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PAY-ROLL TAX (AMENDMENT) BILL, 1982

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to impose a supplementary pay-roll tax from 1st July, 1982, at the rate of 1 per cent in respect of employers or groups that pay wages (disregarding foreign wages) at an annual rate of \$1,000,000 or more, subject to a tapered tax concession in respect of wages payable at an annual rate of between \$1,000,000 and \$1,100,000.

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PAY-ROLL TAX (AMENDMENT) BILL, 1982

No. , 1982.

A BILL FOR

An Act to amend the Pay-roll Tax Act, 1971, to impose a supplementary pay-roll tax upon certain employers in respect of certain wages, and to provide for the assessment and collection of tax so imposed.

[MR BOOTH—6 April, 1982.]

Pay-roll Tax (Amendment).

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:—

5 Short title.

1. This Act may be cited as the "Pay-roll Tax (Amendment) Act, 1982".

Commencement.

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

- 10 (2) Except as provided in subsection (1), this Act shall commence on 1st July, 1982.

Amendment of Act No. 22, 1971.

3. The Pay-roll Tax Act, 1971, is amended in the manner set forth in Schedule 1.

15 **SCHEDULE 1.**

(Sec. 3.)

AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971.

- (1) (a) Section 2—

After the matter relating to Part IVA, insert:—

- 20 **PART IVB.—IMPOSITION OF SUPPLEMENTARY PAY-ROLL
TAX—s. 16M.**

Pay-roll Tax (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—*continued.*

(b) Section 2—

After the matter relating to Part VIII, insert:—

5 **SCHEDULE 1.—SUPPLEMENTARY PAY-ROLL TAX.**

(2) Section 3 (1), definition of “tax”—

After “Act”, insert “, and includes pay-roll tax payable under Schedule 1”.

(3) Part IVB—

10 After Part IVA, insert:—

PART IVB.

IMPOSITION OF SUPPLEMENTARY PAY-ROLL TAX.

Imposition of pay-roll tax on certain taxable wages.

15 16M. There shall be charged, levied, collected and paid, for credit of the Consolidated Revenue Fund in the Treasury, pay-roll tax in accordance with Schedule 1.

(4) Schedule 1—

After section 51, insert:—

SCHEDULE 1.

20

SUPPLEMENTARY PAY-ROLL TAX.

(Sec. 16M.)

PART I.

GENERAL.

Interpretation.

25 1. (1) In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—

“designated group employer”, in relation to a group, means the member of that group who, under clause 7, is for the time being the designated group employer in respect of that group;

Pay-roll Tax (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.**

“financial year” does not include any period before 1st July, 1982;

“month” does not include any period before 1st July, 1982;

5 “principal provisions of this Act” means the provisions of this Act except this Schedule.

(2) A reference in section 10, 18, 32, 36, 37 or 42 to pay-roll tax includes a reference to pay-roll tax payable under this Schedule.

10 (3) A reference in section 11B, 11C, 13, 14, 16I, 16K, 16L or 17 to a return does not include a reference to a return under this Schedule.

(4) Obligations or liabilities imposed pursuant to this Schedule, in relation to the furnishing of returns or the payment of pay-roll tax, are in addition to, and not in substitution for, obligations or liabilities imposed under the principal provisions of this Act.

15 (5) If pay-roll tax payable under this Schedule is not paid before the expiration of the time specified in clause 3 (2) or clause 7 (1), as the case may require, or such further time as may be allowed by the Commissioner under section 21, section 22 applies in respect of that pay-roll tax in the same way as it applies to and in respect of pay-roll tax payable under the principal provisions
20 of this Act.

(6) Nothing in subclause (5) affects the application of section 22 in respect of pay-roll tax, further tax or additional tax payable under section 18 in respect of pay-roll tax payable under this Schedule.

Returns.

25 2. (1) Where the wages (disregarding foreign wages) paid or payable by an employer or the total of the wages (disregarding foreign wages) paid or payable by the members of a group, as the case may be, during a month (not being June) are or is \$83,334 or more, the employer or each of the members
30 of the group, as the case may be, shall within 7 days after the close of that month, furnish to the Commissioner, in accordance with the form and in the manner prescribed, a supplementary return relating to that month, and shall specify in that return any taxable wages that were paid or payable by him during that month.

35 (2) Where the wages (disregarding foreign wages) paid or payable by an employer or the total of the wages (disregarding foreign wages) paid or payable by the members of a group, as the case may be, during a financial

Pay-roll Tax (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.*

5 year are or is \$1,000,000 or more, the employer or each of the members of the group, as the case may be, shall within 21 days after the close of the month of June in that financial year furnish to the Commissioner, in accordance with the form and in the manner prescribed, a supplementary return relating to that month and to the adjustment of pay-roll tax paid or payable under this Schedule by the employer or member of the group, as the case may be, in respect of that financial year, and shall specify in that return any taxable wages that were paid or payable by him during that month and that financial year.

(3) Where the Commissioner is of the opinion that it would be unduly onerous to require an employer to furnish supplementary returns—

15 (a) within the time specified in subclause (1) or (2), as the case may require, he may, by notice in writing, vary the time within which that employer is required to furnish returns in pursuance of subclause (1) or (2); or

20 (b) relating to each month, the Commissioner may, by notice in writing, authorise that employer to furnish returns relating to such periods as may be specified in the notice,

and the employer shall, while that notice remains unrevoked, furnish returns accordingly.

(4) The Commissioner may, at any time, by notice in writing, revoke any notice given in pursuance of subclause (3).

