

1979

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS)

AMENDMENT BILL (NO.3) 1979

(Amendments to be moved by the Treasurer)

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Circulated by authority of the Treasurer,
the Hon. John Howard, M.P.)

Introductory Note

This memorandum explains proposed amendments to the Sales Tax (Exemptions and Classifications) Amendment Bill (No.3) 1979 which was introduced into Parliament on 21 August 1979. That Bill is designed to amend the Sales Tax (Exemptions and Classifications) Act 1935.

The proposed amendments will introduce new exemption items into the First Schedule to the Sales Tax (Exemptions and Classifications) Act and amend two existing items in that Schedule. Broadly, the amendments will extend the exemption provided in the Amendment Bill for goods designed and manufactured expressly for use by blind persons or by deaf persons to goods for use by persons suffering from any sickness, disease or disablement. Exemption is to be provided also for -

- . wigs and hair-pieces for people who are clinically bald
- . battery chargers for use exclusively or principally in recharging the batteries of wheelchairs
- . hand controls and other motor vehicle modifications which enable disabled persons to drive vehicles
- . all medical and surgical appliances (not already exempt) of a kind used exclusively or principally in alleviating or treating sickness or disease.

Further amendments will raise the exemption levels applicable to craftsmen and other small manufacturers. They will not be liable for sales tax if their average annual turnover does not exceed \$12,000 or, if this figure is exceeded, their annual tax liability would not exceed \$250.

Notes on each of the proposed amendments to the Bill are set out in the following paragraphs.

Amendment(1) : Commencement

This amendment omits clause 2 of the Amendment Bill and substitutes a new clause 2 which provides for the commencement of the various provisions in the amending Act.

By sub-clause (1), the amending Act, except to the extent that sub-clauses (2) and (3) apply, shall come into operation on the day on which it receives the Royal Assent. Under this sub-clause amendments proposed in amendment(4), other than proposed new paragraph 3(dg), will come into operation on the date of Royal Assent. These amendments alter the exemption levels relating to small manufacturers in items 100 and 103 in the First Schedule to the Principal Act.

Sub-clause(2) provides that paragraph 3(f) and section 4 shall be deemed to have come into operation on 28 June 1979. These are provisions in the Amendment Bill which will exempt LPG conversions kits, non-oil space heating appliances and solar appliances.

Sub-clause(3) provides that paragraphs 3(aaa), (a), (aa), (ab), (b), (c), (dg) and (e) shall be deemed to have come into operation on 22 August 1979, the same date as that proposed in the Amendment Bill for the new exemption for goods for use by the blind and deaf. These paragraphs will insert new provisions in the First Schedule to the Principal Act which will exempt various classes of goods for use by the sick and disabled.

Amendment (2)

This amendment will introduce a new paragraph (aaa) into clause 3 of the Amendment Bill before paragraph (a).

Paragraph (aaa) will amend the heading of Division VII of the First Schedule to the Principal Act so as to include a reference to medical goods. The heading at present refers to surgical goods but not medical goods. This amendment is consequential on the amendment proposed by paragraph (ab) of clause 3 which will insert in Division VII a new item relating to medical goods.

Amendment (3)

This amendment will insert paragraphs (aa) and (ab) after paragraph (a) of clause 3 of the Amendment Bill.

Paragraph (aa) will add a new sub-item (17) to item 42 in the First Schedule to the Principal Act. Item 42 exempts specified medical and surgical aids (and parts therefor), namely:-

- (1) Abdominal belts
- (2) Absorbent cotton wool, gauzes and lint
- (3) Adhesive plaster and strapping
- (4) Articles designed for the alleviation of deafness, but not including articles for public use in buildings or other places
- (5) Artificial eyes
- (6) Artificial limbs
- (7) Bandages and bandage winders
- (7A) Bath seats of a kind used by invalids or aged persons
- (7B) Colostomy, ileostomy and supra-pubic appliances; urinals made principally of rubber or other pliable material
- (8) Crutches
- (9) Elastic bandages, knee caps and stockings
- (10) Invalid chairs, invalid carrying chairs, invalid wheeled lounges and lounge chairs, invalid tricycles including motor propelled invalid wheel chairs and invalid tricycles; spinal carriages and other invalid hand carriages; wheeled beds of the kind used by invalids
- (11) Spectacles and eye-glasses (and cases and wipers therefor), but not including goggles, sun glasses, field glasses or similar optical goods
- (12) Surgical boots, braces and irons
- (13) Surgical, medical and first-aid outfits
- (14) Trusses
- (15) Umbilical belts
- (16) Uterine supports, including surgical pessaries.

