

## **SECTION .0900 – ADVERTISING AND ADVERTISING AGENCIES: PUBLIC RELATIONS FIRMS**

### **17 NCAC 07B .0901 ADVERTISING AND ADVERTISING AGENCIES**

(a) Professional Services to Produce Advertising. -- 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. For purposes of G.S. 105-164.4, charges by advertising agencies for furnishing such professional services are not subject to sales or use tax if the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale. For purposes of this Rule, a professional service by an advertising agency is one that meets the following criteria:

- (1) The agency selects or advises the client on the different kinds of advertising to be used.
- (2) The agency is primarily responsible for developing the concept or design of the advertising.
- (3) The agency produces or arranges for the production of the advertising.
- (4) 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.

(b) Professional Services to Produce a Report. -- Advertising agencies are also engaged in the business of rendering professional 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. For purposes of G.S. 105-164.4, charges by advertising agencies for furnishing such services are not subject to sales and use tax if the charges are separately stated on the invoice or similar billing document given to the purchaser at the time of sale.

(c) Retail Sales. -- Advertising agencies are retailers when they produce, cause to be produced, fabricate, purchase, or otherwise acquire items, as the term item is defined in G.S. 105-164.3, that they sell at retail for any use or purpose other than for resale. Items sold by advertising agencies include: catalogs, magazines, handbills, brochures, programs, pamphlets, or similar printed materials, signs, paintings, portraits, negatives, photographs, vinyl wraps, certain digital property, or taxable services. Advertising agencies making retail sales of items shall collect, report, and remit sales and use tax on the sales price of such items, pursuant to G.S. 105-164.4.

The sales price to which the tax applies is the total amount for which the item is sold including all charges for services rendered in the production, fabrication, manufacture, or delivery of the item, such as charges for creative time, commissions, supervision, research, transportation, installation, postage, telephone and electronic 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 or similar billing document given to the purchaser at the time of sale.

(d) Retainer and Consultation Fees.

- (1) Retainer. -- A retainer is generally collected in advance for future services to be rendered. Charges by advertising agencies to their clients for a retainer that is directly related to the purchase, acquisition, fabrication, or production and retail sale of taxable items are part of the sales price and are subject to sales and use tax, pursuant to G.S. 105-164.4, whether the retainer is separately stated on the customer's invoice or not. For purposes of G.S. 105-164.4, a retainer charged to clients is not subject to sales and use tax when it is solely in connection with the performance of professional services.
- (2) Consultation Fees. -- Charges by advertising agencies to their clients for consultation fees directly related to the purchase, acquisition, fabrication, or production and retail sale of taxable items are a part of the sales price and are subject to sales and use tax, pursuant to G.S. 105-164.4, whether the consultation fees are separately stated on the customer's invoice or not. For purposes of G.S. 105-164.4, consultation fees charged to clients are not subject to sales and use tax when they are solely in connection with the performance of professional services.

(e) Purchases for Use in Rendering Professional Services. -- Advertising agencies are the users or consumers of items purchased by them for use in rendering professional services regardless of whether the items purchased are acquired in the name or account of the advertising agency or their client. Pursuant to G.S. 105-164.4, purchases by advertising agencies of film, printing plates, photographs, positives, negatives, transparencies, color separations, and similar items used in rendering professional services are subject to sales and use tax on the purchase price of the items without any deduction for the cost of the materials used, labor or service costs, transportation charges, or any expenses whatsoever. Advertising agencies that purchase taxable items sourced to this State from suppliers who do

not charge and remit the applicable sales and use tax shall remit the use tax, pursuant to G.S. 105-164.6, due directly to the Department.

(f) Purchases for Resale. -- Pursuant to G.S. 105-164.13, purchases by advertising agencies of items for resale, or of paper, ink, and other tangible personal property, certain digital property, or services that become a part of tangible personal property or certain digital property sold by advertising agencies at retail or wholesale, are exempt from sales or use tax when the purchases are supported by a completed Certificate of Exemption in accordance with 17 NCAC 07B .0106. The term "part of tangible personal property or certain digital 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 consumed in its production. Purchases by advertising agencies of items used or consumed in the production of items for sale are subject to sales and use tax, pursuant to G.S. 105-164.4. 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 and the purchase of such items is subject to sales and use tax, pursuant to G.S. 105-164.4.

*History Note: Authority G.S. 105-164.3; 105-164.4; 105-164.6; 105-164.13; 105-164.28; 105-164.28A; 105-262; 105-264; 105-467; 105-468; 105-469; 105-483; 105-498; 105-507.2; 105-509.1; 105-510.1; 105-511.3; 105-537; 105-538;*  
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