

SOUTH AUSTRALIA

PAY-ROLL TAX REGULATIONS, 1990

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REGULATIONS UNDER THE PAY-ROLL TAX ACT, 1971

Pay-roll Tax Regulations, 1990

being

No. 259 of 1990: *Gaz.* 20 December 1990, p. 1894¹

as varied by

No. 128 of 1995: *Gaz.* 29 June 1995, p. 3074²

¹ Came into operation 1 January 1991: reg. 2.

² Came into operation 29 June 1995: reg. 2.

2.

PART I

PRELIMINARY

Citation

1. These regulations may be cited as the *Pay-roll Tax Regulations, 1990*.

Commencement

2. These regulations will come into operation on 1 January, 1991.

Revocation

3. All regulations previously made under the Act are revoked.

Interpretation

4. In these regulations, unless the contrary intention appears—

"the Act" means the *Pay-roll Tax Act, 1971*:

"objector" means a person who lodges an objection in writing against an assessment of the Commissioner under the provisions of the Act:

"public officer" means a public officer duly appointed for the purposes of the Act under section 45 of the Act.

3.

PART II

DEDUCTIONS

Meaning of financial year

5. In this Part—

"financial year" means—

- (a) the period commencing on 1 July, 1990 and ending on 30 September, 1990;
 - (b) the period commencing on 1 October, 1990 and ending on 30 June, 1991;
- and
- (c) any financial year commencing on or after 1 July, 1991.

Deduction by single employer

6. For the purposes of section 11a(5) of the Act—

- (a) the amount that an employer may nominate as a deduction for a return period of one month is an amount calculated in accordance with the following formulae:
 - (i) in relation to a month that occurs during the financial year commencing 1 July, 1990 and ending 30 September, 1990—

$$A = \frac{TW}{W} \times \frac{3P - \frac{1}{4}(W - 3P)}{3}$$

- (ii) in relation to a month that occurs during the financial year commencing 1 October, 1990 and ending 30 June, 1991, or during any financial year commencing on or after 1 July, 1991—

$$A = \frac{TW \times P}{W}$$

where—

- A is the amount that the employer may nominate;
- TW is the employer's estimate of the taxable wages payable by the employer during the relevant financial year;
- W is the employer's estimate of the total amount of taxable wages and interstate wages payable by the employer during the relevant financial year;

4.

P is the prescribed amount as defined in section 11a(1) of the Act for that month;

and

(b) the amount that an employer may nominate as a deduction for a return period of more than one month is an amount calculated by ascertaining, in accordance with paragraph (a), an amount for each month of the return period and adding those amounts together.

Deduction by group employer

7. For the purposes of section 18j(1) of the Act—

(a) the amount that the members of the group may nominate as a deduction for a return period of one month, where none of the members of the group pay or are liable to pay interstate wages during the relevant financial year, is an amount calculated as follows:

(i) in relation to a month that occurs during the financial year commencing 1 July, 1990 and ending 30 September, 1990—

$$A = \frac{3P - \frac{1}{4}(TW - 3P)}{3}$$

where—

A is the amount that the members of the group may nominate;

TW is the designated group employer's estimate of the taxable wages payable by the members of the group during the relevant financial year;

P is the prescribed amount as defined in section 11a(1) of the Act for that month;

(ii) in relation to a month that occurs during the financial year commencing 1 October, 1990 and ending 30 June, 1991, or during any financial year commencing on or after 1 July, 1991—the prescribed amount as defined in section 11a(1) of the Act;

(b) the amount that the members of a group may nominate as a deduction for a return period of one month, where a member of the group pays or is liable to pay interstate wages during the relevant financial year, is an amount calculated in accordance with the following formulae:

(i) in relation to a month that occurs during the financial year commencing 1 July, 1990 and ending 30 September, 1990—

$$A = \frac{TW}{W} \times \frac{3P - \frac{1}{4}(W - 3P)}{3}$$

5.

- (ii) in relation to a month that occurs during the financial year commencing 1 October, 1990 and ending 30 June, 1991, or during any financial year commencing on or after 1 July, 1991—

$$A = \frac{TW \times P}{W}$$

where—

- A is the amount that the members of the group may nominate;
- TW is the designated group employer's estimate of the taxable wages payable by the members of the group during the relevant financial year;
- W is the designated group employer's estimate of the total amount of taxable wages and interstate wages payable by the members of the group during the relevant financial year;
- P is the prescribed amount as defined in section 11a(1) of the Act for that month;

and

- (c) the amount that the members of a group may nominate as a deduction for a return period of more than one month is an amount calculated by ascertaining, in accordance with paragraph (a) or (b), an amount for each month of the return period and adding those amounts together.

6.

PART III

COLLECTION AND RECOVERY OF TAX

Means of payment

8. An employer may pay pay-roll tax in cash or by cheque, bank draft, postal money order or postal note.

Time of payment

9. Payment will not be taken to have been made—

(a) until the payment is received at the office of the Commissioner;

or

(b) where payment is made by cheque, until the amount for which the cheque is drawn has been collected by the Commissioner (notwithstanding any receipt that may have been given by the Commissioner).

