

FIRST PRINT

## PAY-ROLL TAX (AMENDMENT) BILL 1986

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The following Bills are cognate with this Bill:

Land Tax Management (Amendment) Bill 1986;

Stamp Duties (Amendment) Bill 1986.

The object of this Bill is to amend the Pay-roll Tax Act 1971—

- (a) with respect to the pay-roll tax payable by employment agents and other persons deemed under that Act to be employers in respect of work performed under certain contractual arrangements; and
- (b) to facilitate the exchange of information and other co-operation between New South Wales and Commonwealth tax law officers.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the several provisions of the proposed Act. Of the amendments made by the proposed Act—

- (a) those relating to the scope and manner of application of certain provisions of sections 3 and 3A of the Principal Act (being provisions inserted into the Principal Act by the Pay-roll Tax (Amendment) Act 1985) will be treated as having taken effect from the date of commencement of those provisions (3 December 1985);

- (b) those relating to rebates and refunds obtainable under the Principal Act in respect of overpayments of pay-roll tax will be treated as having taken effect from the date (22 January 1986) on which the Minister for Finance approved of the acceptance of refund or rebate applications which were out of time under the Principal Act as then in force (but which will accord with the Principal Act as amended by the proposed Act); and
- (c) those relating to the exchange of information and other co-operation between State and Commonwealth officers will take effect on the date of assent to the proposed Act.

Clause 3 provides that in the proposed Act the Pay-roll Tax Act 1971 is referred to as the Principal Act.

Clause 4 is a formal provision which gives effect to the Schedule of amendments.

Clause 5 is a formal provision which gives effect to the Schedule of transitional provisions.

#### SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

Schedule 1 (1) amends section 3A of the Principal Act for 2 purposes. The amendment made by Schedule 1 (1) (a) makes it clear that the section does not apply to certain contractual arrangements relating to the carriage of goods, insurance brokerage and door-to-door selling. The amendments made by Schedule 1 (1) (b) and (c) vary the current operation of the section in relation to work performed by persons supplied by an employment agent to one of its clients. As the section currently operates in relation to such a situation, the client is treated as an employer (and is therefore liable to pay-roll tax) and the employment agent is not. The amendment reverses the position, so that the employment agent is to be treated as the employer and not the client.

Schedule 1 (2) amends section 5 of the Principal Act so as to confer on the Chief Commissioner of Pay-roll Tax the functions of a State taxation officer under Part IIIA of the Taxation Administration Act 1953 of the Commonwealth. These functions include power to disclose information to, and to receive information from, Commonwealth officers concerned in the administration of Commonwealth tax laws.

Schedule 1 (3) amends section 11A of the Principal Act so as to enable the Chief Commissioner, on an annual adjustment of tax payments, to grant a refund or rebate in respect of a tax overpayment made in the current financial year or in any of the previous 5 financial years and, in an appropriate case, to grant such a refund or rebate without an application from the person entitled to it.

Schedule 1 (4) and (5) amend section 19 of the Principal Act and Schedule 1 to the Principal Act, respectively, to make the same variation, with respect to the grant of refunds and rebates, as that made by Schedule 1 (3), but in relation to—

