

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-78 (3)S
Sales Tax
March 24, 1978

Recent inquiries as to whether an advertising agency may act as an agent for a disclosed principal and if it can, what elements would constitute a principal-agency relationship, resulted in the following guidelines.

Generally speaking, an agent is one who represents another, called the principal, in dealings with third persons. It has been concluded through departmental correspondence that an advertising agency can act as agent on behalf of its clients in dealings with third persons.

To establish that a particular requisition was made by an advertising agency acting as agent for his client, the following conditions must be met:

1. The advertising agency must clearly disclose to the supplier the name of the client for whom the agency is acting as agent, and
2. The advertising agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client, and
3. The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The advertising 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.

Advertising agencies are required to pay tax on their purchases of tangible personal property used by them in connection with rendition of advertising services for its clients. Tangible personal property used by advertising agencies in this manner includes but is not limited to paintings photographs, illustrations, sketches, drawings, printed matter, tapes or films.

If an advertising agency has established a principal-agency relationship, meeting all of the criteria listed above, all sales of tangible personal property such as catalogs, mailing devices or promotional handouts, tapes or films by that advertising agency to its client are subject to appropriate New York State and Local Tax on the total charge, excluding any separately stated agency commissions. In such a case, the advertising agency may take a credit for the tax paid to its vendors on the purchase price of those items which become component parts of the property sold on any sales tax returns filed within three years of the date the tax was paid.

However, advertising agencies are deemed to be retailers of all items of tangible personal property produced or fabricated by their own employees. Accordingly, an advertising agency is not dealing with third persons and, therefore, they cannot act as agent with respect to that activity.

If an advertising agency does not establish a principal-agency relationship, meeting all of the criteria listed above, the advertising agency pursuant to Sales and Use Tax Regulation 527.3(b)(5), is required to collect appropriate New York State and Local Tax on the total charge (including any separately stated agency commission) on all sales of tangible personal property such as catalogs, mailing devices or promotional handouts, tapes or films. In such a case, the advertising agency may take a credit for the tax paid to its vendors on the purchase prices of those items which become component parts of the property sold on any sales tax return filed within three years of the date the tax was paid.