

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-6450

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Mr. P--- E. R---
B--- & R---
Attorneys at Law
XXX --- --- Circle – Suite XXX
--- ---, CA XXXXX

Dear Mr. R---:

This is in reply to your November 14, 1984 letter regarding the application of sales tax to various charges by an advertising agency you represent. Our answers will follow each of the factual situations you presented.

“A client of the ad agency prepares its own news release. The agency does not edit, rewrite or otherwise modify the release. The agency submits the news release to an independent printer under transmittal documents which comply with Regulation §1540(a)(1) stating that the agency acts as an agent of its client in the acquisition of tangible personal property. The agency invoices the client on an hourly basis for its services as agent in interacting with the outside source. The outside source bills the ad agency for its services which are charged to the client by the ad agency with an ad agency commission added thereto.”

Sales and Use Tax Regulation 1540, Advertising Agencies, Commercial Artists and Designers, provides at subdivision (a)(2)(A), in relevant part:

“To establish that a particular acquisition was made as agent for its client (i) the agency must clearly disclose to the supplier the name of the client for whom the agency is acting as agent, (ii) the agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client, and (iii) the price billed to the client, exclusive of an agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as charging the item to the account of more than one client. An advertising

agency purchasing tangible personal property as an agent on behalf of its client may not issue a resale certificate to the supplier. It will be presumed that an advertising agency who issues a resale certificate to its supplier is purchasing the tangible personal property on its own behalf for resale and is not acting as an agent for its client.

The reimbursement for the property should be separately invoiced, or shown separately on an invoice, to the client.

If the advertising agency establishes that it has acquired the printing as an agent for its client, tax does not apply to the charge made by the agency to its client for reimbursement for the printing, including tax reimbursement charged by the printer, and tax does not apply to the advertising agency's charge for the performance of services directly related to such acquisition of the printing. (Regulation 1540(b)(2)).

“B. Our client writes, researches and project services the preparation of an article which is submitted to a periodical for publication. The client is billed on an hourly or project basis for said services. Additionally, the prepared article is sent via U.S. mail or a courier service to the publication. The client is invoiced for the cost of said mailing with an agency commission added thereto. Does the sales tax apply to the services rendered in preparation of the article? Additionally, does the sales tax apply to the costs of mailing and/or courier shipment?”

If the advertising agency researches and writes an article for the client in manuscript form, the advertising agency performs a non-taxable service. You have not described what work the agency performs as “project services”. If such project services involve of the sale of tangible personal property, tax applies to the agency's charge for such property. For instance, if the agency provides art work or photographs to illustrate the article, tax does not apply when the value of the photographs or art works is so minor as to make them merely incidental to the manuscript. However, if the agency makes a separate charge for such art work or photograph or if their value is substantial, that is 20% or more of the total charge for the manuscript, tax applies to the charge for the art work or photographs. Tax would also apply to the agency's charge for a camera ready pasteup which includes any art work.

“C. Our client researches, writes and plans a news release on behalf of a particular client which release is submitted to an electronics press release distribution service and/or directly to a publisher. Additionally, the agency has contact with editorial and other departments of the publication who may be publishing the news release. The client is billed on an hourly or project basis for the above services.”

Tax applies to this situation as it applies to situation B.

“D. Our client researches, plans, edits and writes letters to editors of various publications attempting to interest these editors in publishing an article concerning the agency’s client. The publication may or may not actually publish an article. The client is billed on an hourly or project basis for these services.”

The advertising agency’s researching, planning, editing, and writing a letter is a non-taxable service unless the service is a part of a taxable sale of tangible personal property.

“E. The agency researches, plans, schedules and counsels its client with respect to a publicity visit by an official or semi-official delegation from a foreign nation. The above-referenced services are rendered with respect to event staging, media phone contact, media advice, on-site event monitoring, photography direction, conducting and coordinating media interviews, etc. Additionally, the agency writes and distributes a follow-up news release. Furthermore, the agency coordinates between the client and the delegation. The client is billed on an hourly or project basis for the above services. Is the above, in whole or in part, subject to sales tax?”

Except for possibly the photography direction, all of the activities you listed in this situation appear to be non-taxable services. In order for us to give you an opinion as to the application of tax to be charged for photography direction, please send a description of such activities. We also would need to know what, if any, tangible personal property the agency anticipates transferring to the client.

“F. The agency provides general research and planning and meets with its client to discuss the client’s financial public relations plan. The client is billed on an interim basis for services rendered which are billed on either an hourly or a project basis. Are the above services subject to sales tax? Additionally, when the client ultimately receives the finished public relations plan, will all or any of a portion thereof be subject to the sales tax?”

Assuming that the finished public relations plan is provided to the client in manuscript form, tax does not apply to the advertising agency’s charge for the public relations plan.

“G. Lastly, the agency has an arrangement with a number of its clients whereby amounts received by the agency as media commissions are offset against amounts otherwise billed to the client for services which may or may not otherwise be taxable if billed. In that media commissions themselves are expressly not subject to sales tax, is the agency still required to charge sales to the extent that media commissions are, under the express written contract, taken into account in determining the amount billed to the client.”

When the ad agency makes a taxable sale to the client, the tax is imposed upon the agency as the retailer. Whether or not the agency collects reimbursement is a matter of contract between

the advertising agency and its client. Tax applies to such sales regardless that the agency may receive its compensation in the form of offsets from media commissions.

You need further information, feel free to write again.

Very truly yours,

R. L. Dick
Staff Counsel

RLD:ct