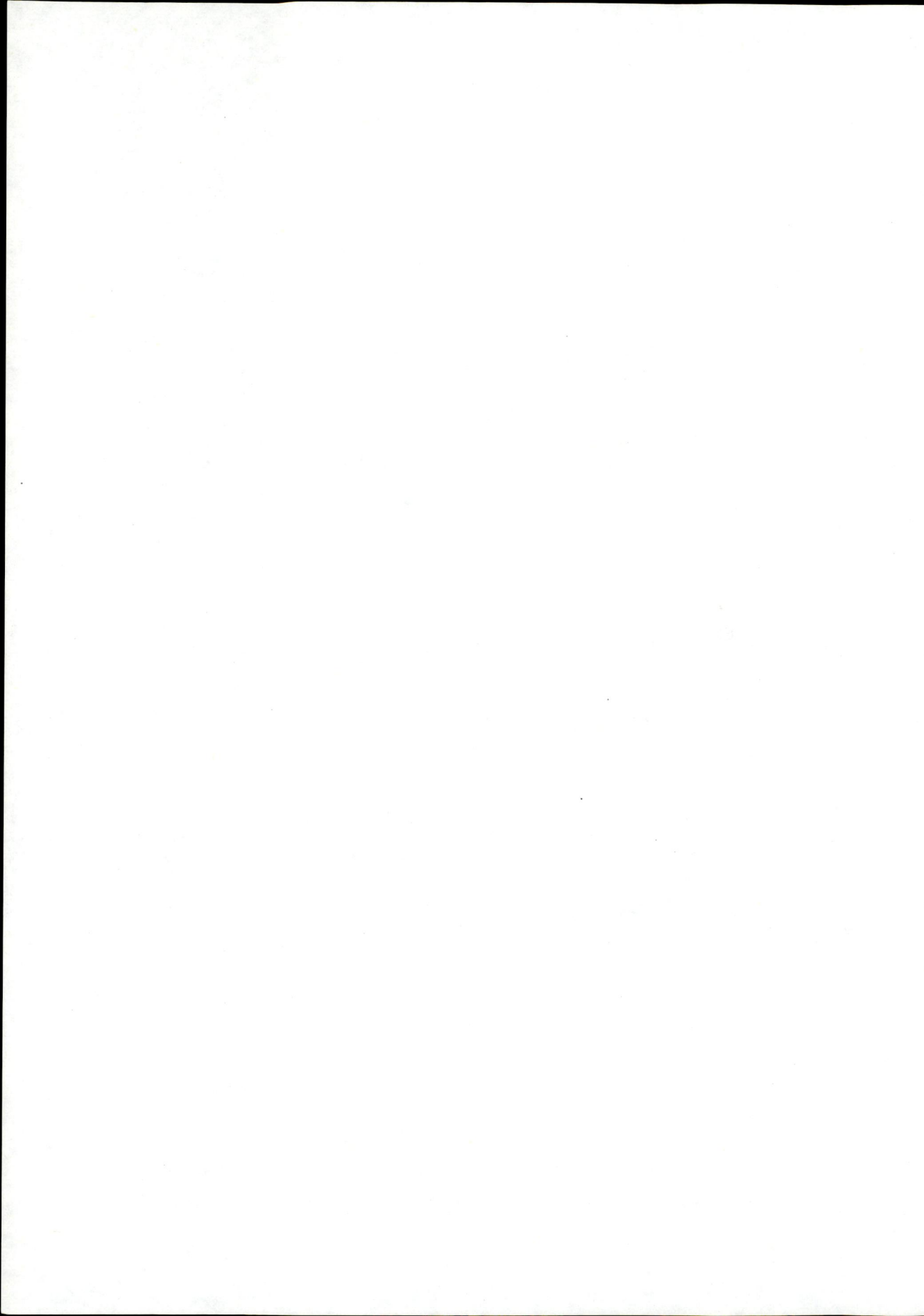
- (a) refunds and rebates arising otherwise than on an annual adjustment (Schedule 1 (4)); and
- (b) refunds or rebates arising in relation to supplementary pay-roll tax (Schedule 1 (5)).

SCHEDULE 2—TRANSITIONAL PROVISIONS RELATING TO AMENDMENTS  
MADE TO THE PRINCIPAL ACT BY ACT No. 175, 1985

Clause 1 provides that certain payments (generally treated as wages for the purposes of the Principal Act) made by an employment agent for or in respect of services supplied to a client shall not be treated as wages. The payments concerned are those made for services supplied at certain times under agency agreements entered into before certain dates, and the effect of the provision is to exempt the payments from pay-roll tax.

Clause 2 makes similar provision, in relation to payments generally treated as wages, as that made by clause 1, but in relation to payments made for services under any contract that is a relevant contract for the purposes of section 3A of the Principal Act by any person deemed by that section to be an employer.

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# PAY-ROLL TAX (AMENDMENT) BILL 1986

NEW SOUTH WALES



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SCHEDULE 2—TRANSITIONAL PROVISIONS RELATING TO AMENDMENTS  
MADE TO THE PRINCIPAL ACT BY ACT No. 175, 1985

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# PAY-ROLL TAX (AMENDMENT) BILL 1986

NEW SOUTH WALES



No.       , 1986

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## A BILL FOR

An Act to amend the Pay-roll Tax Act 1971 with respect to the tax payable on payments made under certain contracts and agency arrangements; and for other purposes.

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See also Land Tax Management (Amendment) Bill 1986; Stamp Duties (Amendment) Bill 1986.

*Pay-roll Tax (Amendment) 1986*

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**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 1986".

**Commencement**

2. (1) Except as provided by subsections (2)–(4), this Act shall commence on the date of assent to this Act.

