

**COUNTRY INDUSTRIES (PAY-ROLL TAX
REBATES) ACT, 1977**

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 79, 1977.

An Act to allow rebates of pay-roll tax in respect of certain
country manufacturing or processing industries.
[Assented to, 20th October, 1977.]

BE

Country Industries (Pay-roll Tax Rebates).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Country Industries Short title.
(Pay-roll Tax Rebates) Act, 1977".

2. (1) This section and section 1 shall commence on Commence-
the date of assent to this Act. ment.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Division
of Act.

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—PAY-ROLL TAX REBATES—*ss.* 5–10.

PART III.—OFFENCES—*ss.* 11–14.

PART IV.—GENERAL—*ss.* 15–17.

SCHEDULE 1.

4. In this Act, except in so far as the context or subject-Interpre-
matter otherwise indicates or requires— tation.

"Director" means the Director, Department of Decentralisation and Development, or the person for the time being acting in his office;

"eligible

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“eligible employer” means a person for the time being registered as an eligible employer under section 5;

“eligible industry” means a manufacturing or processing industry—

(a) which is carried on at an establishment within the State other than an establishment within an area that was, as at 1st July, 1976, within the boundaries of—

(i) the County of Cumberland;

(ii) the City of Liverpool, the City of Newcastle, the City of Penrith or the City of Wollongong; or

(iii) the Municipality of Camden; and

(b) which is, in the opinion of the Minister, within a class of industry prescribed for the purposes of this definition;

“financial year” means the year commencing 1st July, 1976, and each following year commencing on 1st July;

“group” means a group constituted under Part IVA of the Pay-roll Tax Act, 1971;

“pay-roll tax” means pay-roll tax payable under the Pay-roll Tax Act, 1971, excluding additional tax and penal tax imposed by or under that Act;

“pay-roll tax paid” means pay-roll tax paid under the Pay-roll Tax Act, 1971, less any amounts refunded or rebated, or liable to be refunded or rebated, under that Act in respect of that pay-roll tax;

“person” includes a company and the Crown in right of the State of New South Wales;

“regulations” means regulations under this Act;

“wages”

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“wages” means wages liable to pay-roll tax under the Pay-roll Tax Act, 1971.

PART II.

PAY-ROLL TAX REBATES.

5. (1) A person may apply in writing to the Minister for registration as an eligible employer in respect of an establishment at which he carries on, has carried on or intends to carry on an eligible industry. Registration of eligible employers.

(2) If the Minister is satisfied that an applicant under subsection (1) is or will be eligible for a rebate of pay-roll tax in respect of the establishment the subject of the application, he shall register that applicant as an eligible employer for the purpose of applying for rebates of pay-roll tax in respect of that establishment.

(3) The Minister may cancel the registration of a person in respect of an establishment where he is satisfied that that person is no longer eligible for a rebate of pay-roll tax in respect of that establishment.

6. (1) Subject to subsections (2) and (3), an eligible employer may, in respect of an establishment or each establishment— Application for, and payment of, rebates.

- (a) at which he has carried on an eligible industry during a financial year; and
- (b) in respect of which he is registered as an eligible employer,

apply to the Minister for a rebate of pay-roll tax paid in respect of that financial year.

(2)

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(2) An eligible employer is not entitled to apply for a rebate of pay-roll tax under this Act in respect of a financial year—

- (a) unless all pay-roll tax payable by him in respect of that year has been paid; and
- (b) unless, where he has been a member of a group during the whole or any part of that year, all pay-roll tax payable by the other members of that group in respect of the period during which he was such a member has been paid.

(3) Subject to subsection (6), a person whose application under section 5 for registration as an eligible employer in respect of an establishment is not received by the Minister before 31st December in any year is not entitled to apply, in respect of that establishment, for a rebate of pay-roll tax under this Act in respect of the financial year ending on the 30th June immediately preceding his application for registration or any preceding financial year.

(4) An application under subsection (1) shall be made in a form and manner approved by the Director and shall be supported by such evidence relating to—

- (a) the eligible industry and establishment in respect of which the application is made;
- (b) the employment of employees; and
- (c) the payment of wages and the payment of pay-roll tax,

as the Director may require.

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(5) Upon the grant by the Minister of an application under subsection (1), a rebate of pay-roll tax shall be paid to the applicant in accordance with this Act.