25

PART II.**EMPLOYERS OTHER THAN MEMBERS OF GROUPS.****Tax payable by employer who is not a member of a group.**

3. (1) In this clause—

30 “interstate wages” does not include interstate wages paid or payable by a member of a group;

“prescribed amount” means \$834;

“taxable wages” does not include taxable wages paid or payable by a member of a group.

Pay-roll Tax (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.**

(2) Subject to this clause, where the wages (disregarding foreign wages) paid or payable by an employer during a month are \$83,334 or more, the employer shall, within the time within which he is required by this Schedule to furnish a supplementary return relating to that month, pay to the Commissioner, as pay-roll tax, an amount equal to 1 per cent of the taxable wages paid or payable by that employer during that month.

(3) For the purpose of ascertaining the pay-roll tax payable under this Schedule by an employer who pays or is liable to pay taxable wages for the whole of a month, but does not pay and is not liable to pay interstate wages during that month, there shall be deducted, for that month, from the amount of the pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), the prescribed amount, reduced by \$1 for each \$10 (disregarding any remainder) by which the amount of the taxable wages (in whole dollars) paid or payable by that employer during that month exceeds \$83,334.

(4) For the purpose of ascertaining the pay-roll tax payable under this Schedule by an employer who pays or is liable to pay wages during a month and pays or is liable to pay taxable wages for part only of that month, but does not pay and is not liable to pay interstate wages during that month, there shall be deducted, for that month, from the amount of pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), the amount that bears to the prescribed amount the same proportion as the number of days in that part of that month bears to the total number of days in that month, reduced by \$1 for each \$10 (disregarding any remainder) by which the amount of the taxable wages (in whole dollars) paid or payable by that employer during that month exceeds the same proportion of \$83,334.

(5) An employer who during any month pays or is liable to pay taxable wages and interstate wages may, by notice in writing in the prescribed form containing the prescribed particulars, served on the Commissioner, nominate an amount, calculated in the prescribed manner, not exceeding the prescribed amount, as the deduction that he claims to be entitled to make for that month and for subsequent months.

(6) For the purpose of ascertaining the pay-roll tax payable under this Schedule by an employer who has served on the Commissioner notice under subclause (5), there shall, subject to subclause (7), be deducted, for a month (being the month ending last before the day on which he served that notice on the Commissioner or any subsequent month), from the amount of pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), the amount nominated in that notice.

*Pay-roll Tax (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—*continued.*

- 5 (7) The Commissioner may, on an application made to him in writing by an employer who pays or is liable to pay taxable wages and interstate wages during any month or of his own motion in relation to such an employer, at any time, make a determination specifying an amount, not exceeding the prescribed amount, that may be deducted for any month specified or referred to in the determination (being a month commencing before, or after, or the month in which, the determination is made) from the amount of pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), and there shall be deducted, for any such month, from the amount of the pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), the amount so specified.
- 10 (8) The Commissioner may, at any time, by instrument in writing, revoke a determination made under subclause (7) and any such revocation shall have effect as on and from the first day of the month specified in the instrument, whether that month is before, but not before the date of the determination, or after, or the month in which, the instrument is executed by him.
- 15 (9) The Commissioner shall, as soon as practicable after making a determination under subclause (7) or a revocation under subclause (8), serve notice of the determination or revocation on the employer concerned.
- 20

Interpretation for purposes of this clause and clauses 5 and 6.

4. (1) In this clause and clauses 5 and 6—

- 25 “interstate wages” does not include interstate wages paid or payable by a member of a group:
 “taxable wages” does not include taxable wages paid or payable by a member of a group.

- 30 (2) For the purposes of any financial year, a reference in clauses 5 and 6 to the “prescribed amount” is, in relation to an employer, a reference to the amount calculated in accordance with the following formula:—

$$\frac{TW}{TW + IW} \left[\frac{10000C}{D} - \frac{1}{10} \left\{ (TW + IW) - \frac{1000000C}{D} \right\} \right]$$

Pay-roll Tax (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—*continued.*

where—

5 TW is the total of the taxable wages paid or payable by the employer during the financial year;

IW is the total of the interstate wages paid or payable by the employer during the financial year;

10 C is the number of days in respect of which wages (disregarding foreign wages) were paid or payable by the employer during the financial year; and

D is the number of days in the financial year.

15 (3) Where a person who did not pay and was not liable to pay taxable wages or interstate wages for any part of a financial year satisfies the Commissioner that, by reason of the nature of his trade or business, the taxable wages and interstate wages, if any, paid or payable by him fluctuate with different periods of the financial year, the Commissioner may treat him—

(a) if he has conducted that trade or business in Australia during the whole of the financial year—as an employer throughout the financial year; or

20 (b) if he has conducted that trade or business in Australia during part only of the financial year—as an employer during that lastmentioned part of the financial year.

Annual adjustments.

25 5. (1) In this clause, “annual amount of pay-roll tax”, in relation to an employer, means an amount equal to 1 per cent of the total of the taxable wages paid or payable by that employer during a financial year less the prescribed amount, if any.

