

FLOUR TAX (WHEAT INDUSTRY ASSISTANCE) ASSESSMENT.

No. 48 of 1938.

An Act relating to the Imposition, Assessment and Collection of a Tax upon Wheat and Flour and upon certain Goods in the Manufacture of which Flour is used, and for other purposes.

[Assented to 2nd December, 1938.]

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.

- Short title.** **1.** This Act may be cited as the *Flour Tax (Wheat Industry Assistance) Assessment Act* 1938.
- Commencement.** **2.** This Act shall come into operation on the day on which it receives the Royal Assent.
- 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.—Refunds of Tax.
 Part VII.—Application of *Sales Tax Assessment Act (No. 1)* 1930–1936.
 Part VIII.—Miscellaneous.
- Definitions.** **4.**—(1.) In this Act, unless the contrary intention appears—
 “agent” includes—
 (a) every person who in Australia, for or on behalf of any person out of Australia, holds or has the control, receipt or disposal of any money belonging to that person; and
 (b) every person declared by the Commissioner to be an agent or the sole agent of any person for any of the purposes of this Act;
 “Board of Review” means a Board of Review constituted under the *Income Tax Assessment Act* 1936–1938;
 “company” includes all bodies or associations, corporate or unincorporate, but does not include partnerships;
 “Deputy Commissioner” means a Deputy Commissioner of Taxation;

“flour” means any substance produced—

- (a) by gristing, crushing, grinding, milling, cutting or otherwise processing wheat or, except as prescribed, by any one or more of those processes applied to wheat combined with any other commodity;
- (b) by the sifting or screening of, or any mechanical operation applied to, substances produced by any of the operations specified in the last preceding paragraph; or
- (c) by the combination of any of the operations specified in the last two preceding paragraphs,

and includes—

- (d) any mixture of any of those substances; and
- (e) self raising flour held in stock by any person on the fifth day of December, One thousand nine hundred and thirty-eight;

“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;

“public charitable institution” means a public hospital, a public benevolent institution or a religious organization, and includes any public organization which the Commissioner is satisfied is established and maintained for the relief of unemployed persons;

“tax” means the tax imposed by the *Flour Tax Act 1938*, by the *Flour Tax (Stocks) Act 1938*, by the *Flour Tax (Imports and Exports) Act 1938* or by the *Wheat Tax Act 1938*;

“taxpayer” means any person liable to pay tax;

“the Commissioner” means the Commissioner of Taxation;

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

“ton” means two thousand pounds weight;

“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;

“wheat merchant” means any person in Australia to whom wheat is sold by the producer of the wheat or by any person or organization which markets wheat on behalf of producers of wheat and includes any person in Australia who is declared by the Commissioner to be a wheat merchant.

(2.) For the purposes of this Act—

- (a) flour in transit to any person on the fifth day of December, One thousand nine hundred and thirty-eight, and received by him after that date in pursuance of a sale or an agreement for sale of that flour to that person, shall be deemed to be held in stock by that person on that date ;
- (b) flour manufactured by any person and supplied by him to a business over which he exercises control, by reason of a charge over that business or over the assets of that business, shall, when used in that business in the manufacture of goods, be deemed to be used by that person ;
- (c) wheat which is used by any person in the production of flour or other goods and which has been produced by that person either directly or in the course of a business over which he exercises control by reason of a charge over that business or over the assets of that business shall, when so used, be deemed to have been sold to that person ;
- (d) flour held by any person, irrespective of the purposes for which he holds it, shall be deemed to be held in stock by that person, except in the cases of—
 - (i) specific flour held in a deliverable state by the manufacturer of that flour on behalf of another person on the fifth day of December, One thousand nine hundred and thirty-eight ; or
 - (ii) any flour held by any person other than the manufacturer of that flour on behalf of another person ;
 in which cases the flour shall be deemed to be held in stock by that other person ;
- (e) where flour is manufactured for any person from wheat supplied by that person—
 - (i) the person who supplies the wheat shall be deemed to have sold the wheat when he delivers it to the manufacturer ; and
 - (ii) the manufacturer shall be deemed to have sold the flour when he delivers the flour to the person who supplied the wheat ;
- (f) the sale of flour by the manufacturer thereof, whether before or after the commencement of this Act, shall be deemed to be made at the time when he parts with the possession of the flour :

