

(Reprint No. 2)

SOUTH AUSTRALIA

PAY-ROLL TAX ACT, 1971

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 December 1991.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since the reprint published on 1 December 1988.

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PAY-ROLL TAX ACT, 1971

being

Pay-roll Tax Act, 1971, No. 52 of 1971 [Assented to 9 September 1971]

as amended by

Pay-roll Tax Act Amendment Act, 1973, No. 26 of 1973 [Assented to 20 September 1973]
Pay-roll Tax Act Amendment Act, 1974, No. 52 of 1974 [Assented to 30 August 1974]
Pay-roll Tax Act Amendment Act, 1975, No. 94 of 1975 [Assented to 20 November 1975]¹
Pay-roll Tax Act Amendment Act, 1976, No. 6 of 1976 [Assented to 19 February 1976]²
Pay-roll Tax Act Amendment Act (No. 2), 1976, No. 80 of 1976 [Assented to 9 December 1976]³
Pay-roll Tax Act Amendment Act, 1977, No. 37 of 1977 [Assented to 8 December 1977]⁴
Pay-roll Tax Act Amendment Act, 1978, No. 76 of 1978 [Assented to 16 November 1978]⁵
Pay-roll Tax Act Amendment Act, 1979, No. 64 of 1979 [Assented to 15 November 1979]⁶
Pay-roll Tax Act Amendment Act, 1980, No. 113 of 1980 [Assented to 18 December 1980]⁷
Pay-roll Tax Act Amendment Act, 1982, No. 33 of 1982 [Assented to 15 April 1982]⁸
Pay-roll Tax Act Amendment Act (No. 2), 1982, No. 101 of 1982 [Assented to 23 December 1982]⁹
Pay-roll Tax Act Amendment Act, 1983, No. 26 of 1983 [Assented to 16 June 1983]¹⁰
Pay-roll Tax Act Amendment Act, 1985, No. 82 of 1985 [Assented to 22 August 1985]¹¹
Pay-roll Tax Act Amendment Act, 1986, No. 6 of 1986 [Assented to 13 March 1986]
Pay-roll Tax Act Amendment Act (No. 2), 1986, No. 61 of 1986 [Assented to 6 November 1986]¹²
Statutes Amendment (Taxation) Act, 1987, No. 2 of 1987 [Assented to 5 March 1987]
Pay-roll Tax Act Amendment Act, 1988, No. 64 of 1988 [Assented to 27 October 1988]¹³
Pay-roll Tax Act Amendment Act, 1989, No. 46 of 1989 [Assented to 31 August 1989]¹⁴
Pay-roll Tax Act Amendment Act, 1990, No. 45 of 1990 [Assented to 25 October 1990]¹⁵
Pay-roll Tax (Miscellaneous) Amendment Act 1991 No. 55 of 1991 [Assented to 28 November 1991]¹⁶

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

¹ Came into operation 1 January 1976: s. 2.

² Came into operation 1 January 1976: s. 2.

³ Came into operation 1 January 1977: s. 2.

⁴ Came into operation 1 January 1978: s. 2.

⁵ Came into operation 1 January 1979: s. 2.

⁶ Came into operation 1 October 1979: s. 2.

⁷ Came into operation 1 January 1981: *Gaz.* 23 December 1980, p. 2368.

⁸ Came into operation 1 July 1982: s. 2.

⁹ Came into operation 1 January 1983: s. 2.

¹⁰ Came into operation (except ss. 3, 4(b)-(d), 5-8) 1 July 1982: s. 2(3); remainder of Act came into operation 1 July 1983: *Gaz.* 30 June 1983, p. 1754.

¹¹ Came into operation 1 July 1985: s. 2.

¹² Came into operation 1 September 1986: s. 2.

¹³ Came into operation (except s. 8 and Sched.) 1 July, 1988: s. 2; remainder of Act came into operation 1 December 1988: *Gaz.* 10 November 1988, p. 1702.

¹⁴ Came into operation 1 July 1989: s. 2.

¹⁵ Came into operation 1 October 1990: s. 2.

¹⁶ Ss. 5-11 came into operation 1 December 1991: s. 2(2); remainder of Act had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

An Act to impose a tax upon employers in respect of certain wages; to provide for the assessment and collection of the tax; and for related purposes.

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the *Pay-roll Tax Act, 1971*.

* * * * *

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“agent” includes every person who in this State for or on behalf of another person outside this State holds or has the management or control of the business of that other person and every person who, by an order of the Commissioner, is declared to be an agent or the sole agent for any other person for the purposes of this Act and on whom notice of that order has been served:

“Australia” means the States of the Commonwealth:

“the Commissioner” means the Commissioner of Stamps and includes the Deputy Commissioner of Stamps and any other person while performing any of the duties or functions of the Commissioner of Stamps or the Deputy Commissioner of Stamps:

“the Commissioner of Stamps” means the person for the time being holding or acting in the office of Commissioner of Stamps under the *Stamp Duties Act, 1923*:

“the Commonwealth Act” means the *Pay-roll Tax Assessment Act 1941* of the Commonwealth as subsequently amended:

“company” includes all bodies or associations (corporate or unincorporate) and partnerships:

“corporation” has the meaning ascribed by section 5 of the *Companies (South Australia) Code*:

“corresponding law”, in relation to another State, means a law in force in that State relating to the imposition upon employers of a tax on wages paid or payable by them and the assessment and collection of that tax, but does not include the Commonwealth Act:

“council” means a council as defined in the *Planning Act, 1982*, and includes a controlling authority under the *Local Government Act, 1934*, and a local board of health constituted under the *Health Act, 1935*:

“the Deputy Commissioner of Stamps” means the person for the time being holding or acting in the office of Deputy Commissioner of Stamps under the *Stamp Duties Act, 1923*:

“designated group employer”, in relation to a group, means the member of that group who, under section 18j, is for the time being the designated group employer in respect of that group:

“employer” means a person who pays or is liable to pay any wages and includes the Crown in right of the State of South Australia:

“financial year” means any year commencing on 1 July:

“foreign wages” means wages that are not taxable wages and are not interstate wages:

“fringe benefit” has the same meaning as in the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth, but does not include—

(a) a tax-exempt body entertainment fringe benefit within the meaning of that Act;

or

(b) anything that is prescribed by the regulations not to be a fringe benefit for the purposes of this definition:

“group” means a group constituted under Part IVA:

“interstate wages” means wages that are taxable wages within the meaning of a corresponding law:

“liquidator” means a person who, whether or not appointed as liquidator, is required by law to carry out the winding up of a company:

“pay”, in relation to any form of wages, includes provide, confer or assign:

“pay-roll tax” means pay-roll tax chargeable under section 9:

“person” includes a company:

“return period”, in relation to an employer, means a period relating to which that employer is required to furnish a return under this Act:

“tax” means pay-roll tax, further tax, additional tax or penal tax imposed by or under this Act:

“taxable wages” means wages that are liable to pay-roll tax under section 8:

“the Tribunal” means the Pay-roll Tax Appeal Tribunal constituted by section 35:

“trustee” in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, includes—

(a) an executor or administrator, guardian, committee, receiver or liquidator;

and

(b) every person having or assuming the administration or control of any real or personal property affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of any real or personal property of a person under a legal or other disability:

“voting share” has the meaning ascribed by section 5 of the *Companies (South Australia) Code*:

“wages” means wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to an employee as such and, without limiting the generality of the foregoing, includes—

(a) any amount paid or payable by way of remuneration to a person holding office under the Crown in right of the State of South Australia or in the service of the Crown in right of the State of South Australia;

- (b) any amount paid or payable under any contract of a prescribed class to the extent to which that payment is attributable to labour;
- (c) any amount paid or payable by a company by way of remuneration to a director or member of the governing body of that company;
- (d) any amount paid or payable by way of commission to an insurance or time-payment canvasser or collector;
- and
- (e) any fringe benefit.

(1a) An allowance of the kind prescribed by the regulations which is paid or payable to an employee is to be regarded as an allowance for the purposes of the definition of wages only to the extent to which it exceeds—

- (a) the prescribed amount;
- (b) an amount calculated at the prescribed rate;
- or
- (c) an amount calculated in the prescribed manner, that is applicable to the particular case.

(1b) Wages do not include anything that is prescribed by the regulations not to be wages for the purposes of this Act.

(1c) For the purposes of this Act, the value of taxable wages, comprising a fringe benefit, is the value that would be the taxable value of the benefit as a fringe benefit for the purposes of the *Fringe Benefits Tax Assessment Act 1986* of the Commonwealth.

* * * * *

(3) This Act applies in relation to the Australian Capital Territory (including the Jervis Bay Territory) and the Northern Territory of Australia as if they together constituted a State of the Commonwealth.

(4) Where for the purposes of section 13a or 18k it is necessary to calculate an amount in accordance with a formula and, but for this subsection, an amount included in the formula would be an amount of dollars and cents, the cents are disregarded.

(5) A liability for pay-roll tax is assessed in accordance with the provisions of this Act as in force at the time the liability arises and such a liability, once having arisen, is not affected by a subsequent amendment to this Act (except to the extent that the amendment operates retrospectively).

* * * * *

PART II
ADMINISTRATION

Administration of Act

5. The Commissioner of Stamps has the general administration of this Act.

Services of officers or employees of other departments

6. For the purposes of this Act the Commissioner of Stamps may, with the approval of the Minister responsible for the administration of the department concerned and of the Commissioner for Public Employment, on such terms as may be arranged, make use of the services of officers or employees of any government department.

Secrecy

7. A person must not divulge or communicate information acquired in, or in connection with, the administration of this Act, except—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration of this Act;
- (c) to—
 - (i) the Commonwealth Commissioner of Taxation;
 - or
 - (ii) an officer of this or another State, or of a Territory, employed in the administration of laws relating to taxation;
- (d) to the Commissioner for Corporate Affairs;
- or
- (e) for the purposes of legal proceedings under this Act.

Penalty: \$10 000.

PART III
LIABILITY TO TAXATION

Wages liable to pay-roll tax

8. (1) Subject to section 12, the wages liable to pay-roll tax under this Act are—

(a) wages that are paid or payable in this State (not being wages so paid or payable in respect of services performed or rendered wholly in one other State);

or

(b) wages that are paid or payable elsewhere than in this State in respect of services performed or rendered wholly in this State.

* * * * *

(2) For the purposes of subsection (1)(a), wages that are payable to a person by an employer, but have not been paid (not being wages that, under the terms of employment, are payable in this State or in another State) are to be taken—

(a) where those wages are payable in respect of services performed or rendered wholly in this State—to be wages payable to that person in this State;

(b) where those wages are not payable in respect of services performed or rendered wholly in this State or wholly in one other State and the wages that were last paid or payable to that person by that employer were included or are required to be included in a return under this Act—to be wages payable to that person in this State;

or

(c) where those wages are not to be taken under paragraph (a) or (b) or under any provision of a corresponding law that corresponds with either of those paragraphs, to be wages payable to that person in this State or in another State—to be wages payable to that person by that employer at the place where that person last performed or rendered any service for that employer before those wages became payable.

(3) For the purposes of this section, where a cheque, bill of exchange, promissory note, money order or postal order issued by a post office or any other instrument is sent or given by an employer to a person or his or her agent at a place in Australia in payment of wages, those wages are to be taken to have been paid at that place and to have been paid when the instrument was so sent or given.