10 (2) Section 4, in its application to a provision of Schedule 1, shall commence or be deemed to have commenced, as the case requires, on the commencement of the provision.

(3) Section 5 and Schedule 2 shall be deemed to have commenced on 3 December 1985.

15 (4) Schedule 1 (3)–(5) shall be deemed to have commenced on 22 January 1986.

**Principal Act**

3. The Pay-roll Tax Act 1971 is referred to in this Act as the Principal Act.

**20 Amendment of Act No. 22, 1971**

4. The Principal Act is amended in the manner set forth in Schedule 1.

**Transitional provisions**

5. Schedule 2 has effect.

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*Pay-roll Tax (Amendment) 1986*

## SCHEDULE 1

(Sec. 4)

## AMENDMENTS TO THE PRINCIPAL ACT

(1) Section 3A (**Application of this Act to certain contracts**)—

## 5 (a) Section 3A (1A)—

After section 3A (1), insert:

(1A) For the purposes of this section, a contract under which—

10 (a) a person is supplied with services ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them;

(b) a person is supplied with services for or in relation to the procurement of persons desiring to be insured by the person; or

15 (c) a person is supplied with services for or in relation to the door-to-door sale of goods to consumers on the person's behalf,

20 is not a relevant contract, unless the Chief Commissioner determines that the contract was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.

## (b) Section 3A (3)—

Omit "Where", insert instead "Except as provided by subsection (3A), where".

## (c) Section 3A (3A)—

25 After section 3A (3), insert:

30 (3A) Where a contract is a relevant contract pursuant to both subsection (1) (a) and subsection (1) (b) by reason of the supply by a person (in this subsection referred to as the "agent" ), in the capacity of an employment agent described in section 3 (4), of services, being services—

(a) procured by an arrangement so described; and

(b) supplied under such an arrangement to another person (in this subsection referred to as the "client" ) for or in relation to the performance of work,

*Pay-roll Tax (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT —*continued*

the agent shall be deemed to be an employer but the client, notwithstanding subsection (2) (a) (ii), shall not.

(2) Section 5 (**Disclosure of information, etc.**)—

(a) Section 5 (1)—

5 Omit “subsection (2)” insert instead “subsections (2) and (2A)”.

(b) Section 5 (2A)—

After section 5 (2), insert:

10 (2A) The Chief Commissioner may perform the functions of a State taxation officer under Part IIIA of the Taxation Administration Act 1953 of the Commonwealth, as amended and in force for the time being.

(3) Section 11B (**Annual adjustments**)—

Section 11B (3), (4)—

Omit section 11B (3), insert instead:

15 (3) An application under subsection (2) (a) shall be made within 6 years after the end of the financial year in respect of which the refund or rebate is applied for.

(4) The Chief Commissioner may, in a particular case, dispense with the necessity for an application.

20 (4) Section 19 (**Refunds**)—

(a) Section 19—

Omit “date of the overpayment”, insert instead “end of the financial year during which wages to which the tax relates were paid”.

25 (b) Section 19 (2)—

At the end of section 19, insert:

(2) The Chief Commissioner may, in a particular case, dispense with the necessity for an application under subsection (1).

*Pay-roll Tax (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT —*continued*(5) Schedule 1 (**Supplementary pay-roll tax**)—(a) Clause 5 (**Annual adjustments**)—

Omit clause 5 (3), insert instead:

5 (3) An application under subclause (2) shall be made within 6 years after the end of the financial year in respect of which the refund or rebate is applied for.

(4) The Chief Commissioner may, in a particular case, dispense with the necessity for an application.

(b) Clause 9 (**Annual adjustments**)—

10 Omit clause 9 (7), insert instead:

(7) An application under subclause (4) shall be made within 6 years after the end of the financial year in respect of which the refund or rebate is applied for.

15 (8) The Chief Commissioner may, in a particular case, dispense with the necessity for an application.

## SCHEDULE 2

(Sec. 5)

TRANSITIONAL PROVISIONS RELATING TO AMENDMENTS MADE TO THE  
PRINCIPAL ACT BY ACT No. 175, 198520 **Certain payments by employment agents not taxable**

1. Notwithstanding paragraph (f) of the definition of "wages" in section 3 (1) of the Principal Act, an amount paid or payable, by a person who is an employment agent for the purposes of that paragraph, for or in respect of any services performed for a client of that person shall be deemed not to be wages, to the extent to which the amount so  
25 paid or payable relates to—

(a) services which are procured by that person by an arrangement entered into before 1 March 1986 and which are provided before 1 July 1986; or

(b) services which are procured by that person by an arrangement entered into on or after 1 March 1986 and which are provided before 1 April 1986.



