

## APPLE AND PEAR TAX ASSESSMENT.

### No. 62 of 1938.

An Act relating to the Imposition, Assessment and Collection of a Tax upon Apples and Pears and for other purposes.

[Assented to 10th December, 1938.]

**B**E 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.

- Short title.** 1. This Act may be cited as the *Apple and Pear Tax Assessment Act 1938*.
- Commencement.** 2. This Act shall come into operation on the first day of January, One thousand nine hundred and thirty-nine.
- Parts.** 3. This Act is divided into Parts as follows :—  
 Part I.—Preliminary.  
 Part II.—Administration.  
 Part III.—Liability to Taxation.  
 Part IV.—Returns.  
 Part V.—Collection and Recovery of Tax  
 Part VI.—Penal Provisions.  
 Part VII.—Miscellaneous.
- Definitions.** 4. In this Act, unless the contrary intention appears—  
 “case” means a bushel case and includes two half bushel cases or, in respect of pears, three trays ;  
 “Deputy Commissioner” means a Deputy Commissioner of Taxation ;  
 “fruit agent” means any person or organization who or which carries on, whether exclusively or not, the business of selling apples or pears for or on behalf of the grower ;  
 “fruit processor” means a person who engages, whether exclusively or not, in the processing of apples or pears ;  
 “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 ;  
 “tax” means the tax imposed by the *Apple and Pear Tax Act 1938* ;  
 “taxpayer” means any person liable to pay tax ;  
 “the Board” means the Australian Apple and Pear Board constituted under the *Apple and Pear Organization Act 1938* ;

- “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, administrator, guardian, committee, receiver or liquidator ; and
  - (b) every person having or taking upon himself the administration or control of goods affected by any express or implied trust, or acting in any fiduciary capacity, or having the possession, control or management of the goods of a person under any legal or other disability ;
- “wholesale fruit merchant” means any person who engages in the purchase of apples or pears from the grower for sale to a person who purchases them for resale.

#### PART II.—ADMINISTRATION.

**5.** The Commissioner of Taxation shall have the general Commissioner. administration of this Act.

**6.**—(1.) Subject to this section, the Second Commissioner of Taxation 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 Act shall be deemed to confer upon the Second Commissioner any power or function of the Commissioner under section eight 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.** The Deputy Commissioners of Taxation 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 or 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 such review or alteration shall be deemed to be that of the Commissioner.

Reference 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.

Officers to  
observe secrecy.

10.—(1.) Every person executing any power or duty conferred or imposed on an officer or any other person by or under this Act or the regulations shall, before entering upon his duties or exercising any power under this Act, make before a Police Magistrate, a Justice of the Peace, a Clerk of Petty Sessions, a Commissioner for taking Affidavits, a Commissioner for Declarations, a school teacher or a minister of religion, a declaration in accordance with the prescribed form.

(2.) Any person who acts in the execution of any power or duty under this Act or the regulations 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 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 under this Act to the Commissioner of Income Tax for any State or to the Commonwealth Statistician or the Comptroller-General of Customs or the Secretary of the Department of Commerce or, with the approval of the Minister, to any organization representing growers of apples or pears.

(5.) A person 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 when it is necessary to do so for the purpose of carrying into effect the provisions of this Act.

### PART III.—LIABILITY TO TAXATION.

11. Subject to and in accordance with the provisions of this Act, the tax imposed by the *Apple and Pear Tax Act* 1938 shall be levied and paid upon apples and pears grown in Australia and, on or after the date fixed by Proclamation under that Act, sold by or on behalf of the grower.

Tax on apples and pears.

12. The tax shall be paid—

- (a) where the apples or pears are sold by a fruit agent for or on behalf of the grower—by the fruit agent ;
- (b) where the apples or pears are sold by the grower to a wholesale fruit merchant—by the wholesale fruit merchant ; and
- (c) where apples or pears are sold by the grower in any prescribed market or class of market, or to any prescribed persons or class of persons, or in any prescribed manner (not being sales to which paragraph (a) or (b) of this section applies)—by the grower.

Persons liable to pay tax.

13. Notwithstanding anything contained in this Part, tax shall not be payable by any person in respect of—

Exemptions.

- (a) apples or pears exported or to be exported ; or
- (b) apples or pears processed or to be processed by him or sold or to be sold by him to a fruit processor.

### PART IV.—RETURNS.

14. Every person liable under section twelve of this Act to pay tax in respect of apples or pears sold or purchased by him shall in respect of every period of three months ending on the last day of a March, a June, a September or a December, within twenty-one days after the close of that period, furnish to the Commissioner a return in the prescribed form—

Returns.

- (a) if he is a fruit agent—of all apples and pears sold by him for or on behalf of the grower ;
- (b) if he is a wholesale fruit merchant—of all apples and pears purchased by him from the grower ; and
- (c) if he is a grower—of all apples and pears, sold by him, not being apples or pears sold for or on his behalf by a fruit agent :

Provided that any period prior to the date fixed by Proclamation under the *Apple and Pear Tax Act* 1938 shall, for the purposes of any return under this section, be excluded from the period in respect of which the return is furnished.

