

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 18 October 1990

(Minister assisting the Treasurer)

A BILL

FOR

An Act to amend the law relating to sales tax

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

5 1. This Act may be cited as the *Sales Tax Laws Amendment Act (No. 3) 1990*.

Commencement

2. (1) Subject to this section, this Act is taken to have commenced on 19 October 1990.

10 (2) Paragraph 7 (a) commences on the day on which this Act receives the Royal Assent.

**PART 2—AMENDMENT OF THE SALES TAX (EXEMPTIONS
AND CLASSIFICATIONS) ACT 1935**

Principal Act

3. In this Part, “**Principal Act**” means the *Sales Tax (Exemptions and Classifications) Act 1935*¹. 5

First Schedule

4. The First Schedule to the Principal Act is amended:

(a) by adding at the end of the definition of “aids to manufacture” in subclause 1 (1) the following paragraph:

“(p) author/secretary computer equipment;”;

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(b) by inserting in subclause 1 (1) the following definitions:

“**architectural/structural design computer equipment**’ means goods, being individual items of computer equipment, where the goods are mainly for use in connection with the preparation of documentation for:

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(a) the construction of buildings or other structures; or

(b) the carrying out of civil engineering works;

“**audio-visual production computer equipment**’ means goods, being individual items of computer equipment, where the goods are mainly for use in making, altering or reproducing a cinematograph film or a sound recording by the maker, or any of the makers, of the film or sound recording, as the case may be;

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“**author**”, in relation to an original literary, dramatic, musical or artistic work (within the meaning of the *Copyright Act 1968*), has the same meaning as in that Act;

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“**author/secretary computer equipment**’ means goods, being individual items of computer equipment, where all of the following conditions are satisfied:

(a) the goods are mainly for use in connection with the manufacture of printed matter;

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(b) the goods are mainly for use in any or all of the following:

(i) making, altering or reproducing eligible original literary, dramatic, musical or artistic works by the author, or any of the authors, of those works;

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(ii) performing the functions of a secretary;

(iii) performing, in relation to images other than text, functions similar or analogous to the functions performed by a secretary in relation to text;

(iv) performing the functions of a general journalist;

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(c) the goods are not covered by subclause 2 (4);

“**eligible computer equipment**’ has the meaning given by clause 2;

'eligible original literary, dramatic, musical or artistic work' means an original literary, dramatic, musical or artistic work (within the meaning of the *Copyright Act 1968*), but does not include any of the following:

- 5 (a) works where the work is an original work wholly or principally because of features of layout;
- (b) works where the author was performing the functions of a sub-editor in relation to the work of another person;
- (c) works prescribed by the regulations;

10 **'eligible print finalisation activities'**, in relation to a person, means the finalisation of text or other images where all of the following conditions are satisfied:

- (a) the finalisation is mainly for the purpose of bringing the text or images into the final form necessary:

15 (i) to make:

- (A) a bromide; or
(B) a printing plate; or
(C) a similar thing; or

20 (ii) to give electronic instructions to a printing machine;

for use in the production of printed matter manufactured by the person or another person;

- 25 (b) if the text or images embody an eligible original literary, dramatic, musical or artistic work—the finalisation is not carried out by the author, or any of the authors, of the work;

(c) the finalisation is not carried out by a person performing:

(i) in the case of text—the functions of a secretary; or

30 (ii) in the case of other images—functions that are similar or analogous to the functions performed by a secretary in relation to text;

(d) the finalisation is not carried out by a person performing the functions of a general journalist;

35 **'finalisation'**, in relation to text or images, means editing, formatting, typesetting or similar activities;

'general journalist' means a journalist other than a journalist performing the functions of a sub-editor in relation to the work of another person;

40 **'item of computer equipment'** includes any of the following items:

- (a) a central processing unit or other processing device;
- (b) a storage device, including any of the following:
- (i) a disk, diskette or tape drive;

