


ST 2404 - SALES TAX VIDEO PRODUCTION: SALE VALUE

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TAXATION RULING NO. ST 2404

SALES TAX VIDEO PRODUCTION: SALE VALUE

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1019763	VIDEO TAPES - SALE VALUE OF	SALES TAX ASSESSMENT ACT (No 1); SECTIONS 3, 18, AND 18B

OTHER RULINGS ON TOPIC: ST 2094, ST 2258, ST 2269

PREAMBLE It has been accepted for many years that the production and duplication of video tapes constitutes manufacture.

2. Tax has been paid on the copies produced broadly on a sale value of the duplicating charge plus the cost of the tape. Master tapes have generally been treated as exempt from sales tax as aids to manufacture on the basis that the duplicates are produced from them although the sale value of the copies has not generally reflected the cost of producing the master tape.

3. The ordinary concept of sales tax is that aids to manufacture qualify for exemption because the cost of the aids is built into the selling price of the goods. This has not, as indicated, generally been the case in relation to copies of video tapes.

4. The situation is much the same where goods which would ordinarily qualify as aids to manufacture are sold. In this case exemption does not apply to the aids to manufacture and the sales tax law provides that the goods are subject to sales tax to ensure tax is paid on full production costs. Otherwise, tax could be avoided by reducing the selling price of the goods by the amount separately recouped for the aids.

5. It is common in some production processes for aids to manufacture to be sold separately from the goods and not built into the price of those goods. This situation generally arises only in industries where the aid is produced as a "one-off" job. One-off aids to manufacture occur in the advertising industry. Advertising tapes are not vendible products and few copies are produced but the cost of producing the master has to be recouped and is generally subject to a separate charge.

6. While it has been accepted for many years that the production of video tapes is manufacture, an amendment to the law with effect from 20 August 1986 has put the matter beyond doubt. The law now provides that the copying or reproduction of visual images or sounds on tape is manufacture.

7. This Ruling is concerned with the general principles to be

taken into account in determining the sale value of master videos. Some particular fact situations are discussed.

LEGISLATION

8. The legislation introduced into the sales tax law with effect from 20 August 1986 made the following changes:-

- (a) The introduction of a new paragraph to the definition of "manufacture" in subsection 3(1) of STAA (No. 1) which provides:

"Manufacture includes

- (f) the copying or reproduction of visual images or sounds, or visual images and sounds so as to embody the images or sounds, or images and sounds, as the case may be, (whether in the same material form or in a different material form) in goods (including goods and commodities of the kind referred to in paragraph (a) of the definition of 'Goods')".

- (b) Amendment of the definition of "Manufacturer" in subsection 3(1) of STAA (No. 1) by adding a new subsection (1A):

"(1A) For the purposes of the application of this Act in relation to goods in which visual images or sounds, or visual images and sounds have, or a computer program has, been embodied, the reference in the definition of 'Manufacturer' in subsection (1) to materials supplied by a person to another person shall be read as including a reference to the person making available visual images or sounds or visual images and sounds, or a computer program, for the purposes of enabling those images or sounds, or those images and sounds, as the case may be, to be copied or reproduced or that computer program to be copied or reproduced or converted to another language, code or notation, by that other person so as to be embodied in those goods."

9. The addition of paragraph (f) to the definition of manufacture makes it clear that the embodying of visual images and/or sounds on video tape is manufacture. The addition of subsection 3(1A) makes the supplier of the master tape a manufacturer for sales tax purposes in a particular situation. Prior to the introduction of subsection 3(1A), if a person supplied materials to another person to be made up into goods, and the finished goods were for sale by the person supplying the materials, then that person was deemed to be the manufacturer and liable to account for tax on the goods. The person who physically made up the goods was deemed not to be the manufacturer. Subsection 3(1A) extends the meaning of manufacturer to also embrace a person supplying a master tape to a duplicating house for copying provided that the copies are for sale. The supplying of the master tape is regarded by the law as the supplying of materials. Thus if a person supplies a master tape of a film or video to a duplicating house for

copying and the copies are for sale (e.g, the copying of video films for sale to video hire outlets for hire to the public) then the supplier of the master tape will be the manufacturer of the copies and be required to be registered for sales tax and account for sales tax on the sale of the videos on a sale value determined by the legislation.

