

TASMANIA

**EMPLOYMENT INCENTIVE SCHEME (PAYROLL
TAX REBATE) BILL 2009**

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**EMPLOYMENT INCENTIVE SCHEME (PAYROLL
TAX REBATE) BILL 2009**

*(Brought in by the Premier, the Honourable David John
Bartlett)*

A BILL FOR

**An Act to enable the administration of a scheme for the
payment of rebates to promote the creation of new
employment between 11 June 2009 and 30 June 2010**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Employment
Incentive Scheme (Payroll Tax Rebate) Act
2009*.

2. Commencement

This Act is taken to have commenced on
11 June 2009.

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3. Interpretation

In this Act, unless the contrary intention appears –

“approved form” means a form approved by the Commissioner;

“authorised officer” means –

- (a) the Commissioner; and
- (b) a person appointed as an authorised officer under section 20;

“claim” means a claim for an employment incentive scheme rebate under section 10;

“claimant” means a person making a claim for an employment incentive scheme rebate under section 10;

“commencement day” means the day on which this Act is taken to have commenced;

“Commissioner” means the Commissioner of State Revenue appointed as such under the *Taxation Administration Act 1997*;

“Deputy Commissioner” means a person appointed under section 11 of the *Taxation Administration Act 1997*;

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“eligibility criteria” means the criteria determined by the Commissioner under section 8;

“employment incentive scheme” means the scheme for payment of employment incentive scheme rebates established under this Act;

“function” includes a duty;

“interest” means interest required to be paid under section 25;

“objector” means a person who lodges an objection under section 15;

“payroll tax” has the same meaning as in section 3 of the *Payroll Tax Act 2008*;

“premises” includes land, a vehicle, a vessel and an aircraft;

“rebate” means an amount paid or payable under this Act;

“registered employer” means a person registered as an employer under section 86 of the *Payroll Tax Act 2008*;

“regulations” means the regulations made and in force under this Act;

“tax” has the same meaning as in section 3 of the *Taxation Administration Act 1997*;

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“**taxation law**” has the same meaning as in section 3 of the *Taxation Administration Act 1997*;

“**wages**” has the same meaning as in section 3 of the *Payroll Tax Act 2008*.

4. Establishment of scheme

- (1) The Crown is to establish a scheme for the payment of rebates equivalent to the payroll tax paid on new employment created between 11 June 2009 and 30 June 2010.
- (2) Rebates under the scheme referred to in subsection (1) may be paid in respect of wages paid before 1 July 2011.

5. Payments from Consolidated Fund

Where the Commissioner becomes liable to pay amounts in accordance with the provisions of this Act, those amounts shall be paid from the Consolidated Fund.

6. Administration of scheme

Rebates are to be paid to registered employers under such conditions as are determined by the Commissioner.

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7. Repeal of Act

This Act is repealed on 1 January 2015.

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Part 2 – Employment Incentive Scheme Rebate

**PART 2 – EMPLOYMENT INCENTIVE SCHEME
REBATE**

Division 1 – Eligibility criteria

8. Commissioner to determine eligibility criteria

The Commissioner is to determine the criteria governing a claimant's eligibility for the employment incentive scheme rebate.

Division 2 – Entitlement to rebate

9. Entitlement to rebate

An employment incentive scheme rebate is payable under this Act if the claimant meets the eligibility criteria determined by the Commissioner.

Division 3 – Claim for rebate

10. Claim for rebate

- (1) A claim for an employment incentive scheme rebate is to be made to the Commissioner.
- (2) A claim –
 - (a) must be in a form approved by the Commissioner; and
 - (b) must contain the information required by the Commissioner.

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- (3) A claimant must provide the Commissioner with any further information the Commissioner requires to decide the claim.
- (4) Information provided by a claimant in relation to a claim must, if the Commissioner so requires, be verified by statutory declaration or supported by other evidence required by the Commissioner.
- (5) A claim may only be made within a period determined by the Commissioner.
- (6) However, the Commissioner has discretion to allow a claim before or after the claim period mentioned in subsection (5).
- (7) A claim may not be made after 31 December 2011.
- (8) A claimant may, with the Commissioner's consent, amend a claim.