Provided that this paragraph shall not apply to specific flour in a deliverable state held by the manufacturer of that flour on behalf of another person on the fifth day of December, One thousand nine hundred and thirty-eight ;

- (g) a person shall be deemed to have sold flour or wheat if and when, in the performance of any contract (not being a contract for the sale of the flour or wheat) under which he

has received, or is entitled to receive, valuable consideration, he supplies flour or wheat the property in which, under the terms of the contract, passes to some other person ;

- (h) where a person blends flour of his own manufacture with other flour, the product of that blend shall be deemed to be flour manufactured by that person ; and
- (i) subject to paragraphs (c), (e) and (g) of this sub-section, wheat shall be deemed to be sold at the time when the contract for the sale of that wheat is entered into.

PART II.—ADMINISTRATION.

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

6.—(1.) Subject to sub-section (3.) of 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
and Deputy
Commissioners.**

(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 five or section seven 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.

(4.) 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.

7.—(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.

Reference to
Commissioner.

8. 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.

9.—(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 or the regulations, 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 the form prescribed.

(2.) Any person who acts in the execution of any 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 or the regulations, 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 or the regulations, 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 to a Board of Review or 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 or the Secretary of the Department of Commerce, or, with the approval of the Minister, to any other authority of the Commonwealth or of a State:

Provided that, 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 sub-section (3.) of this section upon a person who has been an officer under this Act.

(5.) 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 is necessary for the purpose of carrying into effect the provisions of this Act.

PART III.—LIABILITY TO TAXATION.

10.—(1.) Subject to and in accordance with the provisions of this Act, the tax imposed by the *Flour Tax Act 1938* shall be levied and paid upon all flour manufactured in Australia by any person, not being flour chargeable with tax under section eleven of this Act, and, on or after the fifth day of December, One thousand nine hundred and thirty-eight, sold by him or used by him in the manufacture of goods other than flour.

Tax on flour sold, or used by manufacturers.

(2.) The tax imposed by the *Flour Tax Act 1938* shall be paid by the manufacturer of the flour to which this section applies.

11.—(1.) Subject to and in accordance with the provisions of this Act, the tax imposed by the *Flour Tax (Stocks) Act 1938* shall be levied and paid upon all flour in excess of one thousand pounds in weight held in stock on the fifth day of December, One thousand nine hundred and thirty-eight, by any person, not being the manufacturer of that flour.

Tax on flour held in stock.

(2.) The tax imposed by the *Flour Tax (Stocks) Act 1938* shall be paid by the person holding the flour in stock as specified in this section.

12.—(1.) Subject to and in accordance with the provisions of this Act, the tax imposed by the *Flour Tax (Imports and Exports) Act 1938* shall be levied and paid—

Tax on imports and exports.

(a) upon flour, and upon the goods specified in the Schedule to that Act, imported into Australia and, on or after the fifth day of December, One thousand nine hundred and thirty-eight, entered for home consumption under the law relating to the Customs; and

(b) upon wheat exported from Australia on or after a date to be fixed by Proclamation, not being wheat upon which tax is imposed by the *Wheat Tax Act 1938*.

(2.) The tax imposed by the *Flour Tax (Imports and Exports) Act 1938* shall be paid—

(a) in the case of flour or goods to which paragraph (a) of the last preceding sub-section applies—by the importer of that flour or those goods; and

(b) in the case of wheat to which paragraph (b) of the last preceding sub-section applies—by the exporter of that wheat.

Tax on wheat.

13.—(1.) Subject to and in accordance with the provisions of this Act, the tax imposed by the *Wheat Tax Act 1938* shall be levied and paid upon wheat grown in Australia and, on or after a date to be fixed by Proclamation, sold to a wheat merchant.