*Pay-roll Tax (Amendment) 1986*SCHEDULE 2—*continued*TRANSITIONAL PROVISIONS RELATING TO AMENDMENTS MADE TO THE  
PRINCIPAL ACT BY ACT No. 175, 1985—*continued***Certain payments under relevant contracts not taxable**

2. (1) Notwithstanding section 3A (2) (c) of the Principal Act, an amount paid or payable in relation to the performance, by a person who (by virtue of section 3A (2) (b) of the Principal Act) is deemed to be an employee, of work for or in relation to which services are supplied under a relevant contract shall be deemed not to be wages, to the extent to which the amount so paid or payable relates—
- 5 (a) where the relevant contract was entered into before 1 March 1986—to services provided before 1 July 1986; or
- 10 (b) where the relevant contract was entered into on or after 1 March 1986—to services provided before 1 April 1986.
- (2) Where a person—
- 15 (a) has entered into a contract (in this subclause referred to as the “principal contract”) for or in relation to the performance of work, being a contract that would, but for the operation of section 3A (1) (d) of the Principal Act, be a relevant contract; and
- (b) enters into a relevant contract under which services are to be supplied for or in relation to the performance of work for the purposes of the principal contract,
- 20 an amount paid or payable for or in respect of the work performed under the relevant contract shall, notwithstanding section 3A (2) (c) of the Principal Act, be deemed not to be wages, to the extent to which the amount so paid or payable relates—
- (c) where the principal contract was entered into before 1 March 1986—to services provided, under the relevant contract, before 1 July 1986; or
- 25 (d) where the principal contract was entered into on or after 1 March 1986—to services provided, under the relevant contract, before 1 April 1986.
- (3) In this clause, “relevant contract” means a relevant contract referred to in section 3A of the Principal Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986

# PAY-ROLL TAX (AMENDMENT) ACT 1986 No. 89

NEW SOUTH WALES



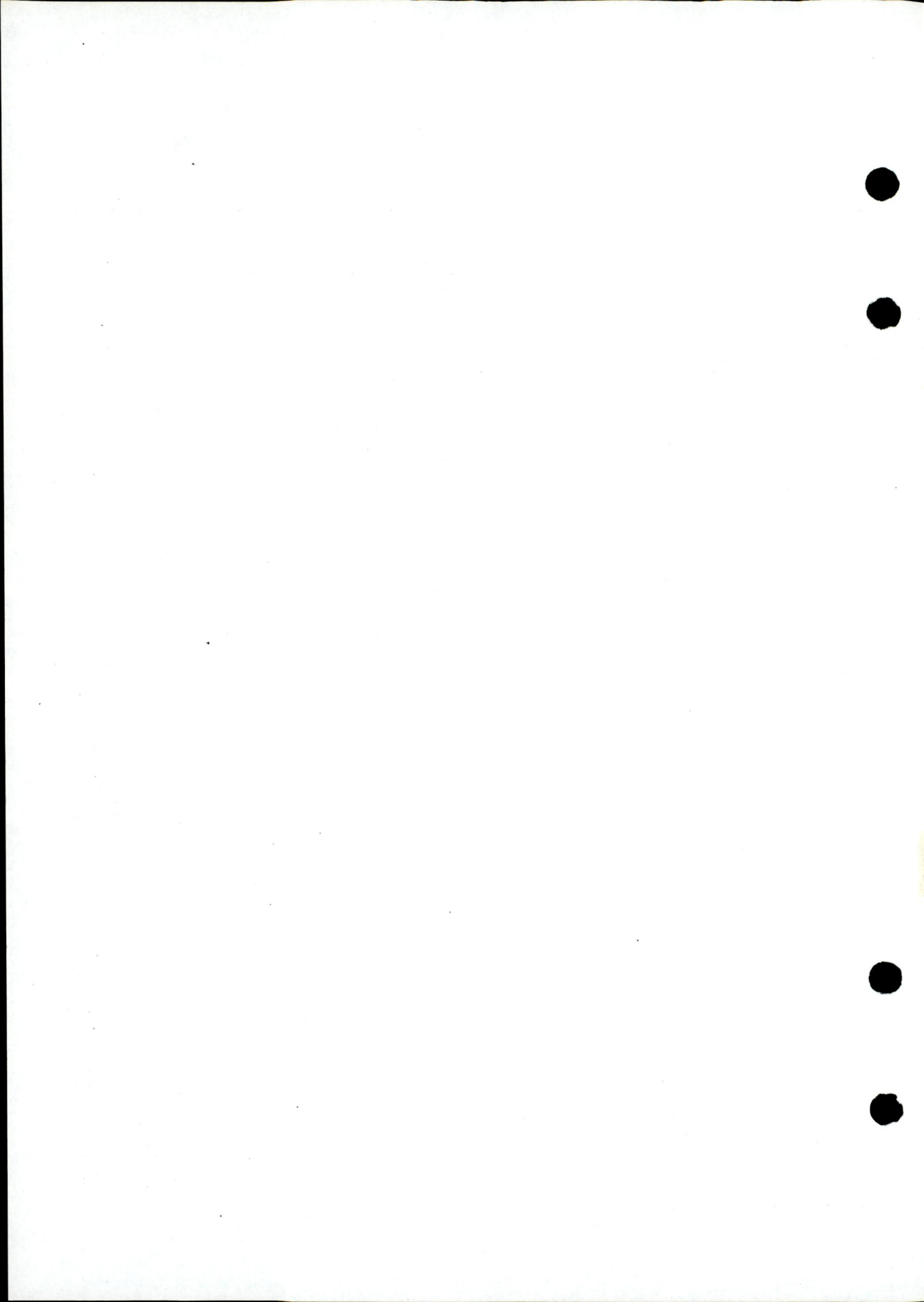
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MADE TO THE PRINCIPAL ACT BY ACT No. 175, 1985