Division 4 – Decision on claim

11. Commissioner to decide claims

- (1) The Commissioner is to decide if an employment incentive scheme rebate is payable on a claim, and the amount of that rebate.
- (2) If the Commissioner decides that an employment incentive scheme rebate is payable on a claim, the Commissioner may authorise the payment of that rebate.

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12. Payment of rebate

- (1) An employment incentive scheme rebate is to be paid in any way the Commissioner considers appropriate.
- (2) An employment incentive scheme rebate is to be paid –
 - (a) to the claimant; or
 - (b) a person nominated by the claimant.
- (3) If the claimant has an outstanding liability under a taxation law or this Act, the Commissioner may apply the amount of an employment incentive scheme rebate, or part of the amount, towards that liability.

13. Conditions generally

- (1) The Commissioner may impose any conditions on an employment incentive scheme rebate that he or she considers appropriate.
- (2) A claimant must –
 - (a) give notice of non-compliance with a condition imposed by the Commissioner (under this section or any other provision of this Act) within a period determined by the Commissioner; and
 - (b) repay the rebate within a period determined by the Commissioner.

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- (3) A person who fails to comply with a condition imposed by the Commissioner (under this section or any other provision of this Act) is guilty of an offence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) in any other case, a fine not exceeding 100 penalty units.

14. Power to correct decision

If the Commissioner decides a claim and is later satisfied (independently of an objection under this Act) that –

- (a) the decision was incorrect; or
- (b) the decision was made on the basis of, or having regard to, false or misleading information provided by the claimant or a third party; or
- (c) the claimant failed to provide information, that was relevant to the making of the decision on the claim, which they ought reasonably to have provided; or
- (d) the claimant failed to comply with any conditions imposed on the employment incentive scheme rebate, or failed to

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comply with or meet any relevant eligibility criteria –

the Commissioner may vary or reverse the decision.

Division 5 – Objections and appeals

15. Objections

- (1) A claimant who is dissatisfied with the Commissioner's decision –
 - (a) on the claim; or
 - (b) to vary or reverse a decision in accordance with section 14; or
 - (c) to require repayment of the rebate under section 24; or
 - (d) to impose a penalty under section 24 –may lodge a written notice of objection with the Commissioner.
- (2) An objection is to –
 - (a) be in writing; and
 - (b) state in full the grounds for the objection.
- (3) An objection is to be lodged within 60 days after the date of service of notice of the Commissioner's decision on the claimant.

- (4) An objection is taken to have been lodged when it is received by the Commissioner.
- (5) If the Commissioner is satisfied that an objector has a reasonable excuse for failing to lodge an objection within the 60-day period, the Commissioner may extend the time for lodging the objection.
- (6) A person making an objection has the onus of proving his or her case.

16. Powers of Commissioner on objection

- (1) After considering an objection, the Commissioner may confirm, vary or reverse the decision that was subject to the objection.
- (2) The Commissioner must give the objector written notice of the determination of the objection, setting out the reasons for the determination.
- (3) The Commissioner may only delegate the function to consider and the power to determine an objection to a person who –
 - (a) is not the person who made the decision to which the objection relates; and
 - (b) is not the subordinate of the person referred to in paragraph (a).

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17. Right of review or appeal

- (1) A claimant may apply to the Magistrates Court (Administrative Appeals Division) for a review of, or may appeal to the Supreme Court against –
 - (a) the Commissioner’s determination of the claimant’s objection; or
 - (b) the Commissioner’s failure to determine the claimant’s objection.
- (2) An application for review or an appeal –
 - (a) is to be made within 60 days after the date of service on the claimant of the notice of the Commissioner’s determination of the objection for a review or appeal under subsection (1)(a); or
 - (b) is not to be made before 90 days after the objection was lodged for a review or appeal under subsection (1)(b).
- (3) A claimant must give written notice to the Commissioner of the intention to apply for a review or make an appeal under subsection (1)(b) at least 14 days before the application for a review or appeal is made.