(2.) The tax imposed by the *Wheat Tax Act 1938* shall be paid by the wheat merchant to whom the wheat is sold.

Exemptions.

14.—(1.) Notwithstanding anything contained in this Part, the flour tax imposed by the *Flour Tax Act 1938* or by the *Flour Tax (Stocks) Act 1938* shall not be payable by any person in respect of—

- (a) bran or pollard which is unsuitable for use as food for human consumption ;
- (b) flour for use as, or in the manufacture of—
 - (i) a food which, in the opinion of the Commissioner, is marketed primarily as a breakfast food and is of a kind used exclusively or principally as a breakfast food ; or
 - (ii) a food for animals or birds ;
- (c) flour exported or to be exported ;
- (d) flour for use in the Northern Territory ;
- (e) flour for use in the manufacture of goods (including cornflour, starch, glucose, sugar and meat products but not including other foods for human or animal consumption) ;
- (f) flour for the use of and not for sale by a public charitable institution ; or
- (g) flour for use as, or in the manufacture of, a food (being a food covered by item 35 in the Schedule to the *Sales Tax Exemptions Act 1935–1936*) for use by infants or invalids.

(2.) Where some of the constituent parts of any flour are used for purposes specified in sub-section (1.) of this section, and other constituent parts are used for other purposes, tax shall be payable only upon the same proportion of the flour as the weight of the constituent parts used for those other purposes bears to the total weight of the flour.

(3.) Where, in pursuance of paragraph (b), (c), (d), (e), (f) or (g) of sub-section (1.) of this section, tax is not payable in respect of any flour, the Commissioner may require—

- (a) the person who would be liable to pay the tax if tax were payable ; or
- (b) any person who is a party to or assists in the carrying out of any transaction in relation to that flour,

to give security to the satisfaction of the Commissioner that the flour will be used or exported as specified in that paragraph and security shall be given accordingly.

(4.) The Commissioner may require securities given in pursuance of the last preceding sub-section to be in relation to any particular date or period and in relation to any particular transaction or series of transactions.

PART IV.—RETURNS.

15. Every person by whom flour is manufactured in Australia and who during any month sells or uses any flour upon which tax is chargeable under section ten of this Act shall, within twenty-one days after the close of that month, furnish to the Commissioner in the prescribed form a return of the flour so sold or used, and shall include in that return such information as is prescribed or as is required for the due completion of that form.

Returns by flour manufacturers.

16. Every person by whom flour is held in stock, as specified in section eleven of this Act, on the fifth day of December, One thousand nine hundred and thirty-eight, shall, on or before the eighth day of December, One thousand nine hundred and thirty-eight, furnish to the Commissioner in the prescribed form a return of all flour so held by that person, and shall include in that return such information as is prescribed or as is required for the due completion of that form.

Returns of flour held in stock.

17. Every person who imports goods upon which tax is chargeable under section twelve of this Act shall at the time of the entry of the goods for home consumption under the law relating to the Customs lodge, for the purposes of this Act, with the Collector of Customs at the port of importation, a return in the prescribed form stating the nature and quantity of those goods and such other information as is prescribed or as is required for the due completion of the return.

Returns by importers.

18.—(1.) Every person who exports wheat upon which tax is chargeable under section twelve of this Act shall, at the time of making entry of the wheat for export under the law relating to the Customs, lodge, for the purposes of this Act, with the Collector of Customs at the port of exportation, a return in the prescribed form of all wheat so exported, and shall include in that return such information as is prescribed or as is required for the due completion of that form.

Returns by exporters.

(2.) During any period in which tax is chargeable under section twelve of this Act on wheat exported from Australia every person who exports wheat upon which tax is not so chargeable under that section shall, at the time of the entry of wheat for export, lodge, for the purposes of this Act, with the Collector of Customs at the port of exportation, a certificate in the prescribed form certifying that the wheat has previously been sold to a wheat merchant.

19. Every wheat merchant who, during any month purchases any wheat upon which tax is chargeable under section thirteen of this Act, shall, within twenty-one days after the close of that month furnish to the Commissioner in the prescribed form a return of the wheat so purchased, and shall include in that return such information as is prescribed or as is required for the due completion of the form :

Returns by wheat merchants.