PART IV

THE PAY-ROLL TAX APPEAL TRIBUNAL

DIVISION I—ADMINISTRATION

Term of appointment

10. (1) A member appointed to the Tribunal under section 35(1a)(a) of the Act will be appointed for a term of three years and is, on the expiration of his or her term of office, eligible for re-appointment.

(2) A member appointed to the Tribunal under section 35(1a)(b) or (c) of the Act will be appointed for a term of two years and is, on the expiration of his or her term of office, eligible for re-appointment.

Removal from office

11. The Governor may remove a member of the Tribunal from office—

(a) for neglect of duty;

(b) for misbehaviour;

or

(c) for mental or physical incapacity to perform the duties of his or her office.

Vacancies

12. (1) The office of a member of the Tribunal becomes vacant if the member—

(a) dies;

(b) resigns by written notice given to the Minister;

(c) is removed from office by the Governor under regulation 11;

(d) is absent, without leave granted by the Minister, from more than three consecutive meetings of the Tribunal;

(e) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or compounds with his or her creditors for less than one hundred cents in the dollar;

(f) is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment;

(g) is convicted of an offence and receives a notice in writing from the Minister discharging the member from office on the ground of that conviction;

(h) becomes a member of the Parliament of the State or the Commonwealth;

8.

- (i) being appointed under section 35(1a)(a) of the Act, ceases to be an officer of the Public Service;
- (j) being appointed under section 35(1a)(b) of the Act, ceases to be a legal practitioner as defined in the *Legal Practitioners Act, 1981*;
- (k) completes a term of office.

(2) On the office of a member of the Tribunal becoming vacant prior to the completion of the full term for which that member was appointed, the Governor may appoint a person to that office for the remainder of that term.

Secretary to the Tribunal

13. (1) There will be a secretary to the Tribunal.

(2) A person employed in the Public Service of the State may be assigned to a position of, or to perform the duties of, secretary to the Tribunal.

DIVISION II—PRACTICE AND PROCEDURE OF THE TRIBUNAL

Procedure on objection

14. (1) Within seven days after an objection in accordance with section 36 of the Act has been lodged with the Tribunal, the chairman of the Tribunal must forward a copy of the objection to the Commissioner.

(2) The Commissioner must, on receipt of that copy, and in any event within fourteen days, forward to the Tribunal a copy of the return relating to the objection, if any such return has been filed with the Commissioner, and a copy of the Commissioner's assessment under section 20 of the Act, if any such assessment has been made by the Commissioner.

Notice of hearing

15. (1) The chairman of the Tribunal must cause notice to be served on the Commissioner and the objector of the time and place at which the Tribunal will require the parties to attend before it to be heard on the objection.

(2) Notice of the hearing must be given not less than twenty-one days prior to the date of the hearing provided that, on the application of either party and, after hearing submissions from the parties, the chairman of the Tribunal may give less than twenty-one days notice of the hearing where the circumstances of the case so require.

Sittings

16. The sittings of the Tribunal will be held in such place or places and at such time or times as are fixed by the chairman of the Tribunal.

Hearing

17. (1) Subject to these regulations, the hearing before the Tribunal will be conducted as the chairman from time to time directs.

(2) All hearings must take place *in camera* unless the objector otherwise elects, and the chairman must, before the Tribunal commences the hearing, inform the objector or his or her representative of his or her right of election.

(3) The chairman may adjourn any hearing from time to time as he or she thinks fit.

Chairman may require information, witnesses

18. The chairman may, and, at the request of the Commissioner, the objector or a person representing the Commissioner or the objector at the hearing, must, by notice in writing, require any person—

- (a) to furnish the Tribunal with such information as is necessary for the hearing;
- (b) to attend and give evidence before the Tribunal concerning the objection that is the subject of the hearing before the Tribunal and produce all books, documents and other papers whatsoever in his or her custody or under his or her control relating to that objection.

Witnesses may be examined on oath or by affirmation

19. The Tribunal may examine witnesses before it on oath or affirmation which may be administered by any member of the Tribunal or by the secretary.

Parties may be represented by counsel

20. A person to whom notice has been given pursuant to regulation 15 may be represented by counsel or any other person at the hearing and must be allowed a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses and to make submissions to the Tribunal.

Procedure and rules of evidence

21. The Tribunal may determine each objection in such manner as it thinks proper, having regard to all relevant matters and in the hearing of each objection the Tribunal is not bound by the rules of evidence.

Time for compliance with decision of Tribunal

22. If an objector or the Commissioner does not appeal against a decision of the Tribunal the Commissioner must give effect to the decision within sixty-five days of being furnished with the reasons for the decision.

