

opportunity to know and be on notice as to the proposition on which he is to cast his vote. *Hill v. Milander*, 72 So.2d 796 (Fla. 1954). Furthermore, two separate and distinct propositions united in one proposition may not be submitted to the voters in one ballot.

... “[I]f there are two or more separate and distinct propositions to be voted on, *each proposition should be stated separately and distinctly, so that a voter may declare his opinion as to each matter separately*, since several propositions cannot be united in one submission to the voters so as to call for one assenting or dissenting vote upon all the propositions; *and elections are invalid where held under such restrictions as to prevent the voter from casting his individual and intelligent vote upon the object or objects sought to be obtained.* . . .” [*Antuono v. City of Tampa*, 99 So. 324 (Fla. 1924). (Citation Omitted.)] (Emphasis supplied.)

073-273—August 13, 1973

# TAXATION

## SALES TAX ON CHARGES BY ADVERTISING AGENCY

To: *Granville H. Crabtree, Jr., Representative, 73rd District, Sarasota*

Prepared by: *J. Kendrick Tucker, Assistant Attorney General*

### QUESTION:

Are sales taxes due on charges made by advertising agencies?

### SUMMARY:

The sale of advertising material is the sale of tangible personal property and hence taxable under the sales tax law; the sale of an advertising agency's services is taxable pursuant to the sales tax law only when tangible personal property is sold to the customer along with the services of the agency.

Your question is answered in the affirmative with the exceptions as noted below.

Section 212.05, F. S., provides in pertinent part as follows:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state . . . .

It is held in Florida that the sale of advertising material is a sale of tangible personal property and taxable within the sales tax law. *United States Gypsum Company v. Green*, 110 So.2d 409 (Fla. 1959).

The Department of Revenue, pursuant to its rulemaking authority as prescribed in §§212.17(6) and 212.18(2), F. S., has issued regulations providing for the sales tax treatment of advertising materials and advertising charges. Rule 12A-1.34, Florida Administrative Code [F.A.C.], provides in pertinent part with regard to the sale of advertising materials as follows:

(1) Upon final sales to ultimate consumers of direct mail advertising pieces, circulars, hand-outs, throw-aways and similar advertising matter, the dealer shall collect the sales tax upon the selling price thereof from his purchaser.

(2) Advertising pieces, circulars, hand-outs and similar advertising matter are taxable.

Again, the sale of advertising material alone (tangible personal property) is subject to the sales tax.

As to advertising charges by an advertising agency, §212.02(4), F. S., provides:

(4) "*Sales price*" means the total amount paid for tangible personal property, including any services that are a part of the sale . . . and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses or any other expense whatsoever. . . . (Emphasis supplied.)

Section 212.02(4), *supra*, requires that all costs of labor, materials, services, etc., must be included in the sales price for purposes of sales taxes where tangible personal property is sold. Rule 12A-1.72, F.A.C., incorporates the rule of the above-cited statute and provides with regard to charges by an advertising agency as follows:

(2) The professional service fee charged by an advertising agency is exempt only if the transaction does not involve the sale of tangible personal property for which a charge is made. In all instances where tangible personal property is involved, the advertising agency either sells the tangible product or uses or consumes it in performance of a service. Where sold, the sales price as defined by law is the taxable amount. *Where used or consumed, "cost price" as defined is the taxable amount to the agency.*

(3) Under either method set out in paragraph (2) above, each and every item, element or ingredient going into the tangible personal property developed, produced, fabricated or manufactured for sale or use becomes taxable. This includes any and all labor . . . art work, designs, sketches, layouts, photographs . . . and any other like or similar items or phases of production.

(4) If an advertising agency purchases tangible personal property and bills it to the ultimate consumer at cost plus a so-called agency fee, the total selling price including such fee, is taxable under Section 212.02(4), F. S.

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(6) When a so-called agency fee is a part of the cost of the finished product, it is covered by the definition of "sales price" . . . .

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(8) Professional and personal service transactions which involve sales as inconsequential elements for which no separate charges are made are exempt. *An advertising agency's professional fee cannot be exempted if the transaction involves the sale of tangible personal property.* . . . (Emphasis supplied.)

Thus, it may be stated that an advertiser's total fee is taxable if tangible personal property was sold to his client by the advertiser together with his services. If, however, the advertiser utilized tangible personal property in the production of his services and transferred none of the tangible personal property to the customer, then the services of the advertiser to the customer would be exempt. The tangible personal property utilized by the advertiser in the production of his services would, of course, then be taxable to the advertiser.