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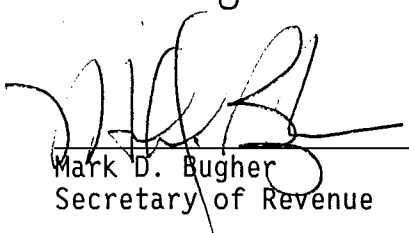
CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF REVENUE)

I, Mark D. Bugher, Secretary of the Department of Revenue and custodian of the official records certify that the annexed rule, relating to sales and use taxes, was duly approved and adopted by this department on February 19, 1993.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the city of Madison, this 19th day of February, 1993.



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1175

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FEB 23 1993

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ORDER OF THE DEPARTMENT OF REVENUE
REPEALING AND RECREATING RULES

The Wisconsin Department of Revenue adopts an order to repeal and recreate Tax 11.70, relating to sales by advertising agencies.

Analysis by the Department

Statutory authority: s. 227.11(2)(a), Stats.

Statutes interpreted: ss. 77.51(14)(intro.) and (h), 77.52(1) and (2) and 77.54(2), (2m), (6)(b) and (25), Stats.

SECTION 1. Tax 11.70 is repealed and recreated for the following reasons:

1. To improve readability.
 2. To put in the proper format as required by the Legislative Council Rules Clearinghouse.
 3. To address ss. 77.52(2)(a)11 and 77.54(25), Stats., dealing with the exemption for advertising materials subsequently shipped outside Wisconsin.
 4. To address the exemption for items consumed in manufacturing as provided in s. 77.54(2) and (2m), Stats.
 5. To address the exemption for containers as provided in s. 77.54(6)(b), Stats.
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SECTION 1. Tax 11.70 is repealed and recreated to read:

Tax 11.70 ADVERTISING AGENCIES. (ss. 77.51(14)(intro.) and (h), 77.52(1) and (2) and 77.54(2), (2m), (6)(b) and (25), Stats.) (1)

DEFINITIONS. In this section:

(a) "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or for display purposes. Finished art includes drawings, paintings, designs, photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs and illustrative material not reproduced.

(b) "Preliminary art" means art prepared solely for presenting an idea to a client or prospective client. Preliminary art includes roughs, visualizations, sketches, layouts and comprehensives.

(2) TAXABLE SALES. The following sales are subject to Wisconsin sales or use tax, unless an exemption in sub. (3) applies:

(a) Charges for finished art. Finished art is tangible personal property.

(b) Charges for preliminary art all or any part of which results in the production of finished art or other tangible personal property by the advertising agency. This preliminary art is tangible personal property.

Examples: 1) Company A contracts with an advertising agency to produce an advertising campaign for Company A's product. The advertising agency develops 10 ideas or suggestions, in the form of preliminary art, for an advertising flyer. Company A selects one of the ideas, and it is developed into finished art, which is used to produce flyers.

The charges by the advertising agency for the production of preliminary art for all 10 ideas are subject to tax, provided an exemption does not apply to the sale of the finished art, because one idea was selected and was used to produce finished art.

2) Company B contracts with an advertising agency to produce a radio commercial. The agency produces a demonstration tape (demo) which contains several different jingles which could be used in the commercial. Company B selects one of the jingles, and the commercial is produced.

The charge by the agency for the demo is subject to tax. The demo is preliminary art. Since finished art was produced from the preliminary art, the charge is subject to tax, unless an exemption applies to the sale of the finished art.

(c) Sales of signs, circulars, business cards, stationary showcards, banners, posters, bulletins, direct mail advertising, catalogs, brochures, commercials, tapes or other items of tangible personal property.

Examples: 1) Company C contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary art. Company C decides on one theme and the finished art is produced. The advertising agency has the flyers printed and delivered to Company C. Company C mails the flyers to its Wisconsin customers.

The entire charge to Company C by the advertising agency for the flyers, which includes preliminary art, finished art and the flyers, is subject to tax.