Imposition of pay-roll tax on taxable wages

9. (1) Subject to, and in accordance with, the provisions of this Act, pay-roll tax is imposed and chargeable on all taxable wages at the rate of—

(a) in relation to wages paid or payable before 1 December 1991—6.25 per cent of those wages;

(b) in relation to wages paid or payable on or after 1 December 1991—6.1 per cent of those wages.

(2) Pay-roll tax is levied and collected for the credit of the Consolidated Account at the Treasury.

Employer to pay pay-roll tax

10. Pay-roll tax must be paid by the employer by whom the taxable wages are paid or payable.

* * * * *

Deduction from taxable wages

11a. (1) In this section—

“interstate wages” does not include interstate wages paid or payable by a member of a group:

* * * * *

“prescribed amount” in relation to a return for a return period—

(a) where the return period is a period of one month—

(i) ending before 1 January 1992, means \$36 000;

(ii) commencing on or after 1 January 1992 and ending before 1 July 1992, means \$37 000;

(iii) commencing on or after 1 July 1992, means \$38 000;

(b) where the return period is a period of more than one month, means for each month of the return period the amount referred to in paragraph (a) of this definition in relation to that month:

“taxable wages” does not include taxable wages paid or payable by a member of a group.

* * * * *

(3) For the purposes of ascertaining the pay-roll tax payable in respect of a return period commencing on or after 1 October, 1990, by an employer who does not pay and is not liable to pay interstate wages during that return period, a deduction is made from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer as follows:

(a) where the employer pays or is liable to pay taxable wages for the whole of the return period—the deduction is the prescribed amount;

(b) where the employer pays or is liable to pay taxable wages for part only of the return period—the deduction is an amount that bears to the prescribed amount the same proportion as the number of days in that part of the return period bears to the number of days in the whole of the return period.

* * * * *

(5) An employer who during any return period pays or is liable to pay taxable wages and interstate wages may, by notice in the form approved by the Commissioner, served on the Commissioner, nominate an amount, calculated in the prescribed manner, not exceeding the prescribed amount, as the deduction that the employer claims to be entitled to make for that return period and for subsequent return periods.

(6) For the purpose of ascertaining the pay-roll tax payable by an employer who has served on the Commissioner a notice under subsection (5), the amount nominated in that notice is, subject to subsection (7), deducted from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to the return period that last ended before service of the notice or any subsequent return period).

(7) The Commissioner may, on an application made in writing by, or on the Commissioner's own initiative in relation to, an employer who pays or is liable to pay taxable wages and interstate wages during any return period, at any time, make a determination specifying an amount, not exceeding the prescribed amount, that may be deducted for any return period specified or referred to in the determination (being a return period commencing before or after, or the return period in which, the determination is made) from the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period) and the amount so specified will be deducted, for any such return period, from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period).

(8) The Commissioner may, at any time, by instrument in writing, revoke a determination made under subsection (7) and such a revocation has effect on and from the first day of the return period specified in the instrument, whether that return period is the one in which the instrument of revocation is executed or a return period falling before or after that return period (but the revocation cannot take effect before the date of the determination).

(9) The Commissioner must, as soon as practicable after making a determination under subsection (7), serve notice of the determination on the employer concerned.

Exemption from pay-roll tax

12. (1) The wages liable to pay-roll tax under this Act do not include wages paid or payable—

(a) by the Governor of a State;

(b) by—

(i) a religious institution to a person during a period in respect of which the institution satisfies the Commissioner that the person is engaged exclusively in religious work of the religious institution;

(ii) a public benevolent institution to a person during a period in respect of which the institution satisfies the Commissioner that the person is engaged exclusively in work of the institution of a public benevolent nature;

(iii) a public hospital to a person during a period in respect of which the hospital satisfies the Commissioner that the person is engaged exclusively in work of the hospital of a kind ordinarily performed in connection with the conduct of public hospitals;

(c) by a hospital that 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, being wages paid or payable to a person during a period in respect of which the hospital satisfies the Commissioner that the person is engaged exclusively in work of the hospital of a kind ordinarily performed in connection with the conduct of hospitals;

(ca) by an employer who provides health services otherwise than for the purpose of profit or gain, being wages paid or payable to an employee during a period in respect of which the employer satisfies the Commissioner that the employee is engaged exclusively in the provision of those health services or is engaged exclusively in work that is incidental to the provision of those health services;

(cb) by the Family Planning Association of South Australia Incorporated;

(d) by a school or college that—

(i) is carried on by a body corporate, society or association otherwise than for the purpose of profit or gain to the individual members of the body corporate, society or association and is not carried on by or on behalf of the State;

and

(ii) provides education at or below, but not above, the secondary level, being wages paid or payable to a person during a period in respect of which the school or college satisfies the Commissioner that the person is engaged exclusively in work of the school or college of a kind ordinarily performed in connection with the conduct of schools or colleges providing education of that kind;

(daa) by a university or a college of advanced education to a person in relation to employment by the university or college pursuant to the Work Experience Training in Commonwealth Establishments scheme established by the Government of the Commonwealth;

(dab) by, or on behalf of, an association or other body the principal function of which is to represent and serve the interests of employers in a particular industry, being wages paid or payable to an apprentice pursuant to an agreement entered into between the association or other body and the apprentice for the purpose of training the apprentice in a trade or other vocation;

* * * * *

(dad) by an employer who conducts a kindergarten otherwise than for the purpose of profit or gain, being wages paid or payable to an employee during a period in respect of which the employer satisfies the Commissioner that the employee is engaged exclusively in work of the kindergarten of a kind ordinarily performed in connection with the conduct of a kindergarten;

(da) by a child care centre that is an eligible organization within the meaning of the *Child Care Act 1972* of the Commonwealth, being wages paid or payable to a person during a period in respect of which the child care centre satisfies the Commissioner that the person is engaged exclusively in work of the centre of a kind ordinarily performed in connection with the conduct of child care centres;

(db) before 1 July, 1992, by, or on behalf of, an employer to a person employed, in accordance with the agreement between the Commonwealth and the State for the implementation of the Australian Traineeship System, under a contract of training registered with the Industrial and Commercial Training Commission;

(e) by a council, except to the extent that those wages are paid or payable—

(i) for or in connection with;

or

(ii) for or in connection with the construction of any buildings or the construction of any works or the installation of plant, machinery or equipment for use in or in connection with,

the generation or supply of electricity or gas, water supply, sewerage, the conduct of abattoirs, of public markets, of parking stations, of cemeteries, of crematoria or of hostels or any prescribed activity;

* * * * *

(g) to a person who is a member of the Defence Force of the Commonwealth or of the armed forces of any part of Her Majesty's Dominions, being wages paid or payable by the employer from whose employment the person is on leave by reason of being such a member;

(h) to a member of official staff by—

(i) a consular or other representative other than a diplomatic representative in Australia of the Government of any other part of Her Majesty's Dominions or of any other country;

or

(ii) a Trade Commissioner representing in Australia any other part of Her Majesty's Dominions;

(i) by the Commonwealth War Graves Commission;

(j) by the Australian-American Educational Foundation;

(k) by a University College affiliated with the University of Adelaide or the Flinders University of South Australia.

* * * * *

* * * * *

(6) In this section—

“health service” means—

(a) a service designed to promote health;

(b) a therapeutic or other service designed to cure, alleviate, or afford protection against, any mental or physical illness, abnormality or disability;

(c) a paramedical or ambulance service;

(d) the care of, or assistance to, sick or disabled persons at their place of residence;

or

(e) a prescribed service.

* * * * *

Meaning of prescribed amount

13a. (1) In this section and sections 13b and 13c, unless the contrary intention appears—

“financial year” means—

(a) the period commencing on 1 July 1991 and ending on 30 November 1991;

(b) the period commencing on 1 December 1991 and ending on 30 June 1992;

and

(c) any financial year commencing on or after 1 July 1992:

“interstate wages” does not include interstate wages paid or payable by a member of a group:

“taxable wages” does not include taxable wages paid or payable by a member of a group.

(2) A reference in section 13b or 13c to the prescribed amount—

(a) in relation to the financial year commencing on 1 July 1991, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{CU}{153}$$

where—

TW is the amount of taxable wages paid or payable by the employer during the financial year

IW is the amount of interstate wages paid or payable by the employer during the financial year

C is \$180 000

U is the number of days in the financial year in respect of which the employer paid or was liable to pay wages (disregarding foreign wages);

(b) in relation to the financial year commencing on 1 December 1991, is an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{DX}{213}$$

where—

TW is the amount of taxable wages paid or payable by the employer during the financial year

IW is the amount of interstate wages paid or payable by the employer during the financial year

D is \$258 000

X is the number of days in the financial year in respect of which the employer paid or was liable to pay wages (disregarding foreign wages);

and

(c) in relation to a financial year commencing on or after 1 July 1992, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{AY}{Z}$$

where—

TW is the amount of taxable wages paid or payable by the employer during the financial year

IW is the amount of interstate wages paid or payable by the employer during the financial year

A is \$456 000

Y is the number of days in the financial year in respect of which the employer paid or was liable to pay wages (disregarding foreign wages)

Z is the number of days in that financial year.

* * * * *

(3) Where a person who did not pay and was not liable to pay taxable wages or interstate wages for any part of a financial year satisfies the Commissioner that, by reason of the nature of the person's trade or business, the taxable wages and interstate wages, if any, paid or payable fluctuate with different periods of the financial year, the Commissioner may treat the person—

(a) if the person has conducted that trade or business in Australia during the whole of the financial year—as an employer throughout the financial year;

or

(b) if the person has conducted that trade or business in Australia during part only of the financial year—as an employer during that last mentioned part of the financial year.

* * * * *

Annual adjustments

13b. (1) In this section—

“annual amount of pay-roll tax”, in relation to an employer, means the amount ascertained by applying the appropriate rate of pay-roll tax prescribed by section 9 to the difference between—

(a) the total of the taxable wages paid or payable by that employer during a financial year;

and

(b) the prescribed amount, if any.

(2) Where taxable wages are paid or payable by an employer during a financial year—

(a) the Commissioner must, on application made by that employer in accordance with subsection (3), where the amount of pay-roll tax paid or payable by that employer when making the returns relating to that financial year is greater than the annual amount of pay-roll tax in relation to that employer for that financial year, refund or rebate to that employer an amount equal to the difference, reduced by the amount, if any, refunded to the employer under section 21 in respect of the tax paid or payable by that employer when returns relating to that year were made or required to be made under this Act by that employer;

or

(b) that employer must, where the amount of pay-roll tax paid or payable by that employer when making the returns relating to that financial year is less than the annual amount of pay-roll tax in relation to that employer for that financial year, pay to the Commissioner as pay-roll tax, within the period during which the employer is required to furnish a return under this Act in respect of the return period that is the last return period to be included in that financial year, an amount equal to the difference.

(3) An application under subsection (2)(a) must, notwithstanding section 21, be made within the financial year next following the financial year in respect of which the refund or rebate is applied for.

(4) Where the Commissioner is satisfied that an employer has not received the full benefit of the deductions prescribed by section 11a by virtue of the prescription under section 13a(1) of two or more periods as financial years for a full financial year (being the period commencing on 1 July in any year and ending on 30 June in the next year), the Commissioner may, in such manner as the Commissioner thinks fit, apply any unused deduction from one period to any other period or periods in that same full financial year and refund or rebate to the employer the amount of tax that has, on the basis of that adjustment, been overpaid.

