


# ***ST 2407 - SALES TAX : SOUND RECORDINGS: SALE VALUE***

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TAXATION RULING NO. ST 2407

SALES TAX : SOUND RECORDINGS: SALE VALUE

F.O.I. EMBARGO: May be released

REF

\*\*\* NOTE - THIS RULING HAS BEEN SUPERSEDED BY ST 2452

N.O. REF: 85/9192-0

DATE OF EFFECT: 1 July 1988

B.O. REF:

DATE ORIG. MEMO ISSUED:

F.O.I. INDEX DETAIL

REFERENCE NO:

SUBJECT REFS:

LEGISLAT. REFS:

I 1019808

SOUND RECORDINGS  
SALE VALUE

SALES TAX ASSESSMENT  
ACT, (No.1); SECTION  
3 and SECTION 18

PREAMBLE Prior to amendments to the sales tax law effective from 20 August 1986, the recording of sound on magnetic tape or disc, where the recorded material was for use by the person recording it, did not create a sales tax liability. Nor did a recording studio incur any liability where it merely recorded material on a customer's tape or disc where the customer required the completed tape or disc for own use. This is in accordance with paragraph 1097 of the publication Australian Sales Tax.

2. Further, in relation to advertising and announcement tapes used by radio stations it was concluded that the advertising and announcement tapes were not manufactured goods but rather were brought into existence in the course of providing professional services to the broadcasting industry. A similar position was taken with theatre advertising tapes and retail store promotions.

3. A recording studio that engaged principally in these activities met its sales tax liability by the payment of tax at the time of purchase of recording equipment and blank tapes.

4. The sales tax law was amended with effect from 20 August 1986 to make the copying of visual images or sounds on tape or disc manufacture.

5. Manufacture as defined in subsection 3(1) of Sales Tax Assessment Act (No.1) now 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')".

The words 'copying' and 'reproduction' in this definition are taken to mean copying from one artificial medium, i.e., a recorded tape or disc, to another similar medium.

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

taken into account in determining when manufacture is involved in the recording of sound on magnetic tape, disc, or other similar carrying medium, and the applicable sale value. Some particular fact situations are also discussed.

RULING

7. While the amendment to the definition of manufacture confirms that the copying and reproduction of sound on magnetic tapes or discs involves manufacture it does not follow that all copying of sound tapes or discs involves the manufacture of goods for the purposes of the sales tax law. For the manufacture of goods to be involved the copying must be carried out in the course of conducting a business and there must be an intention to produce goods. For example, the private copying of sound by a person in his own home would not involve the manufacture of goods for sales tax purposes.

8. The activities in various industries where sound recordings are produced and their liability to sales tax are discussed below.

Sound Recording Studios

9. Recording studios are generally involved in the following areas of sound recording :

- a) Manufacturing original masters and distribution copies of radio and/or television commercials.
- b) Manufacturing original masters, copy masters and cassette copies of music of bands and professional musicians.
- c) Manufacturing original masters and copy masters of music for use in the production of records and cassettes.
- d) Manufacturing original masters and copy masters for use in the production of motion picture films.

10. A considerable amount of recording carried out by sound recording studios is live recording, i.e., the recording of songs by artists, advertising jingles and music of bands. In the recording of this music it is common for each member of a band to be recorded separately with the sounds later being mixed and electronically adjusted before being copied onto a master tape. A similar position applies with singers and advertising jingles. Additional sound and special effects are recorded separately and mixed with the recording of the artist to produce the required sound which is then copied onto a master tape. All these activities including preliminary recording involve the copying and reproduction of sound and the final tapes and any copies produced from them are goods manufactured and liable to sales tax. Sound recording studios that carry out these activities are required to be registered for sales tax.