(2) Where taxable wages are paid or payable by an employer during a financial year—

30 (a) the Commissioner shall, on an application made by that employer in accordance with subclause (3), where the amount of pay-roll tax paid or payable under this Schedule by that employer when he made the returns under this Schedule relating to that financial year is greater than the annual amount of pay-roll tax in relation to that employer for that financial year, refund or rebate to that employer an amount equal to the difference, reduced by the sum of any amount which was, under section 19, refunded (before the time of the refund or rebate under this clause) to him in respect of pay-roll tax payable under this Schedule in respect

Pay-roll Tax (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.*

- 5 of that financial year and, where the rebates paid to him in respect of a financial year under a pay-roll tax rebate scheme administered by the Treasury are in excess of the annual rebate payable to him under that scheme, any amount which the Treasurer has directed should be deducted by reason of that excess payment; or
- 10 (b) that employer shall, where the amount of pay-roll tax paid or payable under this Schedule by that employer when he made the returns under this Schedule relating to that financial year is less than the annual amount of pay-roll tax in relation to that employer for that financial year, pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Schedule in respect of the month of June in that financial year, an amount equal to the difference.
- 15 (3) An application under subclause (2) (a) shall, notwithstanding section 19, be made within the financial year next following the financial year in respect of which the refund or rebate is applied for.

Adjustment of pay-roll tax when employer ceases to be an employer, etc., during a financial year.

- 20 6. (1) In this clause—
- “prescribed period”, in relation to an employer who pays or is liable to pay wages, otherwise than as a member of a group, for part only of a financial year, means that part of that financial year;
- 25 “total amount of pay-roll tax”, in relation to an employer, means an amount equal to 1 per cent of the total of the taxable wages paid or payable by the employer during a prescribed period less the prescribed amount, if any;
- “wages” does not include foreign wages.

- 30 (2) Where in a financial year an employer ceases to pay wages or becomes a member of a group he shall, where the amount of pay-roll tax paid or payable by him under this Schedule when he made returns under this Schedule relating to the prescribed period is less than the total amount of pay-roll tax in relation to that employer for that prescribed period, pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Schedule relating to that prescribed period or the last return under this
- 35 Schedule relating to that prescribed period, an amount equal to the difference.

Pay-roll Tax (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.**

(3) Where an employer, who has ceased to pay wages or has become a member of a group, as referred to in subclause (2), in any financial year, subsequently pays or is liable to pay taxable wages or interstate wages during that financial year otherwise than as a member of a group, clause 5 applies to and in respect of him as if the reference in clause 5 (2) to the amount of pay-roll tax paid or payable under this Schedule by that employer included a reference to any pay-roll tax paid or payable by that employer under subclause (2).

PART III.**MEMBERS OF GROUPS.****Tax payable by members of groups.**

7. (1) Subject to this clause, where the total of the wages (disregarding foreign wages) paid or payable by the members of a group during a month is \$83,334 or more, each member of the group shall, within the time within which he is required by this Schedule to furnish a supplementary return relating to that month, pay to the Commissioner, as pay-roll tax, an amount equal to 1 per cent of the taxable wages paid or payable by that member during that month.

(2) The members of a group may, by an instrument in writing in the prescribed form containing the prescribed particulars, executed by or on behalf of each member of the group and served on the Commissioner, designate one of its members to be the designated group employer in respect of the group for the purposes of this Schedule and nominate, as the deduction to be made for any month in relation to which that designated group employer is required to furnish returns under this Schedule, an amount, calculated in the prescribed manner, not exceeding \$834.

(3) The designated group employer in respect of a group ceases to be the designated group employer in respect of that group on and from the first day of the month during which—

(a) the composition of the group alters; or

(b) the members of the group, by an instrument in writing in the prescribed form containing the prescribed particulars, executed by or on behalf of each of them who is known to the Commissioner to be a member of the group and served on the Commissioner, revoke the designation,

whichever occurs the earlier.

Pay-roll Tax (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.*

5 (4) For the purpose of ascertaining the pay-roll tax payable under this Schedule by a designated group employer, there shall, subject to subclause (5), be deducted, for a month (being the month commencing last before the day on which the instrument under subclause (2) designating him as the designated group employer in respect of the group is served on the Commissioner or any subsequent month) from the amount of the pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause 10 (1) the amount nominated in that instrument.

15 (5) The Commissioner may, on an application made to him in writing by or on behalf of each person known to the Commissioner to be a member of a group or of his own motion in relation to a group, at any time, make a determination specifying an amount, not exceeding \$834, that may be deducted for any month specified or referred to in the determination (being a month commencing before or after, or in which, the determination is made) from the amount of pay-roll tax calculated in respect of that month in accordance with subclause (1) by an employer specified in the determination who was, during any such month, a member of that group and there shall be deducted, 20 for any such month, from the amount of the pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (1) the amount so specified.

25 (6) The Commissioner may, at any time, by instrument in writing, revoke a determination made under subclause (5) and any such revocation shall have effect as on and from the first day of the month specified in the instrument, whether that month is before, but not before the date of the determination, or after, or the month in which, the instrument is executed by him.

30 (7) An employer specified in a determination made under subclause (5) shall, on the first day of the first month specified or referred to in the determination, be deemed to have been designated under subclause (2) to be the designated group employer in respect of the group of which he was then a member and shall, subject to subclause (3), thereafter be the designated group employer in respect of that group.

35 (8) The Commissioner shall, as soon as practicable after making a determination under subclause (5) or a revocation under subclause (6), serve notice of the determination or revocation on the designated group employer in respect of the group concerned.