Adjustment of pay-roll tax when employer ceases to be an employer during a financial year

13c. (1) In this section—

“prescribed period”, in relation to an employer who pays or is liable to pay wages, otherwise than as a member of a group, for part only of a financial year, means that part of that financial year:

“total amount of pay-roll tax”, in relation to an employer, means the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 9 to the difference between—

(a) the total of the taxable wages paid or payable by the employer during a prescribed period;

and

(b) the prescribed amount, if any:

“wages” does not include foreign wages.

(2) Where in a financial year an employer ceases to pay wages or becomes a member of a group, the employer must, where the amount of pay-roll tax paid or payable by the employer when making returns relating to the prescribed period is less than the total amount of pay-roll tax in relation to that employer for that prescribed period, pay to the Commissioner as pay-roll tax, within the period during which the employer is required to furnish a return under this Act relating to that prescribed period or the last return under this Act relating to that prescribed period, an amount equal to the difference.

(3) Where an employer, who has ceased to pay wages or has become a member of a group, as referred to in subsection (2), in any financial year, subsequently pays or is liable to pay taxable wages or interstate wages during that financial year otherwise than as a member of a group, section 13b applies to and in respect of the employer as if the reference in section 13b(2) to the amount of pay-roll tax paid or payable by that employer included a reference to any pay-roll tax paid or payable by that employer under subsection (2) of this section.

PART IV
REGISTRATION AND RETURNS

Registration

14. (1) An employer (not being an employer who is registered as an employer) who, during a month, pays or is liable to pay anywhere wages at a rate in excess of the prescribed amount per week, the whole or any part of which is taxable wages or who, being a member of a group, during a month pays or is liable to pay any taxable wages must apply, within seven days after the close of that month, to the Commissioner, in duplicate in the form and manner approved by the Commissioner for registration as an employer, and thereupon the Commissioner must register the applicant as an employer under this Act.

(2) The Commissioner may cancel the registration of a person as an employer if—

(a) that person, not being a member of a group, is not an employer paying wages as referred to in subsection (1);

or

(b) that person—

(i) ceases to be a member of a group;

and

(ii) does not pay and is not liable to pay wages as referred to in subsection (1).

* * * * *

(2b) Where the Commissioner cancels the registration of a person as an employer in any financial year and that person subsequently pays or is liable to pay (otherwise than as a member of a group) taxable wages during that financial year that person may, notwithstanding that during any month the person pays or is liable to pay wages at a rate not in excess of the prescribed amount per week, apply to the Commissioner, in duplicate in the form and manner approved by the Commissioner, for registration as an employer and thereupon the Commissioner must register the applicant as an employer under this Act.

(3) A person, who immediately before the commencement of this Act, was registered, under the Commonwealth Act, as an employer in respect of this State, is to be taken to be registered as an employer under this Act but, where the person is required, by a notice in writing served by the Commissioner, to apply to the Commissioner, within the time specified in the notice, for registration as an employer, the registration of the person by virtue of this subsection ceases upon the expiration of that time.

(4) For the purposes of this section, the prescribed amount is \$8 000.

Returns

15. (1) Every employer who is registered or required to apply for registration in accordance with section 14 must, within seven days after the close of each month, furnish to the Commissioner, in accordance with a form approved by the Commissioner, a return, relating to that month and must specify in that return any taxable wages that were paid or payable by the employer during that month.

(2) Where the Commissioner is of the opinion that it would be unduly onerous to require an employer to furnish returns—

(a) within the time specified in subsection (1), the Commissioner may, by notice in writing, vary the time within which that employer is required to furnish returns in pursuance of that subsection;

or

(b) relating to each month, the Commissioner may, by notice in writing, authorize that employer to furnish returns relating to such periods as may be specified in the notice,

and the employer must, while that notice remains unrevoked, furnish returns accordingly.

(3) The Commissioner may, at any time, by notice in writing, revoke any notice given in pursuance of subsection (2).

(4) Where an employer considers that it is not reasonably practicable to calculate the value of any fringe benefits for the purposes of a return under this section, the employer may request the Commissioner to agree to accept a return in which that value is an estimate of the value of those fringe benefits.

(5) A request under subsection (4) may be granted by the Commissioner on such conditions as the Commissioner thinks fit.

(6) The Commissioner may, at any time, by notice in writing—

(a) revoke an agreement under subsection (4);

(b) vary or revoke a condition under subsection (5).

Exemption from furnishing returns

16. (1) If the Commissioner is of the opinion that tax will not be payable by an employer, or, if paid, would be refunded, the Commissioner may issue a certificate to that employer exempting the employer from furnishing monthly returns in accordance with section 15 and an employer to whom such a certificate is issued may refrain from furnishing monthly returns but must, unless the contrary is expressed in the certificate, furnish a return in respect of each financial year within 21 days after the close of each financial year.

* * * * *

(2) A certificate issued under subsection (1) may be either unconditional or subject to such conditions as are prescribed or as the Commissioner thinks fit.

(2a) The Commissioner may, at any time, by notice in writing, revoke any certificate issued under subsection (1).

(3) The issue of a certificate under subsection (1) does not exempt an employer from the payment of any pay-roll tax, notwithstanding that it may have the effect of postponing the time for payment of pay-roll tax.

* * * * *

Further returns

17. The Commissioner may, by notice in writing, call upon an employer or person to furnish to the Commissioner, within the time specified in the notice, such return or such further or fuller return, as the Commissioner requires, whether on the employer's or person's own behalf or as an agent or a trustee.

Power to obtain information and evidence

18. (1) The Commissioner may, by notice in writing, require a person—

(a) to furnish the Commissioner with such information as the Commissioner requires;

or

(b) to attend and give evidence before the Commissioner or before any person authorized by the Commissioner to take the evidence,

for the purpose of inquiring into or ascertaining the person's or any other person's liability or entitlement under any of the provisions of this Act, and may require the person to produce all books, records, papers and documents of which the person has custody or control relating to any such liability or entitlement.

(2) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, and for that purpose the Commissioner or the person so authorized may administer an oath.

(3) A person attending before the Commissioner or person pursuant to a requirement under this section is entitled to be paid by the Commissioner an allowance in accordance with the scale of allowances to witnesses in local courts for the time being in force.

PART IVA
GROUPING PROVISIONS

Interpretation

18a. In this Part—

“business” includes—

- (a) a trade or profession;
- (b) any other activity carried on for fee, gain or reward;
- and
- (c) the activity, carried on by an employer, of employing one or more persons where that person performs or those persons perform duties for or in connection with another business.

Grouping of corporations

18b. For the purposes of this Act, two corporations constitute a group if they are by reason of section 7(5) of the *Companies (South Australia) Code*, to be taken, for the purposes of that Code, to be related to each other.

Grouping where employees used in another business

18c. For the purposes of this Act, where—

- (a) an employee of an employer, or two or more employees of an employer, performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons;

or

- (b) an employer has, in respect of the employment of, or the performance of duties by, one or more employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons,

that employer and—

- (c) each such other person;

or

- (d) both or all of those other persons,

constitute a group.

Grouping of commonly controlled businesses

18d. (1) A reference in this section to two businesses does not include a reference to two businesses both of which are owned by the same person or persons, not being a trustee or trustees, or by the trustee or trustees of a trust.

(2) For the purposes of this Act, where the same person has, or the same persons have together, a controlling interest, as referred to in subsection (3), in each of two businesses, the persons who carry on those businesses constitute a group.

(3) For the purposes of subsection (2), the same person has, or the same persons have together, a controlling interest in each of two businesses if that person has, or those persons have together, a controlling interest under any of the following paragraphs of this subsection in one of the businesses and a controlling interest under the same or another of those paragraphs in the other business:

- (a) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation, if the directors, or a majority of the directors, or one or more of the directors, being a director or directors who is or are entitled to exercise a majority in voting power at meetings of the directors, of the corporation are or is accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of that person or of those persons acting together;
- (b) a person has, or persons have together, a controlling interest in a business, being a business carried on by a corporation that has a share capital, if that person or those persons acting together may (whether directly or indirectly) exercise, control the exercise of, or substantially influence the exercise of, 50 per cent or more of the voting power attached to voting shares issued by the corporation;
- (c) a person has, or persons have together, a controlling interest in a business, being a business carried on by a partnership, if that person or those persons—
 - (i) owns, or own together (whether beneficially or not beneficially) 50 per cent or more of the capital of the partnership;
 - or
 - (ii) is, or are together entitled (whether beneficially or not beneficially) to 50 per cent or more of any profits of the partnership;
- (d) a person has, or persons have together, a controlling interest in a business, being a business carried on under a trust, if that person (whether or not as the trustee of another trust) is a beneficiary or those persons (whether or not as the trustees of another trust) are together beneficiaries, in respect of 50 per cent or more of the value of the interests in the trust first mentioned in this paragraph;
- (e) a person has, or persons have together, a controlling interest in a business, if that person (whether or not as a trustee of a trust) is the sole owner of the business, or those persons (whether or not as trustees of a trust) are the owners of the business.

(4) Where a corporation has a controlling interest under subsection (3) in a business, it also has a controlling interest in any other business in which another corporation that is, by reason of section 7(5) of the *Companies (South Australia) Code*, to be taken, for the purposes of that Code, to be related to it, has a controlling interest.

(5) Where—

- (a) a person is a beneficiary under a trust;

or

- (b) two or more persons together are beneficiaries under a trust,

in respect of 50 per cent or more of the value of the interests in that trust and the trustee or trustees of that trust has or have under subsection (3) a controlling interest in a business that beneficiary or those beneficiaries will for the purposes of that subsection be taken to have a controlling interest in that business.

(6) Where—

(a) a person has, or persons have together, a controlling interest under subsection (3) in a business;

and

(b) the person or persons who carries or carry on that business has or have a controlling interest under subsection (3) in another business,

the person or persons referred to in paragraph (a) also have a controlling interest for the purposes of that subsection in the business referred to in paragraph (b).

Grouping by regulation

18e. (1) The Governor may make regulations—

(a) specifying circumstances in which two or more persons constitute a group;

or

(b) declaring that two or more persons constitute a group in relation to such wages (excluding foreign wages) paid or payable by those persons as are specified or described in the regulation,

and, for the purposes of this Act, any such regulation has effect so as to constitute a group according to its terms.

(2) The power to make a regulation for the purposes of subsection (1) is not limited by any other provision of this Part.

(3) A regulation made for the purposes of subsection (1) takes effect, if it so provides, from a date antecedent to the date of its publication in the *Gazette* (but not from a date earlier than 1 January, 1976).

Smaller groups subsumed into larger groups

18f. (1) Notwithstanding any other provision of this Part (except subsection (2) of this section), where a person is, whether or not by virtue of this subsection, a member of two or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.

(2) Except for the purpose of determining whether a group is constituted under subsection (1), a group which, but for this subsection, would be a smaller group ceases to be a group if its members are members of a group constituted under subsection (1).

Grouping provisions to operate independently

18g. The fact that a person is not a member of a group constituted under a provision of this Part does not prevent that person from being a member of a group constituted under another provision of this Part.

Beneficiaries under discretionary trusts

18h. A person who, as the result of the exercise of a power or discretion by the trustee of a discretionary trust or by any other person or by that trustee and other person, may benefit under that trust is to be taken, for the purposes of this Part, to be a beneficiary in respect of 50 per cent or more of the value of the interests in that trust.