11. In some cases a studio provides facilities, equipment and technicians but the actual recording is organised and carried out by an outside producer. Although the recording is under the direction of an outside producer it is the studio that physically produces the recorded tape. The studio is therefore the manufacturer of the tape and liable to account for sales tax on an appropriate sale value, unless the person requiring the master copy intends to produce copies therefrom for sale. In the latter

case the owner of the master becomes the manufacturer of the copies and the cost of the master tape, hiring of the studio, sound engineers and producers fees would form part of the sale value of the copies. This would also be the case where the producer supplies the tapes to the studio and requires the end products for sale.

12. In the past it was common for an artist or band to supply a blank tape to a studio for recording on it. As indicated above in paragraph 1, if the recorded tape was for use by the client supplying the blank tape, a sales tax liability did not arise. However, the 1986 amendment to the law has changed this position and where a customer supplies a blank tape to a recording studio and requires the recorded tape for own use, the studio is the manufacturer and liable to account for sales tax on the value of the recorded tape. The ruling in paragraph 1097 of the publication Australian Sales Tax no longer applies therefore as a result of the 1986 amendment to the law.

13. A further situation that arises is where a customer or outside producer supplies a blank tape to a studio for recording and requires the recorded tape for sale. In this case the law deems the person supplying the blank tape to be the manufacturer and liability to pay sales tax will fall on the person supplying the blank tape and not the recording studio. The same position applies where a person supplies a master tape to a recording studio for copying and requires the copies for sale. The person supplying the master tape is deemed by subsection 3(1A) of the Sales Tax Assessment Act (No.1) to be the manufacturer and liability to pay sales tax on the copies will fall on that person. In both cases the person deemed to be the manufacturer, i.e., the person supplying the tape, is required to register for sales tax and would quote a sales tax certificate number to the studio.

14. In some situations the person requiring the copies for sale may not be engaged in business in a significant way, e.g., the sale tapes could be for a particular promotion and that may be the only occasion on which that person sells tapes. The person could therefore be covered by the exemption provisions relating to the manufactures of small businesses. In this event the person supplying the master would not be registered for sales tax and would not be in a position to quote a sales tax certificate number to the recording studio. Where a person supplies a master or other tape to a recording studio for copying, the studio should charge sales tax on the copies produced unless the person supplying the master or other tape quotes a sales tax certificate number.

#### Radio Stations

15. In carrying out their broadcasting activities radio stations are involved in the recording of sound on tape. All stations regularly tape programmes of music, current affairs and documentaries for later airplay as well as large numbers of community announcements. Records obtained for airplay are also copied onto cartridge. The recording is carried out to make it more convenient for radio stations to carry out their broadcasting activities. For example, a significant amount of broadcasting is pre-recorded for airplay and where this occurs it is convenient to record the items for airplay on one tape

including advertisements, announcements and so on.

16. Almost all convenience recording is erased after broadcast. It has virtually no subsequent commercial use, being recorded only for the particular broadcast. Records recorded for airplay are required by the Copyright Act to be erased within 12 months.

17. Under the Broadcasting and Television Act all political and current affairs material is required to be recorded and kept for six weeks after which period it may be erased.

18. Copying of the kind undertaken by radio stations as outlined above does not involve manufacture of goods because there is no intention to manufacture goods. The recording is simply for broadcasting purposes and is of a temporary nature. Much of the recording is required by law to be carried out as part of the obligations of operating a public broadcasting service. Radio stations involved in this kind of recording will satisfy their sales tax liability by paying tax on purchase of capital equipment and blank tapes.

19. Some radio stations, however, copy material onto tape for sale. Where sound tapes are copied for sale, manufacture takes place and, unless the small manufacture provisions apply, there is a liability to register for sales tax and account for tax on sales of the recorded tapes.

#### Live Recording

20. As indicated in paragraph 5 the words 'copying' and 'reproduction' in the definition of manufacture are taken to mean copying from one artificial medium to another. Where live sound is recorded directly onto tape as in office dictation, public addresses etc. and no further copying occurs, no liability for sales tax arises. A liability would arise, however, where the live sound is copied or further recorded from the original recording. An example where this occurs is live recording carried out by recording studios, refer paragraph 10.