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**PAY-ROLL TAX (AMENDMENT) ACT 1986 No. 89**

NEW SOUTH WALES



**Act No. 89, 1986**

An Act to amend the Pay-roll Tax Act 1971 with respect to the tax payable on payments made under certain contracts and agency arrangements; and for other purposes. [Assented to, 26 May 1986]

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See also Land Tax Management (Amendment) Act 1986; Stamp Duties (Amendment) Act 1986.

*Pay-roll Tax (Amendment) 1986*

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**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 1986".

**Commencement**

2. (1) Except as provided by subsections (2)–(4), this Act shall commence on the date of assent to this Act.

(2) Section 4, in its application to a provision of Schedule 1, shall commence or be deemed to have commenced, as the case requires, on the commencement of the provision.

(3) Section 5 and Schedule 2 shall be deemed to have commenced on 3 December 1985.

(4) Schedule 1 (3)–(5) shall be deemed to have commenced on 22 January 1986.

**Principal Act**

3. The Pay-roll Tax Act 1971 is referred to in this Act as the Principal Act.

**Amendment of Act No. 22, 1971**

4. The Principal Act is amended in the manner set forth in Schedule 1.

**Transitional provisions**

5. Schedule 2 has effect.
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## SCHEDULE 1

(Sec. 4)

## AMENDMENTS TO THE PRINCIPAL ACT

## (1) Section 3A (Application of this Act to certain contracts)—

## (a) Section 3A (1A)—

After section 3A (1), insert:

(1A) For the purposes of this section, a contract under which—

- (a) a person is supplied with services ancillary to the conveyance of goods by means of a vehicle provided by the person conveying them;
- (b) a person is supplied with services for or in relation to the procurement of persons desiring to be insured by the person; or
- (c) a person is supplied with services for or in relation to the door-to-door sale of goods to consumers on the person's behalf,

is not a relevant contract, unless the Chief Commissioner determines that the contract was entered into with an intention either directly or indirectly of avoiding or evading the payment of tax by any person.

## (b) Section 3A (3)—

Omit "Where", insert instead "Except as provided by subsection (3A), where".

## (c) Section 3A (3A)—

After section 3A (3), insert:

(3A) Where a contract is a relevant contract pursuant to both subsection (1) (a) and subsection (1) (b) by reason of the supply by a person (in this subsection referred to as the "agent" ), in the capacity of an employment agent described in section 3 (4), of services, being services—

- (a) procured by an arrangement so described; and
- (b) supplied under such an arrangement to another person (in this subsection referred to as the "client" ) for or in relation to the performance of work,

*Pay-roll Tax (Amendment) 1986*

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT —*continued*

the agent shall be deemed to be an employer but the client, notwithstanding subsection (2) (a) (ii), shall not.

