


# ***ST 2133 - SALES TAX: NIMROD THEATRE CO LTD: GOODS APPLIED TO OWN USE***

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TAXATION RULING NO. ST 2133

SALES TAX: NIMROD THEATRE CO LTD: GOODS APPLIED TO  
OWN USE

F.O.I. EMBARGO: May be released

REF H.O. REF: 82/6049 DATE OF EFFECT: Immediate

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F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1187244	GOODS MANUFACTURED AND APPLIED TO OWN USE. NIMROD THEATRE CO LTD	SALES TAX ASSESSMENT ACT (No. 1), SECTION 17

PREAMBLE In FCT v Nimrod Theatre Co Ltd 85 ATC 4092:  
16 ATR 232; the Federal Court held that the Nimrod Theatre did not have a sales tax liability in respect of scenery and stage props that it produced for its own use in the course of presenting theatrical productions to the public. The High Court has refused to grant special leave to the Commissioner to appeal against the decision. The purpose of this Ruling is to set out the extent to which the decision of the Federal Court applies to other situations.

RULING 2. Sub-section 17(1) of Sales Tax Assessment Act (No.1) imposes sales tax liability on taxable goods manufactured by a taxpayer and applied to his own use. Sub-section 17(2) operates to bring within the scope of sub-section 17(1) goods manufactured in the course of carrying on a business whether the goods are for the purposes of that business or for any other purpose and whether or not the goods are of a class manufactured by the manufacturer for sale.

3. The broad effect of sub-sections 17(1) and (2) is that sales tax liability exists for all goods, other than exempt goods, manufactured and applied to a taxpayer's own use in the course of carrying on a business whether or not the person manufacturing the goods is engaged in a business of manufacture.

4. It has been suggested that the decision of the Federal Court in the Nimrod Theatre case is authority for the wider view that persons not engaged in business as manufacturers do not have a sales tax liability where, in the course of their businesses, they manufacture goods for their own use. This office does not accept this view. The wider view was raised in the course of the application to the High Court for special leave to appeal against the decision of the Federal Court. In refusing application for special leave the High Court observed that the special facts in the Nimrod Theatre case did not make it a convenient vehicle to raise the wider view.

5. The sales tax law should continue to be applied on the basis that persons engaged in business, whether it be a business of manufacture or some other business, have a liability to

account for sales tax on taxable goods produced by them and applied to their own use. Thus, persons who have in-house printing facilities and do not otherwise operate as printers continue to have a sales tax liability for taxable printed matter produced and applied to own use. The same basis applies to other persons in business who manufacture taxable goods for their own use.

6. Application for refunds of tax claimed to have been overpaid by persons in business on the basis of the Nimrod Theatre case should not be accepted. Where persons have declined to pay tax on the basis of the Nimrod Theatre case, action should be taken to recover the tax considered to be properly payable.

7. The decision of the Federal Court does apply to other theatre companies like the Nimrod Theatre. There will not be any sales tax liability for theatre companies that produce scenery and stage props for their own use in presenting theatrical productions. The sales tax liability of the theatre companies will be met by payment of tax at time of purchase of any taxable materials used in producing the scenery and stage props.

COMMISSIONER OF TAXATION  
02 July 1985

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