



COMMONWEALTH of VIRGINIA

Department of Taxation
Richmond, Virginia 23282

MEMORANDUM

TO: Russ Whitehead, Supervisor
Office Services Division

Wally Cordle, Director
Field Services Division

DATE: August 21, 1987

SUBJECT: Advertising Regulation Training

This responds to questions presented in the training recently provided by this division on the sales and use tax exemption for advertising.

1. Must an advertising agency use a Certificate of Exemption (Form ST-10A), to support its non-taxable purchases of concept, writing, graphic design, mechanical art, photography, or production supervision for use in media advertising?

Yes. For an advertising agency's purchases of concept, writing, graphic design, mechanical art, photography or production supervision for use in media advertising to qualify for exemption from the tax, it must provide its supplier with a certificate of exemption (Form ST-10A) indicating that such purchases are intended for placement in the media.

However, no certificate of exemption is required to support the non-taxable sale of a finished media ad campaign by an advertising agency to its client since the total charge for the campaign represents the charge for a professional service.

2. What is mechanical art for purposes of the exemption? How is mechanical art distinguished from typesetting?

Based on the new exemption, the total charge for the production of mechanical artwork for placement in "media" advertising is not subject to the tax. However, by ruling dated June 2, 1987, the Commissioner determined that the total charge for typesetting purchased for use in media advertising is taxable.

Typesetting involves the setting and assembling of type, sometimes by hand, but more frequently through some mechanical means, according to a customer's specifications. Typesetting

may be provided for use in the printing of books, articles, magazines, newspapers, catalogs or pamphlets. The end product of typesetting, commonly called a "galley" sheet, is also used by graphic artists and designers to create what is referred to interchangeably as a "mechanical", "layout" or "paste-up" of an advertisement, combining the typed elements, i.e., the words, of the advertisement, with the artistic, photographic, graphic, or other components of the ad. The "mechanical" produced by the graphic artist also contains instructions to the printer on how the ad should be printed, based on available spacing, proper coloring, and any other variables.

3. Are so called "specialty" advertising businesses which provide such items as buttons, stickers, calendars, pens, and similar promotional items, engaged in providing exempt media advertising services?

When a specialty advertising business is provided with a logo, trade name, or other design by a customer for imprinting on buttons, stickers, calendars, pens, and similar promotional items, they are engaged in making sales of tangible personal property the total charge for which is subject to the tax.

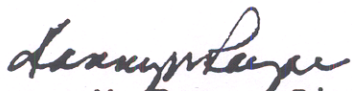
Similarly, when an advertising agency contracts with a specialty advertising business for the imprinting of a logo (designed by the advertising agency) onto promotional items, the total charge by the specialty ad business to the advertising agency is subject to the tax. (See, subsection 2(B)(3) of § 630-10-3 of the Sales and Use Tax Regulations) However, the charge by the advertising agency to its client to reimburse it for having purchased such promotional items, would not be taxable.

If a specialty advertising business goes beyond the mere imprinting of a customer provided logo onto promotional items, but also contracts to provide the concept, graphic design, and artwork necessary for the production of the logo, the total charge for the logo and the imprinted promotional items would be non-taxable. However, the specialty advertising businesses purchases of the blank buttons, stickers, calendars, pens, etc., to be personalized with the logo would be fully taxable.

4. How should a supplier compute the tax in making bulk sales of supplies to advertising businesses when some of the supplies will be used and consumed by the ad business in providing exempt media advertising services and some will be resold to the advertising businesses clients in connection with its provision of non-media advertising?

Subsection 2(B)(1) of § 630-10-3 of the regulations provides that advertising businesses are the taxable users and consumers of all tangible personal property purchased, including administrative items, such as paper, ink, pencils, layout boards, blank audio and video tapes, etc. However, when making purchases of any items which it knows at the time of purchase will be resold to its client(s) subject to the tax in the form of non-media advertising, an advertising business may purchase such items exempt of the tax for resale, under Certificate of Exemption (Form ST-10).

In addition, when an advertising business makes a bulk purchase of supplies, some of which will be used and consumed in providing exempt media advertising services, and some of which will be resold to clients, subject to the tax in providing non-media advertising, it may purchase all of such items exempt of the tax for resale, pursuant to a valid resale certificate of exemption (Form ST-10). However, whenever it withdraws any of such items from its inventory of supplies purchased for resale for use in providing media advertising services, it must report the use tax to the department based on the cost price of such items.



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