

SECTION 24 - ADVERTISING AND PUBLIC RELATIONS FIRMS**24-1 ADVERTISING AND ADVERTISING AGENCIES****A. Professional Services**

1. Advertising agencies are engaged in the business of rendering professional services when they produce advertising, such as radio and television spots or newspaper, magazine, or billboard advertising, and contract on their own behalf with radio and television stations, newspaper, or magazine publishers, outdoor advertising companies, or other media for time or space to televise, broadcast, publish, or otherwise display their advertising. Receipts derived by advertising agencies from furnishing these professional services are not subject to sales or use tax. However, their purchases of taxable tangible personal property for use in producing the advertising are subject to the general rate of State tax and any applicable local sales or use tax.
2. Agencies rendering professional services rely on expertise in advertising strategy, media buying, and in graphic arts production in their specialized fields to secure and retain clients. Usually agreements to provide professional advertising services also have the following characteristics:
 - a. The agency selects or advises the client on the different kinds of advertising to be used.
 - b. The agency is primarily responsible for developing the concept or design of the advertising.
 - c. The agency produces or arranges for the production of the advertising.
 - d. The agency places or arranges for the placement of the advertising on radio or television stations or in newspapers, magazines, or other media and the agency purchases time or space in the media to display the advertising instead of delivering it to the client for placement or distribution.
3. Advertising agencies are also engaged in the business of rendering services when they contract to do market research, consulting, statistical analysis, or other services that result only in a report of their findings to the client. The tax is due on all tangible personal property purchased by these agencies for use in the performance of the above services regardless of whether the property is acquired in the name or account of the advertising agencies or their clients. Advertising agencies that, in performing these service purchase paper, ink, printing plates, positives, negatives, color separations, photographs, filmed or recorded commercials that are not exempt audiovisual masters, and any other tangible personal property from suppliers in North Carolina or from out-of-state suppliers who charge the applicable tax must pay the tax due directly to their suppliers. Advertising agencies that purchase tangible personal property from out-of-state suppliers who do not charge and remit the applicable tax must remit the use tax due directly to the Department on the purchase price of the property without any deduction on account of the cost of the materials used, labor or service costs, transportation charges, or any expenses whatsoever.

B. Retail Sales

Advertising agencies are considered to be retailers when they produce, cause to be produced, fabricate, purchase, or otherwise acquire catalogs, magazines, handbills, brochures, programs,

pamphlets or similar printed matter or any other tangible personal property they sell and deliver to their clients or to others on behalf of their clients for delivery or distribution as advertising material or for any use or purpose other than for resale. Advertising agencies making retail sales of tangible personal property, other than exempt audiovisual masters, must collect and remit the general rate of State tax and any applicable local sales or use tax on the sales price of such property whether it is prepared by the agency or acquired from outside sources. The sales price to which the tax applies is the total amount for which the tangible personal property is sold including all charges for services rendered in the production, fabrication, manufacture or delivery of the property, such as charges for commissions, supervision, research, transportation charges, postage, telephone and telegraph messages, copy, models' fees, stage props, printing, printing plates, film, positives, negatives, transparencies, and color separations, even though the agency may separately state the charges on the invoice rendered to the client and in the agency's records.

C. Retainer and Consultation Fees

1. Charges by advertising agencies to their clients for **retainer fees** that are directly related to the purchase, acquisition, fabrication, or production and sale of tangible personal property are subject to sales or use tax. Charges by advertising agencies for retainer fees to their clients are generally paid in advance to cover future services and if no sale of tangible personal property is involved are not subject to sales or use tax.
2. **Consultation fees** charged to clients in connection with oral or written reports only and not in connection with the sale of tangible personal property are also exempt from sales or use tax. Consultation fees directly involved in transactions that require the purchase, acquisition, fabrication, or production and sale of tangible personal property, such as pamphlets and brochures, are a part of the sales price and are subject to sales and use tax even though the fees may be separately stated on the customer's invoice. If an advertising agency is retained to perform market research, analyze statistics, and develop an advertising concept on which a report is presented, either orally or in writing to the client, the charges for these services are not taxable. After considering the report, if the client decides to pursue the advertising concept and contracts with the same agency to develop and produce advertising material to be placed on radio or television spots or in space in newspapers, magazines, or on billboards, the agency must remit sales or use tax on the purchase price of all taxable tangible personal property used in producing the advertising material. If the advertising concept calls for the production, fabrication, purchase, or acquisition of catalogs, magazines, handbills, brochures, programs, pamphlets, or similar printed matter, or any other tangible personal property they sell and deliver to their clients or to others for their clients, the advertising agency is making retail sales subject to sales and use tax on the sales price of the property. The sales price to which the tax applies includes all the items and services described in Paragraph B. of this Bulletin.