- (ii) a mass storage device;
 - (iii) a data module;
 - (iv) a similar device;
 - (c) an input/output device, including any of the following:
 - (i) a visual display terminal; 5
 - (ii) a keyboard;
 - (iii) a printer;
 - (iv) a plotter;
 - (v) a scanner;
 - (vi) a magnetic, optical or card reader; 10
 - (vii) a mouse;
 - (viii) a light-pen;
 - (ix) a digitiser tablet;
 - (x) a tape punch;
 - (xi) a similar device; 15
 - (d) any of the following devices:
 - (i) an analogue-to-digital converter;
 - (ii) a modem;
 - (iii) a multiplexer;
 - (iv) an adaptor; 20
 - (v) a controller for input/output devices;
 - (vi) a similar device;
 - (e) a device prescribed by the regulations;
 - (f) a combination of devices that:
 - (i) includes any of the above devices; and 25
 - (ii) is contained in the same housing;
 - (g) cables for use with any of the above items;
- but does not include any of the following:
- (h) furniture;
 - (j) an anti-static mat; 30
 - (k) consumable items (including disks, diskettes, tapes and paper);
 - (m) a device that forms part of the infrastructure of a telecommunications network;
 - (n) a device prescribed by the regulations; 35
- 'main'**, in relation to the use of goods, or the finalisation of text or images, means not less than 50%;
- 'software-generation computer equipment'** means goods, being individual items of computer equipment, where all of the following conditions are satisfied: 40
- (a) the goods are mainly for use in making, altering or reproducing eligible original literary works, being

computer programs, by the author, or any of the authors, of those works;

(b) the goods are not mainly for use in connection with the embodying of the program concerned in a microchip;

5 (c) the goods are not covered by paragraph (2) (b) of clause 2 by virtue of subparagraph (v) or (vi) of that paragraph;”;

(c) by adding at the end of clause 1 the following subclauses:

10 “(7) For the purposes of the definition of ‘audio-visual production computer equipment’ in subclause (1), ‘**cinematograph film**’, ‘**make**’ and ‘**sound recording**’ have the same meanings as in the *Copyright Act 1968*.

15 “(8) The definition of ‘main’ in subclause (1) does not affect the meaning of the expressions ‘ordinarily’, ‘primarily and principally’, ‘primarily or principally’, ‘primarily’ or ‘principally’, when used elsewhere in this Act or in any other law of the Commonwealth relating to sales tax.”;

(d) by inserting after clause 1 the following clause:

20 “2. (1) A reference in this Schedule to eligible computer equipment is a reference to goods covered by any of the following categories:

(a) design/engineering computer equipment (defined by subclause (2));

(b) production-related computer equipment (defined by

25 (c) print-related computer equipment (defined by subclause (4));

(d) non-print mixed-use computer equipment (defined by subclause (5));

30 (e) print-related mixed-use computer equipment (defined by subclause (6));

(f) parts for goods covered by any of the above categories.

35 “(2) A reference in this clause to design/engineering computer equipment is a reference to goods, being individual items of computer equipment, where all of the following conditions are satisfied:

(a) the goods are for use by a person, being:

(i) a manufacturer; or

40 (ii) a person who manufactures goods but, by virtue of the definition of ‘Manufacturer’ in subsection 3 (1) of the *Sales Tax Assessment Act (No. 1) 1930*, is deemed not to be the manufacturer of the goods; or

(iii) a person who applies any process or treatment to goods as specified in subparagraph (a) (iii) of the

definition of 'Wholesale Merchant' in that subsection;

(b) the goods are mainly for use in the engineering or technical design of any or all of the following:

(i) goods for manufacture, processing or treatment, or for likely manufacture, processing or treatment, by the person, as the case may be; 5

(ii) machinery, implements or apparatus for use, or likely use, by the person in the manufacturing, processing or treatment of goods, as the case may be; 10

(iii) processes (including the detailing of plant layout or of machining and assembly steps) for use, or likely use, by the person in the manufacturing, processing or treatment of goods, as the case may be; 15

(iv) processes (including the detailing of plant layout or of machining and assembly steps) for use, or likely use, by the person in the manufacturing, processing or treatment of machinery, implements or apparatus covered by subparagraph (ii); 20

(v) operating instructions for computer-controlled equipment for use, or likely use, by the person in the manufacturing, processing or treatment of goods, as the case may be; 25

(vi) operating instructions for computer-controlled equipment for use, or likely use, by the person in the manufacturing, processing or treatment of machinery, implements or apparatus covered by subparagraph (ii); 30

(c) the goods are not author/secretary computer equipment;

(d) the goods are not software-generation computer equipment;

(e) the goods are not audio-visual production computer equipment; 35

(f) the goods are not architectural/structural design computer equipment;

(g) the goods are not covered by paragraph (4) (b).