Provided that, where the wheat merchant purchases an unascertained quantity of wheat, he shall furnish the return in respect of that wheat within twenty-one days after the close of the month in which he ascertains the quantity of that wheat.

Further returns.

20. In addition to any return that has been required under any of the preceding sections of this Part, the Commissioner may, by notice in writing, call upon any 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 that person's own behalf or as an agent or a trustee.

Commissioner to obtain information and evidence.

21.—(1.) The Commissioner may, by notice in writing, require any person, whether a taxpayer or not—

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

PART V.—COLLECTION AND RECOVERY OF TAX.

Time for payment of tax.

22. Subject to this Act, every person liable to pay tax under the provisions of this Act shall pay the tax within the time within which he is required by this Act to lodge the return in respect of the flour or other goods upon which the tax is payable.

Time for payment of tax upon stocks on hand.

23. Where the amount of tax payable by any person under section eleven of this Act upon flour held in stock by him on the fifth day of December, One thousand nine hundred and thirty-eight, exceeds Five pounds, the amount of tax may be paid—

(a) where twenty per centum of the amount of tax exceeds Five pounds—by equal monthly instalments of twenty per centum of the amount of tax ; and

(b) in any other case—by equal monthly instalments of Five pounds (except where the unpaid balance of the tax is less than Five pounds, in which case the instalment shall be the amount of that balance),

the first of such instalments being payable on or before the eighth day of December, One thousand nine hundred and thirty-eight, and an instalment being payable on or before the twenty-first day of each succeeding month until the amount of tax is paid in full.

Time for payment of tax upon imports.

24. Subject to this Act, every person liable under section twelve of this Act to pay tax upon flour or other goods imported by him shall, in respect of the flour, and in respect of the other goods as to which he states in the return lodged in pursuance of section seventeen of this Act the quantity of flour used in the manufacture of the goods, pay the tax at the time of the entry of the flour or the goods for home consumption under the law relating to the Customs.

25. Subject to this Act, every person liable under section twelve of this Act to pay tax upon wheat exported by him shall pay the tax at the time of the entry of the wheat for export under the law relating to the Customs.

Time for
payment of
tax upon
exports.

26.—(1.) Where the importer of any goods specified in the Schedule to the *Flour Tax (Imports and Exports) Act 1938*—

Ascertainment
of flour used
in manufacture
of imported
goods.

(a) does not state in the return in respect of those goods lodged in pursuance of section seventeen of this Act the quantity of flour used in the manufacture of those goods; or

(b) states in the return so lodged a quantity of flour which, in the opinion of the Commissioner, is not true and correct,

the Commissioner may determine the quantity of flour which, in his opinion, has been used in the manufacture of those goods and the quantity so determined shall, for the purposes of this Act, be deemed to be the quantity of flour so used and the Commissioner shall, as soon as conveniently may be, notify the taxpayer of the quantity so determined and of the amount of tax, or, as the case may be, the amount of further tax, upon those goods.

(2.) Any amount of tax or further tax specified in any notice under this section, together with any other amount which is payable in accordance with any other provision of this Act, shall be payable on or before the date specified in the notice.

27.—(1.) Where the Commissioner finds in any case (not being a case to which the last preceding section applies) that tax or further tax is payable by any person, the Commissioner may assess the amount of tax which should be or should have been paid.

Assessment of
tax or further
tax.

(2.) Where—

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

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

(c) the Commissioner has reason to believe or suspect that any person (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 of tax which, in his judgment, ought to be levied, and the person shall be liable to tax accordingly, excepting so far as he establishes on objection 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, 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 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 provision of this Act.

(6.) The omission to give notice in accordance with the provisions of sub-section (4.) of this section shall not invalidate any assessment made by the Commissioner.

Remission of
tax unpaid
after three
years.