Exclusion of persons from groups

18i. (1) Where the Commissioner is satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters that the Commissioner considers relevant, that a business carried on by a member of a group is carried on substantially independently of, and is not substantially connected with the carrying on of, a business carried on by any other member of that group, the Commissioner may, by notice in writing served on that first mentioned member, exclude that member from that group.

(2) The Commissioner cannot exercise the power conferred by subsection (1) so as to exclude a person from a group on and from a date if that person is or was on that date a corporation which, by reason of section 7(5) of the *Companies (South Australia) Code*, is to be taken, for the purposes of that Code, to be related to another corporation which is a member of that group.

(3) Notwithstanding any other provision of this Part, a notice under subsection (1) has effect according to its terms on and from the date specified in the notice (being a date that is the date of the notice or before the date of the notice) as the date on and from which the person referred to in the notice is or is to be taken to have been excluded from the group so referred to.

Designated group employer

18j. (1) The members of a group may, by an instrument in writing in the form approved by the Commissioner, executed by or on behalf of each member of the group and served on the Commissioner, designate one of the members of the group to be the designated group employer in respect of the group for the purposes of this Act and nominate an amount, calculated in the prescribed manner, not exceeding the prescribed amount as defined in section 11a(1), as the deduction to be made for any return period in relation to which that designated group employer is required to furnish returns under this Act.

(2) The designated group employer in respect of a group ceases to be the designated group employer in respect of that group on and from the first day of the return period relating to the employer during which—

(a) the composition of the group alters;

or

(b) the members of the group, by an instrument in the form approved by the Commissioner, executed by or on behalf of each of them who is known to the Commissioner to be a member of the group and served on the Commissioner, revoke the designation,

whichever occurs the earlier.

(3) For the purpose of ascertaining the pay-roll tax payable by a designated group employer, the amount nominated in the instrument under subsection (1) is, subject to subsection (4), deducted from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to the return period that last commenced before service of the instrument on the Commissioner or a subsequent return period).

(4) The Commissioner may, on an application made in writing executed by or on behalf of each person known to the Commissioner to be a member of a group or on the Commissioner's own initiative in relation to a group, at any time, make a determination specifying an amount, not exceeding the prescribed amount as defined in section 11a(1), that may be deducted for any return period specified or referred to in the determination

(being a return period commencing before or after the determination is made) from the taxable wages included in a return made by, or an assessment relating to, an employer specified in the determination who was, during any such return period, a member of that group and the amount so specified will be deducted, for any such return period, from the amount of the taxable wages included in a return made by, or an assessment relating to, that employer (being a return or an assessment relating to any such return period).

(5) The Commissioner may, at any time, by instrument in writing, revoke a determination made under subsection (4) and such a revocation has effect on and from the first day of the return period specified in the instrument, whether that return period is the one in which the instrument of revocation is executed or a return period falling before or after that return period (but the revocation cannot take effect before the date of the determination).

(6) An employer specified in a determination made under subsection (4) will, on the first day of the first return period specified or referred to in the determination, be taken to have been designated under subsection (1) as the designated group employer in respect of the group of which the employer was then a member and will, subject to subsection (2), thereafter be the designated group employer in respect of that group.

(7) The Commissioner must, as soon as practicable after making a determination under subsection (4), serve notice of the determination on the designated group employer in respect of the group concerned.

Interpretation

18k. (1) In this section and sections 18l and 18m, unless the contrary intention appears—

“financial year” means—

(a) the period commencing on 1 July 1991 and ending on 30 November 1991;

(b) the period commencing on 1 December 1991 and ending on 30 June 1992;

and

(c) any financial year commencing on or after 1 July 1992.

(2) A reference in section 18l or 18m to the prescribed amount—

(a) in relation to the financial year commencing on 1 July 1991, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{CU}{153}$$

where—

TW is the amount of taxable wages paid or payable by the members of the group during such period of the financial year as the designated group employer was the designated group employer in respect of the group

IW is the amount of interstate wages paid or payable by the members of the group during the period referred to above

C is \$180 000

U is the number of days in the financial year in respect of which any member of the group paid or was liable to pay wages (disregarding foreign wages);

(b) in relation to the financial year commencing on 1 December 1991, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{DX}{213}$$

where—

- TW is the amount of taxable wages paid or payable by the members of the group during such period of the financial year as the designated group employer was the designated group employer in respect of the group
- IW is the amount of interstate wages paid or payable by members of the group during the period referred to above
- D is \$258 000
- X is the number of days in the financial year in respect of which any member of the group paid or was liable to pay wages (disregarding foreign wages);

and

(c) in relation to a financial year commencing on or after 1 July 1992, is a reference to an amount calculated in accordance with the following formula:

$$\frac{TW}{TW + IW} \times \frac{AY}{Z}$$

where—

- TW is the amount of taxable wages paid or payable by the members of the group during such period of the financial year as the designated group employer was the designated group employer in respect of the group
- IW is the amount of interstate wages paid or payable by the members of the group during the period referred to above
- A is \$456 000
- Y is the number of days in the financial year in respect of which any member of the group paid or was liable to pay wages (disregarding foreign wages)
- Z is the number of days in that financial year.

Annual adjustments

18/. (1) This section applies in relation to a group at least one member of which, as such a member, paid or was liable to pay taxable wages or interstate wages for the whole of a financial year.

(2) A reference in this section to the annual amount of pay-roll tax paid or payable by the members of a group is a reference to the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 9 to the amount by which—

(a) the total of the taxable wages paid or payable by the members of that group during a financial year,

exceeds—

(b) where—

- (i) during that year there was only one designated group employer in respect of that group—the prescribed amount applicable to that designated group employer;

or

- (ii) during that year there were two or more designated group employers in respect of that group—the prescribed amount that, if there had been only one designated group employer in respect of that group during that year, would have been applicable to that designated group employer.

(3) A reference in this section to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is a reference to the amount of pay-roll tax paid or payable when returns were made or required to be made under this Act relating to that financial year, being returns in which the taxable wages referred to in subsection (2)(a) were included or required to be included.

(4) Where the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is greater than the annual amount of pay-roll tax in relation to those members for that financial year, the Commissioner must, on application made in accordance with subsection (7) by the person who is the designated group employer in respect of that group on the last day of that financial year, refund or rebate to that employer an amount equal to the difference, reduced by the total of the amounts, if any, refunded to any member of that group under section 21 in respect of the tax paid or payable by any such member when returns relating to that year were made or required to be made under this Act by that member.

(5) Where the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is less than the annual amount of pay-roll tax in relation to those members for that financial year, the person who is the designated group employer in respect of that group on the last day of that financial year must pay to the Commissioner as pay-roll tax, within the period during which that person is required to furnish a return under this Act in respect of the return period that is the last return period to be included in that financial year, an amount equal to the difference.

(6) If a designated group employer in respect of a group fails to pay any amount required under subsection (5) in respect of a financial year, every member of the group who paid or was liable to pay taxable wages during that financial year is liable jointly and severally to pay that amount to the Commissioner.

(7) An application under subsection (4) must, notwithstanding section 21, be made within the financial year next following the financial year in respect of which the refund is applied for.

(8) Where the Commissioner is satisfied that the members of a group have not received the full benefit of the deductions prescribed by section 11a by virtue of the prescription under section 18k(1) of two or more periods as financial years for a full financial year (being the period commencing on 1 July in any year and ending on 30 June in the next year), the Commissioner may, in such manner as the Commissioner thinks fit, apply any unused deduction from one period to any other period or periods in that same financial year and refund or rebate to the designated group employer the amount of tax that has, on the basis of that adjustment, been overpaid.

Payment of pay-roll tax when members of a group cease to pay taxable wages or interstate wages during a financial year

18m. (1) This section applies in relation to a group at least one member of which paid or was liable to pay, as such a member, taxable wages or interstate wages for part only (being a continuous part) of a financial year and no member of which paid or was liable to pay, as such a member, any such wages during the whole of that year.

(2) In this section—

“prescribed period”, in relation to a group, means that part only (being a continuous part) of a financial year for which at least one member of that group paid or was liable to pay, as such a member, taxable wages or interstate wages.

(3) A reference in this section to the total amount of pay-roll tax paid or payable for a prescribed period by the members of a group is a reference to the amount ascertained by applying the appropriate rate or rates of pay-roll tax prescribed by section 9 to the amount by which—

(a) the total of the taxable wages paid or payable by the employers in that group during that prescribed period,

exceeds—

(b) where—

(i) during that prescribed period there was only one designated group employer in respect of that group—the prescribed amount applicable to that designated group employer;

or

(ii) during that prescribed period there were two or more designated group employers in respect of that group—the prescribed amount that, if there had been only one designated group employer in respect of that group during that prescribed period, would have been applicable to that designated group employer.

(4) Where, at the expiration of a prescribed period relating to a group, the total amount of pay-roll tax paid or payable when returns were made or required to be made under this Act, being returns in which the taxable wages referred to in subsection (3)(a) were included or required to be included, is less than the total amount of pay-roll tax paid or payable for that prescribed period by the members of that group, the person who is the designated group employer in respect of that group on the last day of that prescribed period must pay to the Commissioner as pay-roll tax, within the period during which that person is required to furnish a return under this Act or the last return under this Act relating to that prescribed period, an amount equal to the difference.

(5) Section 18I(4) and (5) apply in relation to a group to which this section applies, as if—

(a) at least one member of the group paid or was liable to pay, as such a member, taxable wages or interstate wages for the whole of that financial year;

(b) the reference in section 18I(3) to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of that group included a reference to any pay-roll tax paid or payable under subsection (4) by a designated group employer in respect of that financial year;

and

(c) the person, if any, who was the designated group employer in respect of that group at the time when the group last ceased in that financial year to have a member who was paying or was liable to pay, as such a member, taxable wages or interstate wages was the designated group employer in respect of that group on the last day of that financial year.

(6) If a designated group employer in respect of a group fails to pay any amount required under subsection (4) in respect of a period, every member of the group who paid or was liable to pay taxable wages during the financial year that includes that period is liable jointly and severally to pay that amount to the Commissioner.

PART V

COLLECTION AND RECOVERY OF TAX

Time for payment of tax

19. Every employer liable to pay pay-roll tax must pay the pay-roll tax within the time within which the employer is required by this Act to lodge the return of the wages in respect of which the pay-roll tax is payable.

Assessments

20. (1) Where the Commissioner finds in any case that pay-roll tax or further tax is payable by any employer, the Commissioner may—

(a) assess the amount of taxable wages or, where relevant, interstate wages paid or payable by the employer;

and

(b) calculate the pay-roll tax or further tax payable by the employer.

(2) Where—

(a) any employer fails or neglects duly to furnish any return as and when required by this Act or by the Commissioner;

(b) the Commissioner is not satisfied with the return made by any employer;

or

(c) the Commissioner has reason to believe or suspect that any employer (though the employer may not have furnished any return) is liable to pay pay-roll tax,

the Commissioner may cause an assessment to be made of the amount upon which, in the Commissioner's judgment, pay-roll tax or further tax ought to be levied and that employer is liable to pay pay-roll tax or further tax thereon, except insofar as the employer establishes on objection or appeal that the assessment is excessive.