“(3) A reference in this clause to production-related computer equipment is a reference to individual items of computer equipment, where both of the following conditions are satisfied: 40

(a) the goods are for use by a person, being:

(i) a manufacturer; or

(ii) a person who manufactures goods but, by virtue of the definition of 'Manufacturer' in subsection 45

3 (1) of the *Sales Tax Assessment Act (No. 1) 1930*,
is deemed not to be the manufacturer of the goods;
or

5 (iii) a person who applies any process or treatment to
goods as specified in subparagraph (a) (iii) of the
definition of 'Wholesale Merchant' in that
subsection;

(b) the goods are mainly for use in any or all of the following:

10 (i) the scheduling, sequencing, monitoring, controlling
or costing of manufacturing, processing or
treatment, as the case may be;

15 (ii) if subparagraph (a) (i) or (ii) applies—the ordering,
storage, handling, monitoring, controlling or costing
of goods to be used in, wrought into or attached
to goods to be manufactured or of other materials
used in the manufacture of the goods;

20 (iii) if subparagraph (a) (iii) applies—the ordering,
storage, handling, monitoring, controlling or costing
of goods to be treated or processed or of materials
to be used in that processing or treatment;

25 (iv) the storage, handling, monitoring, controlling or
dispatch (but not including dispatch other than to
persons covered by paragraph (a)) of goods which
have been manufactured, processed or treated by
the person, as the case may be;

30 (v) the ordering, storage, handling, monitoring,
controlling or costing of machinery, implements or
apparatus for use by the person in the
manufacturing, processing or treatment of goods,
as the case may be.

“(4) A reference in this clause to print-related computer
equipment is a reference to goods, being individual items of
computer equipment, where both of the following conditions
are satisfied:

35 (a) the goods are for use by a person, being:

(i) a manufacturer of printed matter; or

(ii) a manufacturer of goods for use in the production
of printed matter;

(b) the goods are mainly for use in any or all of the following:

40 (i) eligible print finalisation activities of the person;

(ii) the recording of advertisements for inclusion in a
newspaper, periodical or magazine manufactured
by the person;

(iii) the preparation or finalisation of text or images

for inclusion in goods, being technical manuals, or other documentation, relating to activities that:

- (A) are covered by paragraph (2) (b) or (3) (b); and
- (B) relate to goods other than printed matter. 5

“(5) A reference in this clause to non-print mixed-use computer equipment is a reference to goods, being individual items of computer equipment, where the goods are covered by either of the following paragraphs:

- (a) goods where both of the following conditions are satisfied: 10
 - (i) the goods are for use by a registered person covered by paragraph (2) (a);
 - (ii) the goods are mainly for use for any or all of the following purposes:
 - (A) a purpose that would have been covered by subclause (2) or (3) if the reference in the subclause concerned to mainly were a reference to partly; 15
 - (B) a purpose which would qualify the goods as aids to manufacture (as defined by regulations made under the Sales Tax Assessment Acts) if the first reference in paragraph (a) of the definition of ‘aids to manufacture’ in those regulations, the references in paragraphs (b), (h) and (i) of that definition and the second reference in paragraph (f) of that definition to primarily and principally were references to partly; 20 25
 - (C) a purpose which would qualify the goods as auxiliaries to aids to manufacture (as defined by regulations made under the Sales Tax Assessment Acts) if all references in the definition of ‘auxiliaries to aids to manufacture’ in those regulations to primarily and principally were references to partly; 30 35
- (b) goods where both of the following conditions are satisfied:
 - (i) the goods are for use by an unregistered manufacturer;
 - (ii) the goods are mainly for use for any or all of the following purposes: 40
 - (A) a purpose that would have been covered by subclause (2) or (3) if the reference in the subclause concerned to mainly were a reference to partly; 45

5 (B) a purpose which would qualify the goods as aids to manufacture if the first reference in paragraph (a) of the definition of 'aids to manufacture' in subclause 1 (1), the references in paragraphs (b), (h) and (i) of that definition and the second reference in paragraph (f) of that definition to primarily and principally were references to partly;

10 (C) a purpose which would qualify the goods as auxiliaries to aids to manufacture if all references in the definition of 'auxiliaries to aids to manufacture' in subclause 1 (1) to primarily and principally were references to partly.