FACTS

10. The production of a master video tape can range from a fairly simple process to a complex one. At the lower end of the scale the production may involve no more than shooting the video tape and adding titles and perhaps sound with little or no editing. At the complex end a master video will be produced in much the same fashion as a feature film and, broadly, the production will be divided into three stages:-

- (a) Pre-production - Scripting, preparation of story-boards, dialogue re-writing, actors and actresses fees.
- (b) Production - Set design and construction, (or hire of sets), design and manufacture of wardrobe, lighting, casting, actual shooting (including cameramen, director, sound technician fees etc) usually directly onto video tapes, but sometimes onto cinematograph film when the output is 'rushes' or 'work-prints'.
- (c) Post-production - Editing, adding music and special effects, dubbing.

11. The most complex production processes are generally found in the production of national advertising videos and promotional videos on the achievements or operations of large companies. Some training videos may also involve complex production techniques. The less complex videos are generally those produced for private individuals such as weddings or celebrations of particular events. Training videos can also be produced on a low key basis as can advertisements of a limited life, eg, weekly supermarket specials, one-day sales.

RULING

12. While the 1986 amendments to the sales tax law confirm that the production and duplication of video tapes also constitutes manufacture, for manufacture to be present there must be an intention to produce goods. For example, the amateur video cameraman in shooting video film of holidays, family events and other special occasions for own private use is not a manufacturer for sales tax purposes. The mere exposure of video film without an intention to manufacture goods does not create a sales tax liability. Similarly, the freelance operator who shoots "wild reels" for television stations is considered to be providing a service to the television station for which he is paid a fee and is not supplying manufactured goods. The role of the freelance operator is discussed more fully in Taxation Ruling No. ST 2269 which is not varied by this Ruling.

SALE VALUE

13. On the question of sale value, it is a basic concept of the

law that the sale value should reflect the cost of producing the goods. There is no reason why that principle should not apply to videos and the sale value of a master video should reflect all costs associated with the production and post-production stages. It is accepted that with the more complex productions the planning stage, i.e., the pre-production lead-up, does not form part of the actual production costs of the final video. In many cases these costs are incurred separately and with advertising videos particularly many ideas can be developed before a final one is selected by the client. Also, where artists appear in videos their fees are generally the subject of a separate contract to the production of the video and they will not form part of the sale value of the master or other video produced.

14. Generally master videos are made to the order of the client and are sold by retail to the client who retains ownership of the video. Where goods are manufactured for sale by retail, the sale value is determined under subparagraph 18(1)(b)(ii) of Sales Tax Assessment Act (No. 1) which provides for the sale value to be the amount for which the video could have been purchased from another manufacturer if the other manufacturer had, in the ordinary course of his business, manufactured the video for sale and sold it by wholesale to the actual manufacturer. The legislation seeks to apply a notional wholesale value to the recorded video tape.

15. There are, however, no wholesale sales made of master video tapes because they are invariably made to the order of the customer. In the absence of any wholesale sales the following sale values have been determined for master video tapes -

(a) Advertising masters

The sale value shall be equal to the total of the production and post-production costs, i.e., all costs relating to and in connection with the filming of the wild reels through the editing, dubbing of sound effects, addition of special effects, etc. until a final edited master has been produced.

(b) Company promotions

These may also be called industrials. The sale value of these shall be the same as for advertising masters as set out in subparagraph (a) above.

(c) Training videos

These may be produced professionally using known artists or in-house, i.e., by commercial firms for their own use. Where training videos are produced professionally the sale value will be the same as for advertising masters. The position of in-house training videos is discussed below.

(d) Wedding videos

With wedding videos and other private videos there is generally a single contract which covers a range of services including the shooting and editing of the

video. The sale value of the video will be the cost of shooting the video tape plus all costs in editing, adding titles, sound etc. to produce the final tape that is sold to the customer. The sale value will generally be an amount lower than the contracted price because of the additional services included. How much lower will depend on the production costs incurred in each case.