(3) Subsection (2) does not authorize the Commissioner to cause an assessment to be made as referred to in that subsection on the ground that any deduction made from the wages included in any return is not correctly made if the deduction is made in accordance with this Act.

(4) Where the Commissioner makes a determination in respect of a return period ending before the determination is made as to the deduction that may be made from the taxable wages included or required to be included in returns made or required to be made under this Act, the Commissioner may cause an assessment to be made of the further tax that would have been payable by the employer concerned had the deduction been made from the wages included in the return for that month or period at the rate specified in the determination, and that employer is liable to pay that further tax, except insofar as the employer establishes, on objection or appeal, that the amount determined is too little.

(5) Any employer who becomes liable to pay pay-roll tax or further tax by virtue of an assessment made under subsection (2) is also liable to pay, by way of additional tax, double the amount of that pay-roll tax or further tax (reduced by the amount of any additional tax for which that employer became liable by reason of being an employer to whom section 39(1)(b) applied and which the employer has paid in respect of the taxable wages in respect of which the pay-roll tax or further tax was assessed) or the amount of two dollars, whichever is the greater, but the Commissioner may, in any particular case, for reasons the Commissioner thinks sufficient, remit the additional tax or any part of it.

(6) As soon as convenient after an assessment is made under this section, the Commissioner must cause notice in writing of the assessment and of the pay-roll tax, further tax, or additional tax to be given to the employer liable to pay it.

(7) The amount of pay-roll tax, further tax, or additional tax specified in the notice is payable on or before the date specified in the notice together with any other amount which may be payable in accordance with any other provision of this Act.

(8) The omission to give any such notice does not invalidate the assessment and calculation made by the Commissioner.

* * * * *

Refunds

21. Where the Commissioner finds in any case that tax has been overpaid, the Commissioner may, on application by the person entitled to it, within three years after the day of the overpayment, refund to that person the amount of tax found to be overpaid.

Refund of tax overpaid

21a. Where the Commissioner finds that as a consequence of amendments effected to this Act tax has been overpaid, the Commissioner may, on the Commissioner's own initiative, refund to the person who paid the tax the amount of the overpayment.

Appropriation

22. The amount of any refund payable under this Act is payable out of the General Revenue of the State (which is appropriated to the necessary extent).

Employer leaving Australia

23. When the Commissioner has reason to believe that an employer may leave Australia before tax or further tax becomes due and payable by the employer, the tax or further tax becomes due and payable on such day as the Commissioner fixes and notifies to the employer.

Time to pay extensions and instalments

24. The Commissioner may, in such cases as the Commissioner thinks fit—

(a) extend the time for payment of any tax by such period as the Commissioner considers the circumstances warrant;

or

(b) permit the payment of tax to be made by instalments within such time as the Commissioner considers the circumstances warrant.

Penal tax

25. (1) If pay-roll tax, further tax or additional tax is not paid before the expiration of the time specified in section 19 or 20, or such further time as may be allowed by the Commissioner under section 24, penal tax is forthwith payable—

(a) where it is paid on or before the fourteenth day after that time, at the rate of 10 per cent per annum of the pay-roll tax, further tax or additional tax, as the case may be, to be computed from the expiration of the time specified in section 19 or 20, or, where further time has been allowed by the Commissioner under section 24, from the expiration of that further time, as the case may require;

(b) where—

- (i) it is paid within one month after that day, at the rate of 10 per cent;
- (ii) it is not paid within one month, but is paid within two months, after that day, at the rate of 25 per cent;

or

- (iii) it is not paid as referred to in paragraph (a) or subparagraph (i) or (ii) of this paragraph, at the rate of 100 per cent,

of the pay-roll tax, further tax or additional tax, as the case may be.

(2) The Commissioner may, in any particular case, for reasons the Commissioner thinks sufficient, remit the penal tax or any part of it.

Recovery of tax

26. (1) When tax becomes due and payable, it is a debt due to Her Majesty and payable to the Commissioner.

(2) Any unpaid tax may (whether or not an assessment has been made, or notice of an assessment has been given, in pursuance of section 20) be sued for and recovered in any court of competent jurisdiction by—

- (a) the Commissioner of Stamps;

or

- (b) the Deputy Commissioner of Stamps,

suing in that official name.

Substituted service

27. If, in any proceedings against an employer for the recovery of tax, the defendant—

- (a) is absent from Australia and has not, to the knowledge of the Commissioner after reasonable inquiry, any attorney or agent in Australia on whom service of process can be effected;

or

- (b) cannot after reasonable inquiry be found,

service of any process in the proceedings may, without leave of the court, be effected on the defendant by posting it or a sealed copy of it in a letter addressed to the defendant at his or her last known place of business or residence.

Liquidator to give notice

28. (1) A person who is liquidator of any company which is being wound up and which is, or has been on or after the day upon which this Act commenced an employer registered or required to be registered under this Act, must, within 14 days after becoming liquidator of that company, give notice in writing to the Commissioner of the appointment as liquidator.

(2) The Commissioner must, as soon as practicable thereafter, notify to the liquidator the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company.

(3) The liquidator—

- (a) must not without leave of the Commissioner part with any of the assets of the company until the liquidator has been so notified;
- (b) must set aside out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value;

and

- (c) is, to the extent of the value of the assets so required to be set aside, liable as trustee to pay the tax.

(4) A liquidator who fails to comply with any provision of this section (or fails as trustee duly to pay the tax for which the liquidator is liable under subsection (3)), is, to the extent of the value of the assets of which the liquidator has taken possession and which are, or were at any time, available for the payment of the tax, personally liable to pay the tax and is guilty of an offence.

Penalty: Not less than \$2 or more than \$100.

(5) Where more persons than one are appointed liquidators or required by law to carry out the winding up, the obligations and liabilities attaching to a liquidator under this section attach to each of those persons but where any one of those persons has paid the tax due in respect of the company being wound up, the other person or persons are each liable to pay that person an equal share of the amount of the tax so paid.

(6) Notwithstanding anything contained in this section, all costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator in the winding up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any tax payable in respect of the company.

(7) Nothing in this section—

- (a) limits the liability of a liquidator under section 46 or a liquidator's liability, as a trustee, under Part IVA;

or

- (b) affects any of the provisions of the *Companies (South Australia) Code*.

* * * * *

Agent for absentee principal winding up business

29. (1) Where an agent for an absentee principal has been required by the principal to wind up the principal's business, the agent must, before taking any steps to wind up the business, notify the Commissioner of the intention so to do, and must set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any tax that becomes payable.

(2) An agent who fails to give notice to the Commissioner or fails to provide for payment of the tax as required by this section is personally liable for any tax that becomes payable in respect of the business of the principal and is guilty of an offence.

Penalty: Not less than \$2 or more than \$100.

* * * * *

Where tax not paid during lifetime

30. (1) The following provisions of this section apply where, whether intentionally or not, a person escapes full payment of tax in his or her lifetime by reason of not having duly made any, or full, complete and accurate returns.

(2) The Commissioner has the same powers and remedies against the trustees of the estate of that person in respect of the liability to which that person was subject as the Commissioner would have had against that person if he or she were still living.

(3) The trustees must make such returns under this Act as the Commissioner requires.

(4) The trustees are subject to tax to the same extent as the deceased person would be subject to tax if still living, but the Commissioner may in a particular case, for reasons that the Commissioner thinks sufficient, remit any tax or a part of it.

(5) The amount of any tax payable by the trustees is a charge on all the deceased person's estate in their hands in priority to all other encumbrances.

Provision for payment of tax by executors or administrators

31. (1) Where, at the time of an employer's death, the employer had not paid the whole of the tax payable up to the date of death, the Commissioner has the same powers and remedies for the assessment and recovery of tax from the executors and administrators as the Commissioner would have had against that employer, if he or she were alive.

(2) The executors or administrators must furnish such of the returns mentioned in Part IV as have not been made by the deceased.

(3) Where the executors or administrators are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the wages on which, in the Commissioner's judgment, pay-roll tax ought to be charged.

(4) Where, in respect of the estate of any deceased employer, probate has not been granted or letters of administration have not been taken out within six months of death, the Commissioner may cause an assessment to be made of the amount of tax due by the deceased.

(5) The Commissioner must cause notice of the assessment to be published twice in a daily newspaper circulating in the State of the Commonwealth in which the deceased resided.

(6) Any person claiming an interest in the estate of the deceased may, within 42 days after the first publication of notice of the assessment, post to or lodge with the Tribunal an objection in writing against the assessment stating fully and in detail the grounds of objection and the provisions of this Act relating to objections and appeals thereupon apply in relation to the objection as if the person so claiming an interest were the deceased.

(7) Subject to any amendment of the assessment on objection or appeal, the assessment so made is conclusive evidence of the indebtedness of the deceased to the Commissioner.

(8) Where tax is not paid within six months after the day on which the tax becomes due and payable the Commissioner may apply to the Supreme Court for an order that such part of the property of the deceased as is specified in the order be sold, and that the proceeds of the sale be applied in payment of the tax and the costs incurred in connection with the application and the sale.

(9) Where any property has been sold under an order under subsection (8) the Supreme Court may make an order vesting the property in the purchaser.

(10) An order made under subsection (9) has the same effect as if all persons entitled to the property had been free from all disability, and, as if it were a proper conveyance, transfer or assignment of the property for such estate or interest as is specified in the order, executed by those persons.

(11) If at any time probate of the will of the deceased is, or letters of administration of the estate are, granted to a person that person may, within 42 days after the day on which probate was, or letters of administration were, granted, lodge an objection against the assessment stating fully and in detail the grounds of objection and the Tribunal must consider any such objection and make such amendment (if any) as it considers necessary but such an amendment does not affect the validity or efficacy of any order made under subsection (8) or (9) and the provisions of this Act relating to objections and appeals apply to and in relation to that objection as if the person lodging the objection were the deceased.

Recovery of tax paid on behalf of another person

32. Every person who, under the provisions of this Act, pays any tax for or on behalf of any other person is entitled to recover the amount so paid from that other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in his or her hands belonging or payable to that other person.

Contributions from joint taxpayers

33. Where two or more persons are jointly liable to pay tax they are each liable for the whole tax, but any of them who have paid the tax may recover contributions as follows:

- (a) a person who has paid the tax in respect of any wages may recover by way of contribution from any other person jointly liable to that tax a sum which bears the same proportion to the tax as the share of the taxable wages which that other person was liable to pay bears to the total amount of the taxable wages which the persons jointly liable to tax were liable to pay;

and

- (b) every person entitled to a contribution under this section may sue for it in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his or her request; or may retain or deduct the amount of the contribution out of any money in his or her hands belonging or payable to the person liable to contribute.

Commissioner may collect tax from person owing money to employer

34. (1) The Commissioner may, by notice in writing (a copy of which must be forwarded to the employer at the employer's last known place of residence or business) require—

- (a) any person by whom any money is due or accruing or may become due to an employer;
- (b) any person who holds or may subsequently hold money for or on account of an employer;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to an employer;

or

- (d) any person having authority from some other person to pay money to an employer,

to pay to the Commissioner, forthwith upon the money becoming due or being held, or within such further time as the Commissioner allows, the money or so much of it as is sufficient to pay the tax due by the employer or the fines and costs (if any) imposed by a court on the employer in respect of an offence against this Act.

(2) A person who fails to comply with any notice under this section is guilty of an offence.

Penalty: \$100.