18. Objection, review or appeal not to stay proceedings based on relevant decision

- (1) Although a decision is subject to an objection, review or appeal, the Commissioner may act on

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the basis that the decision is correct until the objection, review or appeal is determined.

- (2) When an objection, review or appeal is determined, the Commissioner must take any necessary action to give effect to that determination.

PART 3 – ADMINISTRATION

Division 1 – Administration generally

19. Delegation

- (1) The Commissioner may delegate any of his or her functions or powers related to the administration of the employment incentive scheme rebate other than this power of delegation.
- (2) Subject to the direction and control of the Commissioner, a Deputy Commissioner has the same functions and powers as the Commissioner under this Act.

20. Authorised officers

- (1) The Commissioner may appoint persons as authorised officers for the purposes of this Act.
- (2) An authorised officer is a prescribed person for the purposes of section 77(1)(e)(x) of the *Taxation Administration Act 1997*.

21. Identity cards

The Commissioner is to issue an authorised officer with an identity card in an approved form –

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- (a) containing the person’s name, signature and photograph; and
- (b) stating that the person is an authorised officer for the purposes of this Act.

Division 2 – Application of certain provisions of Taxation Administration Act 1997

22. Application of certain provisions of *Taxation Administration Act 1997*

- (1) For the purposes of this Part, this Act is taken to be a taxation law.
- (2) Parts 8 and 9 of the *Taxation Administration Act 1997* apply as if –
 - (a) a reference to an authorised officer were a reference to an authorised officer appointed under section 20 of this Act; and
 - (b) in section 60(1), for “person’s tax liability under a taxation law to be properly assessed.” there were substituted “person’s eligibility for an employment incentive scheme rebate to be decided.”; and
 - (c) in section 64, for “by a taxation law” there were substituted “under this Act”; and
 - (d) in section 65(1), for “a taxation law” there were substituted “this Act”; and

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- (e) in section 65(2), for “tax liability” there were substituted “eligibility for an employment incentive scheme rebate”; and
- (f) in section 66(2)(b), for “a taxation law” there were substituted “this Act”; and
- (g) subsection (1B) of section 67 were omitted; and
- (h) for subsection (1C) of section 67 there were substituted the following subsection:
 - (1C) An authorised officer may retain possession of any record for up to and including 28 days, without the consent of the person entitled to possession of it.
- (i) in section 68, for “the assessment or collection of tax” there were substituted “a decision under this Act and”; and
- (j) in section 69(2), for “liability under a taxation law” there were substituted “eligibility for an employment incentive scheme rebate”; and
- (k) in section 70(1), for “a taxation law” there were substituted “this Act”; and
- (l) paragraph (d) of section 71(1) were omitted; and

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- (m) in section 71(3)(a), for “taxpayer” there were substituted “claimant or former claimant”; and
- (n) in section 71(3)(b), for “taxpayer” there were substituted “claimant or former claimant”; and
- (o) in section 76, for “a tax officer” there were substituted “an authorised officer” and for “a taxation law” there were substituted “this Act”; and
- (p) in section 77(1), for “A tax officer” there were substituted “An authorised officer” and for “a taxation law” there were substituted “this Act”; and
- (q) in section 77(1)(b), for “a taxation law” there were substituted “this Act or a taxation law or a law of the Commonwealth”; and
- (r) in section 77(1)(c), for “a taxation law” there were substituted “this Act or a taxation law”; and
- (s) in section 77(1)(e), the following subparagraph were inserted after subparagraph (ix):
 - (ixa) a person employed in the Department who provides advice on taxation policy;
- (t) in section 77(2), for “a taxation law” there were substituted “this Act” and for