Further  
returns.

**15.** In addition to any return required under the last preceding section, the Commissioner may, by notice in writing, call upon any person to furnish to him, within a time specified in the notice, such return, or such further or fuller return, as the Commissioner requires.

Commissioner  
to obtain  
information and  
evidence.

**16.**—(1.) For the purpose of inquiring into or ascertaining the liability of any person under any of the provisions of this Act, the Commissioner may, by notice in writing, require any person—

(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,

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.) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

Returns deemed  
to be made.

**17.** Any return purporting to be made and signed by or on behalf of any person shall, until the contrary is proved, be deemed to have been made and signed by him or with his authority.

#### PART V.—COLLECTION AND RECOVERY OF TAX.

Time for  
payment of  
tax.

**18.** Subject to this Act every person liable to pay tax shall pay the tax within the time within which he is required by this Act to lodge the return in respect of the apples or pears upon which the tax is payable.

Additional tax.

**19.** Any person who fails to pay the tax on or before the date when it is due and payable shall, in addition to his liability to pay that tax, be liable to pay, by way of additional tax, ten per centum of the amount of tax which he has so failed to pay:

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.

Assessment of  
tax or further  
tax.

**20.**—(1.) Where in any case the Commissioner is of the opinion that tax or further tax is payable by any person, the Commissioner may assess the amount of tax which, in his opinion, should be or should have been paid.

(2.) Where—

(a) any person makes default in furnishing any return; or

(b) the Commissioner is not satisfied with the return furnished by any person; or

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

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

(3.) Any person 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, 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 tax or further tax payable in accordance with the assessment to be given to the person 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 is payable in accordance with any other provisions of this Act.

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

**21.** The production of any notice of assessment or of any document under the hand of the Commissioner, the Second Commissioner or a Deputy Commissioner, purporting to be a copy of a notice of assessment, shall be *prima facie* evidence of the due making of the assessment and that the amount and all the particulars of assessment are correct.

Copies as evidence.

**22.—(1.)** Tax or additional 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.

Commissioner may sue for tax.

(2.) Any tax unpaid, including 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.

**23.—(1.)** Where the Commissioner finds in any case that tax has been overpaid, he shall refund the amount of tax found to be overpaid.

Refunds of tax.

(2.) A refund under the last preceding sub-section shall not be made to any person unless he furnishes to the Commissioner such return or other information, certified in such manner as the Commissioner requires, as will enable the Commissioner to determine the amount of tax which has been overpaid.

**24.—(1.)** Where a company is being wound up, the liquidator of the company shall, within fourteen days after he becomes liquidator, give notice of his appointment to the Commissioner, and shall set aside such sum out of the assets of the company as is sufficient to provide for any tax that then is or will thereafter become payable by the company.

Liquidator to give notice.

(2.) A liquidator who fails to give notice to the Commissioner within the time specified in the last preceding sub-section, or fails to provide for payment of the tax as required by this section, shall be personally liable for any tax that then is or thereafter becomes payable by the company.

(3.) Where two or more persons are appointed liquidators, the obligations and liabilities attaching to a liquidator under this section shall attach to those persons jointly.

Provision for  
payment of tax  
by legal  
personal  
representatives  
of deceased  
persons.

25.—(1.) Where at the time of a person'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 legal personal representatives of the deceased person as he would have against that person if that person were alive.

(2.) The legal personal representatives shall furnish a return of all apples and pears in respect of which the deceased person, if he were alive, would be required by this Act to furnish a return.

(3.) Where the legal personal representatives are unable or fail to furnish a return, the Commissioner may estimate and make an assessment of the quantity of apples and pears on which, in his judgment, tax ought to be paid, and the legal personal representatives shall be liable to pay tax as if that quantity were the quantity of apples and pears in respect of which tax was due and payable by the deceased person but had not been paid.

#### PART VI.—PENAL PROVISIONS.

Offences.

26.—(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 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 truly and fully to answer any questions put to him, or to produce any book or papers required of him by the Commissioner or any such officer ; or
- (c) makes or delivers a return which is false in any particular or makes any false answer, whether orally or in writing, to any question duly put to him by the Commissioner or any officer duly authorized by him,

shall be guilty of an offence.

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

(2.) A prosecution in respect of an offence against paragraph (a) or (c) of the last preceding sub-section may be commenced at any time.

(3.) Upon the conviction of any person for an offence against this section, the Court may order him, within a time specified in the order, to do the act which he had failed or refused or neglected to do, and any person who does not duly comply with the order shall be guilty of an offence.

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

(4.) An order under this section may be made orally by the Court to the defendant or may be served in the manner prescribed.

(5.) In any prosecution for an offence against paragraph (c) of sub-section (1.) of this section of a person who has not previously been convicted of an offence against this Act, it shall be a defence if the defendant proves that the false particulars were given or the false statement was made through ignorance or inadvertence.