PART V

AUTHENTICATION AND SERVICE OF DOCUMENTS

Documents to be signed

23. (1) Where an application, statement, return, certificate, nomination, claim, notice or other document referred to in the Act or these regulations is required by the Act or these regulations to be made, given, forwarded or furnished to, or served on, the Commissioner, that document must, subject to this regulation, be signed personally—

- (a) in the case of an individual—by that individual;
- (b) in the case of trustees—
 - (i) by a trustee resident in Australia;
 - or
 - (ii) where there is no trustee resident in Australia—by an agent of the trustees who is resident in Australia;
- (c) in the case of a company (other than a company referred to in paragraph (e) or (f))—by the public officer or secretary of the company, or by a director or an agent of the company;
- (d) in the case of a municipal corporation, local governing body or a public authority—by the officer duly authorized by the corporation, local governing body or public authority;
- (e) in the case of a partnership—by a partner or the public officer of the partnership;
- and
- (f) in the case of an incorporated or unincorporated association—by the secretary, public officer or a sealholder of the association.

(2) A person specified in subregulation (1) as a person who must sign a document personally may—

- (a) where it is not possible or practicable for that person to do so;
- or
- (b) where the Commissioner, for reasons the Commissioner thinks sufficient, permits,

by an instrument in writing signed personally by that person authorize another person to sign that document or documents of that nature for the purposes of this regulation in his or her place.

(3) Subject to subregulation (4), a document signed in accordance with an authorization under subregulation (2) will, for the purposes of this regulation, be taken to have been signed personally by a person specified in subregulation (1).

(4) The Commissioner may at any time, if he or she thinks fit, disallow an authorization given under subregulation (2) and where he or she does so that authorization is to be taken, for the purposes of this regulation, as void and of no effect from the time the authorization was given or from such later time as is determined by the Commissioner.

(5) The Commissioner may refuse to accept, for the purposes of the Act or these regulations, a document referred to in subregulation (1) that is unsigned or not signed in accordance with this regulation.

(6) A person who is not specified in subregulation (1) or authorized under subregulation (2) must not sign a document referred to in subregulation (1) for the purpose of providing that document to the Commissioner.

(7) A person who is specified in subregulation (1) or authorized under subregulation (2) must not aid, abet, counsel, procure, be party or privy to, or be directly or indirectly concerned in, the signing of a document referred to in subregulation (1) for the purpose of providing that document to the Commissioner by a person who is not so specified or authorized.

(8) A person must not knowingly provide to the Commissioner a document referred to in subregulation (1) that is unsigned or not signed in accordance with this regulation.

Specimen signature of public officer of company

24. Where a company gives notice in writing to the Commissioner of the appointment of a public officer of the company under section 45 of the Act, the company must also provide a specimen signature of the officer with that notice.

Notice by duly authorized officer

25. A notice required by the Act or these regulations to be given by the Commissioner that is given by a duly authorized officer of the Commissioner must be taken to have been given by the Commissioner.

Document signed by authority of Commissioner

26. A certificate, notice or other document purporting to be signed by the authority of the Commissioner is as valid and effectual for all purposes as if signed by the Commissioner in person.

Document bearing name of Commissioner

27. A certificate, notice or other document bearing the printed or stamped name (including a facsimile of the signature) of the Commissioner must, in the absence of proof that the document was issued without his or her authority, be taken to have been duly signed by the Commissioner.

Return to include address for service

28. A person who furnishes a return to the Commissioner must, in that return, give an address for service in this State.

Change of address for service to be notified

29. A person who has given an address for service to the Commissioner for the purposes of the Act or these regulations must, within one month after changing that address, give to the Commissioner notice in writing of his or her new address for service in this State.

12.

Notice may be given by post

30. A notice required to be given or served under these regulations may, except where otherwise expressly provided, be given by post.

PART VI

MISCELLANEOUS

False or misleading statements

31. A person must not make a statement that is false or misleading in a material particular in a form or other document used in connection with a matter arising under these regulations.

Allowances

32. For the purposes of section 3(1a) of the Act, the following allowances paid or payable to an employee are to be regarded as an allowance for the purposes of the definition of wages in the Act to the extent that they exceed the amount specified, or an amount calculated at the rate or in the manner described:

- (a) a travelling allowance, to the extent that it exceeds an amount calculated at the rate of 56 cents per kilometre;
- (b) an accommodation allowance, to the extent that it exceeds an amount calculated at the rate of \$127.60 per day.

Wages

32A. (1) Pursuant to section 3(1b) of the Act, wages do not, for the purposes of the Act, include payments of wages made by Momentum Films Pty. Ltd. for the purposes of production of the feature film entitled "Shine".

(2) This regulation expires on 30 June 1996.

Exemption of councils

33. For the purposes of section 12(1)(e) of the Act, "prescribed activity" includes the conduct of public transport.

Offences

34. A person who commits a breach of, or fails to comply with—

- (a) a provision of these regulations;

or

- (b) an order or direction given under these regulations,

is guilty of an offence.

Penalty: A fine of not less than \$2 and not more than \$100.

14.

APPENDIX

LEGISLATIVE HISTORY

Regulation 32A:

inserted by 128, 1995, reg. 3