.9 Even where there is a lack of sophisticated medical equipment, such as operating equipment, an institution may still be recognised as a hospital, if the other facts show that it is a hospital.

Paragraph (a) - Public Hospitals

3.10 In the context of paragraph 81(1)(a), a public hospital is one which is operated for, and on behalf of, the general public and is subject to public control.

3.11 A hospital may offer specialised services, for example a maternity hospital, and still be considered a public hospital if its services are available without discrimination to all members of the public which it seeks to benefit and it is subject to public control. The most obvious examples of public control, are control:

- . by a governmental or quasi-governmental authority; or
- . by a management board elected from the community.

Paragraph (b) - 'Non-profit' Hospitals

3.12 Paragraph (b) is often referred to as applying to 'non-profit private hospitals'. This term is used simply for convenience as the words of the legislation are not that narrow. Paragraph (b) provides for sales tax exemption on goods for use and not for sale by:

'a hospital which is carried on by a society or association otherwise than for the purpose of profit or gain to the individual members of the society or association'.

3.13 Therefore, a hospital may generate a profit and still be entitled to exemption provided that the profit does not accrue to the individual members, for example where profits are applied to the purposes of the society or association.

3.14 The Crown is not an individual for the purposes of this subitem. The Crown is the head of government, and is used, representationally, to mean the people of Australia. A benefit to the people of Australia as a whole is not profit or gain to individual members.

3.15 The ordinary meanings of the terms society and association are wide and would include any organization or body of persons associated for a common purpose. Thus an individual is not a society or an association, although a company may be.

3.16 There is no requirement under paragraph (b) that the hospital direct its activities to the general public. Private hospitals are therefore exempt where they satisfy the other requirements of the paragraph.

Paragraph (c) - Public Benevolent Institutions

3.17 The term 'public benevolent institution' has been considered by the Courts on a number of occasions.

3.18 Based on the views expressed in those decisions the Commissioner considers that an organization will be a public benevolent institution if:

- . it is established and carried on for the relief of poverty, sickness, suffering, distress, misfortune, destitution or helplessness;
- . it pertains to the public, by benefiting a section of the public (with relief being available without discrimination to every member of the section of the public which the organization aims to benefit); and
- . it is an institution, that is, an establishment, organization or association formed to promote a particular (especially non-business) purpose.

In this context, poverty is a relative term and beneficiaries do not have to be destitute, simply needy.

3.19 Whether an organization is a public benevolent institution is a question of fact in each case. There are many factors which may be relevant in determining this question. In any given case some may be more important than others (and some may not be relevant at all). Factors which may be relevant include:

- (i) the class of people to be benefited.
- (ii) whether the membership of that class depends on the possession of natural attributes or attributes which any member of the public might acquire. For example classes consisting of members of a particular calling, residents of a particular locality or persons suffering from a particular ailment. Classes where membership depends upon the consent of others such as trade unions, sporting clubs or masonic lodges would not qualify as public benevolent institutions.
- (iii) whether there is public control or ownership.
- (iv) whether the organization dispenses benefits directly. (It is the Commissioner's view that for an institution to be a public benevolent institution it must be directly concerned with the provision of relief although this does not need to be financial relief.)
- (v) what form the organization takes.
- (vi) whether there is a written document setting out clearly and accurately the purpose of the organization. (Where subsidiary objects are set out to provide flexibility in operation, so long as they are incidental and ancillary to the primary objects, this would not preclude the body from being a public benevolent institution.)

If there is a written document whether it:

- (a) provides the machinery for the control of the organization's funds, the calling of meetings, the appointment of officers and so on;

- (b) prohibits the carrying on of the organization for private gain, that is, states that the funds and assets of the organization will be used solely to further the objects of the organization. (This does not mean that the persons rendering services in providing the relief for which the organization was established cannot be properly remunerated.);
 - (c) being a constitution, contains an 'appropriate' dissolution clause. Dissolution clauses will be dealt with at paragraph 3.35.
- (vii) whether the activities of the organization reflect the objects for which it was established.
 - (viii) whether fees are charged for the services. (The charging of fees to help offset operating costs does not necessarily prevent an organization from being a public benevolent institution.)
 - (ix) whether fees, if charged, are waived in whole or in part where the applicant for relief is unable to pay.

3.20 While the above factors may assist in determining whether an organization is a public benevolent institution, in any given case, one factor may be more important than others. For example, the terms of the constitution may be vitally important where a body is run by private individuals who may be in a position to make a private gain but may be less important where the body is government controlled.