27.—(1.) Notwithstanding anything contained in this Act, any person who—

- (a) fails or neglects duly to furnish any return or information as and when required by this Act or the regulations or by the Commissioner ; or
- (b) fails to include particulars of any apples or pears in any return,

Additional  
tax in certain  
cases.

shall, if a person 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 which he is liable to pay (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 an assessment of the tax is made, whichever first happens), or the sum of One pound whichever is the greater, or, if a person 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 the amount of the difference between the tax properly payable and the amount of tax payable in respect of the apples or pears, if any, set out in the return furnished by him, whichever is the greater, in addition to any additional tax which may become payable by him in accordance with section nineteen of this Act :

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.

Penalties  
not to relieve  
from tax.

**28.** Payment of penalties under this Act shall not relieve any person from liability to assessment or payment of any tax or additional tax.

Obstructing  
officers.

**29.** Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the regulations, shall be guilty of an offence.

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

Treatment  
of convicted  
offenders.

**30.** Where any pecuniary penalty is adjudged to be payable by any convicted person, the Court 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 or money adjudged to be payable in any other case.

Taxation  
prosecutions.

**31.** Any proceeding by the Crown for the recovery of a pecuniary penalty under this Act (in this Part referred to as a "taxation prosecution") may be instituted in the name of the Commissioner or a Deputy Commissioner.

Place where  
offence  
committed.

**32.** Any of the following offences, namely :—

- (a) failure duly to furnish any return or information ;
- (b) making or delivering a return which is false in any particular, or making a false answer ; or
- (c) failure to comply with any requirement,

shall be deemed to have been committed either—

- (d) at the place where the return or information was furnished, or should, in accordance with this Act, the regulations or a requirement of the Commissioner, have been furnished, or where the answer was made, or where the requirement should have been complied with ; or
- (e) at the usual or last known place of business or abode of the defendant,

and may be charged as having been committed at either of those places.

Averment of  
prosecutor  
sufficient.

**33.—(1.)** In any prosecution under this Act, every averment of the prosecutor or plaintiff, contained in the information, shall be *prima facie* evidence of the matter averred.

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

- (a) evidence in support or rebuttal of the matter averred or any other matter is given ; 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 in support or rebuttal of the 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.) This section shall not apply to an averment of the intent of the defendant.

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

**34.** Where any taxation prosecution has been instituted by an officer in the name of the Commissioner or a Deputy Commissioner the prosecution shall, unless the contrary is proved, be deemed to have been instituted by the authority of the Commissioner or the Deputy Commissioner, as the case may be. Evidence of authority to institute proceedings.

**35.—(1.)** In any action, prosecution or other proceeding in any Court by the Commissioner or a Deputy Commissioner, he may appear either personally or by a barrister or solicitor, or by an officer. Appearance by Commissioner.

(2.) The appearance of any such officer, and his statement that he appears by authority of the Commissioner or Deputy Commissioner shall be sufficient evidence of that authority.

**36.** In all taxation prosecutions the Court may award costs against any party, and all the 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. Costs.

#### PART VII.—MISCELLANEOUS.

**37.** Every company which is a fruit agent or a wholesale fruit merchant shall at all times be represented for the purposes of this Act by a public officer, being a person residing in Australia, and duly appointed by the company or by its duly authorized agent or attorney, and with respect to every such company and public officer the following provisions shall apply :— Public officer of company.

- (a) The company shall appoint a public officer within three months after the commencement of this Act or after the company commences to carry on business as a fruit agent or a wholesale fruit merchant.
- (b) The company shall keep the office of the public officer constantly filled.
- (c) 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 an address for service upon him, has been given to the Commissioner.
- (d) If the company fails duly to appoint a public officer when and as often as an appointment becomes necessary, it shall be guilty of an offence.

Penalty : Two pounds for every day during which the failure continues.

- (e) Service of any document at the address for service, or on the public officer of the company shall be sufficient service upon the company for all the purposes of this Act, or the regulations, 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.
- (f) 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, and in case of default shall be liable to the same penalties.
- (g) 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 excuse the company from the necessity of complying with any of the provisions of this Act or the regulations, or from any penalty for failure to comply therewith, but the company shall be liable to comply with the provisions of this Act as if there were no requirement to appoint a public officer.
- (h) Any notice given to or requisition made upon the public officer shall be deemed to be given to or made upon the company.
- (i) Any proceedings under this Act taken against the public officer 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.
- (j) 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 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 proceeding 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.

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

- (a) He shall be answerable as taxpayer for the doing of all such things as are required to be done by virtue of this Act in respect of any sale or purchase of apples or pears upon which tax is payable.

- (b) He shall, in respect of any apples or pears upon which tax is payable, make the returns and be chargeable with tax 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.
- (f) He is hereby made personally liable for the tax 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 the 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, 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 taxpayer in respect of tax, and in as full and ample a manner.

**39.** The Commissioner, or any person 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 that purpose may make extracts from or copies of any such books, documents or papers.

Access to  
books, &c.

**40.** 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 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.