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- “taxpayer” there were substituted “claimant or former claimant”; and
- (u) in section 78, for “a tax officer” there were substituted “an authorised officer”; and
 - (v) in section 78(b), for “a taxation law” there were substituted “this Act or a taxation law”; and
 - (w) in section 79, for “a tax officer” there were substituted “an authorised officer” and for “a taxation law” there were substituted “this Act”; and
 - (x) in section 79(a), for “a taxation law” there were substituted “this Act or a taxation law”.
- (3) For the purposes of the application of Parts 8 and 9 of the *Taxation Administration Act 1997*, the terms specified in section 3 of that Act apply except as provided in subsection (2) or in regulations made under subsection (4).
- (4) Regulations may be made modifying the application under this Part of Parts 8 and 9 of the *Taxation Administration Act 1997*.

Note: The provisions of the *Taxation Administration Act 1997* that are being applied relate to record-keeping, investigations and secrecy.

PART 4 – MISCELLANEOUS

23. False or misleading statements

- (1) A person must not, in giving any information under this Act, dishonestly –
- (a) make a statement that is false or misleading; or
 - (b) omit any matter from a statement if, without that matter, the statement is false or misleading; or
 - (c) provide a document that is false or misleading without informing the person to whom the document is provided of that fact.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 750 penalty units; or
 - (b) in any other case, a fine not exceeding 150 penalty units.
- (2) A person must not, in giving any information under this Act, intentionally or negligently –
- (a) make a statement that is false or misleading; or
 - (b) omit any matter from a statement if, without that matter, the statement is false or misleading; or

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- (c) provide a document that is false or misleading without informing the person to whom the document is provided of that fact.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) in any other case, a fine not exceeding 100 penalty units.

24. Power to require repayment and impose penalty

- (1) The Commissioner may, by written notice, require a claimant (or former claimant) for an employment incentive scheme rebate to repay an amount paid if –
 - (a) the amount was paid in error; or
 - (b) the Commissioner varies or reverses the decision under which the amount was paid in accordance with section 14.
- (2) If –
 - (a) a claimant (or former claimant) contravenes section 23(1) or (2); and
 - (b) as a result of that contravention an employment incentive scheme rebate, or part of such a rebate, is paid under Division 4 of Part 2 or applied under section 12(3) –

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the Commissioner, by the notice specified in subsection (1) or another notice, may impose a penalty not exceeding the amount the claimant (or former claimant) is required to repay under subsection (1).

- (3) If a claimant (or former claimant) for an employment incentive scheme rebate fails to make a repayment required under this section or the conditions of the rebate, the Commissioner may, by written notice, impose a penalty not exceeding the amount the claimant (or former claimant) is required to repay.
- (4) If an amount is paid in error on a claim for an employment incentive scheme rebate to a third party, the Commissioner may, by written notice, require the third party to repay the amount to the Commissioner.

25. Power to recover amount paid in error, &c.

- (1) This section applies to the following amounts:
 - (a) an amount that a claimant (or former claimant) for an employment incentive scheme rebate is required to repay under the conditions of the rebate or by requirement of the Commissioner under this Act;
 - (b) the amount of penalty imposed on a claimant (or former claimant) for an employment incentive scheme rebate under section 24;

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- (c) an amount a third party is required to repay by requirement of the Commissioner under this Act.
- (2) The liability arising from a requirement to pay (or repay) an amount to which this section applies is, if the requirement attaches to 2 or more persons, joint and several.
- (3) The Commissioner may recover as a debt due to the Crown –
 - (a) an amount to which this section applies; and
 - (b) any reasonable costs and expenses incurred by the Commissioner in connection with the recovery, or attempted recovery, by any lawful means of the amount referred to in paragraph (a).
- (4) If a person fails to pay an amount to which this section applies, or any part of that amount, within the time specified in the notice under section 24 which requires that payment, the Commissioner, by written notice to the person, may require the person to pay interest on the unpaid amount.
- (5) If the Commissioner requires a person to pay interest on an amount under subsection (4), the person is liable to pay interest on the amount, or part of the amount, that is unpaid –
 - (a) on a daily basis from the end of the last day for payment specified in the notice