28.—(1.) Notwithstanding anything contained in this Act, where tax in respect of any goods has not been paid at the expiration of a period of three years from—

- (a) in the case of tax payable by any person under section ten of this Act—the close of the month in which the flour was sold or used as specified in that section ;
- (b) in the case of tax payable by any person under section eleven of this Act—the eighth day of December, One thousand nine hundred and thirty-eight ;
- (c) in the case of tax payable by any person under section twelve of this Act—the date of the entry for home consumption or for export, as the case may be ; or
- (d) in the case of tax payable by any wheat merchant under section thirteen of this Act—the close of the month in which he purchased the wheat,

the Commissioner may remit that tax unless he—

- (e) has required payment of the tax prior to the expiration of that period, or
 - (f) is satisfied that the payment of the tax was avoided by fraud or evasion.
- (2.) For the purposes of this section—
- (a) “tax” includes any additional tax for which the person is liable under this Act ; and
 - (b) the payment of any amount in part satisfaction of tax shall, unless otherwise appropriated by or with the concurrence of the Commissioner, be appropriated in satisfaction of tax in the order in which the goods in respect of which tax is payable were sold, used, held or entered, as the case may be.

PART VI.—REFUNDS OF TAX.

Refunds of
overpayments
of tax.

29.—(1.) Where the Commissioner finds in any case that tax has been overpaid and is satisfied that the tax has not been passed on by the taxpayer to some other person, or, if passed on to some other person, has been refunded to that person by the taxpayer, the Commissioner may refund the amount of tax found to be overpaid.

(2.) Where any person has paid tax upon any flour or wheat on the whole or part of which the Commissioner is satisfied that tax has previously been paid, the Commissioner may refund to that person—

- (a) where tax has previously been paid on the whole of the flour or wheat—the amount of tax paid by that person ; or
- (b) where tax has previously been paid on part of the flour or wheat—the amount of tax previously paid.

(3.) A refund under this section shall not be made unless the Commissioner finds or becomes satisfied as required by this section—

- (a) within a period of three years ; or
- (b) on consideration of a claim in writing for the refund which is lodged with the Commissioner within a period of three years,

from the date on which the overpayment or further payment, as the case may be, was made.

30. Where any person has paid tax on flour, or has purchased flour at a price which, in the opinion of the Commissioner, includes an amount in respect of tax paid or payable thereon, and uses that flour as specified in paragraphs (b), (d), (e) or (g) of sub-section (1.) of section fourteen of this Act, or sells that flour, at a price which does not include any of the tax, to a purchaser who will use that flour as specified in any of those paragraphs, the Commissioner may refund or pay to that person the amount of tax so paid or included.

Refunds where flour used for exempt purposes.

31.—(1.) Where any person has paid tax upon any flour or goods, or has purchased any flour or goods at a price which, in the opinion of the Commissioner, includes an amount in respect of tax paid or payable on that flour or those goods or on the flour used in the manufacture of those goods, and that person—

Refunds where flour exported.

- (a) sells that flour or those goods, or goods manufactured from that flour, at a price which does not include the tax so paid or included and the flour or goods is or are exported ; or
- (b) exports that flour or those goods, or goods manufactured from that flour,

the Commissioner may refund or pay to that person the amount of tax so paid or included.

(2.) A refund, under the last preceding sub-section, of tax in respect of goods manufactured from flour, upon which tax has been paid or is payable, and exported, shall not be made to any person unless he furnishes to the Commissioner such returns and other information, certified in such manner as the Commissioner requires, as will enable the Commissioner to determine the quantity and identity of stocks of goods in the manufacture of which flour has been used, and which—

- (a) are of a class or kind exported by that person or sold by him for export ; and

(b) were held by that person at the commencement of business on the fifth day of December, One thousand nine hundred and thirty-eight, or on any subsequent date on which a variation in the rate of tax commences to operate.

(3.) For the purposes of this section, "goods" does not include "wheat."

Refunds of
tax included
in bad debts.