Community Bodies which do not qualify as PBIs

3.21 Examples of the types of bodies which generally would not be considered to be public benevolent institutions include:

- (a) Community information services (that is, those which provide information regarding community services and facilities).
- (b) Progress associations, community associations, community activities centres, development associations, neighbourhood centres, neighbourhood watch and the like.
- (c) Museums, libraries and art galleries. (Some may, however, qualify under items 74A or 78 in the First Schedule to the Exemptions and Classifications Act.)
- (d) Cultural groups (for example, dance or drama theatres, music groups, art and craft groups, community broadcasting stations, historical societies).
- (e) Sporting groups (for example, bowling clubs, golf clubs, rowing clubs). (Surf life saving clubs which are affiliated with the Surf Life Saving Association of Australia are the exception.)
- (f) Social clubs (such as leagues clubs, ethnic associations, R.S.L. clubs, hobby associations).

- (g) Service clubs (such as Rotary, Apex and Lions).
(Although some of these clubs establish separately constituted fund raising bodies which are covered by subitem 81(3) in the First Schedule to the Exemptions and Classifications Act.)
- (h) Religious bodies, Christian fellowships, etcetera.
(Some goods for use in churches and church services may qualify under item 65 in the First Schedule to the Exemptions and Classifications Act.)
- (i) Political parties and lobby groups.
- (j) Conservation groups, animal welfare groups, domestic pet owners' groups.
- (k) Agricultural societies. (Some goods used by these societies are covered by item 60A in the First Schedule to the Exemptions and Classifications Act.)
- (l) Professional and trade associations, chambers of commerce, trade unions.
- (m) Marriage counselling services.
- (n) Child minding centres and playgroups.
- (o) Credit unions, building societies, friendly societies.

Paragraph (d) - Organizations for the Relief of Unemployed Persons

3.22 An organization as described in paragraph (d) of subitem 81(1) is:

- a public organization
- which the Commissioner is satisfied
 - is established and maintained
 - for the relief of unemployed persons.

3.23 A public organization means a body which relates to the public and which has a definite and systematic structure.

3.24 The term 'established and maintained' means that not only must the requisite purpose appear in the objects of the organization, the organization must actually continue to operate for that purpose. (See paragraph 3.35 on dissolution clauses.)

3.25 In providing 'for the relief of unemployed persons', an organization is not limited to the provision of benefit merely by way of money or goods. Benefits could include assistance with the acquisition of skills necessary to gain employment.

3.26 The employment of unemployed persons does not in itself constitute relief of unemployed persons for the purposes of this paragraph. However, specific mention needs to be made of Group Apprentice Training Schemes ("GATS") which are set up to support and create apprenticeships in a particular region. The objects of

these bodies generally include:

- . the employment and indenture of apprentices to itself and secondment of such apprentices to employers;
- . the administration of the group apprenticeship scheme in relation to such apprentices and employers; and
- . the encouragement, promotion and training of apprentices and the provision of advice on the training of apprentices.

3.27 Although GATS can be seen as providing employment to unemployed persons through apprenticeship schemes, their activities are much broader than that. Given the history and development of these organizations, and in view of their overall objects, the Commissioner is satisfied that their activities amount to the relief of unemployed persons.

3.28 However, not all apprenticeship training schemes are covered by paragraph 81(1)(d). For example, schemes organized by racing associations are concerned principally with maintaining a high standard of riding by providing training programmes for trainee jockeys rather than increasing employment opportunities. Such training schemes would not be covered by paragraph 81(1)(d).

Goods for use and not for sale

3.29 Exemption is provided under subitem 81(1) only in relation to '... goods for use (whether as goods or in some other form), and not for sale' by the specified organizations. The bracketed phrase indicates that the exemption extends to goods sold to, for example, contractors, for incorporation into buildings for use by the relevant institution.

3.30 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:

- (1) The goods need only be for use to a significant degree by the specified organization for exemption to apply.
- (2) Provided the use by the specified organization is sufficiently substantial in extent and time to give a character to the goods, then the exemption may apply where the goods are also applied to the use of another person (even if in a business or commercial context). This may be so even though that other person retains property in the goods.
- (3) It is the projected use which is important not the inherent quality or nature of the goods themselves.
- (4) Where the goods are in use, evidence of the actual use to which the goods have been put will be relevant.