(e) Sporting events

Videos of sporting events fall into a number of different categories. A professional cameraman or studio may be hired to shoot a particular sporting event where the price is fixed under a single contract that may cover other services. The sale value of the master video produced is to be determined in accordance with the principles set out for wedding videos in subparagraph (d) above.

Many sporting events are telecast live through the networks of television stations. The live telecasting of a sporting event does not involve manufacture as there is no intention to produce goods. Live telecasting is considered to be the provision of services. However, highlights of a recording of the live telecasts may be selected for dubbing to produce a packaged video for sale to the public. The dubbing and sale of these videos involves manufacture. Because live telecasting (including the recording of the live telecasting) is not manufacture the costs incurred in that service do not form part of the sale value of the packaged videos. The costs incurred in selecting the highlights and producing a master from which the copies are produced for sale do form part of the sale value. Generally these costs are reflected in the selling price of the packaged video. In the absence of any wholesale sales the sale value is considered to be the price charged to the customer treated as tax inclusive.

A further situation is where a professional cameraman is retained by a horse racing club to video horse races for viewing by race stewards. The video is not edited or further processed but is merely a recording of the race to assist the club in carrying out its obligations in the conduct of horse race meetings. The essential nature of the contract between the club and the professional cameraman is one of service for which the cameraman is paid a fee. There is no intention to produce goods. This activity is considered not to involve manufacture and a professional cameraman who carries out these activities alone is not required to be registered for sales tax. Any sales tax liability will be met by payment of tax on the capital equipment (video camera) and tapes used.

However, cameramen engaged in these activities often produce copies of horse racing tapes for sale to punters, owners and trainers. Where a cameraman undertakes these activities he is engaged in the manufacture and sale of video tapes and is required to

be registered for sales tax. Tax is payable on a sale value of the dubbed tapes which generally would be the price charged to the customer treated as tax inclusive.

(f) Television Stations

Television stations are concerned in two fields with the manufacture of recorded video tapes. The bulk of manufacture involves the straight copying of films and video masters provided to the television stations for the purposes of transmission. Production costs are not involved in this activity. It is a copying exercise only. This activity is dealt with in Taxation Ruling No. ST 2094 which is not varied by this Ruling.

The second field of activity involves the production of master tapes of advertisements, station promotions, community announcements, etc. Some of these masters are sold to clients e.g., advertising tapes, while others are applied to own use. In both situations tax is payable on a sale value which reflects all costs incurred from the point of filming to the final edited master, i.e., production and post-production costs.

IN-HOUSE VIDEOS

16. Some firms that do not conduct a video production business make their own training and promotional videos. Where a firm such as a bank, retailer or insurance company merely shoots video film and does not edit or otherwise process the recorded video tape, it is accepted that any sales tax liability will be met by payment of tax on video cameras, video tapes and other equipment and materials purchased.

17. Other firms operate a small video production branch. Besides shooting the blank tape they edit it and otherwise process it to produce a final version. They may also produce copies from the master tape. Firms that are engaged in these activities are required to be registered for sales tax, unless the small manufactures provisions apply, and to account for tax on a sale value of the production and post-production costs of the videos produced as outlined earlier in this Ruling. Being a registered person, equipment for use as an aid to manufacture, e.g, video cameras and video tapes may be purchased free of tax.

SURVEILLANCE CAMERAS

18. A number of firms operate surveillance cameras as part of their security systems. As explained in Taxation Ruling No. ST 2258 the recording of video tape in the course of surveillance operations does not involve the manufacture of goods. The amendments made to the law in August 1986 do not affect the position of surveillance cameras. It is considered that the activities involved in the recording of video tape by surveillance cameras do not involve the manufacture of goods. It is a surveillance operation. There is no intention to produce goods. Taxation Ruling No. ST 2258 remains in force and is not affected by this Ruling.

DATE OF EFFECT

19. This Ruling will come into effect on 1 June 1988.

COMMISSIONER OF TAXATION

7 April 1988