*Pay-roll Tax (Amendment).***SCHEDULE 1—continued.****AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.****“Prescribed amount” for purposes of clauses 9 and 10.**

- 5 8. For the purposes of any financial year, a reference in clauses 9 and 10 to the “prescribed amount” is, in relation to a designated group employer, a reference to the amount calculated in accordance with the following formula:—

$$\frac{TW}{TW + IW} \left[\frac{10000C}{D} - \frac{1}{10} \left\{ (TW + IW) - \frac{1000000C}{D} \right\} \right]$$

10 where—

TW is the total of the taxable wages paid or payable by the members of the group, in respect of which that designated group employer is the designated group employer, during the financial year;

15 IW is the total of the interstate wages paid or payable by the members of that group during the financial year;

20 C is the number of days in that part of the financial year for which that designated group employer was the designated group employer in respect of that group, reduced by the number of days, if any, during that part in respect of which no wages (disregarding foreign wages) were paid or payable by any member of that group; and

D is the number of days in the financial year.

Annual adjustments.

- 25 9. (1) This clause applies in relation to a group at least one member of which paid or was liable to pay, as such a member, taxable wages or interstate wages for the whole of a financial year.

(2) A reference in this clause to the annual amount of pay-roll tax paid or payable by the members of a group is a reference to an amount equal to 1 per cent of the total of the taxable wages paid or payable by the members of that group during a financial year less, where—

30 (a) during that financial year there was only one designated group employer in respect of that group—the prescribed amount applicable to that designated group employer; or

35 (b) during that financial year there were 2 or more designated group employers in respect of that group—the prescribed amount that, if there had been only one designated group employer in respect of that group

Pay-roll Tax (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.**

5 during that financial year, would have been applicable to that designated group employer had he paid all of the taxable wages paid or payable by the members of that group during that financial year.

10 (3) A reference in this clause to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is a reference to the amount of pay-roll tax paid or payable when returns were made or required to be made under this Schedule relating to that financial year, being returns in which the taxable wages referred to in subclause (2) were included or required to be included.

15 (4) Where the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is greater than the annual amount of pay-roll tax in relation to those members for that financial year, the Commissioner shall, on an application made in accordance with subclause (7) by the person who is the designated group employer in respect of that group on 30th June in that financial year, refund or rebate to that employer an amount equal to the difference, reduced by the sum of the total of any amounts refunded to any member of that group under section 19 in respect of the pay-roll tax paid or payable under this Schedule by any such member when returns relating to that financial year were made or required to be made under this Schedule by that member and, where the rebates paid to any member of that group in respect of that financial year under a pay-roll tax rebate scheme administered by the Treasury are in excess of the annual rebate payable to that member under that scheme, the total of any amounts which the Treasurer has directed should be deducted by reason of such an excess payment.

25 (5) Where the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is less than the annual amount of pay-roll tax in relation to those members for that financial year, the person who is the designated group employer in respect of that group on 30th June in that financial year shall pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Schedule in respect of the month of June in that financial year, an amount equal to the difference.

35 (6) If a designated group employer in respect of a group fails to pay any amount that he is required to pay under subclause (5) in respect of a financial year, every member of the group who paid or was liable to pay taxable wages during that financial year is liable jointly and severally to pay that amount to the Commissioner.

Pay-roll Tax (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.*

5 (7) An application under subclause (4) shall, notwithstanding section 19, be made within the financial year next following the financial year in respect of which the refund or rebate is applied for.

Adjustment of pay-roll tax when members of a group cease to pay taxable wages or interstate wages during a financial year.

10 10. (1) This clause applies in relation to a group at least one member of which paid or was liable to pay, as such a member, taxable wages or interstate wages for part only (being a continuous part) of a financial year and no member of which paid or was liable to pay, as such a member, any such wages during the whole of that financial year.

15 (2) In this clause, "prescribed period", in relation to a group, means part only (being a continuous part) of a financial year for which at least one member of the group paid or was liable to pay taxable wages or interstate wages.

20 (3) A reference in this clause to the total amount of pay-roll tax paid or payable for a prescribed period by the members of a group is a reference to an amount equal to 1 per cent of the total of the taxable wages paid or payable by the members of that group during that prescribed period less, where—

(a) during that prescribed period there was only one designated group employer in respect of that group—the prescribed amount applicable to that designated group employer; or

25 (b) during that prescribed period there were 2 or more designated group employers in respect of that group—the prescribed amount that, if there had been only one designated group employer in respect of that group during that prescribed period, would have been applicable to that designated group employer had he paid all of the taxable wages paid or payable by the members of that group during that prescribed period.

35 (4) Where, at the expiration of a prescribed period relating to a group, the total amount of pay-roll tax paid or payable when returns were made or required to be made under this Schedule, being returns in which the taxable wages referred to in subclause (3) were included or required to be included, is less than the total amount of pay-roll tax paid or payable for that prescribed period by the members of that group, the person who is the designated group employer in respect of that group on the last day of that prescribed period shall pay to the Commissioner as pay-roll tax, within the period during which

Pay-roll Tax (Amendment).

SCHEDULE 1—*continued.***AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—*continued.***

5 he is required to furnish a return under this Schedule or the last return under this Schedule relating to that prescribed period, an amount equal to the difference.

(5) The provisions of clause 9 (4) and (5) apply in relation to a group to which this clause applies as if—

10 (a) at least one member of the group paid or was liable to pay, as such a member, taxable wages or interstate wages for the whole of that financial year;

15 (b) the reference in clause 9 (3) to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of that group included a reference to any pay-roll tax paid or payable under subclause (4) by a designated group employer in respect of that group in respect of that financial year; and

20 (c) the person, if any, who was the designated group employer in respect of that group at the time when the group last ceased in that financial year to have a member who was paying or was liable to pay, as such a member, taxable wages or interstate wages was the designated group employer in respect of that group on 30th June in that financial year.

