

NEW SALES TAX THREAT!

IN THE 1981 Budget the Federal Government proposed amendments to the Sales Tax Act which would have imposed a 2½ percent tax on books, magazines and newspapers. The LAA, the Australian Book Publishers Association, the Australian Booksellers Association and the National Book Council successfully mounted a \$40,000 campaign to have the legislation defeated. In March 1982, the amendments were rejected by the Senate. Now a new sales tax threat has emerged which will affect not only libraries who use computers but is likely also to resurrect the controversy of sales tax on books.

In April 1982 the Australian Taxation Office reviewed an interpretation of the Sales Tax Act and moved to collect a 17½ percent sales tax on computer software. Computer industry representatives held talks on 23 April with assistant deputy taxation commissioner, Frank Beaumont to clarify the issue. According to *Pacific Computer Weekly* no.367, Mr Beaumont warned that 'those software companies who do not have a written ruling from the Taxation Department stating their software is non-taxable are liable to three years' retrospective sales tax.'

This led to a flurry of lobbying activity by the Australian Software Houses Association and the Australian Computer Society. The main points of contention have been an inability by the Taxation Office to define what constitutes software and to define whether software is 'goods' or 'services'. As sales tax can only be applied to 'commodities' by definition of the Act, obviously the Taxation Office had decided that software constitutes 'goods' or 'commodities'. However, the Industrial Research and Development Grants Board does not regard software packages as 'goods' and has therefore consistently refused applications for R & D grants for the development of software.

On 7 May official Taxation Office guidelines were issued in which software was classified under one of three categories:

1. 'Software that conveys the results of consultancy work of specialist programmers who have been retained by the user'. (This is not taxable - sales tax is payable only on the medium, ie tape, disc, used to store the software.)
2. 'Standard and games software such as computer games, educational software and standard business programs generally supplied in the form of a cartridge or floppy disc and sold over the counter or supplied for a fee'. (This is taxable at 17½ percent except if the purchaser is a sales tax exempt organisation as defined in the Act, eg a State Library.)
3. 'Standard software that is substantially altered by a specialist programmer to meet the particular user's needs'. (Only the original program's sale is taxable at 17½ percent; customisations and modifications are not taxable even though they may increase the

value of the original.)

In a later revision of the guidelines the term 'programmes' has replaced 'software' in categories 1 and 3 and category 2 has been expanded to include 'standard business programmes such as general ledger or accounts receivable, household packages and so on'. Category 1 has been amplified by the following: 'The finished tape (sic) is produced incidentally in the course of providing professional services and is merely the media (sic) for transmission of ideas found in the programme'.

These definitions are obviously inadequate and have provoked some angry reactions from software industry representatives. Over the past 15 years in Australia 'standard software' has been available and has been sold. According to the Chairman of ASHA, Ian Dennis, during that time numerous companies have been advised verbally and in writing that software was not subject to sales tax. In *Australasian Computerworld*, 21 May 1982 he said 'The segregation of software into three components, one of which is primarily categorised by its uniqueness, one by its media and the other by undefined amount of changes made to it is going to produce a morass of unknowns'.

Other associated anomalies have been brought to light recently.

- a) Duplication of a program is deemed for sales tax purposes to be manufacture. However, recent rulings by the commissioner regarding the record industry have been that when the medium is supplied by the user, in some instances the recording is not manufacture.
- b) Equipment used primarily and principally in research and development of computer software is 'not for use ... directly in the manufacture of goods' and does not qualify for exemption of sales tax under the 'aids to manufacture' provisions. However, computer equipment used exclusively, or primarily and principally, and directly in the manufacture of goods marketed as standard software is not excluded from the definition of aids to manufacture therefore qualifies for exemption.
- c) There is complete authority for sales tax to be demanded up to three years in arrears, but no common law recourse for a wholesaler to claim sales tax not charged. The wholesaler is liable for the collection of the sales tax.

The ACS software industry committee has decided that software is a service and should therefore be exempt from sales tax. But it would also be ineligible for aids-to-manufacture tax rebates, research and development grants, export incentives, and other government assistance available to manufacturers.

continued page 7

The owners return to Lanyon



Mrs Pam Ray a historian from the National Library holds a pair of porcelain portraits which are to be returned to Lanyon, a historic homestead in the ACT. Mrs Ray has been conducting research into the homestead and has written a detailed history. The portraits are of Jane and Andrew Cunningham who were the owners of Lanyon in the 1850s. The portraits were in the possession of a grandson of the couple, who has returned them to Lanyon as a gift.

A MEETING to discuss the draft constitution of the newly formed union called LIBRARY AND INFORMATION STAFF ASSOCIATION of New South Wales will be held on Tuesday 14 September at 6.00 pm at the Tom Mann Theatre, 136 Chalmers Street, Surry Hills (near Central Station and opposite the Ice Skating Rink).

All library staff in the private sector are urged to attend this crucial meeting. Copies of the draft constitution and the minutes of the inaugural meeting held on 4 August, are available from Judith Hill at the LAA office.

**Judith Hill
Industrial Officer**