

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-81(66)S
Sales Tax
April 6, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S810320A

On March 20, 1981, a Petition for Advisory Opinion was received from Polydor, Inc., 450 Park Avenue, New York, New York 10022.

The issue raised is whether purchases made by Petitioner between March 1, 1975 and May 31, 1979, of master sound tapes used to produce phonograph records and cassette and cartridge tapes which are sold to consumers, fell within the exemption from sales and use taxes provided for by section 1115(a)(12) of the Tax Law. The master sound tapes in question have a useful life in excess of one year.

Petitioner is a major United States record company. Its business involves the production and marketing to consumers of products containing recorded music. Those products are disc phonograph records, cassette tapes and 8-track cartridge tapes.

Master sound tapes are the source from which all phonograph records and tapes are produced by Petitioner. A master sound tape is a 2-track, 1/4-inch electromagnetic tape, the length of which depends upon the number and duration of the musical selections recorded. A master sound tape for an entire album is commonly wound around an aluminum reel 10-1/2 inches in diameter and stored in a cardboard box. The music heard by playing Petitioner's records and tapes is originally recorded on master sound tapes.

Master sound tapes are produced by recording artists, producers and sound engineers, in most cases through independent production companies. After a master sound tape is completed, it is furnished to Petitioner, which uses it to produce records and tapes. Master sound tapes are used by Petitioner solely in the production of records and tapes.

To produce records, a master sound tape is played on a tape deck. The tape deck produces electrical sound signals from the master sound tape. These electrical signals are amplified and routed by wire to a lathe. The lathe, in response to the signals produced from the master sound tape, cuts grooves in a lacquer coated aluminum disc, creating a "lacquer master." Several other intermediate products are formed from the "lacquer master," resulting in the finished disc phonograph record.

To produce 8-track cartridge and cassette tapes, sound on the master sound tape is also electronically re-recorded, this time onto "duplicating masters." Those duplicating master tapes are then played over and over again on a duplicating machine so that several machines can simultaneously re-record the sound onto cartridge or cassette tapes.

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Section 1105(a) of the Tax Law imposes a tax of four per cent upon the ". . . receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1107 of the Tax Law imposes an additional tax of four per cent upon such sales within New York City. Sections 1110 and 1108 of the Tax Law impose correlative compensating use taxes. Section 1115(a)(12) of the Tax Law provides for an exemption from the State (but not New York City) sales and compensating use taxes with respect to machinery and equipment (including parts therefor which have a useful life of more than one year) used or consumed directly and predominantly in the production of tangible personal property for sale by manufacturing.

In defining the term "directly", the Sales and Use Tax Regulations provide that the machinery and equipment (including parts therefor which have a useful life of more than one year) must during the production phase of a process, have an "active causal relationship in the production of the product to be sold." 20 NYCRR 528.13(c).

The Sales and Use Tax Regulations also define the term "predominantly" as follows: "Machinery or equipment is used predominantly in production, if over 50% of its use is directly in the production phase of a process." 20 NYCRR 528.13(c)(14)

Master sound tapes are played on a tape deck in order to produce the electrical signals necessary to form a "lacquer master" from which phonograph disc records are ultimately produced. Master sound tapes are also played to produce "duplicating masters" from which cassette tapes and 8-track cartridge tapes are produced. Master sound tapes thus have an active causal relationship in the production of Petitioner's records and tapes for sale, are used solely for such purpose, and are, therefore, used directly and predominantly in production, within the meaning of section 1115(a)(12) of the Tax Law.

Accordingly, Petitioner's purchases of master sound tapes between March 1, 1975 and May 31, 1979 fell within the ambit of section 1115(a)(12) of the Tax Law and were, therefore, exempt from the New York State sales and use taxes. Petitioner's purchases were also exempt from sales and use taxes imposed by localities other than New York City. Tax Law, §1210(a)(1). However, inasmuch as section 1115(a)(12) of the Tax Law is not applicable to the New York City sales and use taxes imposed under section 1107 of the Tax Law, Petitioner's purchases of master sound tapes were subject to New York City's sales and use taxes.

DATED: December 9, 1981

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau