

ST 2140 - SALES TAX - INDIRECT MARKETING ARRANGEMENTS

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TAXATION RULING NO. ST 2140

SALES TAX - INDIRECT MARKETING ARRANGEMENTS

F.O.I. EMBARGO: May be released

REF

*** NOTE: THIS RULING HAS BEEN MODIFIED BY ST 2424

H.O. REF: 85/4050/1

DATE OF EFFECT:

B.O. REF:

DATE ORIG. MEMO ISSUED: 5 June 1985

F.O.I. INDEX DETAIL

REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1193200	AGENTS	SALES TAX ASSESSMENT
	AGENCY	ACT (No. 1) SECTION 3.
	INDIRECT MARKETING	SALES TAX ASSESSMENT
	ARRANGEMENTS	ACT (Nos 2,3,6,7)
	SALE VALUE	SECTION 4

PREAMBLE

The Sales Tax Bills introduced into the House of Representatives by the Treasurer on 9 May 1985 received the Royal Assent on 30 May 1985. One of the amendments to the sales tax legislation provides that a person, other than a manufacturer, who markets goods under indirect marketing arrangements is defined to be a wholesale merchant. A person selling goods under an indirect marketing arrangement is a person (here referred to as the "vendor"), who is not the manufacturer of the goods, selling goods by retail -

- a) under an arrangement that provides, directly or indirectly, for the sale of goods (whether ascertained or not) by the vendor through another person acting for and on behalf of the vendor, whether in the name of the vendor or in any other name, but not being an employee of the vendor; or
- b) from premises that -
 - i) are used principally for the sale of goods by retail by any other person or persons; and
 - ii) are held out to be premises of, or used by, the other person or persons.

2. As a consequence persons, other than manufacturers, who market goods in this way are now required to register for sales tax purposes and quote their certificate for goods to be sold under indirect marketing arrangements. The sale value upon which tax is to be paid by the indirect marketer is the fair market value of the goods if sold by him by wholesale.

3. The sale of goods through indirect marketing arrangements which have come to the notice of this office fall into the following three broad categories -

- (a) the sale of goods by retail on an agency basis other than through retailers, e.g., door to door sales, party plan and home demonstration sales, etc;
- (b) the sale of goods in the past by wholesale to retailers and the subsequent implementation of an agency arrangement with the retailers to move the taxing point back in the marketing chain; and
- (c) the sale of goods by retail through agents where the same goods are sold by wholesale.

RULING REGISTRATION

4. All persons who market their products by any of the above methods are required to become registered for sales tax purposes. Registration must be effected within 28 days of becoming a wholesale merchant. For persons engaged in indirect marketing as at 30 May 1985, the date the legislation received the Royal Assent, registration should have been effected by 27 June 1985.

5. The three categories of indirect marketing arrangements referred to in paragraph 3 are not intended to be exhaustive and persons who market goods under other indirect marketing arrangements are also required to register for sales tax purposes. Persons who are uncertain about whether their selling arrangements are caught by the provisions relating to indirect marketing should make enquiries at the Australian Taxation Office.

QUOTATION OF CERTIFICATE

6. Registered persons who market goods under indirect marketing arrangements are required to quote their certificate in respect of the purchase of goods to be sold in that way. The sales tax regulations deem an indirect marketer to have quoted his certificate for stock on hand on the date that the relevant regulations came into effect, 5 June 1985. Thus indirect marketers, who are now required to be registered will be liable to account for sales tax on all sales of goods made by them through indirect marketing arrangements after 5 June 1985.

SALE VALUE

7. Indirect marketers to whom paragraph 3(a) applies have not previously engaged in selling the goods involved by wholesale and it is a matter of determining what would be the fair market value of the goods if sold by them by wholesale. At this stage it has not been possible to examine the circumstances of individual taxpayers so as to set firm sale values. It is considered that, if persons in this category sold the goods in question by wholesale, a mark-up of at least 20% would be required to cover the costs of marketing, warehousing, etc. and return a reasonable profit.

8. Accordingly, for indirect marketers in this category it has been decided, on an interim basis, that a sale value of cost into store plus 20% is acceptable for goods sold by retail through agents. The cost into store should include any separate

costs incurred for packaging and other costs necessary to bring the goods into a marketable state. Where royalties are payable in respect of the goods the cost should include the amount of the royalty. With imported goods the sale value will be landed cost plus 20% provided that the goods are landed in a marketable condition. If they have to be, say, packaged the sale value will be landed cost plus packaging plus 20%. Where applicable any amount paid for royalties in respect of the goods should be included in the cost price.

9. The sale value of cost into store or landed cost, where appropriate, plus 20% is an interim one only. A uniform sale value of cost plus 20% will not be appropriate in all situations and adjustments to this value will need to be made in individual cases when the Taxation Office has had the opportunity to examine them. Pending review of individual cases, adoption by indirect marketers to whom paragraph 3(a) applies of the interim sale value, will be accepted as satisfying their sales tax liability in full.

10. Indirect marketers to whom paragraph 3(b) applies are essentially those who have sold goods by wholesale in the past and changed to an agency basis without any significant alteration in the level of nett proceeds to the retailer. In these cases it has been concluded that the retailer agent's commission represents the retail margin applicable to the goods. Consequently, indirect marketers in this category are required to account for sales tax on a sale value calculated on the basis of retail selling price less agent's commission treated as tax inclusive. The sale value may be converted to a cost plus a percentage basis provided the sale value arrived at equals that calculated by treating the nett price received by the retailer as tax inclusive.

11. A sale value of retail selling price less commission treated as tax inclusive will also apply to indirect marketers who sell through retail stores where the commission is equivalent to a retail margin even if they had not previously sold the goods to the retailer. This sale value would apply to most sales through agents who operate retail businesses because the agents would generally require a commission that is similar to their normal retail margin. A retailer would not normally operate merely on a seller's commission. This sale value may also be converted to a cost plus a percentage basis on the same terms as outlined in paragraph 10 above. Cost price should be determined as outlined for indirect marketers to whom paragraph 3(a) applies. Indirect marketers who operate in this way and who are uncertain about their position should make enquiries at the Taxation Office.

12. So far as indirect marketers to whom paragraph 3(c) applies are concerned, where wholesale sales at arm's length are made that are comparable to sales made under indirect marketing arrangements, the arm's length price is accepted as a fair and reasonable wholesale value for the purpose of calculating liability for sales made under indirect marketing arrangements.

13. Where the circumstances under which wholesale sales are not comparable to sales made under indirect marketing arrangements the wholesale sales are not a suitable yardstick for determining the sale value of goods sold under indirect

marketing arrangements. In such cases the sale value of the goods is to be determined on the basis of what would be a fair market value for wholesale sales made in comparable quantities and circumstances to the sales made under indirect marketing arrangements.

14. It would reasonably be expected that the sale value that emerges in this last mentioned situation would be higher than that for non-comparable wholesale sales but lower than retail price less the agent's commission treated as tax inclusive.

COMMISSIONER OF TAXATION
16 July 1985

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