(2) Section 5 (**Disclosure of information, etc.**)—

(a) Section 5 (1)—

Omit “subsection (2)” insert instead “subsections (2) and (2A)”.

(b) Section 5 (2A)—

After section 5 (2), insert:

(2A) The Chief Commissioner may perform the functions of a State taxation officer under Part IIIA of the Taxation Administration Act 1953 of the Commonwealth, as amended and in force for the time being.

(3) Section 11B (**Annual adjustments**)—

Section 11B (3), (4)—

Omit section 11B (3), insert instead:

(3) An application under subsection (2) (a) shall be made within 6 years after the end of the financial year in respect of which the refund or rebate is applied for.

(4) The Chief Commissioner may, in a particular case, dispense with the necessity for an application.

(4) Section 19 (**Refunds**)—

(a) Section 19—

Omit “date of the overpayment”, insert instead “end of the financial year during which wages to which the tax relates were paid”.

(b) Section 19 (2)—

At the end of section 19, insert:

(2) The Chief Commissioner may, in a particular case, dispense with the necessity for an application under subsection (1).



*Pay-roll Tax (Amendment) 1986*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT —*continued*

## (5) Schedule 1 (Supplementary pay-roll tax)—

## (a) Clause 5 (Annual adjustments)—

Omit clause 5 (3), insert instead:

(3) An application under subclause (2) shall be made within 6 years after the end of the financial year in respect of which the refund or rebate is applied for.

(4) The Chief Commissioner may, in a particular case, dispense with the necessity for an application.

## (b) Clause 9 (Annual adjustments)—

Omit clause 9 (7), insert instead:

(7) An application under subclause (4) shall be made within 6 years after the end of the financial year in respect of which the refund or rebate is applied for.

(8) The Chief Commissioner may, in a particular case, dispense with the necessity for an application.

## SCHEDULE 2

(Sec. 5)

TRANSITIONAL PROVISIONS RELATING TO AMENDMENTS MADE TO THE  
PRINCIPAL ACT BY ACT No. 175, 1985**Certain payments by employment agents not taxable**

1. Notwithstanding paragraph (f) of the definition of "wages" in section 3 (1) of the Principal Act, an amount paid or payable, by a person who is an employment agent for the purposes of that paragraph, for or in respect of any services performed for a client of that person shall be deemed not to be wages, to the extent to which the amount so paid or payable relates to—

- (a) services which are procured by that person by an arrangement entered into before 1 March 1986 and which are provided before 1 July 1986; or
- (b) services which are procured by that person by an arrangement entered into on or after 1 March 1986 and which are provided before 1 April 1986.

*Pay-roll Tax (Amendment) 1986*SCHEDULE 2—*continued*TRANSITIONAL PROVISIONS RELATING TO AMENDMENTS MADE TO THE  
PRINCIPAL ACT BY ACT No. 175, 1985—*continued***Certain payments under relevant contracts not taxable**

2. (1) Notwithstanding section 3A (2) (c) of the Principal Act, an amount paid or payable in relation to the performance, by a person who (by virtue of section 3A (2) (b) of the Principal Act) is deemed to be an employee, of work for or in relation to which services are supplied under a relevant contract shall be deemed not to be wages, to the extent to which the amount so paid or payable relates—

(a) where the relevant contract was entered into before 1 March 1986—to services provided before 1 July 1986; or

(b) where the relevant contract was entered into on or after 1 March 1986—to services provided before 1 April 1986.

(2) Where a person—

(a) has entered into a contract (in this subclause referred to as the “principal contract”) for or in relation to the performance of work, being a contract that would, but for the operation of section 3A (1) (d) of the Principal Act, be a relevant contract; and

(b) enters into a relevant contract under which services are to be supplied for or in relation to the performance of work for the purposes of the principal contract,

an amount paid or payable for or in respect of the work performed under the relevant contract shall, notwithstanding section 3A (2) (c) of the Principal Act, be deemed not to be wages, to the extent to which the amount so paid or payable relates—

(c) where the principal contract was entered into before 1 March 1986—to services provided, under the relevant contract, before 1 July 1986; or

(d) where the principal contract was entered into on or after 1 March 1986—to services provided, under the relevant contract, before 1 April 1986.

(3) In this clause, “relevant contract” means a relevant contract referred to in section 3A of the Principal Act.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1986