

PAY-ROLL TAX ASSESSMENT.

No. 2 of 1941.

An Act relating to the Imposition, Assessment and Collection of a Tax upon the Payment of Wages.

[Assented to 4th April, 1941.]

[Date of commencement, 2nd May, 1941.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Pay-roll Tax Assessment Act* 1941. Short title.

2. This Act is divided into Parts, as follows:— Parts.

- Part I.—Preliminary.
- Part II.—Administration.
- Part III.—Liability to Taxation.
- Part IV.—Registration and Returns.
- Part V.—Collection and Recovery of Tax.
- Part VI.—Objections and Appeals.
- Part VII.—Penal Provisions.
- Part VIII.—Taxation Prosecutions.
- Part IX.—Miscellaneous.

3.—(1.) In this Act, unless the contrary intention appears— Definitions.

- “agent” includes every person who in Australia, for or on behalf of any person out of Australia (in this section called “the principal”), holds or has the management or control of the business of his principal, and every person declared by the Commissioner to be an agent or the sole agent for any person for the purposes of this Act;
- “Board of Review” means a Board of Review constituted under the *Income Tax Assessment Act 1936–1940*;
- “company” includes all bodies or associations (corporate or unincorporate) and partnerships;
- “Deputy Commissioner” means a Deputy Commissioner of Taxation;
- “employer” means any person who pays or is liable to pay any wages and includes—
 - (a) the Crown in the right of a State;
 - (b) a municipal corporation or other local governing body or a public authority constituted under any State Act;

(c) any public authority constituted under any Act or under any law in force in a Territory of the Commonwealth the wages paid by which are not paid out of the Consolidated Revenue Fund ;

“ liquidator ” means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding up of a company ;

“ person ” includes a company ;

“ tax ” means the tax imposed by the *Pay-roll Tax Act 1941* ;

“ the Commissioner ” means the Commissioner of Taxation ;

“ the Second Commissioner ” means the Second Commissioner of Taxation ;

“ trustee ”, in addition to every person appointed or constituted trustee by act of parties, by order or declaration of a court, or by operation of law, includes—

(a) an executor or administrator, guardian, committee, receiver or liquidator ; and

(b) every person having or taking upon himself the administration or control of any real or personal property affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of any real or personal property of a person under any legal or other disability ;

“ wages ” means any wages, salary, commission, bonuses or allowances paid or payable (whether at piece work rates or otherwise and whether paid or payable in cash or in kind) to any employee as such and, without limiting the generality of the foregoing, includes—

(a) any payment made under any prescribed classes of contracts to the extent to which that payment is attributable to labour ;

(b) any payment made by a company by way of remuneration to a director of that company ;

(c) any payment made by way of commission to an insurance or time-payment canvasser or collector ; and

(d) the provision by the employer of meals or sustenance or the use of premises or quarters as consideration or part consideration for the employee’s services ;

(2.) For the purposes of this Act meals or sustenance provided by an employer shall be deemed to have a value of Fifteen shillings per week or, in any particular case or class of cases, such other value as is prescribed, and the use of premises or quarters provided by an employer shall be deemed to have a value of Five shillings per week or, in any particular case or class of cases, such other value as is prescribed.

(3.) Where any wages are paid or payable in respect of any service performed or rendered, those wages shall, for the purposes of this Act, be deemed to have been paid, or to be payable, as the case may be, in respect of the period of time in which that service was performed or rendered.

PART II.—ADMINISTRATION.

4.—(1.) For the purposes of this Act, there shall be a Commissioner of Taxation who shall have the general administration of this Act. Commissioner.

(2.) The person for the time being holding office as Commissioner of Taxation under the *Estate Duty Assessment Act* 1914–1940 shall be the Commissioner of Taxation under this Act.

5.—(1.) For the purposes of this Act, there shall be a Second Commissioner of Taxation. Second Commissioner.

(2.) The person for the time being holding office as Second Commissioner of Taxation under the *Estate Duty Assessment Act* 1914–1940 shall be the Second Commissioner of Taxation under this Act.

6.—(1.) Subject to this section, the Second Commissioner shall have and may exercise all the powers and functions of the Commissioner under this Act. Powers of
Second
Commissioner.

(2.) Where in this Act the exercise of any power or function by the Commissioner or the operation of any provision of this Act is dependent upon the opinion, belief or state of mind of the Commissioner in relation to any matter, that power or function may be exercised by the Second Commissioner or that provision may operate (as the case may be) upon the opinion, belief or state of mind of the Second Commissioner in relation to that matter.

(3.) Nothing in this section shall be deemed to confer upon the Second Commissioner any power or function of the Commissioner under section four, or under section eight or ten, of this Act, or to prevent the exercise of any power or function by the Commissioner under this Act, and the Commissioner shall have, in relation to any act of the Second Commissioner, the same power as if that act were done by himself.

7. For the purposes of this Act, there shall be such Deputy Commissioners of Taxation as are required, who shall, subject to the control of the Commissioner, have such powers and functions as are prescribed, or as the Commissioner directs. Deputy
Commissioners.

8.—(1.) The Commissioner may, in relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, by writing under his hand, delegate to a Deputy Commissioner or other person all or any of his powers or functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the Deputy Commissioner or person with respect to the matters or class of matters or the State or part of the Commonwealth specified in the instrument of delegation. Delegation
by the
Commissioner.

(2.) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power or function by the Commissioner.

(3.) Any delegation under this section may be made subject to a power of review and alteration, within the period specified in the instrument of delegation, by the Commissioner of any act done in pursuance of the delegation, and the decision given upon any such review or alteration shall be deemed to be that of the Commissioner.

References to
Commissioner.

9. Any reference in this Act to the Commissioner shall be deemed to include—

- (a) in respect of matters as to which the Second Commissioner has exercised any power or function conferred upon him by this Act—a reference to the Second Commissioner ; and
- (b) in respect of matters as to which a Deputy Commissioner has exercised any power or function conferred upon him by delegation under this Act—a reference to that Deputy Commissioner.