Sub-item (17) will exempt wigs and hair-pieces for use by a person in respect of whom a legally qualified medical practitioner has certified that the use of a wig or hair-piece is necessitated by the loss of hair through sickness or disease (other than naturally occurring baldness) or the effects of the treatment of sickness or disease.

Paragraph (ab) will introduce three new exemption provisions (items 42A, 42B and 42C) into the First Schedule to the Principal Act.

Item 42A will exempt battery chargers for use exclusively or principally in recharging the batteries of goods covered by sub-item (10) of item 42, i.e. invalid chairs etc. - the terms of sub-item (10) are quoted under paragraph (aa) above.

Item 42B will provide exemption for a range of medical and surgical appliances for use by persons suffering from sickness, disease or physical impairment.

Sub-item(1) of item 42B will exempt medical and surgical appliances of a kind used exclusively or principally by persons suffering from sickness, disease or physical impairment for the purpose of alleviating or treating that sickness, disease or impairment or the effects of that sickness, disease or impairment.

Sub-item (2) of item 42B will exempt parts for goods covered by sub-item (1) of item 42B.

Item 42C will provide exemption for goods to be used in the modification of a motor vehicle solely for the purpose of adapting it for driving by a person who is suffering from a physical impairment.

Amendment (4)

This amendment will omit paragraph (d) from the Amendment Bill and insert new paragraphs (d), (da), (db), (dc), (dd), (de), (df) and (dg).

Broadly, paragraphs (d), (da), (db) and (dc) will amend item 100 in the First Schedule to the Principal Act so as to increase the turnover level for exemption from sales tax to a single figure of \$12,000 per annum in respect of all classes of manufacturers. Item 100 now exempts -

- (1) Goods manufactured and sold by retail by a person (not being a manufacturer of the class specified in sub-item (2)) if the Commissioner is of the opinion that the average annual value of that person's sales of all goods is not, or would not be, in excess of Fourteen hundred dollars
- (2) Goods manufactured by a person exclusively in his own home if the Commissioner is of the opinion that the average annual value of that person's sales of all goods is not, or would not be, in excess of One thousand dollars.

Item 100 as amended by paragraphs (d), (da), (db) and (dc) will exempt -

Goods manufactured by a person if the Commissioner is of the opinion that the average annual value of that person's sales of all goods is not, or would not be, in excess of \$12,000.

The exemption will apply not only when the goods are sold by the manufacturer but also to sales of the goods by retailers or other persons who may acquire the goods for resale.

Paragraph (dd) will add a further definitional provision to item 100 in the First Schedule to the Principal Act. In the item the "average annual value of sales of all goods" is defined for the purposes of the item to mean -

- "(a) the amount which, in the opinion of the Commissioner, represents the average annual value of all sales of goods effected by a person in the course of carrying on business, computed by reference to the following periods:-
 - (i) in the case of a person who engaged in business continuously on and from a date not later than five years prior to the beginning of the financial year in which the goods so manufactured are sold - the five financial years next preceding the financial year in which those goods are sold; or

- (ii) in the case of a person (not being a person to whom the last preceding subparagraph applies) who engaged in business continuously on and from a date not later than the beginning of the financial year next preceding the financial year in which the goods so manufactured are sold - a period commencing on the date upon which he so commenced to engage in business and terminating on the last day of the financial year next preceding the year in which those goods are sold; or
- (b) in any case (not being a case covered by the last preceding paragraph) where a person who, after commencing to engage in business continues to engage in business up to the date on which the goods manufactured as specified in this item are sold -
 - (i) where that date is prior to the expiration of a period of twelve months after he so commenced to engage in business, the amount which, in the opinion of the Commissioner -
 - (a) if that opinion is formed prior to the expiration of that period - would be or would have been the value of that person's sales of all goods during that period in the event of his continuance in business for the whole of that period; or
 - (b) if that opinion is formed after the expiration of that period - is the value of that person's sales of all goods during that period or would have been the value of those sales if he had continued in business during the whole of that period; or
 - (ii) where that date is after the expiration of a period of twelve months from the date on which he so commenced to engage in business, the amount which, in the opinion of the Commissioner, is the value of that person's sales of all goods during that period of twelve months.

The new provision to be added by paragraph (dd) specifies how the value of each sale of goods is to be determined by the Commissioner for the purpose of arriving at an opinion of the average annual value of a person's sales of all goods. In the general run of cases the value to be taken into account will be the amount for which goods are sold. However, if the manufacturer sells to parties not at arms length, at less than arms length prices, the Commissioner can adopt an arms length price as the measure of value.