(3) Where any amount referred to in subsection (1) is less than the amount of tax due by the employer, the person must pay to the Commissioner in reduction of the amount of tax due the amount payable by that person to the employer.

(4) A person making any payment in pursuance of this section is entitled to be indemnified in respect of the payment by the employer.

(5) If the tax due by the employer, or the fine and costs (if any) imposed by a court on the employer, are paid before any payment is made under a notice given in pursuance of this section, the Commissioner must forthwith give notice to the person of the payment.

(6) In this section—

“tax” includes any judgment debt and costs in respect of any tax.

PART VI

OBJECTIONS AND APPEALS

Pay-roll Tax Appeal Tribunal

35. (1) For the purposes of this Act, the *Pay-roll Tax Appeal Tribunal* is established.

(1a) The Tribunal consists of three members, appointed by the Governor, of whom—

(a) one (the chairman) is an officer of the Public Service;

(b) one is a legal practitioner as defined in the *Legal Practitioners Act, 1981*;

and

(c) one is a person who in the opinion of the Minister has knowledge of and experience in the commercial application of a law, whether of the Commonwealth or of this State, relating to pay-roll tax.

(2) The Governor may, as occasion requires, appoint such person as the Governor considers fit and proper to act in the place of a member of the Tribunal during that member's absence or incapacity.

(3) During the absence or incapacity of a member of the Tribunal, the person, appointed in accordance with subsection (2) to act in the member's place, is entitled to act in the place of that member and, when so acting, will be taken to be a member of the Tribunal and, in the case of the person appointed to act in the place of the chairman of the Tribunal, will be taken to be the chairman of the Tribunal.

(4) An appointment made under subsection (2) of a person to act in the place of a member and any exercise by that person of powers and functions, as such, cannot be questioned on the ground that the occasion for the appointment or for the exercise of the power or function had not arisen or had ceased.

(5) An objection made to the Tribunal will be determined by the Tribunal at a sitting convened by the chairman of the Tribunal and the chairman of the Tribunal will preside at any such sitting.

(6) A decision concurred in by the majority of the members of the Tribunal is a decision of the Tribunal.

(7) A member of the Tribunal is not, as such, subject to Part III of the *Government Management and Employment Act, 1985*, but this section does not affect the rights, duties or obligations under that Act of any member of the Tribunal who is employed in the Public Service.

(8) No act or proceeding of the Tribunal is invalid on the ground only of any vacancy in the office of any member or of any defect in the appointment of any member.

(9) A member of the Tribunal is entitled, if the Governor thinks fit, to such fees or other remuneration as may from time to time be fixed by the Governor and to such travelling and other expenses as are from time to time approved by the Minister.

(10) Regulations under this Act may make provision for—

(a) the practice and procedure to be adopted in the conduct of proceedings before the Tribunal;

(b) the term of office of members of the Tribunal;

(c) the vacation of office by, or the removal from office of, members of the Tribunal and the filling of offices that so become vacant;

and

(d) the provision of secretarial assistance to the Tribunal.

Objections and appeals

36. (1) A person required to pay tax who is dissatisfied with the assessment of the Commissioner may—

- (a) within 60 days after the service on that person of notice of assessment, lodge with the Tribunal an objection in writing against the assessment stating fully and in detail the grounds of objection;

or

- (b) within 60 days after the service on that person of notice of assessment, appeal to the Supreme Court.

(2) Notwithstanding subsection (1), where the assessment is an amended assessment, the objector or appellant has no further or other right of objection or appeal than he or she would have had if the amended assessment had not been made, except to the extent to which a fresh liability in respect of any particular is imposed or an existing liability in respect of any particular is increased by the amendment.

(3) Where such a person forwards to the Tribunal an objection against the Commissioner's assessment, the Tribunal after making such inquiries and obtaining such information and advice as it thinks proper, may confirm or modify the assessment; and, if the assessment is not confirmed, the amount of tax to be ultimately retained is that fixed by the Tribunal and the difference must be refunded by the Commissioner to the person who lodged the objection.

(4) In deciding an objection the Tribunal is not bound by any rules relating to the admissibility of evidence, but may admit such evidence it considers relevant.

(4a) The Tribunal—

- (a) must furnish the objector and the Commissioner with a statement of the reasons for its decision on the objection;

and

- (b) may publish its reasons in such other manner as it thinks fit (but the name of the objector and other material tending to identify the objector must be suppressed from material published under this paragraph).

(5) Upon the confirmation or modification by the Tribunal of the Commissioner's assessment the objector or the Commissioner may within 60 days after the decision of the Tribunal is communicated appeal to the Supreme Court.

(6) A person who desires to appeal against an assessment of the Commissioner or a decision by the Tribunal on an objection must, within 60 days after receiving notice of the assessment or decision, give notice in writing to the Commissioner or the person affected by the decision of the Tribunal, as the case may be, of intention to appeal together with a statement of the grounds of the appeal and, within a further period of 14 days, institute the appeal in the Supreme Court by notice of motion stating with sufficient particularity the grounds of the appeal.

(7) The Court or any judge of the Court sitting in Court or in Chambers may hear and determine the matter of the appeal and make such orders with regard to it and the costs of the appeal as are just.

(8) At the hearing of an appeal or objection under this Act the person making the objection or instituting the appeal is limited to the grounds stated in the objection or notice of motion to appeal.

Pending objections and appeals

37. (1) The fact that an appeal or objection is pending does not in the meantime interfere with or affect the assessment the subject of the appeal or objection and tax may be recovered on the assessment as if no appeal or objection were pending.

(2) If the assessment is altered on an appeal or objection, a due adjustment must be made; any amounts paid in excess must be refunded by the Commissioner and any amounts short paid are recoverable by the Commissioner as arrears.

(3) If the assessment is quashed on objection or appeal, any amount paid upon the assessment must be refunded by the Commissioner.

PART VII
PENAL PROVISIONS

Offences

38. (1) A person who—

- (a) fails or neglects duly to furnish a return or information or to comply with a requirement of the Commissioner as and when required by this Act or by the Commissioner;
- (b) without just cause shown by that person refuses or neglects duly to attend and give evidence when required by the Commissioner or a person duly authorized by the Commissioner, or to answer questions truly and fully, or to produce any books, records, papers or documents required by the Commissioner or such a person;
- (c) makes or delivers a return which is false in any particular or makes a false answer whether orally or in writing;

or

- (d) contravenes a provision of this Act for the contravention of which no penalty is expressly provided,

is guilty of an offence.

Penalty: Not less than \$4 or more than \$200.

(2) In a prosecution for an offence against subsection (1)(c) of a person who has not previously been convicted of an offence against this Act, it is a defence if the defendant proves—

- (a) that the return or answer to which the prosecution relates was prepared or made by that person personally;

and

- (b) that the false particulars were given or (as the case may be) the false statement was made through ignorance or inadvertence.

(3) A person who, after conviction for an offence against this section, continues to fail to comply with the requirements in respect of which the person was convicted, is guilty of an offence and punishable as provided in section 41.

(4) Where an offence against this section arises under subsection (1)(a) or (d) by reason of the neglect or failure of a person to do anything within a particular period, the offence is, for the purposes of subsection (3), taken to continue for as long as the thing remains undone, notwithstanding that that period has elapsed.

Additional tax in certain cases

39. (1) Notwithstanding anything contained in section 38, an employer who—

- (a) fails or neglects, otherwise than as referred to in paragraph (b) duly to furnish a return or information as and when required by this Act or by the Commissioner is liable to pay additional tax at the rate of 10 per cent per annum upon the amount of pay-roll tax payable (that percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which an assessment is made under section 20, whichever first happens), or the amount of two dollars, whichever is the greater;

or

- (b) furnishes a return to the Commissioner, but fails or neglects to include in that return all of the taxable wages required by this Act to be included in that return or claims in that return a larger amount as a deduction than the amounts the employer is entitled to claim under this Act is liable to pay by way of additional tax double the amount of the difference between the pay-roll tax properly payable and the payroll tax payable upon the basis of the return furnished, or the amount of two dollars, whichever is the greater in addition to any penal tax that is or may become payable under section 25.

(2) The Commissioner may, in any particular case, for reasons which the Commissioner thinks sufficient, remit the additional tax or any part of it.

(3) If the Commissioner considers that the circumstances of any case warrant action being taken to recover the penalty provided by section 38, that action may be taken by the Commissioner, and in that case the additional tax payable under this section will not be charged.

False declarations

40. If a person, in a declaration made under, or authorized or prescribed by or under this Act, knowingly or wilfully makes a statement that is false or untrue, that person is guilty of wilful and corrupt perjury and is, upon conviction, liable to imprisonment for a period not exceeding four years.

Avoiding taxation

41. A person who, by wilful act, default or neglect, avoids or attempts to avoid tax chargeable under this Act, is guilty of an offence.

Penalty: Not less than \$100 plus the amount of tax avoided or attempted to be avoided, or more than \$1 000 plus treble the amount of tax avoided or attempted to be avoided.

Time for commencing prosecutions

42. (1) A prosecution in respect of an offence against section 41 may be commenced at any time within three years after the commission of the offence.

(2) A prosecution in respect of an offence against section 38(1)(a) or (c) may be commenced at any time.

Penalties not to relieve from tax

43. Payment of penalties under this Act does not relieve a person from liability to tax for which the person would otherwise be liable.

Obstructing officers

44. A person who obstructs or hinders a person acting in the discharge of a duty under this Act is guilty of an offence.

Penalty: Not less than \$2 or more than \$100.

PART VIII
MISCELLANEOUS

Public officer of company

45. (1) The Commissioner may, by notice served on a company, require the company to appoint, within a period specified in the notice, a public officer of the company (being a natural person whose principal place of residence is in the State) for the purposes of this Act, and to keep the office of public officer constantly filled by such a person.

(2) An appointment of a public officer is not duly made until notice of the appointment in writing, specifying the name of the officer, has been lodged with the Commissioner.

(3) Service of a document on the public officer of the company is sufficient service on the company for the purposes of this Act, and, if at any time there is no public officer, then service on a person acting or appearing to act in the business of the company is sufficient.

(4) The public officer is answerable for the doing of all such things as are required to be done by the company under this Act, and, in case of default, is liable to the same penalties.

(5) Everything that the public officer is required to do and does in his or her representative capacity is taken to have been done by the company and the absence or non-appointment of a public officer does not excuse the company from the necessity of complying, or from any penalty for failure to comply, with any of the provisions of this Act, but the company is liable to comply with the provisions of this Act as if there were no requirement to appoint a public officer.

(6) A notice served on or requisition made upon the public officer will be taken to have been served on or made upon the company.

(7) Any proceedings under this Act taken against the public officer will be taken to have been taken against the company, and the company is liable jointly with the public officer for any penalty imposed upon the public officer.

(8) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding that, under this Act, may be given to, served on or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served on or taken against a director, secretary or other officer of the company or an attorney or agent of the company, and that director, secretary, officer, attorney or agent has the same liability in respect of that notice, process or proceeding as the company or public officer would have had if it had been given to, served on or taken against the company or public officer.