Report by the
Commissioner.

10.—(1.) The Commissioner shall furnish to the Treasurer annually, for presentation to the Parliament, a report on the working of this Act.

(2.) In the report the Commissioner shall draw attention to any breaches or evasions of this Act which have come under his notice

Officers to
observe secrecy.

11.—(1.) Every person executing any power or duty conferred or imposed on an officer under this Act or the Regulations thereunder shall, before entering upon his duties or exercising any power under this Act, make before a Justice of the Peace or a Commissioner for taking Affidavits or a Commissioner for Declarations, a declaration in the form prescribed.

(2.) Any person who acts in the execution of any duty under this Act, or the Regulations thereunder, before he has made the prescribed declaration, or who after making the declaration makes a record of or divulges any information relating to the affairs of a person except in the performance of any duty under this Act shall be guilty of an offence.

Penalty : Two hundred and fifty pounds.

(3.) Any person who has been an officer or has performed any duty under this Act, and who communicates any information acquired by him in the performance of any duty under this Act or the Regulations thereunder to any person, other than a person to whom he is authorized by the Commissioner, Second Commissioner or a Deputy Commissioner to communicate it, shall be guilty of an offence.

Penalty : Two hundred and fifty pounds.

(4.) Notwithstanding anything contained in this section, the Commissioner, the Second Commissioner or a Deputy Commissioner may communicate any matter, which comes to his knowledge in the

performance of his official duties, to a Board of Review, to the Commissioner of Income Tax for any State, or the officer or authority administering any Act of a State relating to Stamp Duties or Succession Duties (who is authorized by law to afford similar information to the Commissioner, the Second Commissioner or a Deputy Commissioner) or to the Comptroller-General of Customs.

(5.) Where any matter is communicated to a Board of Review in pursuance of this section and that matter consists of returns, or information derived from returns, of a taxpayer other than the taxpayer whose assessment is under review in the review in the course of which the communication is made, the members of the Board shall be subject to the same obligation as is imposed by subsection (3.) of this section upon a person who has been an officer under this Act.

(6.) An officer shall not be required to produce in any court any return, assessment or notice of assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under this Act except as may be necessary for the purpose of carrying into effect the provisions of this Act.

PART III.—LIABILITY TO TAXATION.

12. Subject to, and in accordance with, the provisions of this Act, the tax imposed by the *Pay-roll Tax Act* 1941 shall be levied and paid on all wages paid or payable by any employer in respect of any period of time occurring after the thirtieth day of June, One thousand nine hundred and forty-one. Pay-roll tax.

13. Pay-roll tax shall be paid by the employer who pays or is liable to pay the wages. Liability to pay tax.

14. For the purposes of ascertaining the tax payable by an employer on wages paid or payable by him in respect of any period, there shall be excluded from those wages an amount calculated at the rate of Twenty pounds per week. General exemption

15.—The provisions of this Part shall not apply to wages paid— Exemption from tax.

- (a) by the Governor-General or the Governor of a State ;
- (b) by a religious or public benevolent institution, or a public hospital ; and
- (c) to members of his official staff by—
 - (i) a diplomatic, consular or other representative in Australia of the government of any other part of His Majesty's dominions or of any other country ;
or
 - (ii) a Trade Commissioner representing in Australia any other part of His Majesty's dominions.

Annual
adjustment of
tax.

16.—(1.) Where the wages paid or payable by any employer in respect of the financial year commencing on the first day of July, One thousand nine hundred and forty-one, or in respect of any subsequent financial year, do not exceed—

(a) in the case of a person who is an employer during the whole of the financial year—the amount of One thousand and forty pounds ; or

(b) in the case of a person who is an employer during part only of the financial year—such amount as bears to One thousand and forty pounds the same proportion as that part of the year bears to a year,

the Commissioner shall refund or rebate to that employer the amount of tax paid or payable, as the case may be, by him in respect of that year or part.

(2.) Where any person to whom paragraph (b) of the last preceding sub-section applies, satisfies the Commissioner that the wages paid in respect of his trade or business, by reason of the nature of that trade or business, fluctuate with different periods of the year and that, as a consequence, if he had been an employer for the full period of the financial year the total wages would not have exceeded the amount of One thousand and forty pounds, the Commissioner may treat him as a person to whom paragraph (a) of that sub-section applies.

PART IV.—REGISTRATION AND RETURNS.

Registration.

17. Every employer who, in respect of any period of time occurring after the commencement of this Act, pays or is liable to pay wages at a rate in excess of Twenty pounds per week shall, within seven days after the close of the month in which that period ends, make application to the Commissioner in accordance with the form and in the manner prescribed, for registration as an employer.

Returns.

18. Every employer who is registered or required to be registered in accordance with the provisions of the last preceding section shall, within seven days after the close of each month, furnish to the Commissioner, in accordance with the form and in the manner prescribed, a return of all wages paid or payable by him in respect of that month or in respect of each pay period of less than one month ending in that month, as the case may be :

Provided that this section shall not apply to any month prior to the month of July, One thousand nine hundred and forty-one.

Exemption
from
furnishing
returns.

19.—(1.) If the Commissioner is of the opinion that no tax will be payable by an employer, or, if paid, would be refunded, he may issue a certificate to that employer exempting him from furnishing monthly returns in accordance with the provisions of the last preceding section, and any employer to whom such a certificate is issued may refrain from furnishing monthly returns but shall, unless the contrary is expressed in the certificate, furnish an annual return within twenty-one days after the close of each financial year.

(2.) A certificate issued under the last preceding sub-section may be either unconditional or subject to such conditions as are prescribed or as the Commissioner thinks fit.

(3.) The issue of a certificate under sub-section (1.) of this section shall not exempt an employer from the payment of any tax, notwithstanding that it may have the effect of postponing the time for payment of any tax.

20. In addition to any return required to be furnished by this Act, the Commissioner may, by notice in writing, call upon any employer or person to furnish to him, within the time specified in the notice, such return or such further or fuller return, as the Commissioner requires, whether on his own behalf or as an agent or a trustee.