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under section 24 until the day it is paid;
and

- (b) at the interest rate specified in section 35 of the *Taxation Administration Act 1997*.
- (6) Despite subsection (5), a person is not liable to pay interest on an amount as required by that subsection if the amount of interest that would be payable under subsection (5) would be less than \$20.
- (7) The Commissioner may enter into an arrangement (which may include provision for the payment of interest) for payment of a liability outstanding under this section by instalments.
- (8) The Commissioner may write off the whole or part of a liability to pay an amount to which this section applies or any interest relating to such an amount if satisfied that action, or further action, to recover the amount outstanding or interest is impracticable or unwarranted.
- (9) The Commissioner, in any circumstances he or she considers appropriate, may remit interest payable under this section by any amount.

26. Recovery of rebates and costs from third parties

- (1) The Commissioner, by notice in writing, may require any of the following persons instead of the claimant (or former claimant) for an

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employment incentive scheme rebate to pay any amount due under section 24 or 25:

- (a) a person from whom any money is due or accruing or may become due to the claimant (or former claimant);
 - (b) a person who holds or may subsequently hold money for or on account of the claimant (or former claimant);
 - (c) a person who holds or may subsequently hold money on account of some other person for payment to the claimant (or former claimant);
 - (d) a person who has authority from some other person to pay money to the claimant (or former claimant).
- (2) A copy of the notice is to be served on the claimant.
- (3) The amount of money required to be paid by a person under subsection (1) is –
- (a) if the amount of the money held or due or authorised to be paid does not exceed the amount payable by the claimant (or former claimant) to the Commissioner, all the money; or
 - (b) if the amount of the money exceeds the amount payable, sufficient money to pay the amount payable.

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- (4) A person required to pay money under this section must pay the money to the Commissioner –
- (a) on receipt of the notice referred to in subsection (1); or
 - (b) when the money is held by the person –
- whichever is the later, or within any period specified by the Commissioner.
- (5) A person subject to a requirement of the Commissioner under this section must comply with the requirement.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
 - (b) in any other case, a fine not exceeding 100 penalty units.
- (6) If the whole or a part of an amount is paid by another person –
- (a) the Commissioner is to promptly notify the person on whom the notice referred to in subsection (1) was served and the claimant (or former claimant) within 7 days of the receipt of the payment; and
 - (b) that notice is taken to be amended accordingly.

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27. Evidence

- (1) A certificate signed by the Commissioner stating that an employment incentive scheme rebate was paid to a person named in the certificate on a specified date is admissible in legal proceedings as evidence of the payment.
- (2) A copy of a notice issued by the Commissioner imposing a penalty under this Act is admissible in legal proceedings as evidence of the imposition of the penalty.
- (3) A copy of a notice issued by the Commissioner requiring the payment or repayment of a specified amount is admissible in legal proceedings as evidence –
 - (a) that the requirement was made; and
 - (b) that the amount specified in the notice was outstanding at the date of the notice.

28. Time for commencing prosecution

Proceedings for an offence against this Act may only be commenced within 3 years after the date on which the offence is alleged to have been committed.

29. Protection of officers, &c.

- (1) This section applies to –
 - (a) the Commissioner; and

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- (b) an authorised officer; and
 - (c) a delegate of the Commissioner who is a State Service officer or State Service employee.
- (2) No personal liability attaches to a person to whom this section applies for an honest act or omission in the performance, or purported performance, of functions under this Act.
- (3) A liability that would, but for subsection (2), lie against a person to whom this section applies, lies instead against the Crown.

30. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Regulations made under this Act may –
- (a) authorise any matter to be determined, applied or regulated by the Commissioner; and
 - (b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) Regulations made under this Act may –

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- (a) provide that a contravention of, or failure to comply with, any of the regulations is an offence; and
- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

31. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Treasurer; and
- (b) the department responsible to the Treasurer in relation to the administration of this Act is the Department of Treasury and Finance.