Agents and trustees

46. (1) The following provisions apply with respect to an agent or trustee (a "representative"):

- (a) a representative is answerable as an employer for the doing of all such things as are required to be done by virtue of this Act in respect of the payment of wages which are subject to pay-roll tax under this Act;
- (b) a representative must, in respect of any such wages, make the returns and is chargeable with pay-roll tax thereon, but in his or her representative capacity only, and each return must, except as otherwise provided by this Act, be separate and distinct from any other;
- (c) if a representative is an executor or administrator, the returns must be the same as far as practicable as the deceased person, if living, would have been liable to make;

- (d) where a representative pays tax, he or she is authorized to recover the amount from the person on whose behalf it was paid, or to deduct it from any money in the representative's hands belonging to that person;
 - (e) a representative is authorized and required to retain from time to time out of any money which comes to the representative in his or her representative capacity so much as is sufficient to pay the tax;
 - (f) a representative is personally liable for the tax payable if, after the Commissioner has required the representative to make a return, or while the tax remains unpaid, the representative, except with the written permission of the Commissioner, disposes of or parts with any fund or money which comes to the representative from or out of which tax could legally be paid, but the representative is not otherwise personally liable for the tax;
 - (g) a representative is indemnified for all payments which the representative makes in pursuance of this Act or by the requirements of the Commissioner;
- and
- (h) for the purpose of ensuring the payment of tax the Commissioner has the same remedies against attachable property of any kind vested in or under the control or management or in the possession of a representative, as the Commissioner would have against the property of any other person in respect of tax, and in as full and ample a manner.

(2) Nothing in subsection (1) affects the operation of Part IVA in relation to trustees.

Person in receipt or control of money for absentee

47. The following provisions apply, subject to this Act, with respect to a person (a "representative") who has the receipt, control or disposal of money belonging to a person resident or carrying on business out of this State, who is liable to pay tax under this Act:

- (a) the representative must when required by the Commissioner pay the tax due and payable by the person on whose behalf the representative has the receipt, control or disposal of money;
- (b) where the representative pays tax in accordance with paragraph (a) the representative is authorized to recover the amount so paid from the person on whose behalf it was paid or to deduct it from any money in the representative's hands belonging to that person;
- (c) the representative is authorized and required to retain from time to time out of any money which comes to the representative on behalf of the person resident or carrying on business out of this State so much as is sufficient to pay the tax which is or will become due by that person;
- (d) the representative is personally liable for the tax payable by the representative on behalf of the person resident or carrying on business out of this State after the tax becomes payable, or if, after the Commissioner has required the representative to pay the tax, the representative, except with the written permission of the Commissioner, disposes of or parts with any fund or money then in the representative's possession, or which comes to the representative from or out of which the tax could legally be paid, but the representative is not otherwise personally liable for the tax;

and

- (e) the representative is indemnified for all payments which the representative makes in pursuance of this Act or in accordance with the requirements of the Commissioner.

Books and records to be preserved

48. (1) Every person who is an employer registered or required to apply for registration under this Act must keep or cause to be kept in this State sufficient books and records to enable the person's liability in respect of tax under this Act to be accurately calculated and must preserve those books and records in this State for a period of not less than five years next following the completion of the transactions to which they relate.

Penalty: \$200.

(2) This section does not apply so as to require the preservation of any books or records—

(a) in respect of which the Commissioner has notified the employer that preservation is not required;

or

(b) of a company which has gone into liquidation and which has been finally dissolved.

Access to books, etc.

49. The Commissioner, or a person authorized by the Commissioner for the purpose, will at all reasonable times have full and free access to all buildings, places, books and records for any of the purposes of this Act and for any such purpose may make extracts from or copies of any such books or records.

Evidence

50. (1) For the purposes of any proceedings against a person for the recovery of tax, a certificate purporting to be signed by the Commissioner certifying that—

(aa) the employer named in the certificate is registered, or, as the case may be, is taken to be registered, as an employer under this Act;

(a) the employer named in the certificate was liable to tax in respect of the period specified in the certificate;

(b) an assessment of tax was duly made against the employer;

(c) the particulars of the assessment are as stated in the certificate;

(d) notice of the assessment was duly served upon the employer;

or

(e) the amount specified in the certificate was at the date of the certificate payable as tax by the employer named in the certificate,

is *prima facie* evidence of the matters so certified.

(2) The production of any document or a copy of a document signed by, or apparently signed by the Commissioner, or apparently issued by the Commissioner (that document or copy appearing to be a notice or a copy of a notice specifying any liability or entitlement of an employer under this Act, or to be a copy of a determination made under this Act), constitutes conclusive evidence of the due exercise of any act required by this Act to be done or performed by the Commissioner for the purpose of ascertaining the liability or entitlement so specified or making the determination and (except in proceedings on objection or appeal when it is *prima facie* evidence only) constitutes conclusive evidence of the correctness of any calculations upon which that liability or entitlement is ascertained or on which that determination is based.

(3) The production of a document apparently signed by the Commissioner (that document appearing to be a copy of or extract from any document or return furnished to, or of any document issued by, the Commissioner), is for all purposes sufficient evidence of the matter set forth in the document or return, without production of the original.

(4) In proceedings against a person for failing or neglecting duly to furnish a return, a certificate in writing apparently signed by the Commissioner certifying that the return has not been received from that person by a person authorized by the Commissioner to receive returns at the place where the return should have been furnished, is *prima facie* evidence that the defendant has failed or neglected duly to furnish the return.

(5) In proceedings against a person for failing or neglecting duly to furnish the Commissioner with information required by the Commissioner in pursuance of section 18, a certificate apparently signed by the Commissioner certifying that—

(a) the defendant was so required to furnish the Commissioner with the information of the nature specified in the certificate;

and

(b) the defendant failed or neglected duly to furnish the information as and when required by the Commissioner,

is *prima facie* evidence of the matters so certified.

(6) In proceedings against a person for failing or neglecting duly to register as an employer, a certificate in writing apparently signed by the Commissioner certifying that on a day specified in the certificate a person was not duly registered as an employer is *prima facie* evidence of the matter so certified.

Service of documents by the Commissioner

51. (1) A certificate, notice, form or other document required or authorized by this Act to be served on or given to a person by the Commissioner is duly served or given—

(a) if delivered personally to, or if left at the last known place of residence or business in or out of the State of the person, whether or not the person is an employer, or, in the case of an employer, at the employer's address for service shown on the return last furnished by the employer with some person apparently in the employer's employment;

or

(b) if sent by prepaid letter post addressed to the person, (whether or not an employer) at the person's last known place of business or residence in or out of the State or, in the case of an employer, at the employer's address for service shown on the last return furnished by the employer.

(2) Service of a notice or document in accordance with subsection (1)(b) will *prima facie* be taken to have been effected at the time when it would have been delivered in the ordinary course of post.

(3) The provisions of this section are in addition to and not in derogation from any other provisions of this Act or any other Act relating to the service of documents or the provisions of section 528 of the *Companies (South Australia) Code*.

Service of documents on the Commissioner

52. Any notice, summons, writ or other process and any return, application, notice, statement or form to be served on the Commissioner for the purposes of this Act may be served by lodging it at the office of the Commissioner with a person apparently employed in the administration or execution of this Act.

Institution of prosecutions

53. (1) An information for an offence against any provision of this Act may be laid in the name of the Commissioner of Stamps by any person employed in the administration of this Act and authorized to lay informations on behalf of the Commissioner of Stamps, and a prosecution instituted in the name of the Commissioner of Stamps will, in the absence of evidence to the contrary, be taken to have been instituted by the Commissioner's authority.

(2) A person referred to in subsection (1) may appear on behalf of the Commissioner in any proceedings for an offence against any provision of this Act.

Protection to witnesses

54. A witness on behalf of the Commissioner in proceedings under this Act cannot be compelled to disclose the fact that the witness received information, or the nature of it or the name of the person who gave it, and a person appearing as such a witness cannot be compelled to produce any reports made or received confidentially in his or her official capacity or containing confidential information.

Minimum penalties

55. No minimum penalty provided by this Act can be reduced under any power of mitigation which would, but for this section, be possessed by the court.

Summary procedure

56. An offence against this Act (other than an offence against section 40) is a summary offence.

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Regulations

57. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and, in particular, for prescribing penalties not less than \$2 nor more than \$100 for any breach of the regulations.

(2) Without limiting the generality of subsection (1) the regulations may make provision with respect to—

- (a) the manner of making any application to the Commissioner under this Act;
- (b) the evidence that the Commissioner may require for the purpose of determining whether or not an employer was an employer for part only of a financial year, whether or not a person was or was not a member of a group or whether or not a notice under section 15(2), or a certificate under section 16(1), should be given;
- (c) the furnishing and signing of returns, applications, notices, statements or forms by or on behalf of employers and presuming any return, application, notice, statement or form signed on behalf of an employer to have been signed by the employer;
- (d) the authentication of any certificate, notice or other document issued for the purpose of this Act;

or

- (e) the manner of notifying the appointment of a public officer of a company.

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 8 of The Public General Acts of South Australia 1837-1975 at page 81.