Further returns.

21.—(1.) The Commissioner may, by notice in writing, require any employer or person—

Department to obtain information and evidence.

(a) to furnish him with such information as he requires ; or

(b) to attend and give evidence before him or before any officer authorized by him in that behalf,

for the purpose of inquiring into or ascertaining his or any other person's liability under any of the provisions of this Act, and may require him to produce all books, documents and other papers whatsoever in his custody or under his control relating thereto.

(2.) The Commissioner may require the information or evidence to be given on oath, and either orally or in writing, and for that purpose he or the officer so authorized by him may administer an oath.

(3.) Regulations made under this Act may prescribe scales of expenses to be allowed to persons required under this section to attend.

PART V.—COLLECTION AND RECOVERY OF TAX.

22. Every employer liable to pay tax shall pay the tax within the time within which he is required by this Act to lodge the return of the wages in respect of which the tax is payable.

Time for payment of tax.

23.—(1.) Where the Commissioner finds in any case that tax or further tax is payable by any employer, the Commissioner may—

Assessments.

(a) assess the amount of wages paid or payable by the employer ; and

(b) calculate the tax or further tax payable thereon.

(2.) Where—

(a) any employer makes default in furnishing any return ;

(b) the Commissioner is not satisfied with the return made by any employer ; or

(c) the Commissioner has reason to believe or suspect that any employer (though he may not have furnished any return) is liable to pay tax,

the Commissioner may cause an assessment to be made of the amount upon which, in his judgment, tax ought to be levied and that person shall be liable to pay tax thereon, excepting in so far as he establishes on objection that the assessment is excessive.

(3.) Any employer who becomes liable to pay tax by virtue of an assessment made under the last preceding sub-section shall also be liable to pay, by way of additional tax, double the amount of that tax or the amount of One pound, whichever is the greater :

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(4.) As soon as conveniently may be after an assessment is made under this section, the Commissioner shall cause notice in writing of the assessment and of the tax or further tax to be given to the employer liable to pay the tax or further tax.

(5.) The amount of tax or further tax specified in the notice shall be payable on or before the date specified in the notice together with any other amount which may be payable in accordance with any other provision of this Act.

(6.) The omission to give any such notice shall not invalidate the assessment and calculation made by the Commissioner.

Refunds.

24. Where the Commissioner finds in any case that tax has been overpaid he may refund to the employer who paid the tax the amount of tax found to be overpaid.

**Employer
leaving
Australia.**

25.—(1.) When the Commissioner has reason to believe that an employer may leave Australia before the tax or further tax becomes due and payable by him, the tax or further tax shall be due and payable on such date as the Commissioner fixes and notifies to the employer.

(2.) Subject to this section, every employer who is registered or required to be registered under this Act, who is about to leave Australia, shall apply to the Commissioner, at his office or at the office of a Deputy Commissioner, for a certificate that—

(a) tax is not payable by that employer ; or

(b) all tax which is due by that employer has been paid or that arrangements satisfactory to the Commissioner have been made for the payment of that tax and of any further tax which may become due and payable by that employer,

and the Commissioner, Second Commissioner or Deputy Commissioner, upon being satisfied as to the facts, may issue a certificate accordingly.

(3.) Every certificate issued under the last preceding sub-section shall be presented by or on behalf of the person to whom it is issued to the office of the owner or charterer, or of the representative of the owner or charterer, of the ship or aircraft by which the person intends to leave Australia at the port at which passage by the ship or aircraft is to be booked, and unless and until such certificate is so presented an authority for that person to travel by that ship or aircraft shall not be issued by the owner or charterer or a representative or employee of the owner or charterer.

(4.) Any owner or charterer or the representative or employee of the owner or charterer of any ship or aircraft who issues in contravention of the provisions of the last preceding sub-section an authority to any person to travel by the ship or aircraft shall be guilty of an offence.

Penalty : The amount of tax, if any, which is, or may become, due and payable by the person to whom the authority to travel is issued and in addition a fine not less than Fifty pounds or more than Two hundred pounds.

(5.) The owner, charterer, or the representative of the owner or charterer, of every ship or aircraft which takes passengers on board at any port shall, on the first working day after the advertised date of departure of the ship or aircraft from the port in Australia at which the certificate mentioned in this section is required to be presented, lodge all certificates so presented at the office of the Deputy Commissioner of Taxation for the State in which that port is situated, together with a list showing the name and last-known address in Australia of every person (other than members of the crew and staff of the ship or aircraft) who sailed on the ship or aircraft.

(6.) Every owner or charterer of a ship or aircraft or his representative who fails to comply with the provisions of the last preceding sub-section shall be guilty of an offence.

Penalty : Not less than Ten pounds or more than One hundred pounds.

26. The Commissioner may, in such cases as he thinks fit—

- (a) extend the time for payment of any tax or further tax by such period as he considers the circumstances warrant ; or
- (b) permit the payment of tax or further tax to be made by instalments within such time as he considers the circumstances warrant.

Time to pay—
extensions and
instalments.

27. If the tax or further tax is not paid before the expiration of the time specified in section twenty-two or twenty-three of this Act, or such further time as may be allowed by the Commissioner under section twenty-six of this Act, additional tax shall be payable at the rate of ten per centum per annum upon the amount of tax unpaid, to be computed from the expiration of the time specified in section twenty-two or twenty-three of this Act, or, where further time has been allowed by the Commissioner under section twenty-six of this Act, from the expiration of that further time :

Penal tax.

Provided that the Commissioner may, in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional tax imposed or any part thereof.

Recovery of tax.

28.—(1.) Tax shall be deemed when it becomes due and payable to be a debt due to the King on behalf of the Commonwealth and payable to the Commissioner in the manner and at the place prescribed.

(2.) Any tax or further tax unpaid, including any additional tax, may be sued for and recovered in any court of competent jurisdiction by the Commissioner or a Deputy Commissioner suing in his official name.

Substituted service.

