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Public Ruling Payroll Tax Act:

EXEMPTION FOR SURROGACY LEAVE PAY

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. The *Payroll Tax Act 1971* (the Payroll Tax Act) imposes payroll tax in Queensland on certain taxable wages paid or payable by an employer.¹
2. With effect from 14 October 2010, s.14A of the Payroll Tax Act was amended to exempt from payroll tax wages paid or payable to employees on surrogacy leave. The exemption:
 - (a) applies to wages paid or payable to employees taking surrogacy leave
 - (b) applies to all wages other than fringe benefits
 - (c) is limited to a maximum of 14 weeks' pay²
 - (d) applies irrespective of whether the leave is taken before or after the child starts residing with the employee under a surrogacy arrangement and
 - (e) must be supported by keeping relevant records.
3. The purpose of this Public Ruling is to explain the application of the exemption for surrogacy leave pay.³

¹ Sections 9 and 10 of the Payroll Tax Act

² See PTAQ014A.2—*Exemption for parental, adoption or surrogacy leave pay—maximum entitlement* for the Commissioner's practice on applying this condition for both full-time and part-time employees.

³ Section 14A of the Payroll Tax Act also exempts from payroll tax wages paid or payable to employees on parental leave or adoption leave. See Public Ruling PTA012—*Exemption for parental and adoption leave pay* for the Commissioner's view on the application of the exemption for wages paid or payable to employees on parental leave or adoption leave. PTA012 is under review to reflect the amendments to section 14A(4)(b) of the Payroll Tax Act made by the *Revenue Amendment and Trade and Investment Queensland Act 2013*.

Ruling and explanation

Definition of 'surrogacy leave'

4. The Payroll Tax Act defines 'surrogacy leave' as leave given to an employee in connection with a child residing with the employee under a surrogacy arrangement, other than annual leave, recreation leave, sick leave or similar leave.⁴
5. 'Surrogacy arrangement' is defined as having the meaning given by the *Surrogacy Act 2010* (the Surrogacy Act).⁵
6. Under s. 7(1) of the Surrogacy Act, a surrogacy arrangement means an arrangement, agreement or understanding between a woman and another person or persons under which:
 - (a) the woman agrees to become, or try to become, pregnant with the intention that—
 - (i) a child born as a result of the pregnancy is to be treated as the child, not of the woman, but of the other person or persons and
 - (ii) the woman will relinquish to the other person or persons custody and guardianship of a child born as a result of the pregnancy and
 - (b) the other person or persons agree to become permanently responsible for the custody and guardianship of a child born as a result of the pregnancy.
7. Section 56 of the Surrogacy Act makes it an offence to enter into a 'commercial surrogacy arrangement'. Section 10 of the Surrogacy Act provides that a surrogacy arrangement is a commercial surrogacy arrangement if a person receives a payment, reward or other material benefit or advantage (other than the reimbursement of the birth mother's surrogacy costs) for the person or another person:
 - (a) agreeing to enter into or entering into the surrogacy arrangement
 - (b) permanently relinquishing to one or more intended parents the custody and guardianship of a child born as a result of the surrogacy arrangement or
 - (c) consenting to the making of a parentage order for a child born as a result of the surrogacy arrangement.

When the leave may be taken

8. The exemption is not affected by whether the surrogacy leave is taken before or after the child starts residing with the employee, provided the leave is in connection with the child residing with the employee.⁶

⁴ Section 14A(7) of the Payroll Tax Act

⁵ Section 14A(7) of the Payroll Tax Act

⁶ Section 14A(2) of the Payroll Tax Act

Example 1

A child begins residing with Julie under a surrogacy arrangement on 1 February 2011. Julie takes 14 weeks' surrogacy leave, commencing two weeks prior to 1 February 2011, and extending 12 weeks after that date. The two weeks before 1 February 2011 are spent making arrangements for the child's arrival. The wages paid to Julie for the full 14 weeks' surrogacy leave are exempt.

Types of wages that are exempt

9. Exempt wages include wages, salaries, employer superannuation contributions, allowances, bonuses and commissions. Fringe benefits provided to an employee on surrogacy leave are not exempt.⁷
10. Wages paid or payable to an employee for annual leave, recreation leave, sick leave or similar leave that is not surrogacy leave, even if taken in connection with a child residing with the employee under a surrogacy arrangement, are not exempt.⁸

Example 2

A child commences residing with Michael under a surrogacy arrangement. Michael's employer provides 12 weeks' paid surrogacy leave. Michael also takes an additional three weeks' annual leave and four weeks' long service leave consecutively with the surrogacy leave, in connection with the child starting to reside with him. The wages paid to Michael for the 12 weeks' surrogacy leave are exempt. The wages paid to him for the remaining seven week leave period are taxable.

Record keeping

11. To claim the exemption in relation to surrogacy leave, an employer must obtain and keep as a record a statutory declaration from the employee stating that a child has started residing with the employee under a surrogacy arrangement.
12. The employer must keep the records substantiating a claim for the exemption for wages paid or payable to an employee on surrogacy leave for five years.⁹

⁷ Section 14A(6) of the Payroll Tax Act

⁸ Section 14A(7) of the Payroll Tax Act

⁹ Section 118 of the *Taxation Administration Act 2001*

Date of effect

13. This Public Ruling takes effect from the date of issue.

David Smith
Commissioner of State Revenue
Date of issue: 26 June 2013

References

Public Ruling	Issued	Dates of effect	
		From	To
PTAQ014A.1.2	26 June 2013	26 June 2013	8 August 2021
PTAQ014A.1.1	13 December 2012	14 October 2010	25 June 2013