3.31 The material circumstances to be considered in determining use include:

- . the nature of the goods;
- . the activity of the institution which is to be assisted by

using the goods;

- . the terms upon which the goods are to be acquired by the institution or upon which it is to be entitled to use them;
- . the power of others to qualify that use; and
- . the likelihood of the use being changed by the decision of the institution, or by another person having power to decide, or by a joint decision of both.

3.32 The words 'and not for sale' in subitem 81(1) emphasise that the exemption is available only on goods which will be used by the organization, not goods sold by it. However, provided the goods were purchased without the intent to resell them and have been put to a real and substantial use by the organization, the goods may then be sold (if, say, they become old or outmoded) without incurring any sales tax liability.

(Note: Where an organization purchases goods with the intention of selling them, the goods may attract sales tax when sold or the organization may be required to register for sales tax purposes. Please contact the local Branch of the Australian Taxation Office for further details.)

3.33 Examples of goods which may be exempt when purchased by a relevant institution (or auxiliary) for use by the institution (even though they may also be used by or given to another) include:

- (a) buttons and badges purchased for use in connection with appeals for funds. (This is on the basis that these items are not sold when given to contributors, being merely tokens given in acknowledgment of contributions made. This would not apply to the sale of, for example, ball point pens in return for donations, as the pens are more than mere tokens.);
- (b) cards for display in shops, art union tickets, and admission tickets for benefit picture shows and other social functions purchased by an institution for issue to the public;
- (c) goods such as kitchen utensils supplied by an institution to beneficiaries by means of orders on retailers with payment direct from the institution to the retailer;
- (d) goods purchased by an institution for disposal as a prize in a raffle conducted on behalf of the institution;
- (e) teletext decoding devices for hire by a public benevolent institution to eligible hearing impaired persons; and
- (f) goods which are incorporated into buildings or other works with the property passing to the exempt body for its use.

3.34 In contrast, goods for use by sub-contractors and contractors in carrying out work and labour contracts for public benevolent institutions are not considered to be goods for use by the institution where they are merely equipment (for example, tools and graders) owned by or leased by the contractor for the duration of the contract or expendable items (for example, drill bits or

lubricants) consumed by the contractor during the course of carrying out the contracts.

Dissolution Clause

3.35 An appropriate dissolution clause in the organization's constitution provides evidence that the assets will continue to be used for exempt purposes.

3.36 Taxation Ruling IT 2259 provides more information and examples of dissolution clauses which meet similar requirements of the Income Tax Assessment Act, 1936, as amended.

3.37 The following clause would be suitable for the purposes of subitem 81(1) of the Exemptions and Classifications Act and generally meets the requirements of similar provisions in other Acts, both State and Commonwealth:

'If upon the winding up or dissolution of the .. (name of organization) .. there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the .. (name of organization) .. but shall be given or transferred to some other institution or institutions having objects similar to the objects of the .. (name of organization) .. and which is a registered or exempted charity which has also been ruled by the Commissioner of Taxation to be covered by sec. 78(1)(a)(i) or (ii) of the Income Tax Assessment Act.'

(Subparagraphs 78(1)(a)(i) or (ii) of the Income Tax Assessment Act provide for the tax deductibility of gifts to organizations described in similar terms to those described in paragraphs 81(1)(a), (b) and (c) of the Exemptions and Classifications Act.)

Applying for Exemption

3.38 An organization wishing to seek the opinion of the Commissioner as to whether it falls within the ambit of subitem 81(1) should provide the following information to the local branch of the Australian Taxation Office:

- (a) A copy of its constitution and rules.
- (b) A copy of financial statements showing the nature of its receipts and payments for the preceding year (not a bank statement of deposits and withdrawals).
- (c) Full details of the organization's day to day activities.
- (d) Copies of any brochures, newsletters, applications for government funding or similar documents which outline the organization's activities.
- (e) Details of any other applications for taxation benefits which have been made.
- (f) If the organization has not yet begun operations, the proposed date of commencement.

In addition, if an organization employs any of its members, the

following details should be provided with its application for exemption:

- . the number of members employed;
- . their positions within the organization;
- . the reasons for the members' appointments;
- . the annual salaries (including fringe benefits); and
- . the method by which those salaries are set.