29. If, in any proceedings against an employer for the recovery of tax, further tax or additional tax, the defendant—

(a) is absent from Australia and has not, to the knowledge of the Commissioner after reasonable inquiry in that behalf, any attorney or agent in Australia on whom service of process can be effected ; or

(b) cannot after reasonable inquiry be found,

service of any process in the proceedings may, without leave of the court, be effected on him by posting the same or a sealed copy thereof in a letter addressed to him at his last known place of business or abode in Australia.

Liquidator to give notice.

30.—(1.) Every person who is liquidator of any company which is being wound-up and which is, or on or after the first day of July, One thousand nine hundred and forty-one has been, an employer registered or required to be registered under this Act, shall, within fourteen days after he has become liquidator of that company, give notice in writing to the Commissioner of his appointment as liquidator.

(2.) The Commissioner shall, as soon as practicable thereafter, notify to the liquidator the amount which appears to the Commissioner to be sufficient to provide for any tax which then is or will thereafter become payable by the company.

(3.) The liquidator—

(a) shall not without leave of the Commissioner part with any of the assets of the company until he has been so notified ;

(b) shall set aside out of the assets available for the payment of the tax, assets to the value of the amount so notified, or the whole of the assets so available if they are of less than that value ; and

(c) shall, to the extent of the value of the assets which he is so required to set aside, be liable as trustee to pay the tax.

(4.) If the liquidator fails to comply with any provision of this section (or fails as trustee duly to pay the tax for which he is liable under the last preceding sub-section), he shall, to the extent of

the value of the assets of which he has taken possession and which are, or were at any time, available to him for the payment of the tax, be personally liable to pay the tax, and shall be guilty of an offence.

Penalty : Not less than One pound or more than Fifty pounds.

(5.) Where more persons than one are appointed liquidators or required by law to carry out the winding-up, the obligations and liabilities attaching to a liquidator under this section shall attach to each of such persons :

Provided that where any one of such persons has paid the tax due in respect of the company being wound-up, the other person or persons shall be liable to pay that person each his equal share of the amount of the tax so paid.

(6.) Notwithstanding anything contained in this section, all costs, charges and expenses which, in the opinion of the Commissioner, have been properly incurred by the liquidator in the winding-up of a company, including the remuneration of the liquidator, may be paid out of the assets of the company in priority to any tax payable in respect of the company.

(7.) Nothing in this section shall limit the liability of a liquidator under section sixty-six of this Act.

31.—(1.) Where an agent for an absentee principal has been required by the principal to wind-up the business of his principal he shall, before taking any steps to wind-up the business, notify the Commissioner of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Commissioner to be sufficient to provide for any tax that becomes payable.

Agent for
absentee
principal
winding-up
business.

(2.) An agent who fails to give notice to the Commissioner or fails to provide for payment of the tax as required by this section shall be personally liable for any tax that becomes payable in respect of the business of the principal.

32. In any case where, whether intentionally or not, an employer escapes full taxation in his lifetime by reason of not having duly made full, complete and accurate returns—

Where tax not
paid during
lifetime.

- (a) the Commissioner shall have the same powers and remedies against the executors and administrators of the employer in respect of the liability which the employer had as he would have had against the employer in his lifetime ;
- (b) the executors and administrators shall make such returns and furnish such information as the Commissioner requires for the purpose of an accurate assessment ;
- (c) the amount of tax shall (where the employer's default was intentional) be double the amount of the difference between the tax so assessed and the amount actually paid by the taxpayer, and shall be a first charge on all the employer's estate in the hands of the executors and administrators ; and

- (d) no lapse of time shall prevent the operation of this section, and the Commissioner may take all such proceedings and exercise all such powers and remedies for the purpose of giving effect to this section and recovering the double tax as in the case of ordinary assessments and taxation.

Provision for
payment of tax
by executors or
administrators.

33.—(1.) Where, at the time of an employer's death, he had not paid the whole of the tax payable up to the date of his death, the Commissioner shall have the same powers and remedies for the assessment and recovery of tax from the executors and administrators as he would have had against that employer, if he were alive.

(2.) The executors or administrators shall furnish such of the returns mentioned in Part IV. of this Act as have not been made by the deceased.

(3.) Where the executors or administrators are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the wages on which, in his judgment, tax ought to be charged.

(4.) Where, in respect of the estate of any deceased employer, probate has not been granted or letters of administration have not been taken out within six months of his death, the Commissioner may cause an assessment to be made of the amount of tax due by the deceased.

(5.) The Commissioner shall cause notice of the assessment to be published twice in a daily newspaper circulating in the State or Territory of the Commonwealth in which the deceased resided.

(6.) Any person claiming an interest in the estate of the deceased may, within forty-two days after the first publication of notice of the assessment, post to or lodge with the Commissioner an objection in writing against the assessment stating fully and in detail the grounds on which he relies and the provisions of this Act relating to objections and appeals shall thereupon apply in relation to the objection as if the person so claiming an interest were the deceased.

(7.) Subject to any amendment of the assessment by the Commissioner or by a Board of Review or by a court, the assessment so made shall be conclusive evidence of the indebtedness of the deceased to the Commissioner.

(8.) The Commissioner may issue an order in the form in the Schedule to this Act authorizing any member of the police force of the Commonwealth or of a State or of a Territory of the Commonwealth or any other person named therein to levy the amount of tax due by the deceased, with costs, by distress and sale of any property of the deceased.

(9.) Upon the issue of any such order the member or person so authorized shall have power to levy that amount accordingly in the prescribed manner.

(10.) Notwithstanding anything contained in the last three preceding sub-sections, if at any time probate of the will of the deceased is, or letters of administration of the estate are, granted to

a person, that person may, within forty-two days after the date on which probate was, or letters of administration were, granted, lodge an objection against the assessment, stating fully and in detail the grounds on which he relies, and the Commissioner shall consider any such objection and shall make such amendment (if any) as he considers necessary.

34. Every person who, under the provisions of this Act, pays any tax for or on behalf of any other person shall be entitled to recover the amount so paid from that other person as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in his hands belonging or payable to that other person.

