


ST 2451 - SALES TAX : VIDEO TAPE MASTERS PRODUCED TO THE ORDER OF A CLIENT

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TAXATION RULING NO. ST 2451

SALES TAX : VIDEO TAPE MASTERS PRODUCED TO THE ORDER OF
A CLIENT

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1211547	VIDEO TAPE MASTERS	SALES TAX ASSESSMENT ACT (No.1); SECTION 3

OTHER RULINGS ON TOPIC : ST 2258, ST 2269

PREAMBLE This Ruling considers the sales tax liability of persons engaged in the production of master video tapes of advertisements, company promotional films, training videos and other videos produced for the use of the client. The Ruling is not intended to be an exhaustive statement of the position of master videos. It covers the main situations where master videos are produced to the order of a client for the use of the client. The principles in the Ruling, however, will provide useful guidelines for application to other master videos produced in comparable circumstances. The Ruling does not address the position of video production houses that are engaged in producing videos for sale or hire in commercial quantities.

2. The issue to be determined is whether the production of master videos for the use of the client 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, i.e., a cinematograph film or video tape, to another similar medium.

FACTS 3. 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'; and

(c) post-production - editing, adding music and special effects, dubbing.

4. 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 or particular events. Training videos can also be produced on a low key basis as can advertisements of a limited life, e.g., weekly supermarket specials, one-day sales.

5. In some situations master video tapes can be produced in a series of steps. For example, with a national advertising video the advertising agent contracted by the client may arrange for different persons or entities to carry out certain processes. Cameramen may be hired just to expose the blank film or video tape with the editing and special effects added by another person or firm. Separate firms may also be engaged to provide wardrobe, lighting, set design and sound. In other cases the one company may carry out all aspects of the production. This particularly would be the case with the less expensive advertisements such as weekly supermarket specials and large production companies which shoot on cinematograph film and do their own editing.

6. Some master videos may be produced under contracts of service. An example is where a cameraman is paid a fee for videotaping horse races, the video being viewed by race stewards to ensure there were no irregularities in the running of the race. The recorded video is not edited or otherwise treated. The sole purpose is simply to have a video record of the horse race.

7. Other master videos, such as wedding videos, will be produced to the order of the customer. While some wedding videos may not be edited, generally most are subject to some editing and often have titles and other minor enhancements added.

RULING

8. Whether manufacture is involved in the production of a master video is a question of fact and much depends on the circumstances under which the master video is produced including the purpose for which it is produced. 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.

Advertising Masters

9. Advertising masters range from complex ones that are expensive to make and involve a lot of people with different skills to low cost advertisements which may involve little more than recording blank video film with minimal or no editing. The most expensive videos have a high service content commencing with the development and working up of the advertising theme to the individual skills of the various persons engaged to design and place sets, select wardrobe, apply make-up and direct any actions involved in the advertisements. Scenes may be shot many times before a satisfactory take is made.

10. Bearing in mind the individual skills which go into the making of a high cost advertising master, it is considered that the essential nature of the contract between the advertising agent and the client is one of service. While it may be arguable that particular processes, such as the editing of the recorded video tapes or the conversion of an advertisement produced first on cinematograph film to video tape are manufacture, the overall contract has to be considered. The final product is not goods as such but rather it represents the advertising agent's ideas of how the client should promote its products. The end product is not vendible but is provided to television stations for transmission by them for which an advertising fee is payable by the client.

11. The position of lower cost master advertising videos is not so clear. The service element is not so strong but nevertheless the intention is not to produce goods as such but rather to advertise the client's products. In some instances the case for manufacture also is not strong simply because all that may be involved is the shooting of video tape without any editing. Other factors with low cost advertisements are that they are of a temporary nature only, their life being limited, and they are not vendible products. While these factors in themselves are not conclusive on the issue of manufacture, they point to the production of these videos being more in the nature of services rather than the manufacture of goods. It would also be difficult to draw any clear dividing line between advertising videos that come into existence through the provision of skilled services and those that do not.

12. Accordingly it has been decided that the production of master advertising videos does not involve the manufacture of goods for sales tax purposes. Persons engaged in the production of these goods will satisfy their sales tax liability by payment of tax on any capital equipment and blank video tape and other goods and materials used to produce the master videos. No sales tax liability will arise on the value of the finished master video.

Company Promotional Videos

13. The purpose of these videos is to promote the image of the company. They are public relations films and sometimes are called industrials.