21. Bands often record the music being played by them at clubs, discos, concerts and other live performance shows. Providing the recording is no more than the original recording of the live performance without further copying, a sales tax liability does not arise for the band.

22. Sometimes persons operating PA systems produce copies of the material recorded (addresses, music etc.) and sell the copies. Where this occurs the operator of the PA system becomes a manufacturer and is required to be registered and account for tax on the sale value of the copies sold.

#### Sale Value

23. Charges involved in the production of master recordings and copies usually fall into the following groups:

- a) Pre-production costs - Talent fees, cost of writing jingles, music etc.
- b) Production time - Preliminary recording, adjusting, mixing etc,

hire of studio

- c) Post-production costs - Copying onto original master and copy masters, dubbing of copies.

24. Pre-production costs such as talent fees usually form part of a contract between the performer etc. and the advertising agent and are not direct manufacturing costs. Generally payments made to artists or to jingle writers are negotiated outside the actual recording activities. These payments are not included in the sale value of the recordings. On some occasions the recording studio may supply the artist or write the jingle. Charges made by the studio for these services will also not form part of the sale value.

25. Generally the charge levied by a recording studio will cover the hire of the studio and the use of the equipment. These are considered to be production costs and the charges levied will form part of the sale value. In some cases, to obtain particular effects a separate location may be hired for use as a studio with the recording equipment being conveyed to the location site. The hire of a separate studio by the recording studio will also form part of the taxable sale value.

26. The sale value of recordings should include all charges made for production time and all post-production costs. Ordinarily most recordings made by recording studios for clients are sold by retail. They are recordings made to order and not of the kind sold by wholesale. Sound recordings of this kind that are sold virtually exclusively by retail e.g., commercials, recordings for music groups, will have a sale value equal to the tax inclusive retail selling price (which must of course reflect production and post-production costs but will be exclusive of pre-production costs). The tax is calculated by applying a formula of the rate of tax divided by 100 plus the rate of tax. For example, sound recordings are currently taxable at 20% and the tax content of a recording which has a sale value of the tax inclusive retail selling price is calculated at  $20/120$  of the retail selling price, i.e., if the tax inclusive retail selling price (excluding pre-production costs) is \$600, the tax content ( $20/120$ ) would be \$100.

27. Some sound recordings, particularly bulk copies, are sold by both wholesale and retail. Where copies are sold by wholesale, i.e., to a retailer, tax is payable on the wholesale selling price of the goods. Where the copies are sold by retail, tax is payable on the price for which similar copies are sold by wholesale. Where bulk copies are produced for retail sale, tax is payable on the price for which copies of that kind are sold by wholesale in similar quantities.

28. The sale value principles outlined above also apply to a person who is a deemed manufacturer of recorded tapes and is liable to account for tax on the tapes sold by him.

29. If a customer supplies a blank tape and requires the completed tape for own use, the studio or other recording house is deemed to have sold the recorded tape to the customer under section 17A of Sales Tax Assessment Act No.1 and the sale value is the price charged to the customer as determined by paragraph

18(1B)(b).

#### Master Recordings

30. Where masters are retained by a studio and used to produce copies they qualify as aids to manufacture. The cost of producing the master would ordinarily be reflected in the sale price of the copies and form part of the taxable sale value. Sometimes the master may be sold separately from the copies. Where the master is sold it does not qualify for exemption as an aid to manufacture and tax is payable on a sale value of the master which reflects its cost of production i.e., all charges for production time and all post-productions costs. The sale value of the master would not then be included in the copies.

31. More often in the sound recording business the property in the original master and copy masters passes to the customer because it is the customer who requires the masters. These masters do not qualify as aids to manufacture because they are invariably sold to the customer whether by a direct charge or indirectly in the charges levied by the advertising or other agent. The sale value of such masters will be in accordance with sub-paragraph 18(1)(b)(ii) which will again include the cost of production and postproduction costs.

#### DATE OF EFFECT

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

COMMISSIONER OF TAXATION

7 April 1988