Paragraph(a) of the new definitional provision specifies what the value of a particular sale of goods is to be for the purpose of ascertaining the average annual value.

Sub-paragraph (i) will apply in relation to a sale by the manufacturer of his own products to a person other than a person who is registered for sales tax purposes and who quoted his certificate in respect of the sale. The value to be taken into account is the sale value of the goods as ascertained for the purposes of the Sales Tax Assessment Act (No.1). This value will be the amount for which the goods are sold unless paragraph (b) applies.

Sub-paragraph (ii) will apply to a sale by the manufacturer to a person who is registered for sales tax purposes and quotes his sales tax certificate in respect of the sale. Such a quotation of certificate has the effect of reducing to nil the sale value for the purposes of the Sales Tax Assessment Act under which the sale is made. This is a basic feature of the single-stage nature of the tax which enables manufacturers and wholesalers who pay tax on their sales to purchase free of tax. Sub-sub-paragraph (A) of sub-paragraph (ii) will nullify this effect of the quotation of certificate, but only for the purpose of ascertaining the average annual value of sales. The value of the sale for this purpose will then be the amount for which the goods are sold - the same as in sub-paragraph (i) - unless paragraph (b) applies.

Sub-sub-paragraph (B) of sub-paragraph (ii) and sub-paragraph (iii) are drafting devices which provide for a way of ascertaining the relevant value of sales under other Sales Tax Assessment Acts that will be uniform with that for sales under the Sales Tax Assessment Act (No.1).

Paragraph (b) of the definitional provision relates to the Commissioner's powers under the Sales Tax Assessment Act (No.1) to substitute an arms length price for the sale price where there are sales for less than an arms length price between parties not at arms length. Where the value of a sale, as determined under paragraph (a), would be less than an arms length price, paragraph (b) will empower the Commissioner to adopt the arms length price as the value to be taken into account for the purpose of the exemption.

Paragraph (c) of the definitional provision will apply to retail sales. The effect of this paragraph coupled with paragraph (a) will be that the value to be taken into account in respect of retail sales for the purpose of the exemption will ordinarily be the amount for which the goods are sold. If the sale is not at arms length the Commissioner may substitute an arms length price.

Paragraphs (de) and (df) will amend item 103 in the First Schedule to the Principal Act. Item 103 now exempts -

Goods manufactured by a person who satisfies the Commissioner that the amount of sales tax which, but for this item, would be payable by him is not, or would not be, in excess of One hundred dollars per annum:

Provided that -

- (a) where that person has on hand goods in respect of the purchase or importation of which he has quoted his certificate, he has paid to the Commissioner an amount equivalent to the sales tax which would have been payable in respect of the sale to or importation by him of those goods if he had not so quoted his certificate; and
- (b) the Commissioner has issued to that person a statement in writing to the effect that he has been satisfied as specified in this item, and that statement has not been revoked by notice in writing.

Paragraph (de) will substitute \$250 for the amount of one hundred dollars in the item.

Paragraph (df) will omit the reference in item 103 to "Nos.1 to 3" and substitute a reference to "No.1". These numbers refer to the Sales Tax Assessment Acts under which the exemption is applicable. Because of constitutional requirements there are nine separate Sales Tax Assessment Acts, each dealing with particular classes of transactions. The Sales Tax Assessment Acts (Nos. 1 to 3) deal with sales of Australian-made goods. The Sales Tax Assessment Act (No.1) deals with sales by the manufacturer, Act (No.2) deals with sales by a person who purchased the goods from the manufacturer and Act (No.3) deals with sales by a person other than the manufacturer or a purchaser from the manufacturer. The effect of the amendment proposed by paragraph (df) will be to limit the application of the exemption to sales by the manufacturer who qualifies for exemption.

Paragraph (dg) will replace paragraph (d) of clause 3 of the Amendment Bill. The latter paragraph would substitute a new item for item 123 in the First Schedule to the Principal Act which would exempt certain goods designed and manufactured expressly for use by blind persons or deaf persons. By paragraph (dg) the new item 123 to be substituted for existing item 123 in the First Schedule to the Principal Act will exempt a wider range of goods than that proposed in the Amendment Bill. It will apply to goods designed and manufactured expressly for use by persons suffering from any type of sickness, disease or disablement, including blindness or deafness, provided that they are goods of a kind not ordinarily used by persons not suffering from sickness, disease or disablement.