15 “(6) A reference in this clause to print-related mixed-use computer equipment is a reference to goods, being individual items of computer equipment, where the goods are covered by either of the following paragraphs:

20 (a) goods where both of the following conditions are satisfied:

(i) the goods are for use by a registered person covered by paragraph (4) (a);

(ii) the goods are mainly for use for any or all of the following purposes:

25 (A) a purpose that would have been covered by subclause (2), (3) or (4) if the reference in the subclause concerned to mainly were a reference to partly;

30 (B) a purpose which would qualify the goods as aids to manufacture (as defined by regulations made under the Sales Tax Assessment Acts) if the first reference in paragraph (a) of the definition of 'aids to manufacture' in those regulations, the references in paragraphs (b), (h) and (i) of that definition and the second reference in paragraph (f) of that definition to primarily and principally were references to partly;

35 (C) a purpose which would qualify the goods as auxiliaries to aids to manufacture (as defined by regulations made under the Sales Tax Assessment Acts) if all references in the definition of 'auxiliaries to aids to manufacture' in those regulations to primarily and principally were references to partly;

40 (b) goods where both of the following conditions are satisfied:

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- (i) the goods are for use by an unregistered manufacturer covered by paragraph (4) (a);
- (ii) the goods are mainly for use for any or all of the following purposes:
 - (A) a purpose that would have been covered by subclause (2), (3) or (4) if the reference in the subclause concerned to mainly were a reference to partly; 5
 - (B) a purpose which would qualify the goods as aids to manufacture if the first reference in paragraph (a) of the definition of 'aids to manufacture' in subclause 1 (1), the references in paragraphs (b), (h) and (i) of that definition and the second reference in paragraph (f) of that definition to primarily and principally were references to partly; 10 15
 - (C) a purpose which would qualify the goods as auxiliaries to aids to manufacture if all references in the definition of 'auxiliaries to aids to manufacture' in subclause 1 (1) to primarily and principally were references to partly." 20
- (e) by adding at the end the following items:
 - "155. Goods where: Nos. 1 to 9
 - (a) the goods are sold or leased to, or imported by, an unregistered person for use by the person as eligible computer equipment; and 25
 - (b) the goods manufactured, processed or treated by the person, as mentioned in clause 2, are covered by any item or sub-item in this Schedule other than item 100 or 103 30
 - "156. Goods manufactured by a person and applied by the person to the person's own use as eligible computer equipment No. 1 35
 - "157. Goods applied by a registered person to the person's own use as eligible computer equipment Nos. 1, 4, 6 and 8 40
 - "158. Goods in respect of which both of the following conditions are satisfied: Nos. 1 to 9

5 (a) the goods are for use by a person (in this item called the 'sub-contractor') mainly in carrying out activities (in this item called the 'contracted activities') on behalf of one or more other persons (in this item called the 'primary manufacturers');

10 (b) in the case of each of the primary manufacturers, at least one of the following subparagraphs applies:

15 (i) if the goods had been sold to the primary manufacturer for use mainly in carrying out the contracted activities that were to be carried out by the sub-contractor on behalf of the primary manufacturer—the goods would have been covered by item 155;

20 (ii) if the goods:

(A) had been manufactured by the primary manufacturer; and

25 (B) had been applied by the primary manufacturer to his or her own use in carrying out the contracted activities that were to be carried out by the sub-contractor on behalf of the primary manufacturer;

30 the goods would have been covered by item 156;

35 (iii) if the goods had been applied by the primary manufacturer to his or her own use in carrying out the contracted activities that were to be carried out by the sub-contractor on behalf of the primary manufacturer—the goods would have been covered by item 157".

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PART 3—AMENDMENT OF SALES TAX REGULATIONS

Sales Tax Regulations

5. In this Part, “**Regulations**” means the Sales Tax Regulations.

Interpretation

6. Regulation 4 of the Regulations is amended: 5

(a) by adding at the end of the definition of “aids to manufacture” in subregulation (1) the following paragraph:

“(p) author/secretary computer equipment;”;

(b) by inserting in subregulation (1) the following definitions:

“**‘author/secretary computer equipment’** has the same meaning as in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*; 10

‘eligible computer equipment’ has the same meaning as in the First Schedule to the *Sales Tax (Exemptions and Classifications) Act 1935*;”.

