



Ohio Administrative Code

Rule 5703-9-41 Person engaged in advertising field.

Effective: June 14, 2018

(A) A person engaged in the field of advertising or in the preparation of advertising matter who sells tangible personal property obtained from others or who produces tangible personal property for transfer to another for a consideration is a vendor with respect to such transactions. If the sales are retail sales the vendor must hold a vendor's license, collect the sales tax, file returns and remit the tax.

(B) The production of tangible personal property for the advertiser is a sale irrespective of whether the material used in the production is supplied either directly or indirectly by the advertiser or is obtained by the producer on his own behalf. The production of items such as photographs, photostats, art work, plates, mats, printed material, etc., for another for a consideration is a sale of such items.

(C) The full amount charged on the sale or production of tangible personal property is subject to the sales tax even though a part of the charge may be billed as "service charge," "fee," or "commission." Where preliminary art has been prepared, the price or tax base for the finished art work includes the amount attributable to the preliminary art.

(D) A person purchasing tangible personal property from others for the purpose of resale or for the purpose of incorporating it into tangible personal property produced for sale may purchase such property exempt from the sales or use tax. Exemption may also be claimed on the purchase or use of tangible personal property used directly in producing the property for sale.

(E) A person in the advertising field who does not sell or produce tangible personal property, but who is engaged solely in rendering service to others as a true agent, is not considered to be a vendor with respect to such services. In determining whether such a person is acting as a true agent, consideration should be given to the contract between the parties, the conduct of the parties with respect to the property involved, and the facts and circumstances of the transaction. A person who, for example, operates under an agreement wherein the agency relationship is specifically set forth



and under which advertising is placed in selected media or tangible personal property is purchased on behalf of, and in the name of, the principal, would be considered a true agent. An agent purchasing for another must either pay the sales tax or furnish a properly executed exemption certificate in the name of, and on behalf of, the principal. In claiming exemption based upon the use of the thing transferred the purpose of the principal, not the agent, is the determining factor.

(F) Transactions not involving the sale of tangible personal property or the production of tangible personal property are considered to be the performance of a service. Examples of such services are:

- (1) Recommendations for advertising themes or for merchandising plans;
- (2) The placing of advertising matter in advertising media;
- (3) The purchase of space or time from advertising media;
- (4) The writing of original manuscripts, news releases, copy for use by newspapers or other publications or for broadcast on television or radio;
- (5) The purchase of tangible personal property as an agent of the advertiser; or
- (6) The preparation of preliminary art (roughs, visualizations, thumbnails) solely for the purpose of displaying the advertising idea to the advertiser.

(G) Where an advertiser is billed for a fee which represents a charge for service not subject to the sales tax, as distinguished from services which are a part of a retail sale or services in the production of tangible personal property, such billing must clearly show the nature of the service rendered.

(H) A person engaged solely in the performance of services is the consumer of the tangible personal property used by him in performing such service and the tax is applicable to these purchases.