Recovery of tax paid on behalf of another person

35. Where two or more persons are jointly liable to pay tax they shall each be liable for the whole tax, but any of them who has paid the tax may recover contributions as follows :—

Contributions from joint taxpayers.

- (a) a person who has paid the tax in respect of any wages may recover by way of contribution from any other person jointly liable to that tax a sum which bears the same proportion to the tax as the share of the wages which that other person was liable to pay bears to the total amount of wages which the persons jointly liable to tax were liable to pay ;
- (b) every person entitled to contribution under this section may sue therefor in any court of competent jurisdiction as money paid to the use of the person liable to contribute at his request ; or may retain or deduct the amount of the contribution out of any moneys in his hands belonging or payable to the person liable to contribute.

36.—(1.) The Commissioner may, by notice in writing (a copy of which shall be forwarded to the employer at the last place of address known to the Commissioner), require—

Commissioner may collect tax from person owing money to employer.

- (a) any person by whom any money is due or accruing or may become due to an employer ;
- (b) any person who holds or may subsequently hold money for or on account of an employer ;
- (c) any person who holds or may subsequently hold money on account of some other person for payment to an employer ; or
- (d) any person having authority from some other person to pay money to an employer,

to pay to him, forthwith upon the money becoming due or being held, or within such further time as the Commissioner, Second Commissioner, or a Deputy Commissioner allows, the money or so much thereof as is sufficient to pay the tax due by the employer or the fines and costs (if any) imposed by a court on him in respect of an offence against this Act.

(2.) Any person who fails to comply with any notice under this section shall be guilty of an offence.

Penalty : Fifty pounds.

(3.) Where any amount referred to in sub-section (1.) of this section is less than the amount of tax due by the employer, the person shall pay to the Commissioner in reduction of the amount of tax due the amount payable by that person to the employer.

(4.) Any person making any payment in pursuance of this section shall be deemed to have been acting under the authority of the employer and of all other persons concerned, and is hereby indemnified in respect of such payment.

(5.) If the tax due by the employer, or the fine and costs (if any) imposed by a court on him, are paid before any payment is made under a notice given in pursuance of this section, the Commissioner shall forthwith give notice to the person of the payment.

(6.) In this section—

“ tax ” includes further tax and additional tax chargeable under this Act, and any judgment debt and costs in respect of tax ;

“ person ” includes company, partnership, Commonwealth or State Officer, and any public authority (corporate or unincorporate) of the Commonwealth or a State.

Evidence.

37.—(1.) The production of any document or a copy of a document under the hand of the Commissioner, Second Commissioner or a Deputy Commissioner purporting to be a notice or a copy of a notice specifying any liability of an employer under this Act shall be conclusive evidence of the due exercise of any act required by this Act to be done or performed by the Commissioner, Second Commissioner, or a Deputy Commissioner for the purpose of ascertaining the liability so specified and (except in proceedings on appeal when it shall be *prima facie* evidence only) shall be conclusive evidence of the correctness of any calculations upon which that liability is ascertained.

(2.) The production of any document under the hand of the Commissioner, Second Commissioner or a Deputy Commissioner purporting to be a copy of or extract from any document or return furnished to, or of any document issued by, the Commissioner shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

PART VI.—OBJECTIONS AND APPEALS.

Powers of Board.

38. A Board of Review shall have power to review such decisions of the Commissioner, Second Commissioner or a Deputy Commissioner as are referred to it by the Commissioner under this Act and, for the purpose of reviewing such decisions, shall have all the powers and functions of the Commissioner in making assessments and decisions under this Act, and such assessments and decisions of the Board, and the decisions of the Board upon review, shall, for all purposes (except

for the purposes of sub-section (4.) of section thirty-nine and sub-section (6.) of section forty of this Act), be deemed to be assessments or decisions, as the case may be, of the Commissioner.

39.—(1.) An employer who is dissatisfied with any decision made by the Commissioner under this Act, by which his liability to pay tax is affected, or with any assessment made by the Commissioner under this Act, may, within forty-two days after service by post of the decision or the notice of assessment, as the case may be, post to, or lodge with, the Commissioner an objection in writing stating fully and in detail the grounds on which he relies. Objections.

(2.) The Commissioner shall consider the objection, and may either disallow it, or allow it, either wholly or in part.

(3.) The Commissioner shall give to the objector written notice of his decision on the objection.

(4.) An employer who is dissatisfied with the decision of the Commissioner, Second Commissioner or a Deputy Commissioner may within thirty days after the service by post of notice of that decision request the Commissioner in writing to refer the decision to a Board of Review for review.

40.—(1.) Where an employer has, in accordance with the last preceding section, requested the Commissioner to refer a decision to a Board of Review, the Commissioner shall, if the employer's request is accompanied by a fee of One pound, refer the decision to the Board not later than thirty days after receipt of the request. References to
Board of
Review.

(2.) An employer shall be limited on the review to the grounds stated in his objection.

(3.) If the employer's liability or assessment has been reduced by the Commissioner after considering the objection, the liability or assessment as reduced shall be that to be dealt with by the Board under the next succeeding sub-section.

(4.) The Board, on review, shall give a decision and may either confirm, reduce, increase or vary the liability or assessment.

(5.) The Commissioner or an employer may appeal to the High Court from any decision of the Board under this section which, in the opinion of the High Court, involves a question of law and the Board shall, upon the request of the Commissioner or an employer, refer to the High Court any question of law arising before the Board and the decision of the High Court thereon shall be final and conclusive.

(6.) If the employer's liability or assessment is reduced either by amendment or as a result of the decision of the Board or a court, the fee paid in accordance with sub-section (1.) of this section shall be refunded to him.

Pending appeal
not to delay
payment of tax.

41.—(1.) The fact that an appeal or reference is pending shall not in the meantime interfere with or affect the liability or assessment the subject of that appeal or reference; and the tax may be recovered as if no appeal or reference were pending.

(2.) If the liability or assessment is altered on appeal or reference, a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

PART VII.—PENAL PROVISIONS.

Offences.