2) Company D decides to have a radio advertising campaign and contracts with an advertising agency. The advertising agency produces several advertising jingles on a "demo" tape, and Company D selects one jingle. The advertising agency then produces a master tape at its Wisconsin sound production studio. The master tape remains at the studio, and 10 copies or "dubs" are produced. One dub is given to Company D, and the other 9 dubs are mailed by the advertising agency directly to various Wisconsin radio stations. The air time is arranged by Company D.

The entire charge by the advertising agency for the production of the master tape and dubs is subject to tax.

(d) Photographic services or photostats.

(e) Producing, fabricating, processing, printing or imprinting tangible personal property for clients for a consideration, even though the client may furnish the materials used in producing, fabricating, processing, printing or imprinting of the tangible personal property.

(3) NONTAXABLE SALES. Charges for the following are not subject to Wisconsin sales or use tax:

(a) Preliminary art that does not result in the production of finished art or other tangible personal property.

Example: Company E contracts with an advertising agency for an ongoing advertising campaign. The agency submits several suggestions, in the form of preliminary art, for a spring advertising campaign. These ideas are rejected by Company E. The charge by the advertising agency for preliminary art not chosen for further development is not subject to tax, because the preliminary art was not developed into finished art.

(b) Writing original manuscripts or news releases.

(c) Writing copy to be used in media advertising.

(d) Consultation, market research and compiling statistical or other information.

(e) Recommendations for advertising themes or merchandising plans.

(f) Obtaining media space and time.

(g) Printed material which is designed to advertise and promote the sale of merchandise, or to advertise the services of individual business firms, which is purchased and stored for the purpose of subsequently transporting it outside Wisconsin by the client for use thereafter solely outside Wisconsin.

Example: Company F contracts with an advertising agency to have 10,000 advertising flyers produced. The advertising agency prepares preliminary art. Company F decides on one theme and the finished art is produced. The advertising agency has the flyers printed and delivered to Company F. Company F mails the flyers to its customers located outside Wisconsin.

The entire charge to Company F by the advertising agency for the flyers, which includes preliminary art, finished art and the flyers, is exempt from tax because the printed advertising material is transported outside Wisconsin by Company F for use by Company F outside Wisconsin.

(h) Printing or imprinting tangible personal property which will be subsequently transported outside Wisconsin for use outside Wisconsin by the client for advertising purposes.

Example: Company G contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art. Company G decides on one theme, and the finished art is prepared. Company G provides the finished art, paper and ink to a Wisconsin printer who prints 10,000 copies of the flyer. The flyers are mailed by Company G to addresses outside Wisconsin.

The charge to Company G by the printer for the printing of the flyers is exempt from tax because the flyers are transported outside Wisconsin for use outside Wisconsin by Company G for advertising purposes.

(i) Tangible personal property that will be resold by the client.

Example: Company H has an advertising agency produce specification sheets for Company H's products. The specification sheets are included with the products when sold to Company H's customers. The advertising agency produces the finished art and has the printing done. Company H receives an itemized bill from the advertising agency which shows a charge for the finished art and the printing.

The entire charge by the advertising agency to Company H is exempt from tax because the specification sheets are included with Company H's products which will be sold to customers. Company H may claim a resale exemption for the specification sheets by providing the agency with a properly completed Wisconsin resale certificate, form S-205.

(j) Tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale.

Example: Company I contracts with an advertising agency to produce an advertising flyer. The advertising agency prepares preliminary art. Company I decides on one theme and the finished art is prepared. Company I takes the finished art to a Wisconsin printer and has 10,000 flyers printed. The printer uses its own paper and ink to print the flyers. The flyers are mailed by the printer to addresses in Wisconsin.

The charge to Company I by the advertising agency for the preliminary art and finished art is exempt from Wisconsin sales tax because the finished art is consumed in the production of flyers which are sold by the printer to Company I.

(k) Tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient. This exemption does not apply to advertising supplements that are not newspapers.

