

1 Department of Revenue

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3 Adopted Permanent Rules Relating to Sales and Use Tax for
4 Advertising

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6 Rules as Adopted

7 8130.9250 ADVERTISING.

8 Subpart 1. Definitions.

9 A. "Advertising" is the expression of an idea created
10 and produced for reproduction and distribution through means
11 such as television, radio, newspapers, newsletters, periodicals,
12 trade journals, publications, books, magazines, standardized
13 outdoor billboards, direct mail, point-of-sale displays,
14 leaflets, brochures, fliers, and package design, and which is
15 designed to promote sales of a particular product or service or
16 to enhance the general image of the advertiser. Advertising
17 includes public service messages that are designed to affect the
18 behavior of the public, and messages that are political in
19 nature.

20 B. "Advertising agency" is any person that is
21 directly responsible to an advertiser for, and whose functions
22 as a business include the creation of advertising. Creation of
23 advertising means developing concepts or ideas to express the
24 advertising message.

25 C. "Advertiser" is a person who contracts to
26 purchase, or have delivered to a third party on its behalf,
27 advertising.

28 Subp. 2. In general. The sale, use, or other consumption
29 (hereinafter referred to as a sale) of advertising ordinarily
30 constitutes a sale of a nontaxable service, and hence is not
31 subject to Minnesota sales or use tax. However, if the means of
32 expressing the advertising is through tangible personal property
33 that has a primary functional use independent of its advertising
34 message, the sale of the advertising will be treated as a
35 taxable sale of tangible personal property. It shall be

1 presumed that the advertising has a primary functional use
2 independent of its advertising message, and the burden is on the
3 taxpayer to prove that the advertising does not have a primary
4 functional use independent of its advertising message.

5 If a person creates advertising for its own use, all of its
6 purchases of tangible personal property are subject to sales tax.
7 This part, with the exception of subparts 11 and 13, does not
8 apply to such a person. For purposes of subparts 11 and 13,
9 such person shall be treated as an advertiser.

10 Subp. 3. **Nontaxable items.** The following are examples of
11 items the sale of which are usually considered to be nontaxable
12 within the meaning of this part because: (1) the items meet the
13 definition of advertising, and (2) the means of expressing the
14 advertising message is not through tangible personal property
15 that has a primary functional use independent of its advertising
16 message:

17 A. certain printed materials including:

18 (1) fliers, handouts, brochures, and sales
19 promotion materials;

20 (2) direct mail materials; and

21 (3) displays, banners, posters, and table tents,
22 including point-of-sale materials;

23 B. radio commercials including cassettes and tapes of
24 them;

25 C. television commercials including cassettes, tapes,
26 films, and slides of them;

27 D. other audio or visual commercials including
28 cassettes, tapes, films, and slides of them;

29 E. print media advertising, including:

30 (1) magazine ads;

31 (2) newspaper ads;

32 (3) periodical ads;

33 (4) trade journal ads;

34 (5) book ads;

35 (6) other printed materials ads;

36 (7) newspaper inserts; and

1 (8) yellow pages ads;

2 F. billboard ads, transit advertising (bus, rail,
3 taxi, airport), and shopping mall and sports arena advertising
4 and displays; and

5 G. direct marketing materials not distributed by mail.

6 Subp. 4. Taxable items. The following are examples of
7 items the sale of which is usually considered to be taxable
8 within the meaning of this part because either: (1) the items
9 fail to meet the definition of advertising, or (2) the means of
10 expressing the advertising message is through tangible personal
11 property that has a primary functional use independent of its
12 advertising message:

13 A. specialty advertising, examples of which include
14 key chains, glassware, frisbees, rulers, pens, calendars,
15 buttons, matchbooks, paper napkins, clocks, and notebooks;

16 B. business cards and stationery;

17 C. books;

18 D. annual reports, except as provided in Minnesota
19 Statutes, section 297A.25, subdivision 10;

20 E. training and educational materials;

21 F. business identification signs;

22 G. employee benefit materials and plan descriptions;

23 H. business directories, including yellow pages;

24 I. warranty books and product instructions; and

25 J. advertising, including items described in subpart
26 3, if mass produced or reproduced in quantities in excess of
27 that reasonably anticipated to be necessary for an advertising
28 campaign, but only to the extent of such excess.

