

Contractor Provisions - Door-to-door sale of goods

Revenue Ruling PT.077 Replaced by PT.095

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Preamble

Section 3C was introduced into the *Pay-roll Tax Act 1971* (the Act) in 1984. Under this section, payments to contractors in relation to relevant contracts may be subject to payroll tax. In the course of the debate on the Bill introducing the contractor provisions into the Act, an undertaking was given on behalf of the then Treasurer that the new provisions would not apply to owner drivers, insurance agents and direct sellers unless there was a contrived arrangement to avoid pay-roll tax.

Section 3C(1)(g) was introduced in the *State Taxation (Further Amendment) Act 1993* to formalise the undertaking. Section 3C(1)(g)(iii) exempts a contract under which a person provides services for or in relation to the door-to-door sale of goods. The exemption will not apply where it has been determined by the Commissioner that the contract was entered into to avoid the payment of pay-roll tax.

This ruling serves to clarify the exemption in relation to services rendered by contractors for or in relation to the door-to-door sale of goods.

Ruling

This ruling takes effect as from 1 January 1994.

This exemption applies to payments made to contactors who enter into an agency agreement with the principal to sell goods solely for domestic purposes under a direct selling method.

The exemption does not apply to commissions paid to salespersons who are employees. (They are wages as defined under the Act that are subject to pay-roll tax.)

Section 3C(6)(g) defines a door-to-door-sale as 'the entering into of an agreement or making of an offer to which Division 3 of Part II of the *Consumer Affairs Act 1972* applies'.

Based on the wording of Division 3 of the Consumer Affairs Act and s.3C (1)(g)(iii) of the Act, the exemption to payments for services for or in relation to the door-to-door sale of goods will apply if all the following criteria are satisfied:

- i. Goods must be sold pursuant to an agreement or offer to which Division 3 of Part II of the Consumer Affairs Act applies, that is:
 - a) The sale is not made to a body corporate.
 - b) The goods must not be purchased for the purpose of retailing or reselling or hiring.
 - c) The sale is to have taken place either at a customer's residence, or at the customer's place of work, or elsewhere than at the vendor's trade premises or a place where goods of that sort are normally offered for sale.
 - d) Where the sale is made away from the vendor's trade premises, this cannot have been as a consequence of the request of the customer or the agent of the customer.
 - e) The original approach (ie. the initial physical attendance, not a telephone contact) leading to the sale was not made at the vendor's premises.
- ii. The exemption applies to all credit sales and cash sales but not sales on a monthly credit arrangement. Even though the Division does not apply to cash sales below \$50, the Commissioner will treat cash sales below \$50 as a door-to-door sale if all the other criteria are satisfied. This application will be easier to administer for those employers who were intended to benefit from the exemption.
- iii. Goods purchased must be used by the purchaser solely for domestic purposes and must not include goods purchased to be further processed in the course of manufacture or goods purchased for commercial or industrial purposes.

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- iv. The term 'goods' includes all movable personal property other than money or livestock and includes any removable fixtures of real estate. It does not include services provided to any personal property or fixtures of real estate, for example, cladding and painting. Those are services and do not fall within the definition of 'goods' under Division 3 of the Consumer Affairs Act.
- v. Where the sale of goods involves ancillary services, such as the installation of the goods for which a separate fee may or may not be charged or services provided under the warranty period, those ancillary services will not preclude the contract from being an exempt contract under this section.
- vi. The agent must personally organise the direct sale of the goods to the end users of the goods.

Direct selling agreements can vary between principals and in cases where there is uncertainty as to whether an agreement falls within the exemption, an individual ruling can be sought from the State Revenue Office.

Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling. All rulings must be read subject to Ruling No. GEN.01

Denzil Griffiths
Commissioner of State Revenue
1 December 1995

