

# ***ST 2450 - SALES TAX : VIDEO RECORDING BY TELEVISION STATIONS***

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TAXATION RULING NO. ST 2450

SALES TAX : VIDEO RECORDING BY TELEVISION STATIONS

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1211531	TELEVISION STATIONS VIDEO RECORDING	SALES TAX ASSESSMENT ACT (NO.1); SECTION 3

OTHER RULINGS ON TOPIC ST 2451

PREAMBLE This Ruling considers the sales tax liability of television stations in -

- (a) the production of master video tapes from which dubbed copies are produced;
- (b) the production of station promotions; and
- (c) the importation of video tapes.

2. The central issue to be determined is whether the production of master videos and dubbed copies by, and for the use of, television stations is manufacture for sales tax purposes. For sales tax purposes, "Manufacture" is defined to include production and also 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 to another similar medium, e.g., the copying of a recorded video tape.

FACTS 3. In relation to television stations, there are a number of entities which may be involved in the creation of masters and dubs.

4. A television station may itself create masters and/or dubs. It may do so either on its own behalf, or on behalf of a third person (e.g. an advertiser) or as agent for a group of television stations of which it may be one (e.g. in a networking situation).

5. Alternatively, a television production company or other entity associated with a television station may be commissioned to create masters and/or dubs. In this regard, the television production company is similar to an independent production house but, like a television station, may be creating the master and/or dubs either on its own behalf or as agent for a number of television stations (e.g. in a networking situation).

6. The third alternative is that masters and/or dubs may be created by an outside production company which is not related to or associated with a television station.

7. When a television production company or an outside production company is commissioned by a television station to create a program or advertisement it usually involves the development of concepts, scripting, actor selection and engagement, providing, or commissioning the provision of, graphics and voice overs, filming and editing. Dubs of the advertisement are often produced for telecasting purposes and are usually destroyed a suitable time after telecast.

8. Following the production and telecasting of a program there may sometimes be a subsequent grant of a licence by a television station to other television stations to telecast the program. Such telecasting is sometimes facilitated by the producer arranging for transmission of the program to the licensee via satellite or landline. For reasons of quality or convenience the producer of the program may sometimes create a dub and provide it to the other television stations to facilitate the telecast of the program. In such circumstances, title in the dub does not pass and it is merely provided to facilitate the limited number of telecasts by the other television stations permitted by the terms of the relevant agreement. Such agreement nearly always requires the transmitting television station to destroy or return the dub after the permitted number of telecasts.

9. Promotions are the vehicles used by a television station to inform its audience of the identity of the television station and of the content, viewing time and classification of future broadcasts. A television station is required under its television licence granted under the Broadcasting Act to inform viewers in advance of the classification of future broadcasts.

10. Finally, television stations may enter into agreements with overseas entities in order to obtain the right to telecast a program etc. The agreement usually provides that only a limited number of telecasts are permitted. In some cases the transmission by the television station is facilitated by the program being relayed into Australia by satellite. The television station may copy the satellite transmission onto a dub for later telecasting. In other cases the overseas entity will send a videotape recording of the program to the television station for it to telecast under the terms of the relevant agreement.

11. Dubs may be produced in a number of ways as outlined above. A television station may also produce dubs for a person who, for example, has appeared on television and requests a copy of the broadcast. The dub is sold to the person concerned and additional copies may also be made for sale to other individuals.

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12. Whether the activities of television stations in producing masters and dubs for telecasting purposes involves manufacture is a question of fact. Not all goods that come into existence are liable to sales tax. The High Court held in the case of *Adams v Rau* (1931) 46 CLR 572 that where the essential nature of the contract was one of services any goods that incidentally came into existence as a result of those services were not goods

liable to sales tax. While in Rau's case it was recognised that the goods were a new entity, they were brought into existence not for sale as a commodity but for the purposes of enabling the client to have the benefit of services given in the course of a skilled vocation.

13. When a television station produces a program or advertisement or community service announcement and records it on a master tape or copies a master onto a dub for transmission or to facilitate transmission by another television station it is doing so as part of the provision of its services of telecasting. The tape on which the program, promotion, advertisement or announcement is recorded is only incidental to the provision of the service and is the means by which the television station provides its services.

14. Generally, television stations produce master video tapes and dubs for their own use. When television stations copy dubs from the master to facilitate transmission, those dubs are not produced for the purpose of commercial dealing in those goods. Television stations are not engaged in a business of producing videos and because the videos are for their own use there is some doubt whether the law operates to tax such activities on the basis of the decision in the case of *FCT v Nimrod Theatre* 85 ATC 4092; 16 ATR 232.

15. Initially it was the view of this office that in producing master video tapes of programs and making dubs from those masters, a television station was engaged in the manufacture of goods - Taxation Ruling ST 2094 refers. That position was not clear cut and the question has been reviewed in the light of more recent judicial pronouncement on the liability of persons who produce goods for their own use other than in a business of manufacturing - *FCT v Nimrod Theatre* (supra) refers.

16. While the decision in the *Nimrod Theatre* case is not seen as having universal application, it is considered that it has relevance to the activities of television stations. The principal activity of a television station is to provide a telecasting service. To provide that service it is necessary to produce programs and make dubs of those and other programs acquired by the station. Any activity of a manufacturing nature is incidental to the provision of the television service. Ordinarily the goods produced are not sold or produced in commercial quantities.

17. In the particular facts of the operation of television stations it has been decided that, on balance, the production of master videos and dubs in the course of providing a television service does not constitute the manufacture of goods. Any sales tax liability will be met by payment of tax by television stations on video cameras, video tapes and other equipment and materials purchased for use in the production of master videos and dubs for use in the transmission of their programs.

18. Dubs produced in accordance with paragraph 11 above do, however, constitute the manufacture of goods and tax is payable on the wholesale sale value of the videos. Television stations producing dubs in these circumstances are entitled to purchase dubbing equipment free of tax provided that the equipment is used exclusively or primarily and principally for producing dubs

for sale. Blank video tapes and other materials which form part of the finished video for sale may also be obtained free of sales tax.

19. Where a television station enters into an agreement in accordance with paragraph 10 above, there is no sales tax liability where the program is relayed into Australia by satellite. The transmission of a program electronically does not involve the manufacture of goods. A liability also does not arise where the program is recorded from the satellite signal for later transmission. In the case where an overseas entity sends a videotape recording of the program to the television station, there is an importation of the goods and tax is payable to the Australian Customs Service at the time the goods are entered for home consumption. Where tax is payable to the Customs, it is payable on a statutory sale value of 120% of the Customs value of the goods plus any Customs duty applicable.

20. Where masters and dubs are produced by television production companies and unrelated production companies for supply to television stations, the principles outlined in Ruling ST 2451 that deals with video tape masters produced to the order of a client will apply.

21. Taxation Ruling No. ST 2094 is withdrawn. The sales tax liability of television stations, insofar as the production of programs and dubbing copies of programs and other video tapes transmitted by television stations are concerned, is to be determined in accordance with this Ruling.

COMMISSIONER OF TAXATION  
8 December 1988