29 Subp. 5. Charges by an advertising agency to an advertiser
30 for services related to the creation and production of taxable
31 and nontaxable advertising. In the case of nontaxable
32 advertising no portion of the gross receipts allocable to
33 services related to the creation or the production of the
34 advertising is taxable, since the item constitutes exempt
35 advertising services.

36 In the case of taxable advertising, all of the gross

1 receipts allocable to all services related to the creation or
2 production of the taxable advertising are taxable. Gross
3 receipts allocable to the creation or production of advertising
4 include all costs incurred in the conception, creation,
5 developing, planning, and design of the advertising, as well as
6 the placing of the advertising.

7 Subp. 6. **Preliminary art.** The Minnesota sales or use tax
8 does not apply to gross receipts allocable to services which
9 relate to preliminary art, film, or tape. Preliminary art,
10 film, or tape, means art, film, or tape prepared for the purpose
11 of conveying or demonstrating an idea or concept for acceptance
12 by a buyer before the final approval is given by a buyer for
13 finished art or finished film or tape. Examples of preliminary
14 art, film, or tape include roughs, visualizations,
15 comprehensives, layouts, sketches, drawings, paintings, designs,
16 story boards, rough cuts of film and tape, initial audio and
17 visual tracks, and work prints. In the case of print
18 advertising, finished art is the final art used for actual
19 reproduction by photochemical or other process. In the case of
20 broadcast advertising, finished film and tape means the master
21 tape or film and duplicate prints. Gross receipts are treated
22 as allocable to preliminary art only to the extent that they are
23 separately billed or stated.

24 Subp. 7. **Nonapportioned contracts.** Where a contract or
25 commission or fee agreement or other agreement requires both the
26 creation of nontaxable advertising and taxable advertising by an
27 advertising agency, and when no separate cost is attributed to
28 the taxable advertising, sales tax on the fair market value of
29 the taxable advertising must be collected and remitted to the
30 commissioner at the time of transfer of title or possession of
31 the taxable advertising to the advertiser or its designee. Fair
32 market value of the taxable advertising will include a fair and
33 appropriate allocation of the agency's fee or commission.

34 Subp. 8. **Purchases for use in producing both nontaxable**
35 **advertising and taxable advertising.** This subpart applies to
36 purchases by an advertising agency of tangible personal property

1 which may used repeatedly, and to tangible personal property
2 which is consumed in part for producing nontaxable advertising
3 and in part for producing taxable advertising.

4 A. If an advertising agency purchases tangible
5 personal property which is used, but not consumed, with respect
6 to both nontaxable advertising and taxable advertising, the
7 determination of whether the purchase is exempt from sales or
8 use tax is based on the initial contract for which the property
9 is purchased. An example of such tangible personal property is
10 a photograph that may be used in connection with both nontaxable
11 advertising services such as a newspaper ad, and taxable
12 advertising such as a mug.

13 If the initial contract with the advertiser is for
14 nontaxable advertising, the purchase by the advertising agency
15 is subject to sales or use tax, notwithstanding that the
16 purchased property may later be used with respect to taxable
17 advertising. The subsequent sale of taxable advertising using
18 such tangible personal property is not exempt from sales and use
19 tax because of the previous tax payment.

20 If the initial contract with the advertiser is for taxable
21 advertising, the item purchased by the advertising agency may be
22 purchased exempt for resale, notwithstanding that the purchased
23 tangible personal property may later be used with respect to
24 nontaxable advertising.