32.—(1.) Where a vendor has paid tax in respect of the sale of any flour, and the whole or any part of the amount for which the flour was sold has actually been written off by the vendor as a bad debt, the Commissioner may, to the extent to which it is proved to his satisfaction that the debt is a bad debt, refund so much of the tax included in the price for which the flour was sold as bears to the total tax the same proportion as the amount so proved to be a bad debt bears to the total amount (including the tax or portion of the tax) for which the flour was sold :

Provided that, if the whole or any part of any amount in respect of which tax has been so refunded is at any time recovered by the taxpayer, he shall, within seven days from that time, notify the Commissioner accordingly and repay to the Commissioner so much of the tax refunded as bears to the total amount of that tax the proportion which the amount so recovered bears to the amount in respect of which tax was so refunded.

(2.) For the purposes of this section, moneys paid by a debtor in part satisfaction of moneys owing by him shall, unless the Commissioner is satisfied that the debtor at the time of payment appropriated the moneys to any particular debt or debts, be deemed to be appropriated in satisfaction of debts in the order of time in which the debts arose.

Refund where
flour for use
by charitable
institution.

33. Where any flour in respect of which tax has been paid, or any goods manufactured from flour in respect of which tax has been paid, is or are sold to a public charitable institution at a price which, in the opinion of the Commissioner, includes an amount in respect of the tax so paid, and the Commissioner is satisfied—

- (a) that the flour or goods is or are for the use of and not for sale by the institution, and
- (b) that the institution has made full payment for the flour or goods,

the Commissioner may pay to the institution the amount in respect of the tax so paid which, in his opinion, was included in the price of the flour or the goods.

Commissioner
may retain
any penalty
from amount
of refund.

34. Where any person is liable to pay any pecuniary penalty incurred by him under this Act, the Commissioner may appropriate to the payment of that penalty, out of any sum payable under this Part to that person, an amount equivalent to the amount of the penalty, or, where that sum is less than the amount of that penalty, the whole of that sum, and that appropriation shall be deemed to be payment, in whole or part, as the case may be, of the penalty.

35. For the purposes of this Part—

Flour deemed to be used for sale, export or manufacture.

- (a) sales or exports of flour or other goods on or after any particular date shall be deemed to have been made first from stocks of flour or other goods (if any) which the Commissioner determines were held in stock by the manufacturer of the flour or goods at the commencement of business on that date; and
- (b) the manufacturer of goods shall be deemed to use flour in the manufacture of those goods in the order of time in which he purchased that flour.

PART VII.—APPLICATION OF SALES TAX ASSESSMENT ACT (No. 1) 1930-1936.

36.—(1.) The following sections, Parts and Schedule of the *Sales Tax Assessment Act (No. 1) 1930-1936* (as in force at the date of the commencement of this Act, and in this section referred to as “the applied Act”), namely, sections twenty-seven to thirty-nine inclusive, and Parts VII. (except section forty-four), VIII. and IX., and sections sixty-eight, sixty-nine, seventy and seventy-one and the Second Schedule, shall, *mutatis mutandis*, apply in relation to the imposition, assessment and collection of the tax chargeable under this Act in like manner as they apply in relation to the imposition, assessment and collection of the tax chargeable under the applied Act, but for the purposes of this Act—

Application of provisions of Sales Tax Assessment Act (No. 1) 1930-1936.

- (a) section twenty-nine of the applied Act shall be read as if the references to the time specified in section twenty-four or twenty-five of that Act were references to the time specified in sections twenty-two, twenty-three, twenty-four and twenty-five of this Act;
- (b) section thirty-five of the applied Act shall be read—
- (i) as if the reference therein to Part V. of that Act were a reference to Part IV. of this Act; and
- (ii) as if the words “tax which in his judgment ought to be charged” were substituted for the words “sale value on which, in his judgment, tax ought to be charged”;
- (c) section thirty-seven of the applied Act shall be read as if the words “the sale value of” were omitted;
- (d) section forty-one of the applied Act shall be read as if the following sub-section were substituted for sub-section (1.):—

“(1.) A taxpayer who is dissatisfied with any assessment, determination or decision made by the Commissioner under this Act whereby the taxpayer is required to pay tax or further tax, may, within forty-two days after the first day upon which he is so required to pay the tax or further tax, post to or lodge with the Commissioner an objection in writing against that assessment, determination or decision stating fully and in detail the grounds on which he relies.”;

