

Senate Bill No. 1330

An act relating to the tax on sales, use, and other transactions; amending s. 212.08, F.S.; defining the term “advertising agency”; exempting the sale of advertising services by an advertising agency and certain items sold to, produced by, or sold by advertising agencies and related services from the tax; providing for administration; providing for retroactive applicability in certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (zz) is added to subsection (7) of section 212.08, Florida Statutes, 1998 Supplement, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—

(zz) Advertising agencies.—

1. As used in this paragraph, the term “advertising agency” means any firm that is primarily engaged in the business of providing advertising materials and services to its clients.

2. The sale of advertising services by an advertising agency to a client is exempt from the tax imposed by this chapter. Also exempt from the tax imposed by this chapter are items of tangible personal property such as photographic negatives and positives, videos, films, galleys, mechanicals, veloxes, illustrations, digital audiotapes, analog tapes, printed advertisement copies, compact discs for the purpose of recording, digital equipment, and artwork and the services used to produce those items if the items are:

a. Sold to an advertising agency that is acting as an agent for its clients pursuant to contract, and are created for the performance of advertising services for the clients;

b. Produced, fabricated, manufactured, or otherwise created by an advertising agency for its clients, and are used in the performance of advertising services for the clients; or

c. Sold by an advertising agency to its clients in the performance of advertising services for the clients, whether or not the charges for these items are marked up or separately stated.

The exemption provided by this subparagraph does not apply when tangible personal property such as film, paper, and videotapes is purchased to create

items such as photographic negatives and positives, videos, films, galleys, mechanicals, veloxes, illustrations, and artwork that are sold to an advertising agency or produced in-house by an advertising agency on behalf of its clients.

3. The items exempted from tax under subparagraph 2. and the creative services used by an advertising agency to design the advertising for promotional goods such as displays, display containers, exhibits, newspaper inserts, brochures, catalogues, direct mail letters or flats, shirts, hats, pens, pencils, key chains, or other printed goods or materials are not subject to tax. However, when such promotional goods are produced or reproduced for distribution, tax applies to the sales price charged to the client for such promotional goods.

4. For items purchased by an advertising agency and exempt from tax under this paragraph, possession of an exemption certificate from the advertising agency certifying the agency's entitlement to exemption relieves the vendor of the responsibility of collecting the tax on the sale of such items to the advertising agency, and the department shall look solely to the advertising agency for recovery of tax if it determines that the advertising agency was not entitled to the exemption.

5. The exemptions provided by this paragraph apply retroactively, except that all taxes that have been collected must be remitted, and taxes that have been remitted before July 1, 1999, on transactions that are subject to exemption under this paragraph are not subject to refund.

6. The department may adopt rules that interpret or define the provisions of these exemptions and provide examples regarding the application of these exemptions.

Exemptions provided to any entity by this subsection shall not inure to any transaction otherwise taxable under this chapter when payment is made by a representative or employee of such entity by any means, including, but not limited to, cash, check, or credit card even when that representative or employee is subsequently reimbursed by such entity.

Section 2. This act shall take effect July 1, 1999.

Approved by the Governor June 8, 1999.

Filed in Office Secretary of State June 8, 1999.