25 If a contract (or contemporaneously negotiated contracts)
26 with an advertiser is for both taxable advertising and
27 nontaxable advertising, the burden is on the advertising agency
28 to demonstrate the portion of the use that is attributable to
29 each of such categories. If this burden is not met, the
30 contract with the advertiser is deemed to be for nontaxable
31 advertising. An example of this rule may be artwork purchased
32 and used initially in making both a magazine ad and in making a
33 calendar. Where the burden of proof is not met by the
34 advertising agency, the purchase is taxable and the subsequent
35 sale of taxable advertising is not exempt because of the
36 previous tax payment.

1 B. If an advertising agency expects to consume
2 materials in producing both nontaxable advertising and taxable
3 advertising, all such materials can be purchased exempt for
4 resale. An example of such material is a ream of paper that may
5 be used in connection with the production of nontaxable
6 advertising such as a brochure, and taxable advertising such as
7 a calendar. To the extent that the materials are subsequently
8 consumed in producing nontaxable advertising, the materials are
9 taxable and must be reported as purchases subject to use tax on
10 the agency's sales and use tax return. The percentage of
11 materials consumed in producing nontaxable advertising is
12 multiplied by the total purchase price of the materials to
13 determine the amount of materials subject to tax. The burden is
14 on the taxpayer to demonstrate the portion of usage that is
15 attributable to taxable advertising. If the burden is not met,
16 all the materials consumed are deemed to be for nontaxable
17 advertising.

18 Subp. 9. **Purchases for agency use.** Office supplies,
19 capital equipment, and other materials including those used to
20 prepare preliminary art, which are consumed or used by an
21 advertising agency and do not become an ingredient or component
22 part of taxable advertising to be sold at retail, constitute a
23 retail sale from the vendor to the advertising agency. An
24 advertising agency is the consumer of such tangible personal
25 property. Either the vendor must collect sales tax or the
26 advertising agency must remit use tax on those purchases.

27 Tangible personal property that becomes an ingredient or
28 component part of taxable advertising to be sold at retail may
29 be purchased exempt for resale.

30 Subp. 10. **Advertisers that are tax-exempt entities.**
31 Advertisers that are tax-exempt entities may appoint advertising
32 agencies as purchasing agents. If a valid purchasing agency
33 appointment is made, the advertiser shall pay no sales or use
34 tax other than what it would have paid had it made the purchase
35 directly. To make a valid appointment of an advertising agency
36 as a purchasing agent, an advertiser must:

1 A. grant to the agent the ability to bind the
2 principal to pay for purchases made by the agent;

3 B. require that the agent not purchase materials in
4 its own name;

5 C. require that all contracts, purchase orders, and
6 other similar writings of the agent shall specifically state
7 that the principal is obligated to pay for materials purchased
8 and that a clear disclosure of the agency relationship is made
9 to the vendor of the materials; and

10 D. require that the advertising agency make no use of
11 the property for itself or for any client other than the
12 principal.

13 When dealing with advertising agencies acting as purchasing
14 agents for tax-exempt entities, vendors must presume that the
15 agency is the purchaser in the absence of an express statement
16 on a purchase order from an advertising agency that the
17 advertising agency is acting as an agent and that the purchase
18 is within the scope of authority expressed in the agreement.
19 The agency may issue exemption certificates as authorized in
20 part 8130.3000 in the name of the principal and signed by the
21 advertising agency as purchasing agent.

22 Subp. 11. Advertising materials shipped out of state.

23 There is an exemption in Minnesota Statutes, section 297A.25,
24 subdivision 22, for materials designed to advertise and promote
25 the sale of merchandise or services, which material is shipped
26 out of Minnesota for use solely outside the state. This
27 exemption may apply to the purchase of items in final form or to
28 the purchase of an item that is incorporated into a product that
29 ultimately leaves the state. Similarly, the exemption may apply
30 to the purchase of taxable advertising or to the purchase of
31 tangible personal property that is used in creating or producing
32 nontaxable advertising.

33 This exemption is limited to materials used to advertise
34 and promote the sale of merchandise or services. This exemption
35 does not include any advertising which is done for other
36 purposes such as public service messages not related to

1 advertising or promoting sales of merchandise or services.