14. These videos are produced in a similar fashion to high cost

advertisements and have a high service element. For the reasons expressed above for advertising masters it is considered that the production of these videos does not involve the manufacture of goods for sales tax purposes. The sales tax liability of persons engaged in the production of these videos is the same as that set out in paragraph 12 above.

Training Videos

15. Training videos may be produced in a similar fashion to high cost advertising masters using known actors or produced in-house, i.e., by commercial firms for their own use.

16. Professionally produced training videos are in the same category as advertising masters. There is a high service element in their production and the end result represents the ideas of the consultant on how to train staff. The video is merely the medium whereby those ideas are made known. Like advertising videos, it is considered that the production of these master training films does not involve the manufacture of goods.

17. Some firms make their own training and promotional videos. These in-house videos can vary from low key productions to productions of a professional quality. A low key production may involve only the shooting of video tape which in itself is not manufacture. Videos which are edited, titled etc., could be regarded as manufacture because the service element with in-house videos is not as prominent as with professionally produced videos. However, generally firms that produce in-house training films 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 catch such activities on the basis of the decision in the case of *FCT v Nimrod Theatre* 85 ATC 4092; 16ATR 232.

18. It is therefore accepted that the production of master training videos, whether professionally or in-house, does not involve the manufacture of goods. Any sales tax liability will be met by payment of tax on video cameras, video tapes and other equipment and materials purchased for use in the production of the master videos.

Sporting Events

19. 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.

Wedding Videos

20. The position of wedding videos is different to the master videos of the kind described above. Although the production of a master wedding video may involve the provision of some services, the essential nature of the contract is one for the production of goods. The customer engages the cameraman to produce a video of the wedding for which a price is quoted. In this case it is considered that manufacture is involved and tax is payable on the sale value of the video. The sale value will not necessarily be the price charged to the customer but it should cover the cost of shooting the video tape, editing and other finishing costs such as adding titles and sound, the cost of the blank tape and other materials used plus a percentage to cover overheads and an appropriate profit margin.

21. Persons engaged in the production of wedding videos are entitled to purchase video cameras and editing equipment for use in such activities free of tax provided that the equipment is used exclusively or primarily and principally for such purposes. Blank video tapes and other materials which form part of the finished video may also be obtained free of sales tax. Ordinarily persons engaged in these activities would be registered for sales tax purposes and would purchase equipment and materials free of sales tax by quotation of their sales tax certificate.

Video Tape Copies

22. The production of copies from master and other video tapes is manufacture for sales tax purposes and persons engaged in the copying of video tapes are required to be registered and account for sales tax on a sale value of the copies produced. Persons who produce master video tapes of the kind referred to in this Ruling sometimes also produce a limited number of copies for use by the customer. The production of the copies is usually part of the overall contractual arrangements and no liability arises in respect of the copies produced. For example, several copies (and sometimes as many as fifty for a national advertising campaign) of an advertising master may be made for distribution to television companies which are to show the advertisement. There is no sale of the copies involved. They are merely provided under the contract for the purposes of fulfilling advertising contracts with television stations.

23. Where a producer also produces a limited number of copies of the master tape, it is accepted that this is part of the overall service contract and a sales tax liability will not arise on the production of the copies. In most instances no more than 6 copies or so would be produced. Tax will be payable on the blank tapes and equipment used to produce the copies.

24. Some producers of master videos of the kind covered by this Ruling may have copies of the master produced by video duplicating firms. The production of video copies by duplicating firms is manufacture and tax is payable on a sale value of the video copies produced. If the copies are not for sale by the producer, tax is payable to the duplicating firm on the copies produced. If the copies are for sale by the producer, the sales tax law deems the producer to be the manufacturer of the goods. In this case the producer will be required to be registered and quote a sales tax certificate to the duplicating firm. The producer will then be liable to

account for tax on a sale value of the video copies when the copies are sold.

25. In some situations a producer of a master video may produce copies for sale. For example, a race horse owner, trainer or punter may wish to have a video of a particular horse race. Where video copies are produced for sale manufacture is involved and a liability arises to account for sales tax on a sale value of the video copies sold. Equipment used exclusively or primarily and principally in the production of sale copies and blank tapes for use in producing the copies may be purchased free of sales tax under quotation of certificate.

Date of Effect

26. This Ruling comes into effect immediately. It replaces Ruling No. ST 2404 which is withdrawn.

COMMISSIONER OF TAXATION
8 December 1988