Long title:	amended by 64, 1988, s. 8 (Sched.)
Section 2:	repealed by 64, 1988, s. 8 (Sched.)
Section 3(1):	definition of "the Commissioner" amended by 64, 1988, s. 8 (Sched.) definition of "corporation" amended by 64, 1988, s. 8 (Sched.) definition of "council" amended by 64, 1988, s. 8 (Sched.) definition of "designated group employer" amended by 64, 1988, s. 8 (Sched.) definition of "employer" amended by 64, 1988, s. 8 (Sched.) definition of "financial year" amended by 64, 1988, s. 8 (Sched.) definition of "fringe benefit" inserted by 45, 1990, s. 3(a) definition of "group" amended by 64, 1988, s. 8 (Sched.) definition of "liquidator" amended by 64, 1988, s. 8 (Sched.) definition of "pay" inserted by 45, 1990, s. 3(b) definition of "pay-roll tax" amended by 64, 1988, s. 8 (Sched.) definition of "taxable wages" amended by 64, 1988, s. 8 (Sched.) definition of "the Tribunal" amended by 64, 1988, s. 8 (Sched.) definition of "trustee" amended by 64, 1988, s. 8 (Sched.) definition of "voting share" amended by 64, 1988, s. 8 (Sched.) definition of "wages" amended by 64, 1988, s. 8 (Sched.); 45, 1990, s. 3(c) inserted by 82, 1985, s. 3; amended by 64, 1988, s. 8 (Sched.); substituted by 45, 1990 s. 3(d)
Section 3(1a) and (1b):	inserted by 45, 1990, s. 3(d)
Section 3(1c):	substituted by 64, 1988, s. 8 (Sched.); repealed by 45, 1990, s. 3(d)
Section 3(2):	amended by 64, 1988, s. 8 (Sched.)
Section 3(3):	substituted by 80, 1976, s. 3; amended by 64, 1988, s. 8 (Sched.)
Section 3(4):	inserted by 61, 1986, s. 3; amended by 64, 1988, s. 8 (Sched.)
Section 3(5):	repealed by 64, 1988, s. 8 (Sched.)
Section 4:	amended by 64, 1988, s. 8 (Sched.)
Sections 5 and 6:	substituted by 2, 1987, s. 5; amended by 64, 1988, s. 8 (Sched.)
Section 7:	amended by 64, 1988, s. 8 (Sched.)
Section 8(1):	repealed by 64, 1988, s. 8 (Sched.)
Section 8(1)(c) and (d):	amended by 64, 1988, s. 8 (Sched.)
Section 8(2) and (3):	substituted by 64, 1988, s. 8 (Sched.)
Section 9:	substituted by 45, 1990, s. 4; 55, 1991, s. 5
Section 9(1):	amended by 64, 1988, s. 8 (Sched.)
Section 10:	repealed by 64, 1988, s. 8 (Sched.)
Section 11:	definition of "minimum amount" inserted by 6, 1976, s. 3(a); substituted by 80, 1976, s. 4; 37, 1977, s. 3; amended by 76, 1978, s. 3(a); 64, 1979, s. 3(a); 113, 1980, s. 3(a); 26, 1983, s. 3(a); repealed by 61, 1986, s. 4(a)
Section 11a(1):	definition of "prescribed amount" substituted by 80, 1976, s. 4; 37, 1977, s. 3; amended by 76, 1978, s. 3(b); 64, 1979, s. 3(b); 113, 1980, s. 3(b); 33, 1982, s. 3; 101, 1982, s. 3; 26, 1983, s. 3(b); substituted by 61, 1986, s. 4(b); 64, 1988, s. 3; 46, 1989, s. 3; amended by 45, 1990, s. 5(a); 55, 1991, s. 6
Section 11a(2):	repealed by 61, 1986, s. 4(c)
Section 11a(3):	substituted by 6, 1976, s. 3(b); amended by 82, 1985, s. 4(a); substituted by 61, 1986, s. 4(d); amended by 64, 1988, s. 8 (Sched.); substituted by 45, 1990, s. 5(b)
Section 11a(4):	substituted by 6, 1976, s. 3(b); amended by 82, 1985, s. 4(b); repealed by 61, 1986, s. 4(d)
Section 11a(5) and (6):	amended by 64, 1988, s. 8 (Sched.)
Section 11a(7):	amended by 61, 1986, s. 4(e); 64, 1988, s. 8 (Sched.)
Section 11a(8) and (9):	amended by 64, 1988, s. 8 (Sched.)
Section 12:	redesignated as s. 12(1) by 64, 1979, s. 4
Section 12(1):	amended by 113, 1980, s. 4; 26, 1983, s. 4(a)-(c); 6, 1986, s. 2; 61, 1986, s. 5; 64, 1988, s. 8 (Sched.); 46, 1989, s. 4
Section 12(1)(a):	repealed by 64, 1988, s. 8 (Sched.)
Section 12(1)(f):	repealed by 64, 1988, s. 8 (Sched.)
Section 12(2) - (4):	inserted by 64, 1979, s. 4; repealed by 64, 1988, s. 8 (Sched.)
Section 12(5):	inserted by 26, 1983, s. 4(d); repealed by 64, 1988, s. 8 (Sched.)
Section 12(6):	inserted by 26, 1983, s. 4(e) definition of "health service" amended by 64, 1988, s. 8 (Sched.)
Section 13:	repealed by 64, 1988, s. 8 (Sched.)
Section 13a(1):	amended by 61, 1986, s. 6(a); 64, 1988, s. 8 (Sched.); 45, 1990, s. 6(a); substituted by 55, 1991, s. 7
Section 13a(2):	substituted by 6, 1976, s. 4(a); amended by 80, 1976, s. 5(a)-(c); substituted by 37, 1977, s. 4; amended by 76, 1978, s. 4; 64, 1979, s. 5; 113, 1980, s. 5; 33, 1982, s. 4; 101, 1982, s. 4; 26, 1983, s. 5; 82, 1985, s. 5; substituted by 61, 1986, s. 6(b); 64, 1988, s. 4; 46, 1989, s. 5; 45, 1990, s. 6(b); 55, 1991, s. 7
Section 13a(2a) and (2b):	inserted by 80, 1976, s. 5(d); repealed by 37, 1977, s. 4
Section 13a(3):	amended by 64, 1988, s. 8 (Sched.)
Section 13a(4):	substituted by 6, 1976, s. 4(b); repealed by 80, 1976, s. 5(e)
Section 13b(1):	definition of "annual amount of pay-roll tax" amended by 64, 1988, s. 8 (Sched.)
Section 13b(2):	amended by 64, 1988, s. 8 (Sched.); 45, 1990, s. 7
Section 13b(3):	amended by 64, 1988, s. 8 (Sched.)
Section 13b(4):	inserted by 55, 1991, s. 8
Section 13c(1):	definition of "total amount of pay-roll tax" amended by 64, 1988, s. 8 (Sched.)
Section 13c(2) and (3):	amended by 64, 1988, s. 8 (Sched.)

Section 14(1):	amended by 80, 1976, s. 6(a); 37, 1977, s. 5(a); 76, 1978, s. 5(a); 64, 1979, s. 6(a); 113, 1980, s. 6(a); 33, 1982, s. 5(a); 101, 1982, s. 5(a); 26, 1983, s. 6(a); 64, 1988, s. 8 (Sched.)
Section 14(2):	amended by 80, 1976, s. 6(b); 64, 1988, s. 8 (Sched.)
Section 14(2a):	repealed by 64, 1988, s. 8 (Sched.)
Section 14(2b):	amended by 80, 1976, s. 6(c); 37, 1977, s. 5(b); 76, 1978, s. 5(b); 64, 1979, s. 6(b); 113, 1980, s. 6(b); 33, 1982, s. 5(b); 101, 1982, s. 5(b); 26, 1983, s. 6(b); 64, 1988, s. 8 (Sched.)
Section 14(3):	amended by 64, 1988, s. 8 (Sched.)
Section 14(4):	inserted by 26, 1983, s. 6(c); substituted by 61, 1986, s. 7; amended by 64, 1988, s. 5; 46, 1989, s. 6; 45, 1990, s. 8; 55, 1991, s. 9
Section 15(1):	amended by 37, 1977, s. 6; 64, 1988, s. 8 (Sched.)
Section 15(2) and (3):	amended by 64, 1988, s. 8 (Sched.)
Section 15(4) and (5):	repealed by 64, 1988, s. 8 (Sched.); inserted by 45, 1990, s. 9
Section 15(6):	inserted by 45, 1990, s. 9
Section 16(1):	amended by 64, 1988, s. 8 (Sched.)
Section 16(1a):	repealed by 64, 1988, s. 8 (Sched.)
Section 16(2), (2a) and (3):	amended by 64, 1988, s. 8 (Sched.)
Section 16(4):	repealed by 64, 1988, s. 8 (Sched.)
Sections 17 and 18:	amended by 64, 1988, s. 8 (Sched.)
Sections 18b and 18c:	amended by 64, 1988, s. 8 (Sched.)
Section 18d(2) - (6):	amended by 64, 1988, s. 8 (Sched.)
Section 18e(1) and (2):	amended by 64, 1988, s. 8 (Sched.)
Section 18e(3):	substituted by 64, 1988, s. 8 (Sched.)
Sections 18f, 18h and 18i:	amended by 64, 1988, s. 8 (Sched.)
Section 18j(1) and (2):	amended by 64, 1988, s. 8 (Sched.)
Section 18j(3):	substituted by 64, 1988, s. 8 (Sched.)
Section 18j(4) - (7):	amended by 64, 1988, s. 8 (Sched.)
Section 18k:	amended by 6, 1976, s. 5; 80, 1976, s. 7(a)-(c); 37, 1977, s. 7; 76, 1978, s. 6; 64, 1979, s. 7; 113, 1980, s. 7; 33, 1982, s. 6; 101, 1982, s. 6; 26, 1983, s. 7; 82, 1985, s. 6; 61, 1986, s. 8; 64, 1988, s. 8 (Sched.); substituted by 46, 1989, s. 7; 45, 1990, s. 10; 55, 1991, s. 10
Section 18l(2) and (3):	amended by 64, 1988, s. 8 (Sched.)
Section 18l(4):	amended by 61, 1986, s. 9; 64, 1988, s. 8 (Sched.); 45, 1990, s. 11(a)
Section 18l(5):	amended by 61, 1986, s. 9; 64, 1988, s. 8 (Sched.); 45, 1990, s. 11(b), (c)
Section 18l(6) and (7):	amended by 64, 1988, s. 8 (Sched.)
Section 18l(8):	inserted by 55, 1991, s. 11
Section 18m(3) and (4):	amended by 64, 1988, s. 8 (Sched.)
Section 18m(5):	amended by 64, 1988, s. 8 (Sched.); 45, 1990, s. 12
Section 18m(6):	amended by 64, 1988, s. 8 (Sched.)
Section 19:	amended by 64, 1988, s. 8 (Sched.)
Section 20(2) - (8):	amended by 64, 1988, s. 8 (Sched.)
Section 20a:	inserted by 82, 1985, s. 7; repealed by 61, 1986, s. 10
Section 21:	amended by 64, 1988, s. 8 (Sched.)
Section 21a:	inserted by 6, 1976, s. 6; amended by 82, 1985, s. 8; substituted by 64, 1988, s. 7
Sections 22 - 25:	amended by 64, 1988, s. 8 (Sched.)
Section 26(1):	amended by 64, 1988, s. 8 (Sched.)
Section 26(2):	amended by 76, 1978, s. 7; 64, 1988, s. 8 (Sched.)
Section 27:	amended by 64, 1988, s. 8 (Sched.)
Section 28(1) - (5) and (7):	amended by 64, 1988, s. 8 (Sched.)
Section 28(8):	repealed by 64, 1988, s. 8 (Sched.)
Section 29(1) and (2):	amended by 64, 1988, s. 8 (Sched.)
Section 29(3):	repealed by 64, 1988, s. 8 (Sched.)
Section 30(1) - (4):	amended by 64, 1988, s. 8 (Sched.)
Section 31(1) - (7):	amended by 64, 1988, s. 8 (Sched.)
Section 31(9) - (11):	amended by 64, 1988, s. 8 (Sched.)
Sections 32 and 33:	amended by 64, 1988, s. 8 (Sched.)
Section 34(1) - (3):	amended by 64, 1988, s. 8 (Sched.)
Section 34(4):	substituted by 64, 1988, s. 8 (Sched.)
Section 34(5):	amended by 64, 1988, s. 8 (Sched.)
Section 35(1):	substituted by 64, 1988, s. 8 (Sched.)
Section 35(1a):	inserted by 64, 1988, s. 8 (Sched.)
Section 35(2) - (9):	amended by 64, 1988, s. 8 (Sched.)
Section 36(1) - (4):	amended by 64, 1988, s. 8 (Sched.)
Section 36(4a):	inserted by 61, 1986, s. 11; amended by 64, 1988, s. 8 (Sched.)
Section 36(5) - (8):	amended by 64, 1988, s. 8 (Sched.)
Section 37(1) and (2):	amended by 64, 1988, s. 8 (Sched.)
Section 37(3):	inserted by 113, 1980, s. 8; amended by 64, 1988, s. 8 (Sched.)
Sections 38 - 44:	amended by 64, 1988, s. 8 (Sched.)
Section 45(1) - (3):	amended by 64, 1988, s. 8 (Sched.)
Section 45(5) - (8):	amended by 64, 1988, s. 8 (Sched.)
Sections 46 - 55:	amended by 64, 1988, s. 8 (Sched.)
Section 56:	substituted by 64, 1988, s. 8 (Sched.)
Section 56a:	inserted by 64, 1979, s. 8; amended by 26, 1983, s. 8; repealed by 64, 1988, s. 8 (Sched.)
Section 57(2):	amended by 64, 1988, s. 8 (Sched.)