25 (6) If a designated group employer in respect of a group fails to pay any amount that he is required to pay under subclause (4) in respect of a prescribed period, every member of the group who paid or was liable to pay taxable wages during the financial year that includes that prescribed period is liable jointly and severally to pay that amount to the Commissioner.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

PAY-ROLL TAX (AMENDMENT) ACT, 1982, No. 62

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 62, 1982.

An Act to amend the Pay-roll Tax Act, 1971, to impose a supplementary pay-roll tax upon certain employers in respect of certain wages, and to provide for the assessment and collection of tax so imposed. [Assented to, 18th May, 1982.]

Pay-roll Tax (Amendment).

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:—

Short title.

1. This Act may be cited as the "Pay-roll Tax (Amendment) Act, 1982".

Commencement.

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

- (2) Except as provided in subsection (1), this Act shall commence on 1st July, 1982.

Amendment of Act No. 22, 1971.

3. The Pay-roll Tax Act, 1971, is amended in the manner set forth in Schedule 1.

SCHEDULE 1.

(Sec. 3.)

AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971.

- (1) (a) Section 2—

After the matter relating to Part IVA, insert:—

PART IVB.—IMPOSITION OF SUPPLEMENTARY PAY-ROLL
TAX—s. 16M.

Pay-roll Tax (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—*continued.*

(b) Section 2—

After the matter relating to Part VIII, insert:—

SCHEDULE 1.—SUPPLEMENTARY PAY-ROLL TAX.

(2) Section 3 (1), definition of “tax”—

After “Act”, insert “, and includes pay-roll tax payable under Schedule 1”.

(3) Part IVB—

After Part IVA, insert:—

PART IVB.

IMPOSITION OF SUPPLEMENTARY PAY-ROLL TAX.

Imposition of pay-roll tax on certain taxable wages.

16M. There shall be charged, levied, collected and paid, for credit of the Consolidated Revenue Fund in the Treasury, pay-roll tax in accordance with Schedule 1.

(4) Schedule 1—

After section 51, insert:—

SCHEDULE 1.

(Sec. 16M.)

SUPPLEMENTARY PAY-ROLL TAX.

PART I.

GENERAL.

Interpretation.

1. (1) In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—

“designated group employer”, in relation to a group, means the member of that group who, under clause 7, is for the time being the designated group employer in respect of that group;

Pay-roll Tax (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.**

“financial year” does not include any period before 1st July, 1982;

“month” does not include any period before 1st July, 1982;

“principal provisions of this Act” means the provisions of this Act except this Schedule.

(2) A reference in section 10, 18, 32, 36, 37 or 42 to pay-roll tax includes a reference to pay-roll tax payable under this Schedule.

(3) A reference in section 11B, 11C, 13, 14, 16I, 16K, 16L or 17 to a return does not include a reference to a return under this Schedule.

(4) Obligations or liabilities imposed pursuant to this Schedule, in relation to the furnishing of returns or the payment of pay-roll tax, are in addition to, and not in substitution for, obligations or liabilities imposed under the principal provisions of this Act.

(5) If pay-roll tax payable under this Schedule is not paid before the expiration of the time specified in clause 3 (2) or clause 7 (1), as the case may require, or such further time as may be allowed by the Commissioner under section 21, section 22 applies in respect of that pay-roll tax in the same way as it applies to and in respect of pay-roll tax payable under the principal provisions of this Act.

(6) Nothing in subclause (5) affects the application of section 22 in respect of pay-roll tax, further tax or additional tax payable under section 18 in respect of pay-roll tax payable under this Schedule.

Returns.

2. (1) Where the wages (disregarding foreign wages) paid or payable by an employer or the total of the wages (disregarding foreign wages) paid or payable by the members of a group, as the case may be, during a month (not being June) are or is \$83,334 or more, the employer or each of the members of the group, as the case may be, shall within 7 days after the close of that month, furnish to the Commissioner, in accordance with the form and in the manner prescribed, a supplementary return relating to that month, and shall specify in that return any taxable wages that were paid or payable by him during that month.

(2) Where the wages (disregarding foreign wages) paid or payable by an employer or the total of the wages (disregarding foreign wages) paid or payable by the members of a group, as the case may be, during a financial

Pay-roll Tax (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—*continued.*

year are or is \$1,000,000 or more, the employer or each of the members of the group, as the case may be, shall within 21 days after the close of the month of June in that financial year furnish to the Commissioner, in accordance with the form and in the manner prescribed, a supplementary return relating to that month and to the adjustment of pay-roll tax paid or payable under this Schedule by the employer or member of the group, as the case may be, in respect of that financial year, and shall specify in that return any taxable wages that were paid or payable by him during that month and that financial year.

(3) Where the Commissioner is of the opinion that it would be unduly onerous to require an employer to furnish supplementary returns—

- (a) within the time specified in subclause (1) or (2), as the case may require, he may, by notice in writing, vary the time within which that employer is required to furnish returns in pursuance of subclause (1) or (2); or
- (b) relating to each month, the Commissioner may, by notice in writing, authorise that employer to furnish returns relating to such periods as may be specified in the notice,

and the employer shall, while that notice remains unrevoked, furnish returns accordingly.

(4) The Commissioner may, at any time, by notice in writing, revoke any notice given in pursuance of subclause (3).

PART II.

EMPLOYERS OTHER THAN MEMBERS OF GROUPS.

Tax payable by employer who is not a member of a group.

3. (1) In this clause—

“interstate wages” does not include interstate wages paid or payable by a member of a group;

“prescribed amount” means \$834;

“taxable wages” does not include taxable wages paid or payable by a member of a group.

