

STD 97/D1 - Title: Exemption under Items 25 and 26 for goods for use in producing motion picture films



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This document has been finalised.

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Draft Sales Tax Determination

Title: **Exemption under Items 25 and 26 for goods for use in producing motion picture films**

Background

Certain concessions are included in the sales tax legislation to assist motion picture film producers in the Australian film industry. Exemption from sales tax is available for certain goods for use by a person mainly in producing motion picture films in the course of a business.

Some motion picture film producers undertake all phases of production from the exposure of cinematograph film to the production of the exhibition print. Other producers engage freelance contractors to perform specialist functions in the production of the motion picture film. For example:

- cinematographers are contracted to go on set to shoot the film and often supply their own film stock and camera equipment;
- sound recordists are contracted to go on set to record dialogue and often supply their own digital audio equipment, microphones and boom poles;
- contractors edit and process motion pictures photographed on cinematograph film by scanning the film to produce electronic, analogue or digital images for further processing;
- contractors edit and process sound originally recorded on magnetic tape converting it to electrical audio signals; and
- sound recording studios may be contracted to reproduce or record sound or to edit sound recordings for incorporation into the motion picture film.

Some producers and freelance contractors prepare, process and produce motion picture films through electronic means. In these circumstances, they may:

- receive exposed cinematograph film in negative form;
- electronically scan the film onto digital tape;
- edit the digital tape to improve consistency of colour and light in consultation with the film producer;
- produce a master on digital tape once the editing has been finalised; and
- if the film is to be screened in the cinema, send the master tape to a processing laboratory to produce the exhibition copies on cinematograph film.

In producing some animated movies, photo-realistic computer graphics imagery is used either to make entire films or to allow for certain scenes to be directed. Photo-realistic computer graphics imagery is also used to insert animated scenes into some conventional films.

It is not uncommon in the motion picture film industry for these editing and processing activities to be undertaken on a medium different from that used in the original filming. For instance, they could be undertaken on digital tape.

This draft Determination sets out the ATO view on whether freelance contractors (for example, cinematographers and sound recordists) may claim an exemption for goods they use. It also examines whether exemption is available for apparatus and materials where the work print copy of the cinematograph film has been transferred onto a different medium for the editing and processing of the film.

Issues

1. Are freelance contractors, engaged by motion picture film producers, entitled to an exemption for goods covered by Items 25 and 26 of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* (ST(E&C) Act) if the goods are used mainly in producing motion picture films?
 2. Is there an entitlement to exemption under Item 26 for goods used mainly in producing motion picture films where images contained on cinematograph film have been transferred onto another medium, for example digital tape?
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Decision

1. Freelance contractors engaged by motion picture film producers are entitled to exemption from sales tax for the following goods, if they are used **mainly in producing motion picture films** in the course of a business:

- unexposed cinematograph film;
- cinematograph cameras;
- cinematograph film editing or processing equipment;
- sound recording equipment;
- sound reproducing equipment; and
- sound editing equipment.

2. Exemption can also be claimed for goods mainly used in editing or processing a work print copy of the cinematograph film. The exemption applies where the contents of that film have been transferred onto a different medium, for example digital tape, for the purposes of editing or processing. An important restriction is that the medium used in the original filming must have been cinematograph film.

Date of effect

This draft Determination will be effective immediately upon release in final form. It replaces any previous private rulings to the extent that they are inconsistent with this Determination.

Reasons

We have based our decision on the following legislative provisions:

Items 25 and 26 of Schedule 1 to the ST(E&C) Act provide exemption from sales tax for:

25 '(1) *The following goods for use by a person mainly in producing motion picture films in the course of a business:*

- (a) *unexposed cinematograph film;*
- (b) *cinematograph film that has been exposed but not developed;*
- (c) *negatives, positives and reversals produced on cinematograph film.*

Item 25 of Schedule 1 to the Sales Tax (Exemptions and Classifications) Act 1992

(2) *This item does not cover goods that (with or without further processing) are for use as exhibition copies of motion picture films.*