42.—(1.) Any person who—

- (a) fails or neglects duly to furnish any return or information or to comply with any requirement of the Commissioner as and when required by this Act or the Regulations thereunder, or by the Commissioner;
- (b) without just cause shown by him refuses or neglects duly to attend and give evidence when required by the Commissioner or any officer duly authorized by him, or to answer truly and fully any questions put to him, or to produce any book or papers required of him by the Commissioner or any such officer;
- (c) makes or delivers a return which is false in any particular or makes any false answer whether orally or in writing; or
- (d) contravenes any provision of this Act for the contravention of which no penalty is expressly provided,

shall be guilty of an offence.

Penalty: Not less than Two pounds or more than One hundred pounds.

(2.) In any prosecution, for an offence against paragraph (c) of sub-section (1.) of this section, of any person who has not previously been convicted of an offence against this Act, it shall be a defence if the defendant proves—

- (a) that the return or answer to which the prosecution relates was prepared or made by him personally; and
- (b) that the false particulars were given or (as the case may be) the false statement was made through ignorance or inadvertence.

(3.) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements in respect of which he was convicted, shall be guilty of an offence and punishable as provided in section forty-five of this Act.

Additional tax
in certain cases.

43.—(1.) Notwithstanding anything contained in the last preceding section, any employer who—

- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the Regulations thereunder or by the Commissioner; or

(b) fails to include in any return any particulars of wages paid or payable by him which are subject to tax under this Act, shall, if an employer to whom paragraph (a) of this sub-section applies, be liable to pay additional tax at the rate of ten per centum per annum upon the amount of tax payable by him (such percentage to be calculated for the period commencing on the last day allowed for furnishing the return or information and ending on the day upon which the return or information is furnished or the day upon which the assessment is made, whichever first happens), or the sum of One pound, whichever is the greater, or, if an employer to whom paragraph (b) of this sub-section applies, shall be liable to pay by way of additional tax the amount of One pound or double the amount of the difference between the tax properly payable and the tax payable upon the basis of the return lodged, whichever is the greater :

Provided that the Commissioner may, in any particular case, for reasons which he thinks sufficient, remit the additional tax or any part thereof.

(2.) If the Commissioner considers that the circumstances of any case warrant action being taken to recover the penalty provided by the last preceding section, such action may be taken by the Commissioner, and in that case the additional tax payable under this section shall not be charged.

44. If any person, in any declaration made under, or authorized or prescribed by, this Act or the Regulations thereunder, knowingly or wilfully declares to any matter or thing which is false or untrue, he shall be deemed to be guilty of wilful and corrupt perjury and shall upon conviction be liable to imprisonment for a period not exceeding four years.

False
declarations.

45. Any person who, by any wilful act, default or neglect, or by any fraud, art or contrivance whatever, avoids or attempts to avoid tax chargeable under this Act, shall be guilty of an offence.

Avoiding
taxation.

Penalty : Not less than Fifty pounds and the amount of tax avoided or attempted to be avoided, or more than Five hundred pounds and treble the amount of tax avoided or attempted to be avoided.

46.—(1.) A prosecution in respect of any offence against the last preceding section may be commenced at any time within three years after the commission of the offence.

Time for
commencing
prosecutions.

(2.) A prosecution in respect of any offence against paragraph (a) or (c) of sub-section (1.) of section forty-two of this Act may be commenced at any time.

47. Payment of penalties under this Act shall not relieve any person from liability to any tax for which he would otherwise be liable.

Penalties not
to relieve from
tax.

Obstructing
officers.

48. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the Regulations thereunder shall be guilty of an offence.

Penalty : Not less than One pound or more than Fifty pounds.

PART VIII.—TAXATION PROSECUTIONS.

Taxation
prosecutions.

49. Proceedings by the Crown for the recovery of penalties under this Act are hereinafter referred to as "taxation prosecutions".

How instituted.

50. Taxation prosecutions may be instituted in the name of the Commissioner by action, information or other appropriate proceeding—

(a) in the High Court of Australia ; or

(b) in the Supreme Court of any State or Territory of the Commonwealth,

and when the prosecution is for a pecuniary penalty not exceeding Five hundred pounds or the excess is abandoned, the taxation prosecution may be instituted in the name of the Commissioner or a Deputy Commissioner—

(c) in a County Court, District Court, Local Court or Court of Summary Jurisdiction of any State or Territory of the Commonwealth.

Evidence of
authority to
institute
proceedings.

51.—(1.) Where any taxation prosecution has been instituted by an officer in the name of the Commissioner or a Deputy Commissioner, the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Commissioner or the Deputy Commissioner, as the case may be.

(2.) The production of a telegram purporting to have been sent by the Commissioner or a Deputy Commissioner and purporting to authorize an officer to institute any taxation prosecution or proceedings shall be admissible as evidence in the prosecution or proceedings, and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Commissioner or Deputy Commissioner, as the case may be.

Defendant to
have right of
trial in High
or State Court.

52. In any taxation prosecution where the penalty exceeds One hundred pounds and the excess is not abandoned, the defendant, within seven days after service of process, shall have the right to elect, in manner prescribed, to have the case tried, at the option of the prosecutor, either in the High Court of Australia or in the Supreme Court of the State or Territory of the Commonwealth in which the prosecution has been instituted, and thereupon the proceedings shall stand removed accordingly and may be conducted as if originally instituted in the court to which they are so removed.

Prosecution in
accordance with
Practice Rules.

53. Every taxation prosecution in the High Court of Australia or the Supreme Court of any State or Territory of the Commonwealth may be commenced, prosecuted and proceeded with in accordance

with any rules of practice established by the court for Crown suits in revenue matters or in accordance with the usual practice and procedure of the court in civil cases or in accordance with the directions of the court or a Judge.

54. Subject to this Act, the provisions of the law relating to summary proceedings before Justices in force in the State or Territory of the Commonwealth where the proceedings are instituted shall apply to all taxation prosecutions before a court of summary jurisdiction in that State or Territory and an appeal shall lie from any conviction or order of dismissal to the court, and in the manner, provided by the law of the State or Territory where such a conviction or order is made for appeals from convictions or orders of dismissal.

