


STD 98/3 - Exemption under Items 25 and 26 for goods for use in producing motion picture films

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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 final 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 Determination sets out the Australian Taxation Office's (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. What is meant by the term *motion picture film* in Items 25 and 26 of Schedule 1 to the *Sales Tax (Exemptions and Classifications) Act 1992* (ST(E&C) Act)?
2. Are freelance contractors, engaged by motion picture film producers, entitled to an exemption for goods covered by Items 25 and 26 if the goods are used mainly in producing motion picture films?

3. Is there an entitlement to exemption under Item 26 for goods used mainly in producing motion picture films where images and/or sound contained on cinematograph film have been transferred onto another medium, for example digital tape?

4. When does production of a motion picture film finish?

Decision

1. *Motion picture film* means a tangible good that is cinematograph film containing a succession of still images in sequence, which is capable of being projected onto a screen by a projector with or without sound.

2. 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.

3. Exemption can 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. Important restrictions are that the medium used in the original filming must have been cinematograph film and the final output medium must be cinematograph film.

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

Date of effect

This Determination is effective immediately. It replaces any previous public or private rulings to the extent that they are inconsistent with it.

This Determination represents a change in the ATO interpretation of the law. Accordingly, it has prospective application only. However, entitlement to credits for periods prior to the date of this Determination will be considered on their merits on a case by case basis in accordance with the policy set out in paragraphs 6.33 and 6.34 of Taxation Ruling SST 7: 'Sales tax: credits'.

Reasons

We have based our decision on the following legislative provisions:

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

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.*

(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.

Motion picture film

It is necessary to determine whether the term *motion picture film* refers to a tangible good which is produced, or whether the term may refer to the intangible experience enjoyed by a viewing audience when a series of images (with or without sound) is projected so as to give a sense of movement.

It has been argued that the latter meaning of the term *motion picture film* is the one most appropriate to Items 25 and 26, with the consequence that the physical or tangible nature of the medium on which the motion picture film is carried becomes irrelevant, i.e., the film may be produced on cinematograph film, video tape, digital tape or some other medium.

The term *motion picture film* is not defined in the sales tax legislation and, therefore, takes its ordinary or normal meaning. The *Macquarie Dictionary* gives *motion picture film* the same meaning as the 4th definition of *film*:

'a film strip containing consecutive pictures or photographs of objects in motion presented to the eye, esp. by being thrown on to a screen by a projector so rapidly as to give the illusion that the objects or actors are moving.'

This definition emphasises the tangible good, namely the film strip which contains images.

Subitems 25(1) and 26(1) each refer to goods for use in producing motion picture films and appear to be a reference to the production of another good. Additionally, subitem 25(3) can only be referring to a tangible good when it refers to '... a film ... for the ... use of the person by whom or for whom the film is produced.'

and case law:

*Wilson & Anor v.
Commissioner of Stamp
Duties (NSW) 88 ATC
4307; (1988) 19 ATR 1107*

In *Wilson and Anor v. Commissioner of Stamp Duties (NSW)*, the Supreme Court of NSW (Court of Appeal) rejected the argument for the appellants that a *motion picture film* refers to what the viewing audience actually saw and heard and held that the term referred to the tangible property that carried the images and sound. The Court of Appeal, therefore, rejected the argument that the words *motion picture film* should be read as aptly describing a video tape cassette. Additionally, the Court of Appeal rejected the argument that in terms either of technology or common usage, the term *motion picture film* is interchangeable with or descriptive of video tape.

Because the term *motion picture film* in Items 25 and 26 refers to tangible property, it is inappropriate to consider relevant definitions in the *Copyright Act 1968* which deals with intellectual property.

For the purposes of Items 25 and 26, the term *motion picture film* refers to a tangible good which is cinematograph film containing a succession of still images in sequence, which is capable of being projected onto a screen by a projector with or without sound.

Freelance contractors

Activities undertaken by 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 mainly in producing motion picture films. Sound recording, reproducing or editing is usually done for a variety of clients, including the advertising industry, radio, TV and the music industry.

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.

Editing or processing using a medium other than 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 that 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 that were not part of the cinematograph film, for example, photo-realistic computer graphics imagery equipment used to insert animated scenes. Goods used to process a motion picture film that is entirely animated will be exempt under Items 25 and 26 if the original medium for the animated film was cinematograph film.

However, the final output medium must be cinematograph film for exemption Items 25 and 26 to apply. This means exemptions can be claimed if the activities are geared toward the production of a motion picture with cinematograph film as a final product. Exemptions under Items 25 and 26 do not apply to goods for use after the time when a final master of a cinematograph film is produced.

Communication of the Decision

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

Commissioner of Taxation 1 April 1998

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Previously released as STD 97/D1 and STD 98/2

Related Determinations:

Related Rulings: ST 2450; ST 2451; ST 2452; SST 7

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

Legislative Ref: ST(E&C)A 3(2); ST(E&C)A Sch 1 Item 25; ST(E&C)A Sch 1 Item 25(1); ST(E&C)A Sch 1 Item 25(2); ST(E&C)A Sch 1 Item 25(3); ST(E&C)A Sch 1 Item 26; - ST(E&C)A Sch 1 Item 26(1)(c); ST(E&C)A Sch 1 Item 26(2)
Copyright Act 1968

Case Ref: Wilson & Anor v. Commissioner of Stamp Duties (NSW) 88 ATC 4307; (1988) 19 ATR 1107

ATO Ref: NAT 97/6865-3