(3) *In this Item, "motion picture film" does not include a film that is for the private, domestic or personal use of the person by whom or for whom the film is produced.'*

Item 26 of Schedule 1 to the Sales Tax (Exemptions and Classifications) Act 1992

26'(1) The following goods for use by a person mainly in producing motion picture films in the course of a business:

- (a) cinematograph cameras;*
- (b) apparatus and materials for use by the person mainly in reproducing or recording sound or editing sound recordings;*
- (c) apparatus and materials for use by the person mainly in developing, editing or otherwise processing goods that are covered by exemption Item 25.*

[Parts and accessories]

(2) This Item does not cover general-purpose road vehicles or parts for those vehicles.'

Subsection 3(2) of the Sales Tax (Exemptions and Classifications) Act 1992

The term 'mainly' is defined in subsection 3(2) of the ST(E&C) Act to mean to the extent of more than 50%.

Parts and accessories that are used *exclusively* with goods covered by Item 26 are also exempt.

For the purposes of Items 25 and 26, the production of a motion picture film finishes when the master copy of the film has been produced. Consequently, the exemptions under Items 25 and 26 do not apply to goods for use after this stage.

Freelance contractors

Activities undertaken by the freelance contractors are integrally related to the production of the motion picture film. Although the equipment they use is not used directly by the producers of the motion picture film, it is used by a person mainly in producing a motion picture film. Consequently, exemption from sales tax is available to freelance contractors for goods covered by Items 25 and 26 which are used mainly in producing motion picture films in the course of a business.

Freelance contractors who carry out their functions on *set* are more easily able to satisfy the test that the relevant goods be used mainly in producing motion picture films. Sound recording *studios* would be expected to have great difficulty in satisfying this test as it is understood that very few sound recording studios carry out work for motion picture film producers. Sound recording, reproducing or editing is usually done for a variety of clients, including the advertising industry, radio, TV and the music industry. Few studios, if any, would use the relevant goods **mainly for producing motion picture films.**

Goods used in editing or processing

For goods used in editing or processing to be exempt under paragraph 26(1)(c) they must be used mainly in editing or processing goods covered by Item 25. An important restriction is that the medium used in the original filming must be cinematograph film.

Where producers of motion picture films and freelance contractors edit and process digital tapes copied from negatives or reversals that were originally produced on cinematograph film, it is accepted that they are editing the original cinematograph film. Consequently, exemption can be claimed for goods used in editing or processing a work print copy of the cinematograph film, which has been transferred onto a different medium, for example digital tape.

Exemption also applies to goods used in processing the work print copy by inserting scenes or special effects which were not part of the cinematograph film, for example photo-realistic computer graphics imagery equipment used to insert animated scenes. However, exemption does not extend to this equipment or to other goods used mainly to make entire animated films or in circumstances where the original medium was not cinematograph film.

Communication of the Decision

This draft Determination has been made available for publication by the sales tax publishing houses and will be provided to interested persons upon request.

Your comments

If you wish to comment on this Draft Sales Tax Determination, please send your comments by 24 September 1997 to:

Contact Officer: Bruce Kanard

Telephone: (02) 9374 1945

Facsimile: (02) 9374 1468

Address: Australian Taxation Office
PO Box A4000
HURSTVILLE NSW 2220.

Commissioner of Taxation

13 August 1997

FOI Index Detail:

Not previously released in draft form

Related Determinations: ST 2450 Sales Tax: Video Recording by Television Stations
ST 2451 Sales Tax: Videotape Masters Produced to the Order of a Client
ST 2452 Sales Tax: Sound Recording

Related Rulings:

Subject Ref: cinematograph film; exemption; film producers; freelance contractors; motion picture films;
producers; sound recording

Legislative Ref: Sales Tax (Exemptions and Classifications) Act 1992 subsection 3(2)
Sales Tax (Exemptions and Classifications) Act 1992 Schedule 1 Items 25 and 26
Sales Tax (Exemptions and Classifications) Act 1992 Schedule 1 paragraph 26(1)(c)

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