

## REG-1-056, Advertising and Advertising Agencies

056.01 An advertising agency performs advertising services and develops advertising materials for its clients.

056.02 The taxation of purchases by and sales of an advertising agency depend upon the written agreement between the agency and the client. The client and the agency may agree on two different provisions that affect taxation.

056.02A The client can designate the agency to operate as an agent of the client for purchases.

056.02A(1) If the client does not designate the agency to operate as their agent, the advertising agency must operate as a retailer under paragraph 056.05 of this regulation for that client.

056.02B If the client has agreed the agency is operating as their agent, the client and the agency may also agree the agency owns the materials used in producing and developing the advertising.

056.02B(1) The agreement covers the ownership of materials that are not transferred to the client or delivered to customers or potential customers within one year of the completion of the project.

056.02B(2) All materials that are physically delivered less than one year after the completion of the project to the client, to the client's customers or potential customers belong to the client regardless of the terms of the agreement.

056.02B(3) If the agency owns the materials under the agreement, the agency must operate under paragraph 056.03 of this regulation for that agreement.

056.02B(4) If the client and agency do not agree that the agency owns the materials, then the client is presumed to own the materials and the agency must operate under paragraph 056.04 of this regulation.

056.02C The agency may have one agreement with a client that covers all of the projects for that client. The agency may also have different agreements with the same client at different times or on different projects, or the agency may have different agreements with different clients.

056.02D When the agency is required to operate under different paragraphs of this regulation, the agency must have different procedures for such things as record keeping, storage or disposition of materials, and licensing of work from other persons.

056.02D(1) If the same procedures are used for all clients regardless of the terms of the agreement, the agreements will be disregarded as being intended to avoid the tax.

056.03 This section of this regulation applies when the client has designated the advertising agency as its agent for sales and use tax purposes, and has agreed in writing that the advertising agency owns the materials.

056.03A The agency must pay tax on labor or creative talent purchased from third-parties for the development or production of the ideas or for work on advertising materials.

056.03A(1) The agency must pay tax on the total amount paid to third-party artists, photographers, printers, and music producers for drawings, pictures, photographs, audio or video tapes, or for the right to use their work. The entire amount is taxable even if it is itemized as consulting, modeling fees, studio rental, or copyright license.

056.03A(2) The agency will not pay tax on salaries to its employees or fees paid to models, musicians, or voice talent hired by the agency.

056.03B The agency must pay tax on all purchases of equipment, supplies, and tools for the development or production of ideas for either advertising services or advertising materials. Items used by the agency include computers, computer software, typewriters, paper supplies, photographs, chemicals, and drawing or printing materials.

056.03C An advertising agency must pay tax on all purchases of advertising materials.

056.03C(1) Advertising materials include all types of printed material, audio tapes, video tapes, signs, posters, pictures, drawings, computer graphics, computer music, paste-ups, mechanicals, or other artwork.

056.03D The agency will not collect tax from its client on charges for projects that result in the advertising services listed below. The agency will pay tax on its purchases as otherwise required in this paragraph.

056.03D(1) Writing original manuscripts and news releases;

056.03D(2) Writing copy or preparing artwork for use in newspapers, magazines, television, or radio;

056.03D(3) Providing consultation or market research;

056.03D(4) Compiling statistical or other information; or

056.03D(5) Placing or arranging for advertisements in newspapers, magazines, television, or radio.

056.03E Advertising materials are transferred to the client if title or possession are transferred to the client or if the materials are delivered to customers or potential customers of the client.

056.03E(1) The agency will not collect tax on the amounts billed to the client for reimbursement of payments by the agency to third-parties for the materials, labor, or talent.

056.03E(2) The agency will collect tax on any amounts billed for work performed by the agency or its employees directly on materials transferred to the client.

056.03F The agency and the client are both responsible for any tax that was not paid on purchases made by the agency as an agent of the client. Only the agency is responsible for the tax on purchases of materials that will be retained by the agency.

056.04 This section of this regulation applies when the client has designated the advertising agency as its agent for tax purposes, but has not agreed in writing that the advertising agency owns all advertising materials that are not transferred. The client is presumed to own the materials for the project, including those in the possession of the advertising agency.

056.04A The agency must pay tax on any labor or creative talent purchased from third-parties for the development or production of the ideas or for work on advertising materials.

056.04A(1) The agency must pay tax on the total amount paid to third-party artists, photographers, printers, and music producers for drawings, pictures, photographs, audio or video tapes, or for the right to use their work. The entire amount is taxable even if it is itemized as consulting, modeling fees, studio rental, or copyright license.

056.04A(2) The agency will not pay tax on salaries to its employees or fees paid to models, musicians, or voice talent hired by the agency.

056.04B The agency must pay tax on all purchases of equipment, supplies, and tools for the development or production of ideas for either advertising services or advertising materials. Items used by the agency include computers, computer software, typewriters, paper supplies, photographs, chemicals, and drawing or printing materials.