State Court practice.

55. All informations, summonses, convictions and warrants shall suffice if the offence is set forth as nearly as may be in the words of this Act.

Information, &c., to be valid if in words of Act.

56.—(1.) An objection shall not be taken or allowed to any information or summons for any alleged defect therein in substance or in form or for any variance between the information or summons and the evidence adduced at the hearing in support thereof, and the court shall at all times make any amendment necessary to determine the real question in dispute or which may appear desirable.

No objection for informality.

(2.) If any such defect or variance appears to the court to be such that the defendant has been thereby deceived or misled, it shall be lawful for the court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

57. A conviction, warrant of commitment or other proceeding, matter or thing done or transacted in relation to the execution or carrying out of any taxation act shall not be held void, quashed or set aside by reason of any defect therein or want of form, and no party shall be entitled to be discharged out of custody on account of such defect.

Conviction not to be quashed.

58. A witness on behalf of the Commissioner or a Deputy Commissioner in any taxation prosecution shall not be compelled to disclose the fact that he received any information, or the nature thereof or the name of the person who gave such information, and an officer appearing as a witness shall not be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

Protection to witnesses.

59.—(1.) In any taxation prosecution the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters averred.

Averment of prosecutor sufficient.

(2.) This section shall apply to any matter so averred although—

(a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or

(b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3.) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) The foregoing provisions of this section shall not apply to—

- (a) an averment of the intent of the defendant ; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5.) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

Minimum penalties.

60. No minimum penalty provided by this Act shall be liable to reduction under any power of mitigation which would, but for this section, be possessed by the court.

Treatment of convicted offenders.

61. Where any pecuniary penalty is adjudged to be paid by any convicted person, the court—

- (a) may commit the offender to gaol until the penalty is paid ; or
- (b) may release the offender upon his giving security for the payment of the penalty ; or
- (c) may exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the court for the enforcement and recovery of penalties in any other case.

Release of offenders.

62. The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge that person—

- (a) on payment to him of the penalty adjudged ;
- (b) on a certificate by the Commissioner or a Deputy Commissioner that the penalty has been paid or realized ; or
- (c) if the penalty adjudged to be paid is not paid or realized, according to the following table :—

Amount of Penalty.	Period after commencement of imprisonment on the expiration of which defendant is to be discharged.
£2 and under	7 days
Over £2 and not more than £5	14 days
Over £5 and not more than £20	1 month
Over £20 and not more than £50	2 months
Over £50 and not more than £100	3 months
Over £100 and not more than £200	6 months
Over £200	1 year

Parties may recover costs.

63. In all taxation prosecutions, the court may award costs against any party, and all provisions of this Act relating to the recovery of penalties, except commitment to gaol, shall extend to the recovery of any costs adjudged to be paid.

PART IX.—MISCELLANEOUS.

64.—(1.) Each State shall, for the purposes of this Act, be represented by such officer or officers as the State appoints. Application
of Act to State.

(2.) Nothing in this Act imposing any penalty on an employer shall be construed as imposing a penalty on a State or any officer representing that State.

65. Every company which is registered or required to be registered as an employer under this Act shall at all times be represented by a person residing in Australia duly appointed by the company or by its duly authorized agent or attorney, and with respect to every such company and person the following provisions shall apply:— Public officer
of company.

- (a) Such person shall be called the public officer of the company for the purposes of this Act and shall be appointed within three months after the commencement of this Act or after the company commences to carry on business in Australia, whichever is the later date.
- (b) The company shall keep the office of public officer constantly filled and no appointment of a public officer shall be deemed to be duly made until after notice thereof in writing, specifying the name of the officer and address for service, has been given to the Commissioner.
- (c) If the company fails or neglects duly to appoint a public officer when and as often as such appointment becomes necessary, it shall be guilty of an offence.
Penalty: Fifty pounds for every day during which the failure or neglect continues.
- (d) Service of any document at the address for service or on the public officer of a company shall be sufficient service upon the company for all the purposes of this Act or the Regulations thereunder, and if at any time there is no public officer then service upon any person acting or appearing to act in the business of the company shall be sufficient.
- (e) The public officer shall be answerable for the doing of all such things as are required to be done by the company under this Act or the Regulations thereunder, and in case of default shall be liable to the same penalties.
- (f) Everything done by the public officer which he is required to do in his representative capacity shall be deemed to have been done by the company. The absence or non-appointment of a public officer shall not exclude the company from the necessity of complying with any of the provisions of this Act or the Regulations thereunder, or from the penalties provided by any section on the failure to comply therewith, but the company shall be liable to the provisions of this Act as if there were no requirement to appoint a public officer.

- (g) In any proceedings under this Act taken against the public officer of the company the proceedings shall be deemed to have been taken against the company, and the company shall be liable jointly with the public officer for any penalty imposed upon him.
- (h) Notwithstanding anything contained in this section, and without in any way limiting, altering or transferring the liability of the public officer of a company, every notice, process or proceeding which under this Act or the Regulations thereunder may be given to, served upon or taken against the company or its public officer may, if the Commissioner thinks fit, be given to, served upon or taken against any director, secretary or other officer of the company or any attorney or agent of the company and that director, secretary, officer, attorney or agent shall have the same liability in respect of that notice, process or proceedings as the company or public officer would have had if it had been given to, served upon, or taken against the company or public officer.

Agents and
trustees.