Example: Company J contracts with an advertising agency to produce a shoppers guide advertisement. The advertising agency produces layouts and roughs for approval by Company J. Company J approves, and the finished art for the shoppers guide advertisement is produced. The preliminary art and finished art charges are billed to Company J for the job. Company J deals directly with the shoppers guide publisher to run the advertisement in a shoppers guide. The advertising agency bills Company J \$1,000 for preliminary art and \$3,000 for finished art.

The total \$4,000 charge is exempt from Wisconsin sales or use tax because the preliminary art results in finished art and the finished art becomes an ingredient or component part of a shoppers guide, or is consumed or loses its identity in the manufacture of shoppers guides.

(L) Containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping tangible personal property, if the items are used by the purchaser to transfer merchandise to customers. Also exempt are meat casing, wrapping paper, tape, containers, labels, sacks, cans, boxes, drums, bags or other packaging and shipping materials for use in packing, packaging or shipping meat or meat products, regardless of whether these items are used to transfer merchandise to customers.

Example: An advertising agency produces finished art to be used on Company K's shipping boxes. The boxes are used by Company K to ship its products to its customers. The advertising agency delivers the finished art to a printer who uses the finished art to print and produce the boxes which the advertising agency resells to Company K.

The entire charge for the finished art and boxes is exempt from Wisconsin sales or use tax because the boxes are used by Company K in packing, packaging or shipping merchandise to customers. Company K should provide the agency with a properly completed certificate of exemption, form S-207.

(4) MEASURE OF TAX. (a) Tax applies to an advertising agency's total gross receipts from the sale of tangible personal property or taxable services without any deduction for any cost element which becomes a part of the sales price. These elements include consultation, research, copy, supervision, model fees, rentals, photostats, typesetting, postage, express, telephone, travel, agency service fees, or any other labor or service cost incurred in the production of that property. No deduction may be taken even though the costs are separately itemized in a billing to the client.

(b) Tax applies to in-progress billings for production work which ultimately results in the production of finished art work or other tangible personal property.

(5) WHEN AND WHERE SALE OCCURS. (a) The tax applies to an agency's gross receipts from the sale of or the storage, use or consumption of tangible personal property in Wisconsin regardless of whether:

1. The transfer is to the advertiser or to a third party at the direction of or on behalf of the client.

2. The client is located in or outside Wisconsin.

Example: An agency's billing to a client in Minnesota for finished art transferred to a business in Wisconsin is taxable.

(b) The sale of tangible personal property or taxable services occurs when the advertising agency transfers possession of the tangible personal property to the client or the client realizes the economic benefits of the property's use, even though the property may not be physically transferred to the client.

(6) FEES ADDED TO BILLINGS. When an amount billed as an agency "fee", "retainer", "service charge" or "commission" represents services rendered which are a part of the sale of tangible personal property, the amount is taxable. If it clearly represents a charge or a part of a charge for any

nontaxable service rather than for the sale of tangible personal property, it is not taxable. A fee representing both taxable and nontaxable sales shall be reasonably allocated between taxable and nontaxable sales.

(7) PURCHASES BY AGENCIES. (a) An advertising agency is the seller of, and may purchase without tax for resale, any item that:

1. Is resold before use by the advertising agency.

Example: Company L is an advertising agency. Company L purchases various art equipment such as paint brushes, easels, etc., that it uses in its operations. A portion of the art equipment is sold to the general public for use. The art equipment Company L sells to the general public may be purchased by Company L without Wisconsin sales or use tax as property for resale, provided Company L gives its supplier a properly completed Wisconsin resale certificate, form S-205.

2. Becomes physically an ingredient or component part of tangible personal property the advertising agency produces and sells.

Example: Company M is an advertising agency that produces displays for customers. The displays are usually framed or matted photographs or prints. Company M may purchase the frames, matting, and paper for photographs and prints without Wisconsin sales or use tax as property for resale, provided it gives its supplier a properly completed Wisconsin resale certificate, form S-205.

(b) An advertising agency is the consumer of all tangible personal property other than tangible personal property purchased for immediate sale to customers or that becomes physically an ingredient or component part of tangible personal property sold by the agency. As the consumer, the advertising agency is subject to Wisconsin sales or use tax on the tangible personal property purchased.