056.04C The agency must pay tax on all advertising materials that will be transferred to the client, unless the client is an exempt organization.

056.04C(1) If the client is an exempt organization or exempt governmental unit, the advertising agency may give the seller an exempt sale certificate with the name and exemption number of the exempt organization.

056.04C(2) Advertising materials include all types of printed material, audio tapes, video tapes, signs, posters, pictures, drawings, computer graphics, computer music, paste-ups, mechanicals, or other artwork.

056.04D The agency will not collect tax from its client on charges for projects that result in the advertising services listed below.

056.04D(1) Writing original manuscripts and news releases;

056.04D(2) Writing copy or preparing artwork for use in newspapers, magazines, television, or radio;

056.04D(3) Providing consultation or market research;

056.04D(4) Compiling statistical or other information; or

056.04D(5) Placing or arranging for advertisements in newspapers, magazines, television, or radio.

056.04E All advertising materials are transferred to the client. This includes materials such as mechanicals or paste-ups kept at the agency, materials delivered to the client or materials delivered to customers or potential customers of the client.

056.04E(1) The agency will not collect tax on the amounts billed to the client for reimbursement of payments by the agency to third parties for materials, labor, or talent.

056.04E(2) The agency will collect tax on any amounts billed for work performed by the agency on materials.

056.04F The agency and the client are both responsible for any tax that was not paid on purchases made by the agency as an agent of the client and on all purchases of advertising materials used for the client.

056.05 This section of this regulation applies when the client has not designated the advertising agency as its agent for tax purposes. The agency must operate as a retailer and the agency is presumed to be the owner of all advertising materials not transferred to the client.

056.05A The agency must pay tax on labor or creative talent purchased from third-parties for the development or production of the ideas or for work on advertising materials. The agency may purchase from third-parties the labor used directly on the actual final product for resale.

056.05A(1) The agency must pay tax on the total amount paid to third-party artists, photographers, printers, and music producers for drawings, pictures, photographs, audio or video tapes, or for the right to use their work. The entire amount is taxable even if it is itemized as consulting, modeling fees, studio rental, or copyright license.

056.05A(2) The agency will not pay tax on salaries to its employees or fees paid to models, musicians, or voice talent hired by the agency.

056.05B The agency must pay tax on all purchases of equipment, supplies, and tools for the development or production of ideas for either advertising services or advertising materials. Items used by the agency include computers, computer software, typewriters, paper supplies, photographs, chemicals, and drawing or printing materials.

056.05C An advertising agency must pay tax on all purchases of advertising materials, except the agency will not pay tax on advertising materials that will be transferred to the client or to a customer or potential customer of the client. The materials to be transferred can be purchased for resale.

056.05C(1) Advertising materials include all types of printed material, audio tapes, video tapes, signs, posters, pictures, drawings, computer graphics, computer music, paste-ups, mechanicals, or other artwork.

056.05D The agency will not collect tax on charges for projects that result in the advertising services listed below.

056.05D(1) Writing original manuscripts and news releases;

056.05D(2) Writing copy or preparing artwork for use in newspapers, magazines, television, or radio;

056.05D(3) Providing consultation or market research;

056.05D(4) Compiling statistical or other information; or

056.05D(5) Placing or arranging for advertisements in newspapers, magazines, television, or radio.

056.05E Advertising materials are transferred to the client if they are delivered to the client or if the materials are delivered to customers or potential customers of the client.

056.05E(1) The agency must collect tax from the client on the total amounts billed to the client for advertising materials.

056.05E(2) The agency must collect tax on any amounts billed for work performed by the agency on materials transferred to the client.

056.05E(3) The agency must collect tax from the client on the total amount billed for the project including any commissions, surcharges, or agency fees connected with an advertising project that results in materials transferred to the client.

056.05E(4) When a project results in both the services listed in paragraph 056.05D and the transfer of materials, the service fees and commissions are partially taxed. The division will be based on the comparative charges for the services and the materials.

056.05E(5) If the client is an exempt organization or exempt governmental unit, the advertising agency may accept an exempt sale certificate from the exempt organization.

The agency is then not required to collect the tax from the client. The agency must pay tax on all purchases of advertising materials that are not transferred as required in paragraph 056.05A.

056.05F The agency and the client are both responsible for any tax that was not paid on the total amount billed by the agency for advertising materials.

056.06 The type of display determines if charges for outdoor advertising are taxable. Charges for displays that are fixed are exempt. Fixed displays include signs and billboards attached to real estate. Charges for displays that are temporary, portable, or mobile are taxable. These displays include signs and billboards on trailers. Charges for preparing messages for such displays are taxable.

*(Section 77-2702.07, 77-2702.13, 77-2702.15, and 77-2702.17, R.S.Supp., 1993. May 14, 1994.)*