66. With respect to every agent and with respect also to every trustee, the following provisions shall apply :—

- (a) He shall be answerable as an employer for the doing of all such things as are required to be done by virtue of this Act in respect of the payment of any wages which are subject to tax under this Act.
- (b) He shall, in respect of any such wages, make the returns and be chargeable with tax thereon, but in his representative capacity only, and each return shall, except as otherwise provided by this Act, be separate and distinct from any other.
- (c) If he is an executor or administrator, the returns shall be the same as far as practicable as the deceased person, if living, would have been liable to make.
- (d) Where as agent or trustee he pays tax, he is hereby authorized to recover the amount so paid from the person in whose behalf he paid it, or to deduct it from any money in his hands belonging to that person.
- (e) He is hereby authorized and required to retain from time to time out of any money which comes to him in his representative capacity so much as is sufficient to pay the tax which is or will become due in respect of such wages.
- (f) He is hereby made personally liable for the tax payable in respect of such wages if, after the Commissioner has required him to make a return, or while the tax remains unpaid, he disposes of or parts with any fund or money which comes to him from or out of which tax could legally be paid, but he shall not be otherwise personally liable for the tax :

Provided that the Commissioner may, upon application by the agent or trustee permit disposal of such fund or money or part thereof as he considers necessary.

- (g) He is hereby indemnified for all payments which he makes in pursuance of this Act or by the requirements of the Commissioner.
- (h) For the purpose of insuring the payment of tax the Commissioner shall have the same remedies against attachable property of any kind vested in or under the control or management or in the possession of any agent or trustee, as he would have against the property of any other person in respect of tax, and in as full and ample a manner.

67. With respect to every person who has the receipt control or disposal of money belonging to a person resident out of Australia, who is liable to pay tax under this Act, the following provisions shall, subject to this Act, apply :—

Person in receipt or control of money for absentee.

- (a) He shall when required by the Commissioner pay the tax due and payable by the person on whose behalf he has the control, receipt or disposal of money.
- (b) Where he pays tax in accordance with the preceding paragraph he is hereby authorized to recover the amount so paid from the person on whose behalf he paid it or to deduct it from any money in his hands belonging to that person.
- (c) He is hereby authorized and required to retain from time to time out of any money which comes to him on behalf of the person resident out of Australia so much as is sufficient to pay the tax which is or will become due by that person.
- (d) He is hereby made personally liable for the tax payable by him on behalf of the person resident out of Australia after the tax becomes payable, or if, after the Commissioner has required him to pay the tax, he disposes of, or parts with, any fund or money then in his possession, or which comes to him from or out of which the tax could legally be paid, but he shall not be otherwise personally liable for the tax :

Provided that the Commissioner may upon application permit disposal of such fund or money or part thereof as he considers necessary.

- (e) He is hereby indemnified for all payments which he makes in pursuance of this Act or in accordance with the requirements of the Commissioner.

68.—(1.) Every person who is an employer registered or required to be registered under this Act shall, for the purposes of this Act, keep proper books or accounts and shall preserve those books or accounts, for a period of not less than five years after the completion of the transactions to which they relate.

Books, accounts, &c., to be preserved.

Penalty : One hundred pounds.

(2.) This section shall not apply so as to require the preservation of any books, accounts or documents—

- (a) in respect of which the Commissioner has notified the employer that such preservation is not required ; or
- (b) of a company which has gone into liquidation and which has been finally dissolved.

Access to
books, &c.

69. The Commissioner, or any officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act and for any such purpose may make extracts from or copies of any such books, documents or papers.

Release of
employers
in cases of
hardship.

70.—(1.) In any case where it is shown to the satisfaction of a Board consisting of the Commissioner, the Secretary to the Treasury and the Comptroller-General of Customs or of such substitutes for all or any of them as the Minister appoints from time to time that—

- (a) an employer has suffered such a loss or is in such circumstances ; or
- (b) owing to the death of a person who, if he had lived, would have been liable to pay tax, the dependants of that person are in such circumstances,

that the exaction of the full amount of tax will entail serious hardship, the Board may release the employer or the trustee of the estate of the deceased person (as the case may be) wholly or in part from his liability, and the Commissioner may make such entries as are necessary for that purpose.

(2.) The Commissioner or his substitute shall be Chairman of the Board, and the decision of the majority shall prevail.

(3.) Where an application is made for release in respect of an amount of tax if that amount is not less than Five hundred pounds, the Board shall, and if that amount is less than Five hundred pounds, the Board may refer the application to a member of a Board of Review and shall notify the applicant in writing of its having done so.

(4.) The member of the Board of Review who shall have jurisdiction to deal with applications referred under this section shall, at the discretion of the Chairman of that Board, be the Chairman or such other member as he authorizes in writing to deal with the application.

(5.) The applicant may appear before the member of the Board of Review or the member of the Board of Review may require the applicant to appear before him, either in person or by a representative, and the member of the Board of Review may examine the applicant or his representative upon oath concerning any statements which the applicant has, or desires to have, placed before the Board constituted by this section.

(6.) The member of the Board of Review shall be assisted in his examination of the applicant by an officer of the Department of Taxation who is a qualified accountant.

(7.) The member of the Board of Review may permit the taxpayer to be assisted at the examination by such persons as the member of the Board of Review considers the circumstances justify.

(8.) A record shall be made of the information elicited by the member of the Board of Review during his examination.

(9.) The member of the Board shall submit a report to the Board constituted by this section upon the facts disclosed by his examination, and shall draw the attention of that Board to any facts which in his opinion have particular bearing upon the application for release from tax. The report shall be accompanied by the record mentioned in sub-section (8.) of this section.

71. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and, in particular, for prescribing penalties not less than One pound or more than Twenty pounds for any breach of the Regulations. Regulations.

THE SCHEDULE.

COMMONWEALTH OF AUSTRALIA.

Section 33.

Pay-roll Tax Assessment Act 1941.

Order.

To _____ at _____

WHEREAS at the time of the death of _____ of _____ deceased, pay-roll tax has not been levied and/or paid on the whole of the wages paid or payable by the said _____ up to the date of his death :

AND WHEREAS probate has not been, or letters of administration have not been, granted in respect of the estate of the said _____ deceased :

AND WHEREAS the amount of tax remaining due by the said _____ at the time of his death is _____

THESE ARE THEREFORE to require and authorize you forthwith to levy the said sum of _____ together with the costs of these presents by distress and sale of any property of the estate of the said _____ found by you and to require that you certify to me on the _____ day of _____ what you shall do by virtue of this warrant.

Dated this _____ day of _____ One thousand nine hundred and _____

Commissioner of Taxation.