



Office of State Revenue
NSW TREASURY

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Revenue Ruling No. PT 2

Grouping of Employers - Commissioner's Discretion to Exclude a Person from a Group

Ruling history

Ruling no.	Issued date	Dates of effect		Status
		From	To	
PT 2	19 February 1986	19 / 2 / 86	30/ 6 / 99	Obsolete

Preamble

- 1 Part IVA of the **Pay-Roll Tax Act 1971** provides for the grouping of certain related employers for the purposes of the Act. There are basically three situations where employers will be considered to be a group for pay-roll tax purposes, namely where:
 - (a) corporations are related companies for the purposes of the **Companies (New South Wales) Code**;
 - (b) employees of an employer are solely or mainly used in connection with another business, or are the subject of an agreement relating to the use of their services; between their employer and the persons who carry on another business; or
 - (c) two businesses are controlled by the same persons.
- 2 However, in order to avoid anomalies which may arise from strict application of the legislative rules, the legislation provides that in certain circumstances the Chief Commissioner of Pay-roll Tax may make an order to exclude a person from a group.

Ruling

Exclusion Order

- 3 Section 16H of the Act provides that the Chief Commissioner of Pay-roll Tax may, by order in writing, exclude persons from a group. Before making such an order the Chief Commissioner must be satisfied, having regard to the nature and degree of ownership or control of the businesses, the nature of the businesses and any other matters considered relevant, that a business carried on by a member of a group:
 - (a) is carried on substantially independently of a business carried on by any other member of that group; and
 - (b) is not substantially connected with the carrying on of a business carried on by any other member of that group.

Application for Exclusion Order

- 4 An employer who is a member of a group may apply to the Chief Commissioner to make an order excluding that employer from the group. Applications should be made in writing. Upon receipt of an application the Chief Commissioner will seek certain information relating to the relationship between the person and the other members of the group.

Substantial Independence and "No Substantial Connection"

- 5 In considering whether or not there is substantial independence or no substantial connection, it is necessary for a member of a group to prove to the satisfaction of the Chief Commissioner that there does not exist a continuous course of active and substantial relationship, in a business or commercial sense, with any other member of the group, and that the connections which exist are no more than casual, irregular or occasional occurrences.
- 6 In arriving at a decision the Chief Commissioner will consider the nature and extent of all relevant contracts and dealings taken as a whole, between the member and all other members of the group, including:
 - (a) the nature and extent of any commercial transactions or dealings, including the value and percentage of the member's total business which is conducted with other members of the group;
 - (b) the extent to which members share resources, facilities or services, including premises, staff, management and accounting services;
 - (c) the extent to which the member controls or is involved in managerial decisions and day to day administration of the other members, and the extent to which other members control or are involved in managerial decisions and day to day administration of the member;
 - (d) the extent to which there are financial interdependencies, including intra-group loans or guarantees and common banking facilities;
 - (e) the extent to which there is a relationship between customers of the member and customers of other members of the group, including such matters as sharing of customers' total business, and receiving or providing complementary goods or services in respect of particular customers;
 - (f) the degree to which there is a connection between a member and other members of the group in the purchase or sales of goods and services;
 - (g) the extent to which there is a connection between the natures of the businesses of the member and other members of the group;
 - (h) the extent to which there is a connection between the ultimate owners of the member and other members of the group; and
 - (i) any other relevant information.

All Rulings must be read subject to SD Ruling No. 1

A D Clyne,
Chief Commissioner of Pay-roll Tax.
19th February, 1986