- (e) section forty-two of the applied Act shall be read as if the following sub-sections were substituted for sub-sections (3.) and (4.) thereof :—
- “ (3.) If the tax has been reduced by the Commissioner after considering the objection, the reduced tax 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 or increase the amount of tax.” ;
- (f) section forty-three of the applied Act shall be read as if the words “ of tax ” were substituted for the words “ or sale value ”, and as if the words “ or value ” were omitted :
- (g) section forty-six of the applied Act shall be read—
- (i) as if the words “ flour or wheat in respect of which tax is chargeable under this Act in any return, or includes those particulars in a column of the return provided for particulars of flour in respect of which tax is not payable,” were substituted for the words “ goods the sale value of which is subject to tax under this Act in any return, or includes those particulars in a column of the return provided for particulars of goods in respect of which sales tax is not payable ” ; and
- (ii) as if the words “ for which he is otherwise liable under this Act ” were substituted for the words “ assessable to him ” ;
- (h) section forty-eight of the applied Act shall be read as if the words “ quantity of flour or wheat in respect of which tax is payable or the quantity of flour used in the manufacture of goods in respect of which tax is payable ” were substituted for the words “ amount of the sale value of any goods ” ;
- (i) section fifty of the applied Act shall be read as if the words “ section twelve, section fifteen or ” were omitted ;
- (j) section sixty-eight of the applied Act shall be read as if the words “ of flour ” were substituted for the words “ or wholesale merchant ” and the words “ and every company being a wheat merchant which is so required by the Commissioner ” were inserted after the word “ Australia ” (first occurring) ;
- (k) section sixty-nine of the applied Act shall be read as if—
- (i) the words “ flour or of any ” were inserted before the word “ transaction ” and the words “ flour or wheat in respect of which tax is payable ” were substituted for the words “ goods the sale value of which is subject to tax ”, in paragraph (a) of sub-section (1.) of that section ;

- (ii) the words "flour or of any such" were inserted before the word "transaction" and the words "in respect of the flour or wheat" were substituted for the words "on such sale value", in paragraph (b) of that sub-section;
- (iii) the words "the flour or wheat" were substituted for the words "such sale value" in paragraph (e) of that sub-section;
- (iv) the words "the flour or wheat" were substituted for the words "such sale value" in paragraph (f) of that sub-section; and
- (v) sub-section (2.) were omitted;
- (l) section seventy of the applied Act shall be read as if the words "flour or wheat in respect of which tax is payable" were substituted for the words "goods the sale value of which is subject to tax";
- (m) section seventy-one of the applied Act shall be read as if there were added at the end thereof the words "and may inspect stocks of flour or wheat held by any person";
- (n) the Second Schedule to the applied Act shall be read as if the words "flour or wheat in respect of which tax is payable by the said" were substituted for the words "sale value of any goods the subject of any transaction, act or operation entered into or performed by the said up to the date of his death"; and
- (o) any reference in any section or Part applied by this section in relation to the imposition, assessment and collection of the tax chargeable under this Act, to regulations under the applied Act shall be read as a reference to regulations under this Act.

(2.) In this section, unless the contrary intention appears, "flour" includes goods specified in the Schedule to the *Flour Tax (Imports and Exports) Act 1938*.

PART VII.—MISCELLANEOUS.

37. Where before the fifth day of December, One thousand nine hundred and thirty-eight, an agreement for the sale of flour or of goods in the manufacture of which flour is used, has been made and tax is payable in respect of that flour or of the flour so used, unless the agreement contains express written provision that the price at which the flour or goods shall be sold shall not be altered on account of any tax which might be imposed by or under any law of the Commonwealth upon or in respect of the flour or it is clear from the terms of the agreement that the tax has been taken into account in the agreed price of the flour or goods, the vendor may add to the agreed price an amount equivalent to the tax in respect of the flour and the agreement shall be deemed to be altered accordingly.

