

ST 2452 - SALES TAX : SOUND RECORDING



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TAXATION RULING NO. ST 2452

SALES TAX : SOUND RECORDING

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1211552	SOUND RECORDING STUDIOS RADIO STATIONS LIVE RECORDINGS	SALES TAX ASSESSMENT ACT (No.1); SECTION 3

PREAMBLE This Ruling considers the effect of amendments made to the sales tax law in August 1986 on the operation of sound recording studios and radio stations. It also considers the sales tax position of live recording.

2. 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.

3. 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 sound advertising tapes and retail store promotions.

4. 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.

5. 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.

6. 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.

7. The question has been raised as to whether the August 1986 amendments affect the sales tax liability of sound recording studios and radio stations which, in the course of their operations, record music and sound.

FACTS

Sound Recording Studios

8. The sound recording studios under consideration in this Ruling are those that are engaged exclusively or principally in the recording of demonstration tapes for artists, background music tapes for film and video advertisements, sound tape for radio stations, retail store promotion tapes and other tapes for the use of the person who has hired the studio to record the tape. These studios generally do not engage in the production of sound tapes or records for sale to the general public. Nor do they produce copies of tapes in significant quantities to any extent. Any activities of this kind are generally limited.

9. The sound recording studios range in size from small one-man operations to larger studios operating from commercial premises. While the studios are generally engaged to do the recording work, sometimes they just hire out their facilities and equipment with the recording being undertaken by the hirer or a separate producer engaged by the hirer.

10. The majority 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. Live recording of radio advertisements and announcements and other background tapes for use by retailers and other commercial organisations are also made. These generally would involve less mixing of sound and addition of special effects than for music tapes. Recording from recorded music and sound is also undertaken and this also may be mixed and have special effects added.

11. The final tapes produced by these studios are produced on tape which is not capable of being played on domestic tape recorders and tape players. The tapes can only be played on commercial equipment of the kind used by sound recording studios, radio stations and other commercial firms engaged in the production of allied goods such as films and video tapes.

Radio Stations

12. 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 may also be 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.

13. 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.

14. 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.

15. The recording undertaken by radio stations is a mixture of live recording, e.g., political broadcasts, talk-back shows, and copy recording of previous recorded material. Copy recording is generally undertaken for the convenience of the radio station in carrying out its broadcasting activities. Some radio stations may copy material onto tape for sale to the general public, particularly where there is a demand for it due to the popularity of the material, e.g., the broadcast of a popular sporting event, live music show or interview with a leading personality.

Live Recording

16. The situation involved here is where sound is recorded live without any enhancements although sometimes the live sound may be mixed as it is recorded. Common examples are office dictation, public addresses and recording of bands at clubs, discos, concerts and other live performance shows. Depending on the nature of the material being recorded, copies may be made. This can often be the case where a popular artist is recorded at a live concert.

RULING

17. While the amendment to the definition of manufacture states that the copying and reproduction of sound on magnetic tapes or discs constitutes manufacture, it does not follow that all copying of sound tapes or discs constitutes the manufacture of goods for the purposes of the sales tax law. For the manufacture of goods, 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 constitute the manufacture of goods for sales tax purposes.

Sound Recording

18. The operations of sound recording studios of the kind referred to in paragraphs 8 and 9 are basically service oriented. The purpose in producing the recordings is not to produce goods for sale but rather to produce a recording which will reflect the talents and requirements of the artist. The recordings generally are not in themselves vendible goods. They are used by artists to promote or market their talents while others are for use in producing other goods such as advertising videos, films and radio announcements.

19. The basic aim of these sound recording studios is to provide a recording service, whether that service is undertaken by the

studio or the studio facilities are hired out for utilisation by another producer.

20. While the definition of manufacture specifically includes the copying or reproduction of sound, not all recording carried out by sound recording studios is of this kind. Much of the recording of studios is live sound and where copying is involved, it is largely carried out as part of the recording and mixing of live sound or in the course of providing services to clients.

21. It is considered that the amendments made in August 1986 do not affect the sales tax position of these sound recording studios. The studios are basically involved in live recording and providing services rather than manufacturing goods. The final products are not vendible goods like commercial sound recordings of popular artists. The liability of sound recording studios covered by this Ruling will continue to be as set out in paragraphs 2, 3 and 4 of this Ruling. That is, sales tax will be payable by the studio on the purchase of capital equipment and blank tape and the end recorded tape will not attract a sales tax liability.

22. Some studios may, however, engage in the straight copying of recorded music or other sound tapes. Where copies are produced for sale, manufacture is involved and the studio will be liable to account for tax on the sale value of the copies produced and sold. The studio will be entitled to purchase blank tapes for use in the production of the copies free of sales tax and will be entitled to purchase equipment for use exclusively or primarily and principally in the production of the sale copies free of tax.

Radio Stations

23. The position of radio stations is the same as for sound recording studios. Copying of the kind undertaken by radio stations as outlined in paragraphs 12 to 15 does not constitute 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. The recorded material is not vendible and is of use only to the radio station concerned. While this factor in itself is not decisive of the question of manufacture, it is a relevant matter when considered in the context of the overall operations of radio stations. Radio stations are broadcasters, not manufacturers. 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.

24. Some radio stations copy material onto tape for sale to business firms and the general public. 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 the sale value of the recorded tapes. Radio stations are entitled to purchase blank tapes for use in the production of sale tapes free of tax and also may purchase free of tax recording equipment which is for use exclusively or primarily and principally in the recording of

sale tapes.

Live Recording

25. As indicated in paragraph 6 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.

26. Bands often record the music being played by them at clubs, discos, concerts and other live performance shows. Provided 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.

27. 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. The operator who produces the copies for sale is entitled to purchase blank tapes for use in copying free of sales tax as well as the equipment for use in producing the sale copies, provided that the equipment is used exclusively or primarily and principally in producing sale copies.

General recording equipment

28. In each of the recording situations outlined above where copies produced for sale attract a sales tax liability, it may happen that the equipment used to record the sale copies is the same equipment used to record tapes that do not involve manufacture. Generally this equipment would be for use principally in the recording of tapes where manufacture is not involved. This equipment does not qualify for sales tax exemption. While it may be used also to produce taxable tapes, there is no partial exemption for goods used in part as aids to manufacture. Unless equipment is used principally in the manufacture of goods, it cannot qualify for exemption as an aid to manufacture.

Date of Effect

29. This Ruling is effective immediately and replaces Ruling No. ST 2407 issued on 7 April 1988 which is withdrawn.

COMMISSIONER OF TAXATION
8 December 1988