Pay-roll Tax (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.*

(2) Subject to this clause, where the wages (disregarding foreign wages) paid or payable by an employer during a month are \$83,334 or more, the employer shall, within the time within which he is required by this Schedule to furnish a supplementary return relating to that month, pay to the Commissioner, as pay-roll tax, an amount equal to 1 per cent of the taxable wages paid or payable by that employer during that month.

(3) For the purpose of ascertaining the pay-roll tax payable under this Schedule by an employer who pays or is liable to pay taxable wages for the whole of a month, but does not pay and is not liable to pay interstate wages during that month, there shall be deducted, for that month, from the amount of the pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), the prescribed amount, reduced by \$1 for each \$10 (disregarding any remainder) by which the amount of the taxable wages (in whole dollars) paid or payable by that employer during that month exceeds \$83,334.

(4) For the purpose of ascertaining the pay-roll tax payable under this Schedule by an employer who pays or is liable to pay wages during a month and pays or is liable to pay taxable wages for part only of that month, but does not pay and is not liable to pay interstate wages during that month, there shall be deducted, for that month, from the amount of pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), the amount that bears to the prescribed amount the same proportion as the number of days in that part of that month bears to the total number of days in that month, reduced by \$1 for each \$10 (disregarding any remainder) by which the amount of the taxable wages (in whole dollars) paid or payable by that employer during that month exceeds the same proportion of \$83,334.

(5) An employer who during any month pays or is liable to pay taxable wages and interstate wages may, by notice in writing in the prescribed form containing the prescribed particulars, served on the Commissioner, nominate an amount, calculated in the prescribed manner, not exceeding the prescribed amount, as the deduction that he claims to be entitled to make for that month and for subsequent months.

(6) For the purpose of ascertaining the pay-roll tax payable under this Schedule by an employer who has served on the Commissioner notice under subclause (5), there shall, subject to subclause (7), be deducted, for a month (being the month ending last before the day on which he served that notice on the Commissioner or any subsequent month), from the amount of pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), the amount nominated in that notice.

Pay-roll Tax (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.**

(7) The Commissioner may, on an application made to him in writing by an employer who pays or is liable to pay taxable wages and interstate wages during any month or of his own motion in relation to such an employer, at any time, make a determination specifying an amount, not exceeding the prescribed amount, that may be deducted for any month specified or referred to in the determination (being a month commencing before, or after, or the month in which, the determination is made) from the amount of pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), and there shall be deducted, for any such month, from the amount of the pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (2), the amount so specified.

(8) The Commissioner may, at any time, by instrument in writing, revoke a determination made under subclause (7) and any such revocation shall have effect as on and from the first day of the month specified in the instrument, whether that month is before, but not before the date of the determination, or after, or the month in which, the instrument is executed by him.

(9) The Commissioner shall, as soon as practicable after making a determination under subclause (7) or a revocation under subclause (8), serve notice of the determination or revocation on the employer concerned.

Interpretation for purposes of this clause and clauses 5 and 6.

4. (1) In this clause and clauses 5 and 6—

“interstate wages” does not include interstate wages paid or payable by a member of a group;

“taxable wages” does not include taxable wages paid or payable by a member of a group.

(2) For the purposes of any financial year, a reference in clauses 5 and 6 to the “prescribed amount” is, in relation to an employer, a reference to the amount calculated in accordance with the following formula:—

$$\frac{TW}{TW + IW} \left[\frac{10000C}{D} - \frac{1}{10} \left\{ (TW + IW) - \frac{1000000C}{D} \right\} \right]$$

Pay-roll Tax (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.*

where—

TW is the total of the taxable wages paid or payable by the employer during the financial year;

IW is the total of the interstate wages paid or payable by the employer during the financial year;

C is the number of days in respect of which wages (disregarding foreign wages) were paid or payable by the employer during the financial year; and

D is the number of days in the financial year.

(3) Where a person who did not pay and was not liable to pay taxable wages or interstate wages for any part of a financial year satisfies the Commissioner that, by reason of the nature of his trade or business, the taxable wages and interstate wages, if any, paid or payable by him fluctuate with different periods of the financial year, the Commissioner may treat him—

- (a) if he has conducted that trade or business in Australia during the whole of the financial year—as an employer throughout the financial year; or
- (b) if he has conducted that trade or business in Australia during part only of the financial year—as an employer during that lastmentioned part of the financial year.

Annual adjustments.

5. (1) In this clause, “annual amount of pay-roll tax”, in relation to an employer, means an amount equal to 1 per cent of the total of the taxable wages paid or payable by that employer during a financial year less the prescribed amount, if any.

(2) Where taxable wages are paid or payable by an employer during a financial year—

- (a) the Commissioner shall, on an application made by that employer in accordance with subclause (3), where the amount of pay-roll tax paid or payable under this Schedule by that employer when he made the returns under this Schedule relating to that financial year is greater than the annual amount of pay-roll tax in relation to that employer for that financial year, refund or rebate to that employer an amount equal to the difference, reduced by the sum of any amount which was, under section 19, refunded (before the time of the refund or rebate under this clause) to him in respect of pay-roll tax payable under this Schedule in respect

Pay-roll Tax (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—*continued.*

of that financial year and, where the rebates paid to him in respect of a financial year under a pay-roll tax rebate scheme administered by the Treasury are in excess of the annual rebate payable to him under that scheme, any amount which the Treasurer has directed should be deducted by reason of that excess payment; or

- (b) that employer shall, where the amount of pay-roll tax paid or payable under this Schedule by that employer when he made the returns under this Schedule relating to that financial year is less than the annual amount of pay-roll tax in relation to that employer for that financial year, pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Schedule in respect of the month of June in that financial year, an amount equal to the difference.