(6) The Minister may, either generally or in a particular case, determine that the provisions of subsection (3) shall not be a bar to an application by a person for a rebate of pay-roll tax in respect of the financial year commencing 1st July, 1976, if the application by that person for registration under section 5 is made within a time to be specified by the Minister.

(7) For the purposes of this Act, where pay-roll tax is paid by the members of a group in respect of a period, each member of that group shall be deemed to have paid (or paid only) that part of the pay-roll tax that bears to the pay-roll tax the same proportion as the wages paid by that member in respect of that period bears to the total wages paid by the members of that group in respect of that period.

7. (1) Subject to subsection (3), the amount of rebate payable under this Act upon the grant of an application made under section 6 shall be the amount calculated—

**Amount of
rebate.**

- (a) where the applicant was not a member of a group during the relevant financial year or was a member of a group during the whole of the relevant financial year—in accordance with the formula prescribed in subsection (2); or
- (b) where the applicant was a member of a group during part only of the relevant financial year or was a member of two or more groups during the relevant financial year—by applying the formula prescribed in subsection (2) separately—
 - (i) in respect of any part of that year when that applicant was a member of a particular group; and

(ii)

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- (ii) in respect of any part of that year when that applicant was not a member of a group,

and by adding together the amounts thereby arrived at.

- (2) The prescribed formula is—

$$\frac{A \times B}{C}$$

where—

A equals—

- (a) where the calculation is made in respect of any year or part thereof when the applicant was not a member of a group—the pay-roll tax paid by that applicant in respect of that year or part thereof; or
- (b) where the calculation is made in respect of any year or part thereof when the applicant was a member of a group—the pay-roll tax paid by the members of that group in respect of that year or part thereof;

B equals the wages which—

- (c) were paid or payable by the applicant to employees who were employed at, or whose base for employment purposes was, the establishment in respect of which the application is made (not including employees employed at that establishment whose base for employment purposes was another establishment); and

(d)

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(d) were paid or payable by the applicant in respect of time when employees referred to in paragraph (c) were engaged in the eligible industry during—

(i) where the calculation is made in respect of any year or part thereof when the applicant was not a member of a group—that year or part thereof; or

(ii) where the calculation is made in respect of any year or part thereof when the applicant was a member of a group—that year or part thereof,

less that part of those wages which were paid or payable in respect of time when employees referred to in paragraph (c) were engaged in—

(e) retail selling;

(f) distribution, installation or service activities associated with retail selling; or

(g) an administrative, clerical or secretarial capacity in connection with retail selling or the activities referred to in paragraph (f),

in the eligible industry during that year or part thereof; and

C equals—

(h) where the calculation is made in respect of any year or part thereof when the applicant was not a member of a group—the total wages paid or payable by that applicant in respect of that year or part thereof; or

(i)

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- (i) where the calculation is made in respect of any year or part thereof when the applicant was a member of a group—the total wages paid or payable by the members of that group in respect of that year or part thereof.

(3) Where the establishment in respect of which an application is made under section 6 is within an area that was, as at 1st July, 1976, within the boundaries of a city, municipality or shire referred to in Schedule 1, the amount of the rebate payable under this Act in respect of that application shall be 50 per centum of the amount calculated under subsection (1).

(4) The rebate payable under this Act shall be calculated to the nearest whole dollar or, where the odd amount is 50 cents, to the next highest whole dollar.

**Reduction
of rebate.**

8. (1) Where an application under section 6 in respect of a financial year is received by the Minister more than 6 months after the end of that financial year, the rebate payable under this Act in respect of that application shall be reduced by 10 per centum for each month or part thereof that ensues between the end of that period of 6 months and the date the application is received.

(2) The Minister may, if he thinks fit, waive wholly or partially a reduction effected by subsection (1).

**Rebate of
tax paid by
applicant's
predecessor.**

9. Where an eligible employer makes an application under section 6 in respect of an establishment and a predecessor of that eligible employer has paid pay-roll tax in respect of the relevant financial year or would, if he was the eligible employer, have been deemed under section 6 (7) to have paid pay-roll tax in respect of that year, the Minister may, if in his opinion the circumstances warrant a rebate

under

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under this Act to the applicant of the tax so paid or deemed to be paid, grant that rebate and, for the purposes of this Act, that tax shall be deemed to have been paid by the applicant.

10. (1) Where the Minister is satisfied—

Determinations by Minister.