2 When an advertising agency or an advertiser purchases
3 taxable advertising and the advertising agency, the vendor, or
4 the advertiser ships the taxable advertising out of state for
5 use solely outside the state, the advertising agency or
6 advertiser is not subject to sales or use tax with respect to
7 such purchases because it is the purchaser of materials that are
8 designed to advertise and promote the sale of merchandise or
9 services, and the materials are being shipped outside the state
10 for use solely out of state.

11 When an advertising agency or an advertiser purchases
12 tangible personal property that is used in creating or producing
13 nontaxable advertising, and the advertising agency, the vendor,
14 or the advertiser ships the advertising out of state for use
15 solely outside the state, the advertising agency or advertiser
16 is not subject to sales or use tax with respect to such
17 purchases because it is the purchaser of materials that are
18 designed to advertise and promote the sale of merchandise or
19 services, and the materials are being shipped outside the state
20 for use solely outside the state. An example of this is when an
21 advertising agency or advertiser purchases advertising brochures
22 that will be shipped out of state. The agency or advertiser can
23 purchase the brochures from the printer exempt from tax. The
24 printer can purchase the paper and ink used to print the
25 brochures exempt because they are being purchased for resale,
26 whether or not the advertising agency or advertiser has an
27 exemption for shipments out of state. The advertising agency or
28 the advertiser is eligible for the exemption described in this
29 subpart whether the item it purchases is in final form, such as
30 a finished brochure or whether the item is incorporated into the
31 product that ultimately leaves the state, such as cardboard that
32 is purchased and becomes part of an advertising sign that is
33 shipped out of state.

34 The rules described in this subpart also apply with respect
35 to an advertising agency if the advertising agency, instead of
36 itself shipping the advertising directly out of state, delivers

1 the advertising to an advertiser within Minnesota for the
2 purpose of subsequently shipping the materials out of state for
3 use solely outside the state. Similarly, the purchase by the
4 advertiser is not subject to sales or use tax with respect to
5 its purchase of the advertising.

6 This exemption does not apply to purchases that are used to
7 create or produce nontaxable advertising to the extent that
8 these purchases do not get sent outside the state. An example
9 of this is when an advertising agency purchases a photograph
10 that it uses in preparing advertising brochures. The sale of
11 the photograph to the advertising agency is taxable. The sale
12 of the brochures to the advertising agency is exempt to the
13 extent that those brochures will be sent out of state as
14 described in this subpart. Another example is when an
15 advertising agency purchases a master tape that it uses to make
16 copies that will be shipped out of state. The copies or the
17 materials used to make them may be purchased exempt but the
18 purchase price of the master tape is taxable unless that tape is
19 also shipped out of state as described in this subpart.

20 **Subp. 12. Miscellaneous provisions.** When an advertising
21 agency contracts with a recording studio to produce a tape to be
22 used for nontaxable advertising, the recording studio must
23 charge sales tax on all charges to the agency. If the agency
24 hires actors, or directly purchases other exempt services to be
25 used in making the tape, the agency does not pay tax on those
26 purchases. The recording studio only collects tax on the
27 charges it makes to the agency.

28 If a recording studio or printer has contracted directly
29 with the advertiser to produce a tape or printed material, the
30 studio or printer must charge tax on the amount charged to the
31 advertiser, unless the studio or printer is also doing creative
32 work and is acting as an advertising agency. If the studio or
33 printer is acting as an advertising agency, it must pay tax on
34 all its inputs for nontaxable advertising, and does not collect
35 tax on its charges to the advertiser.

36 **Subp. 13. Effective date.** To the extent that this part is

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1 different from previous department applications of the sales and
2 use tax as it applies to the advertising industry, this part is
3 prospective only and is effective five working days after notice
4 of adoption is published in the State Register.

5 REPEALER. Minnesota Rules, part 8130.9200, is repealed.