Example: Company N purchases various office equipment, such as typewriters, computers, tables and cabinets which it uses in its advertising agency office. Company N purchases the equipment from an out-of-state supplier that is not required to collect Wisconsin sales or use tax. Company N is subject to Wisconsin use tax on its purchase of the office equipment.

Note: 1) Forms S-205 and S-207 and their instructions may be obtained free of charge, by writing to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708, or by calling (608) 266-2776.

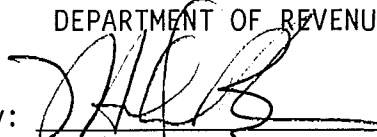
2) The interpretations in s. Tax 11.70 are effective under the general sales and use tax law on and after September 1, 1969, except: (a) The exemption for printing or imprinting of tangible personal property furnished by customers and used out-of-state for advertising became effective March 1, 1970; (b) The exemption for printed advertising material used out-of-state became effective May 21, 1972; and (c) The exemption for ingredients or components of shoppers guides, newspapers, and periodicals became effective July 7, 1983.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Final Regulatory Flexibility Analysis

This rule order does not have a significant economic impact on a substantial number of small businesses.

Dated: February 19, 1993

DEPARTMENT OF REVENUE
By: 
Mark D. Bughner
Secretary of Revenue

CKLEG/922

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ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE

DOA-2048 (R11/90)

Subject

Sales and Use Tax Treatment of Sales by Advertising Agencies

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
- Towns Villages Cities
 - Counties Others _____
 - School Districts VTAE Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The rule is revised to clarify existing sales and use tax treatment of sales by advertising agencies, and to conform language and style to Legislative Council Rules Clearinghouse standards. As such, they have no effect on state tax revenues.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)
Wisconsin Department of Revenue
Yeang-Eng Braun, 266-2700

Authorized Signature/Telephone No. 266-2700
Yeang-Eng Braun *Yeang Eng Braun*

Date
7/6/92



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

February 22, 1993

Gary L. Poulson
Assistant Revisor
131 West Wilson Street, Suite 800
Madison, WI 53703-3233

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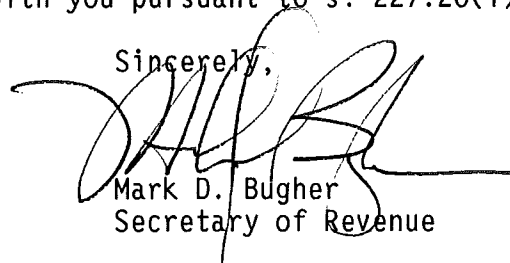
Re: Clearinghouse Rule 92-128

Dear Mr. Poulson:

Enclosed are a certified copy and an extra copy of an Order of the Department of Revenue promulgating rules relating to sales and use taxes.

These materials are filed with you pursuant to s. 227.20(1), Stats.

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1174

Enclosure

cc: Douglas J. LaFollette, Secretary of State
Commerce Clearing House, Inc.
Research Institute of America, Inc.



State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

February 22, 1993

Douglas LaFollette
Secretary of State
30 West Mifflin Street, 10th Floor
Madison, WI 53703

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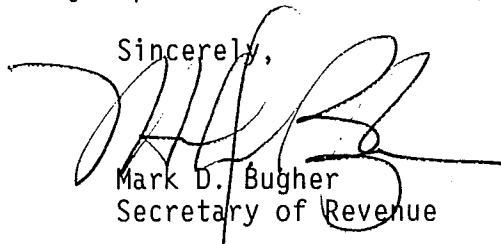
Revisor of Statutes
Bureau

Dear Secretary LaFollette:

Enclosed are a Certificate and an Order of the Department of Revenue adopting Clearinghouse Rule 92-128.

These materials are filed with you pursuant to s. 227.20, Stats.

Sincerely,



Mark D. Bugher
Secretary of Revenue

MDB:MPW:c11
CKLEG/1173

Enclosure

cc: Revisor of Statutes