(3) An application under subclause (2) (a) shall, notwithstanding section 19, be made within the financial year next following the financial year in respect of which the refund or rebate is applied for.

Adjustment of pay-roll tax when employer ceases to be an employer, etc., during a financial year.

6. (1) In this clause—

“prescribed period”, in relation to an employer who pays or is liable to pay wages, otherwise than as a member of a group, for part only of a financial year, means that part of that financial year;

“total amount of pay-roll tax”, in relation to an employer, means an amount equal to 1 per cent of the total of the taxable wages paid or payable by the employer during a prescribed period less the prescribed amount, if any;

“wages” does not include foreign wages.

(2) Where in a financial year an employer ceases to pay wages or becomes a member of a group he shall, where the amount of pay-roll tax paid or payable by him under this Schedule when he made returns under this Schedule relating to the prescribed period is less than the total amount of pay-roll tax in relation to that employer for that prescribed period, pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Schedule relating to that prescribed period or the last return under this Schedule relating to that prescribed period, an amount equal to the difference.

Pay-roll Tax (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.**

(3) Where an employer, who has ceased to pay wages or has become a member of a group, as referred to in subclause (2), in any financial year, subsequently pays or is liable to pay taxable wages or interstate wages during that financial year otherwise than as a member of a group, clause 5 applies to and in respect of him as if the reference in clause 5 (2) to the amount of pay-roll tax paid or payable under this Schedule by that employer included a reference to any pay-roll tax paid or payable by that employer under subclause (2).

PART III.**MEMBERS OF GROUPS.****Tax payable by members of groups.**

7. (1) Subject to this clause, where the total of the wages (disregarding foreign wages) paid or payable by the members of a group during a month is \$83,334 or more, each member of the group shall, within the time within which he is required by this Schedule to furnish a supplementary return relating to that month, pay to the Commissioner, as pay-roll tax, an amount equal to 1 per cent of the taxable wages paid or payable by that member during that month.

(2) The members of a group may, by an instrument in writing in the prescribed form containing the prescribed particulars, executed by or on behalf of each member of the group and served on the Commissioner, designate one of its members to be the designated group employer in respect of the group for the purposes of this Schedule and nominate, as the deduction to be made for any month in relation to which that designated group employer is required to furnish returns under this Schedule, an amount, calculated in the prescribed manner, not exceeding \$834.

(3) The designated group employer in respect of a group ceases to be the designated group employer in respect of that group on and from the first day of the month during which—

- (a) the composition of the group alters; or
- (b) the members of the group, by an instrument in writing in the prescribed form containing the prescribed particulars, executed by or on behalf of each of them who is known to the Commissioner to be a member of the group and served on the Commissioner, revoke the designation,

whichever occurs the earlier.

Pay-roll Tax (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.*

(4) For the purpose of ascertaining the pay-roll tax payable under this Schedule by a designated group employer, there shall, subject to subclause (5), be deducted, for a month (being the month commencing last before the day on which the instrument under subclause (2) designating him as the designated group employer in respect of the group is served on the Commissioner or any subsequent month) from the amount of the pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (1) the amount nominated in that instrument.

(5) The Commissioner may, on an application made to him in writing by or on behalf of each person known to the Commissioner to be a member of a group or of his own motion in relation to a group, at any time, make a determination specifying an amount, not exceeding \$834, that may be deducted for any month specified or referred to in the determination (being a month commencing before or after, or in which, the determination is made) from the amount of pay-roll tax calculated in respect of that month in accordance with subclause (1) by an employer specified in the determination who was, during any such month, a member of that group and there shall be deducted, for any such month, from the amount of the pay-roll tax calculated in relation to that employer, in respect of that month and in accordance with subclause (1) the amount so specified.

(6) The Commissioner may, at any time, by instrument in writing, revoke a determination made under subclause (5) and any such revocation shall have effect as on and from the first day of the month specified in the instrument, whether that month is before, but not before the date of the determination, or after, or the month in which, the instrument is executed by him.

(7) An employer specified in a determination made under subclause (5) shall, on the first day of the first month specified or referred to in the determination, be deemed to have been designated under subclause (2) to be the designated group employer in respect of the group of which he was then a member and shall, subject to subclause (3), thereafter be the designated group employer in respect of that group.

(8) The Commissioner shall, as soon as practicable after making a determination under subclause (5) or a revocation under subclause (6), serve notice of the determination or revocation on the designated group employer in respect of the group concerned.

Pay-roll Tax (Amendment).

SCHEDULE 1—continued.

AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.
“Prescribed amount” for purposes of clauses 9 and 10.

8. For the purposes of any financial year, a reference in clauses 9 and 10 to the “prescribed amount” is, in relation to a designated group employer, a reference to the amount calculated in accordance with the following formula:—

$$\frac{TW}{TW + IW} \left[\frac{10000C}{D} - \frac{1}{10} \left\{ (TW + IW) - \frac{1000000C}{D} \right\} \right]$$

where—

TW is the total of the taxable wages paid or payable by the members of the group, in respect of which that designated group employer is the designated group employer, during the financial year;

IW is the total of the interstate wages paid or payable by the members of that group during the financial year;

C is the number of days in that part of the financial year for which that designated group employer was the designated group employer in respect of that group, reduced by the number of days, if any, during that part in respect of which no wages (disregarding foreign wages) were paid or payable by any member of that group; and

D is the number of days in the financial year.