(a) that incorrect or inadequate information with respect to any or all of the following matters, namely—

- (i) whether an employee was engaged in an eligible industry;
- (ii) whether an employee was employed at an establishment;
- (iii) an employee's base for employment purposes;
- (iv) the amount of time when an employee was engaged in an eligible industry; and
- (v) the amount of time when an employee was engaged in the activities referred to in section 7 (2) (e), (f) and (g),

has been made available to him for the purposes of an application for a rebate under this Act;

(b) that from that information it is not possible to ascertain with certainty—

- (i) whether or not the applicant is entitled to a rebate; or
- (ii) the amount of the rebate payable; and

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- (c) that correct and adequate information with respect to the matter or matters with respect to which that information was given is not readily available,

the Minister may determine the matter in such manner as he in his judgment considers appropriate, having regard to the circumstances of the case and to such estimates and other matters (if any) as he thinks proper.

(2) For the purpose of ascertaining—

- (a) whether or not an applicant is entitled to a rebate under this Act; or

- (b) the amount of the rebate payable,

any determination of the Minister under subsection (1) is conclusive as to the matter or matters the subject of the determination.

PART III.

OFFENCES.

False information. 11. A person shall not, in connection with an application under this Act, wilfully or negligently furnish to the Minister any information that is false or misleading in a material particular.

Penalty: \$1,000.

Disclosure of information. 12. A person shall not disclose any information or publish any document or part of a document obtained by him in connection with the administration or execution of this Act or the regulations, unless the disclosure or publication is made—

- (a) with the consent of the person from whom the information or document was obtained;

(b)

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- (b) in connection with the administration or execution of this Act; or
- (c) for the purpose of any legal proceedings arising out of this Act or of any report of any such proceedings.

Penalty: \$1,000.

13. Proceedings for offences against this Act may be taken in a summary manner before a stipendiary magistrate sitting in petty sessions. Proceedings.

14. (1) Where a person has not made to the Minister a full and true disclosure of all the material facts necessary to determine an amount payable to him under this Act and where the applicant has been paid an amount in excess of the amount which would have been payable under this Act if those facts had been fully and truly disclosed, the Minister may— Failure to disclose all material facts.

- (a) where he is of the opinion that the failure was wilful or negligent—at any time; and
- (b) in any other case—within 6 years from the date upon which the overpayment was made to the applicant,

by notice in writing require the applicant to pay to him—

- (c) where he is of the opinion that the failure was wilful or negligent—such sum being not less than the amount overpaid and not exceeding double the amount overpaid to the applicant as the Minister thinks fit; and
- (d) in any other case—an amount equal to the amount overpaid to the applicant.

(2)

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(2) Any amount that an applicant is required to repay under subsection (1) may be recovered as a debt or liquidated demand in a court of competent jurisdiction or may be deducted from any amount to which the applicant is or becomes entitled under this Act.

PART IV.

GENERAL.

Communication of information. **15.** The Minister, or any person authorised by him, may communicate any matter which comes to his knowledge in the exercise or performance of his powers and duties under this Act or the regulations to any person administering a law relating to pay-roll tax.

Power of entry. **16.** The Director or any person authorised by him in writing in that behalf shall at all reasonable times have full and free access to all buildings (other than buildings used for residential purposes), places, books, documents and other papers for any of the purposes of this Act or the regulations and for any such purpose may make extracts from or copies of any such books, documents or papers.

Regulations. **17.** (1) The Governor may make regulations for or with respect to all matters that by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

(2) The Governor shall not make a regulation for the purposes of paragraph (b) of the definition of "eligible industry" in section 4 unless the proposed regulation has been approved by the Treasurer.

(3)

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(3) Subject to subsection (2), a regulation made for the purposes of paragraph (b) of the definition of "eligible industry" in section 4 may adopt wholly or partially a standard industrial classification prepared by a Department or instrumentality of the State or the Commonwealth or may define classes of industry in the same terms as, or by reference to, classes listed in such a classification.

SCHEDULE 1.

Sec. 7 (3).

City of Blue Mountains.
City of Greater Cessnock.
City of Maitland.
Municipality of Bowral.
Municipality of Kiama.
Municipality of Shellharbour.
Shire of Colo.
Shire of Gosford.
Shire of Lake Macquarie.
Shire of Mittagong.
Shire of Port Stephens.
Shire of Wingecarribee.
Shire of Wollondilly.
Shire of Wyong.
