

03.06.01.00

Title 03 COMPTROLLER OF THE TREASURY

Subtitle 06 SALES AND USE TAX

Chapter 01 Sales and Use Tax

Authority: Tax-General Article, §§2-102, 2-103, 11-407, and 11-701, Annotated Code of Maryland

03.06.01.38

.38 Advertising Agencies.

A. In General.

(1) An advertising agency is providing nontaxable advertising services when the transaction with the client is for:

- (a) The preparation and placement of advertising in print or broadcast media;
- (b) Public relations;
- (c) Setting up press conferences;
- (d) Conducting market research; or
- (e) Creative concept development.

(2) An advertising agency is selling tangible personal property when the transaction with the client is for the production and transfer of specific property, including property that the client uses:

- (a) In its business, such as signage, letterhead stationery, business cards, annual reports, or audio or video tapes; or
- (b) To convey its commercial message, such as brochures, flyers, posters, displays, or finished artwork.

B. Advertising Agency Purchases.

(1) Office Supplies. Advertising agencies shall pay sales and use tax on purchases of office supplies, equipment, and other materials used in their business.

(2) Materials Used or Consumed in Providing Advertising Services. When the transaction with its client is for advertising services, the advertising agency shall pay sales and use tax on its purchases of taxable materials and taxable services that it uses or consumes in providing those services, such as:

- (a) Artwork or photography for preliminary layouts;
- (b) Finished art that is reproduced in print media;
- (c) Recorded music;
- (d) Rentals of recording studio equipment and facilities; and
- (e) Audio and video cassettes and film.

(3) Materials Used in Producing Tangible Personal Property for Sale. When the transaction with its client is for the sale of tangible personal property, the advertising agency shall pay sales and use tax on its purchases of taxable materials and services that it uses in producing the property, unless the material purchased is to be physically incorporated as a component or part of other property produced for sale as set forth in §B(4)(b) of this regulation.

(4) Materials Purchased for Resale. When the transaction with its client is for the sale of tangible personal property, an advertising agency may claim the resale exclusion for:

(a) Tangible personal property and taxable services purchased solely for resale to a client in the same form in which it receives the property or services, such as:

- (i) Finished brochures;
- (ii) Catalogs;
- (iii) Stationery,
- (iv) Specialty advertising items; and
- (v) Signs; and

(b) Tangible personal property or taxable services that are physically incorporated as a part or component of property produced for sale, such as poster board and lettering for signs or displays.

C. Tangible Personal Property Purchased by an Advertising Agency Acting as an Agent of a Specific Client.

(1) An advertising agency may be considered to be the agent of its client with respect to a particular purchase only if:

(a) The advertising agency clearly discloses to the supplier the name of the client and that it is acting as that client's agent;

(b) The price billed to the client, except for a separately stated standard agency fee, is the same as the amount paid to the supplier; and

(c) The advertising agency makes no use of the property in preparing, assembling, fabricating, or producing property for sale or in providing advertising services, and does not charge the property to the account of more than one client.

(2) Notwithstanding the presence of the three minimum requirements set forth in §C(1) of this regulation, an agency relationship will not be presumed. The person claiming agency bears the burden of establishing the agency relationship. The party claiming agency shall demonstrate, by clear and convincing evidence, such as a written contract, that, at the time the transaction was entered into, the parties intended to create an agency relationship with respect to purchases.

(3) An advertising agency making a purchase of property as the agent of a specific client shall pay the sales and use tax that the client would be required to pay if it was making the purchase directly from the supplier. The client, as buyer, is ultimately responsible for payment of the sales and use tax and for maintaining records showing that the sales and use tax has been paid.

(4) Any claim that a transaction is tax exempt by reason of an advertising agency's acting as an agent of a tax-exempt client shall be supported, at the time of the transaction, by certification to the supplier of the client's tax exempt status, including the 8-digit serial number and the expiration date of the client's exemption certificate.

D. Advertising Agency Sales.

(1) Advertising agencies shall charge and collect sales and use tax on all sales of tangible personal property unless a statutory exemption applies. Charges for creative, consultation, or design services rendered or performed in connection with the production of tangible personal property for sale are subject to sales tax, even if separately stated. Similarly, charges for preliminary property, such as artwork, layouts, mock-ups, or models, produced for the agency's use or for the client's approval in connection with the production of the property for sale, are subject to sales tax, even if separately stated.

(2) The tax does not apply to charges for initial consultations or preliminary artwork if:

(a) The consultations are provided and artwork is prepared to discuss and demonstrate an idea or message before the client enters into a contract or understanding with the agency for the production of tangible personal property for sale;

(b) Title to the preliminary artwork does not pass to the client;

(c) The preliminary artwork is not physically incorporated into the property produced for sale; and

(d) There is a separately stated charge clearly identifying the billing for the consultation or preliminary artwork.

(3) If there is a written or unwritten contract or understanding that the agency will produce a product for sale, all charges, including those for additional services or artwork, are subject to sales tax.