Annual adjustments.

9. (1) This clause applies in relation to a group at least one member of which paid or was liable to pay, as such a member, taxable wages or interstate wages for the whole of a financial year.

(2) A reference in this clause to the annual amount of pay-roll tax paid or payable by the members of a group is a reference to an amount equal to 1 per cent of the total of the taxable wages paid or payable by the members of that group during a financial year less, where—

- (a) during that financial year there was only one designated group employer in respect of that group—the prescribed amount applicable to that designated group employer; or
- (b) during that financial year there were 2 or more designated group employers in respect of that group—the prescribed amount that, if there had been only one designated group employer in respect of that group

Pay-roll Tax (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.*

during that financial year, would have been applicable to that designated group employer had he paid all of the taxable wages paid or payable by the members of that group during that financial year.

(3) A reference in this clause to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is a reference to the amount of pay-roll tax paid or payable when returns were made or required to be made under this Schedule relating to that financial year, being returns in which the taxable wages referred to in subclause (2) were included or required to be included.

(4) Where the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is greater than the annual amount of pay-roll tax in relation to those members for that financial year, the Commissioner shall, on an application made in accordance with subclause (7) by the person who is the designated group employer in respect of that group on 30th June in that financial year, refund or rebate to that employer an amount equal to the difference, reduced by the sum of the total of any amounts refunded to any member of that group under section 19 in respect of the pay-roll tax paid or payable under this Schedule by any such member when returns relating to that financial year were made or required to be made under this Schedule by that member and, where the rebates paid to any member of that group in respect of that financial year under a pay-roll tax rebate scheme administered by the Treasury are in excess of the annual rebate payable to that member under that scheme, the total of any amounts which the Treasurer has directed should be deducted by reason of such an excess payment.

(5) Where the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of a group is less than the annual amount of pay-roll tax in relation to those members for that financial year, the person who is the designated group employer in respect of that group on 30th June in that financial year shall pay to the Commissioner as pay-roll tax, within the period during which he is required to furnish a return under this Schedule in respect of the month of June in that financial year, an amount equal to the difference.

(6) If a designated group employer in respect of a group fails to pay any amount that he is required to pay under subclause (5) in respect of a financial year, every member of the group who paid or was liable to pay taxable wages during that financial year is liable jointly and severally to pay that amount to the Commissioner.

Pay-roll Tax (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.**

(7) An application under subclause (4) shall, notwithstanding section 19, be made within the financial year next following the financial year in respect of which the refund or rebate is applied for.

Adjustment of pay-roll tax when members of a group cease to pay taxable wages or interstate wages during a financial year.

10. (1) This clause applies in relation to a group at least one member of which paid or was liable to pay, as such a member, taxable wages or interstate wages for part only (being a continuous part) of a financial year and no member of which paid or was liable to pay, as such a member, any such wages during the whole of that financial year.

(2) In this clause, "prescribed period", in relation to a group, means part only (being a continuous part) of a financial year for which at least one member of the group paid or was liable to pay taxable wages or interstate wages.

(3) A reference in this clause to the total amount of pay-roll tax paid or payable for a prescribed period by the members of a group is a reference to an amount equal to 1 per cent of the total of the taxable wages paid or payable by the members of that group during that prescribed period less, where—

- (a) during that prescribed period there was only one designated group employer in respect of that group—the prescribed amount applicable to that designated group employer; or
- (b) during that prescribed period there were 2 or more designated group employers in respect of that group—the prescribed amount that, if there had been only one designated group employer in respect of that group during that prescribed period, would have been applicable to that designated group employer had he paid all of the taxable wages paid or payable by the members of that group during that prescribed period.

(4) Where, at the expiration of a prescribed period relating to a group, the total amount of pay-roll tax paid or payable when returns were made or required to be made under this Schedule, being returns in which the taxable wages referred to in subclause (3) were included or required to be included, is less than the total amount of pay-roll tax paid or payable for that prescribed period by the members of that group, the person who is the designated group employer in respect of that group on the last day of that prescribed period shall pay to the Commissioner as pay-roll tax, within the period during which

Pay-roll Tax (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PAY-ROLL TAX ACT, 1971—continued.*

he is required to furnish a return under this Schedule or the last return under this Schedule relating to that prescribed period, an amount equal to the difference.

(5) The provisions of clause 9 (4) and (5) apply in relation to a group to which this clause applies as if—

- (a) at least one member of the group paid or was liable to pay, as such a member, taxable wages or interstate wages for the whole of that financial year;
- (b) the reference in clause 9 (3) to the actual amount of pay-roll tax paid or payable in respect of a financial year by the members of that group included a reference to any pay-roll tax paid or payable under subclause (4) by a designated group employer in respect of that group in respect of that financial year; and
- (c) the person, if any, who was the designated group employer in respect of that group at the time when the group last ceased in that financial year to have a member who was paying or was liable to pay, as such a member, taxable wages or interstate wages was the designated group employer in respect of that group on 30th June in that financial year.

(6) If a designated group employer in respect of a group fails to pay any amount that he is required to pay under subclause (4) in respect of a prescribed period, every member of the group who paid or was liable to pay taxable wages during the financial year that includes that prescribed period is liable jointly and severally to pay that amount to the Commissioner.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 18th May, 1982.*

BY AUTHORITY

D. WEST. GOVERNMENT PRINTER, NEW SOUTH WALES—1982