D. Purchases For Resale

Purchases by advertising agencies of paper, ink and other tangible personal property that become a part of tangible personal property sold by advertising agencies at retail or wholesale, including purchases for resale in the same form, are exempt from sales or use taxes when the purchases are supported by properly completed **Streamlined Sales and Use Tax Agreement Certificates of Exemption, Form E-595E**, or other evidence in writing adequate to support the conclusion that the property is being purchased by a registered merchant for the purpose of resale. The term "**part of tangible personal property**" includes only those items that are incorporated into and become a part of property sold and does not include those items that are merely used or incidentally consumed in production. For example, a photograph, transparency,

printing plate, positive, negative or color separation does not become an ingredient or component part of property sold even though the image thereon is reproduced as a part of the property sold.

E. Purchasing For Use

Purchases by advertising agencies of film, printing plates, photographs, positives, negatives, transparencies, color separations, and similar tangible personal property for use in the production of advertising material are subject to the general rate of State tax and any applicable local sales or use tax because the property does not become incorporated into or become a component part of the property produced for sale. When advertising agencies purchase such items for use in the production of property for sale, they are the users or consumers of the property and must pay the State and local sales or use tax on the purchase price without regard to the disposition that may be made of the item by the advertising agency.

F. Acting as Agent

1. An **agent** is one who represents another, called the principal, with third parties. For sales and use tax purposes, to establish that a particular acquisition is made by an agency as agent for its client and not on the agency's own behalf, all of the following must apply:
 - a. The agency must clearly disclose to the supplier the name of the principal for whom the agency is acting as agent and establish that it has the authority to bind the principal with respect to the purchase;
 - b. The agency must be able to document that its status as agent existed prior to the acquisition.
 - c. The price billed by the agency to the principal for the personal property, exclusive of any agency fee, must be the same as the amount paid to the supplier, and the principal must be entitled to any profits realized by the agent from rebates, bonuses, commissions, or divisions of profits received by the agent.
 - d. The agency may make no use of the property for its own account.
2. An advertising agency must remit the tax due on its purchases to suppliers within this State and suppliers outside this State who collect and remit the applicable taxes. An advertising agency that purchases tangible personal property on behalf of a principal from out-of-state suppliers who do not charge and remit the applicable tax must remit the use tax due, as agent for its principal, directly to the Department on the purchase price of the tangible personal property without any deduction on account of the cost of the materials used, labor or service costs, transportation charges, or any expenses whatsoever.
3. All acquisitions by advertising agencies of tangible personal property such as catalogs, brochures, pamphlets, and the like are regarded as purchases by agencies on their own behalf for resale or for use unless the agency clearly establishes with respect to any acquisition that it is acting as agent for its principal pursuant to a prior express contract. An advertising agency purchasing tangible personal property as an agent on behalf of its client for the client's use may not issue its Certificate of Exemption to the supplier. An advertising agency that issues its Certificate of Exemption to its supplier is presumed to be purchasing tangible personal property in its own behalf for resale rather than acting as agent for its principal.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.28; 105-264;
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24-2 ADVERTISING ARTISTS

Advertising artists who actually produce paintings, portraits, negatives, photographs, or other tangible artistic creations and sell them to users or consumers are liable for collecting and remitting the general rate of State tax and any applicable local sales or use tax on the sales price of such articles.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
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24-3 PUBLIC RELATIONS FIRMS

A. Public Relations Firms Rendering Professional Services

If a public relations firm is retained to plan and conduct a public relations program which requires it to conduct research, opinion polls and surveys, compile data, analyze all of the foregoing and present a written or oral report of its findings to its client, the charges for these services are not subject to sales or use tax. The public relations firm shall pay the general rate of State tax and any applicable local sales or use tax on the purchase price of any tangible personal property purchased for use in performing the aforementioned services. If the client decides to pursue the plan or concept developed by the public relations firm and such action results in the development or acquisition of tangible personal property by the public relations firm for its use in carrying out the goals or objectives of the plan or concept, it is liable for paying the general rate of State tax and any applicable local sales or use tax on such purchases.

B. Public Relations Firms Making Retail Sales

If the plan or concept calls for the production, fabrication, purchase or acquisition of tangible personal property by the public relations firm which it sells and delivers to its client or sells to its client and delivers to others on behalf of its client, the public relations firm is making retail sales which are subject to sales or use tax on the sales price of such property. Tax will apply to the sales price of the property and will include fees directly involved in the production of the property and those charges specifically associated with the fabrication, manufacture or delivery of the property, such as charges for commissions, supervision, research, transportation charges, postage, telephone and telegraph messages, copy, models' fees, stage props, printing, printing plates, film, positives, negatives, transparencies and color separations even though the firm may separately state such charges on the invoice rendered to the client and in the firm's records.

Note: For Retainer and Consultation Fees: See Bulletin 24-1 C.

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