Cases in which certificates are to be quoted 15

7. Regulation 12 of the Regulations is amended:

(a) by omitting from the end of subparagraph (1) (d) (i) “and” and substituting “or”;

(b) by inserting after paragraph (1) (d) the following paragraphs:

“(da) in respect of the purchase, or lease of goods, or the entry for home consumption of imported goods, by the registered person for use by the person as eligible computer equipment; 20

(db) in respect of the purchase of goods, or the entry for home consumption of imported goods, by the registered person: 25

(i) to be used in, wrought into or attached to goods to be manufactured by the person for use by the person as eligible computer equipment; or

(ii) for sale or lease to persons for use by them as eligible computer equipment;” 30

Cases in which certificate not to be quoted

8. Regulation 13 of the Regulations is amended by omitting from paragraph (1) (a) “or auxiliaries to aids to manufacture” (wherever occurring) and substituting “, as auxiliaries to aids to manufacture or as eligible computer equipment”. 35

Persons to whom refunds or payments may be made

9. Regulation 48 of the Regulations is amended:

(a) by omitting from paragraphs (1) (e) and (f) “or auxiliaries to aids to manufacture” (first occurring) and substituting “as 40

auxiliaries to aids to manufacture or as eligible computer equipment”;

- (b) by omitting from paragraphs (1) (e) and (f) “or auxiliaries to aids to manufacture” (last occurring) and substituting “, as auxiliaries to aids to manufacture or as eligible computer equipment”.

Claims for refund

10. Regulation 51 of the Regulations is amended by omitting from paragraph (1) (c) “or auxiliaries to aids to manufacture” and substituting “as auxiliaries to aids to manufacture or as eligible computer equipment”.

Refunds in special cases

11. Regulation 55 of the Regulations is amended by omitting from paragraph (1) (c) “or auxiliaries to aids to manufacture” and substituting “as auxiliaries to aids to manufacture or as eligible computer equipment”.

Refund where tax paid on exempt goods

12. Regulation 58 of the Regulations is amended by omitting from subparagraph (4) (a) (i) “or auxiliaries to aids to manufacture” and substituting “, as auxiliaries to aids to manufacture or as eligible computer equipment”.

Amendment or repeal of Regulations

13. (1) The amendment of the Regulations by this Part does not prevent the amendment or repeal, by regulations, of the Regulations as amended by this Part.

(2) Where all of the following conditions are satisfied in relation to particular regulations:

- (a) the regulations are covered by section 4 of the *Sales Tax (Exemptions and Classifications) (Computer Programs) Amendment Act 1989*;
- (b) the regulations are notified on or after the date of commencement of this subsection;
- (c) the regulations are expressed to take effect from a date before the date of the commencement of this subsection;

this Part does not prevent those regulations from adding a paragraph (o) at the end of the definition of “aids to manufacture” in subregulation 4 (1) of the Regulations.

PART 4—APPLICATION OF AMENDMENTS

Application of amendments

14. The amendments made by this Act (other than paragraph 7 (a)) apply in relation to transactions, acts and operations effected or done in relation to goods after the commencement of this section.

NOTE

1. No. 60, 1935, as amended. For previous amendments, see No. 41, 1936; No. 78, 1938; No. 32, 1939; Nos. 29 and 76, 1940; No. 32, 1941; No. 6, 1942; Nos. 35 and 44, 1943; No. 31, 1944; No. 36, 1945; Nos. 12 and 67, 1946; No. 65, 1947; No. 42, 1948; No. 54, 1949; No. 37, 1950; No. 42, 1951; No. 44, 1952; No. 53, 1953; No. 45, 1954; No. 5, 1956; No. 71, 1957; Nos. 17 and 92, 1959; Nos. 65 and 88, 1960; Nos. 1 and 76, 1961; No. 4, 1962; No. 44, 1963; No. 30, 1965; Nos. 26 and 62, 1966; No. 78, 1970; Nos. 67 and 87, 1972; Nos. 17, 181 and 216, 1973; No. 24, 1975; Nos. 21, 29, 80 and 175, 1976; No. 107, 1978; Nos. 3, 94 and 157, 1979; No. 142, 1981; Nos. 64, 93 and 115, 1982; Nos. 63, 84 and 136, 1983; Nos. 81, 123 and 165, 1984; Nos. 65 and 67, 1985; Nos. 28, 76 and 98, 1986; Nos. 42, 135 and 140, 1987; Nos. 78, 89 and 152, 1988; Nos. 63 and 72, 1989; and Nos. 18 and 00, 1990.

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