Alteration of agreements in consequence of imposition of tax.

38.—(1.) Any person not liable to pay tax in respect of any flour shall not, upon the sale or offer for sale of that flour, demand or receive

False pretence as to tax an offence.

or seek to receive sums of money (whether included in larger sums or not) upon the pretence that those sums are chargeable to, and payable by, him as tax.

Penalty : One hundred pounds.

(2.) Any person who—

(a) has paid or is liable to pay an amount of tax in respect of any flour ; or

(b) has purchased flour at a price which includes an amount in respect of the tax payable by the vendor,

shall not, upon the sale or offer for sale of that flour, demand or receive, or seek to receive, any sum of money (whether included in a larger sum or not) in excess of that amount upon the pretence that that sum has been paid or is payable by him as tax, or has been included in respect of tax in the price paid by him for the flour.

Penalty : One hundred pounds.

(3.) For the purposes of this section, “ flour ” includes goods specified in the Schedule to the *Flour Tax (Imports and Exports) Act 1938.*

Purchase of flour on which tax is evaded.

39. Any person who purchases flour at such a price, on such terms or under such conditions as would reasonably lead to the belief that the vendor of the flour has not paid or does not intend to pay the tax chargeable on the flour, shall be guilty of an offence.

Penalty : Five hundred pounds or imprisonment for six months or both.

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

40.—(1.) Every taxpayer shall, for the purposes of this Act, keep proper books or accounts, including all copies of invoices and all vouchers, relating to his business, and shall preserve those books or accounts for a period of not less than three years after the completion of the transactions, acts or operations to which they relate.

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 taxpayer that their preservation is not required ; or

(b) of a company which has gone into liquidation and which has been finally dissolved.

Arrangement for services of officers.

41. The Commissioner may make such arrangements as are, in his opinion, necessary to obtain the services of any officer of the Public Service of the Commonwealth or any other person in connexion with the administration of this Act.

Exempt flour deemed first disposed of.

42. Where by virtue of section eleven of this Act, tax is not payable upon a quantity of one thousand pounds in weight or a smaller quantity of flour, that quantity shall be deemed to be used, sold or disposed of by the person who held that quantity on the fifth day of December, One thousand nine hundred and thirty-eight, before he used, sold or disposed of any other flour.

Securities to be free of stamp duty.

43. Securities given for the purposes of this Act shall not be liable to stamp duty under the law of any State.

44. 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 nor more than Twenty pounds for any breach of the regulations.

Regulations.

FLOUR TAX.

No. 49 of 1938.

An Act to impose a Tax upon Flour manufactured in Australia by any Person and sold by him or used by him in the Manufacture of Goods other than Flour.

[Assented to 2nd December, 1938.]

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

- 1.** This Act may be cited as the *Flour Tax Act* 1938. Short title.
 - 2.** This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.
 - 3.** The *Flour Tax (Wheat Industry Assistance) Assessment Act* 1938, other than sections eleven, twelve, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-three, twenty-four, twenty-five and twenty-six, shall be incorporated and read as one with this Act. Incorporation.
 - 4.** A tax is imposed upon all flour manufactured in Australia by any person and, on or after the fifth day of December, One thousand nine hundred and thirty-eight, sold by him or used by him in the manufacture of goods other than flour. Imposition of tax.
 - 5.**—(1.) The rate of tax, not in any case exceeding Seven pounds ten shillings per ton of flour, shall be such rate per ton of flour as the Minister, from time to time, and in accordance with a recommendation by the Committee, declares, by notice published in the *Gazette*, to be the amount by which the price per ton of flour based upon the price of wheat per bushel free on rails at Williamstown, in the State of Victoria, at the time of the recommendation by the Committee, is less than what, in the opinion of the Committee, the price of flour would be if the price of wheat per bushel free on rails at Williamstown were Five shillings and twopence. Rate of tax.
- (2.) For the purposes of this section, "the Committee" means the Wheat Stabilization Advisory Committee constituted under the *Wheat Industry Assistance Act* 1938, and "price", when used in relation to wheat, means value for export.