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

Retirement Villages/Hostels/Nursing Homes

- (a) Full details of the accommodation provided including the number and types of units/dormitories, an outline of the facilities available, the address, and if possible, a copy of the floor plan.
- (b) The number of people accommodated.
- (c) Details of the staff employed (or retained) including, if applicable, the number of qualified medical staff.
- (d) The criteria for admission (for example, whether accommodation is available to all aged persons in the community, whether admission will be allowed only to persons who are mobile and capable of caring for themselves, whether there is a minimum age for admission).
- (e) Details of the fees and charges; including the amount charged for weekly board, the fee payable for admission (if any), details of any loans required to be given to the organization as a condition of entry, whether fees will be waived if a person is unable to meet them.
- (f) Whether the organization has applied for, or received, government funding. (This information should include details of the Department which is providing the funding and the Act or Scheme under which the funding has been granted.)
- (g) Full details of any other activities to be conducted by the organization.

Refuges (Youth Refuges, Womens' Refuges, etcetera)

- (a) A full description of the accommodation provided including a description of the building, its address and the number of rooms.
- (b) The number of people accommodated.
- (c) The length of time that the people accommodated are permitted to stay.
- (d) Full details of the criteria used to select residents.
- (e) Details of staff including number, qualifications and duties performed.

- (f) Details of any action taken to find permanent accommodation for the residents.
- (g) Details of any assistance given other than accommodation.
- (h) Details of any fees charged.
- (i) Details of the methods by which the residents are referred to the refuge (for example, whether it is through government authorities, church bodies, or others).

Senior Citizens Organizations

- (a) Whether the organization's services are open to all senior citizens in the area, or to members of the organization only.
- (b) Whether membership is open to all senior citizens, or only to those who are known to current members of the organization.
- (c) The circumstances in which the organization would refuse membership to a person.
- (d) The minimum age for admission.
- (e) Details of any fees charged.
- (f) Whether the organization is affiliated with any other senior citizens bodies.

Toy Libraries For Handicapped Children

(Note: other types of toy libraries generally do not qualify for exemption.)

- (a) Whether the toy library is open to handicapped children only, or to all children. If it is open to all children, the proportion of handicapped children, as against other users of the library.
- (b) Full details of the criteria used to determine whether particular children are entitled to participate in the library's services.
- (c) Whether the library's services are open to all children without discrimination, or membership of the organization is required.
- (d) If the library is open to the children of members only, the circumstances under which the organization would refuse membership.
- (e) The number of families and children currently using the library.
- (f) Details of any ancillary services (such as therapy groups) provided by the organization.
- (g) A brief outline of the types of toys provided.

- (h) Details of any fees charged, and of provisions for waiving fees.

Claiming Exemption

3.40 To claim exemption from sales tax on goods, the organization should provide to the supplier a written statement. This written statement, commonly referred to as an exemption certificate, may be hand-written, typed or printed. It may be incorporated into an order form and 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 ORGANIZATION)
which is an organization exempt from sales tax under
subitem 81(1) of the above Act.

Signature
Name and Address
(Block letters)
.....
Status of signatory
in organization
Date

3.41 It is not unusual for goods to be purchased for donation to organizations which are exempt under subitem 81(1). These goods may be purchased free of sales tax by the donor either by:

- . obtaining a certificate from the organization as outlined in paragraph 3.40 (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 the exempt body 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 exempt organization)
and exemption is accordingly claimed under subitem 81(1) in
the First Schedule to the Sales Tax (Exemptions and
Classifications) Act.

Signature
Name and Address
(BLOCK LETTERS)
.....
Date

3.42 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 below.

3.43 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 (similar to the certificate referred to in paragraph 3.41) 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 on
(NAME OF SUPPLIER) (DATE)
was sold to
(NAME OF ORGANIZATION)
which is an organization exempt from sales tax under subitem
81(1) of the above Act.

Signature
Name and Address
(BLOCK LETTERS)
.....
Date

3.44 If the vendor is a registered person and has paid tax on the goods when purchased, they 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.)

3.45 Usually an institution covered by subitem 81(1) will purchase goods free of sales tax by giving a certificate at the time of purchase (see paragraph 3.40). If however, an institution 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 institution.

3.46 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.

3.47 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 listed at Appendix B, which appear in the index published under section 9 of the Freedom of Information Act 1982, will be superseded.
- (2) Australian Sales Tax - A.G.P.S. Canberra, 1984;
All the paragraphs listed at Appendix C will no longer be 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 the institutions covered by item 81 in the First Schedule of the Exemptions and Classifications Act are amended to the extent that they are inconsistent with this Ruling.

COMMISSIONER OF TAXATION
26 July 1990

APPENDIX APPENDIX

APPENDIX A

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APPENDIX B

Appendix B contains details of documents on the FOI index which have been superseded. This appendix can be obtained from the FOI library.