



Guidelines for the Interpretation of Sales Tax Requirements for Graphic designers and Illustrators

Over the past two years, a coalition group representing the AIGA, GAG and SEGD have been meeting with representatives of the New York State Sales Tax Authority to establish guidelines regarding how graphic designers and illustrators should charge sales tax for their services.

The purpose of establishing such guidelines is that there has been a great deal of confusion in the industry. Accountants and other professionals have been telling different people different things. As a consequence, many in our industry, if audited, could face substantial sales tax assessments. The Tax Department has agreed to work with us in providing clear and understandable rules. The guidelines provided in this document have been reviewed and approved by the Tax Department. When circumstances permit, the Tax Department will publish an industry information booklet. However, until then this document will serve as our primer and will be updated periodically as questions arise and are answered by the Tax Department.

The Guidelines

In order to understand the guidelines provided by the Sales Tax Authorities, it is necessary to ask some questions and understand some basic information about sales tax in general.

When are graphic designers and illustrators expected to charge sales tax on their services and when are their sales exempt from tax?

When are graphic designers and illustrators expected to pay sales tax on the materials, equipment and services they buy, and when are those purchases exempt from tax?

Charging of Sales Tax

The basic sales tax law imposes a tax on the sale of tangible personal property. Many local authorities add their own sales tax to the tax imposed by the state. The resulting sales tax must:

- Be charged in addition to the amount of the sale
- Be stated as a separate item on any invoice
- Be paid by the purchaser

Payment of sales tax by the seller (in this case by the graphic designer or illustrator), or failure to itemize it on an invoice, is prohibited. Mixing taxable with nontaxable items on the same invoice subjects the entire invoice to sales tax.

Exemptions From Charging Sales Tax

There are certain instances where sales tax does not have to be charged. The six areas of exemptions relevant to graphic designers and illustrators are:

Items for resale

When tangible personal property passes through intermediate owners, taxes are deferred until it reaches the final purchaser. An example would be any item purchased in a store. Sales



tax would be paid by the end customer at the over the counter sale, but the retailer wouldn't pay tax when purchasing from the wholesaler, nor the wholesaler when purchasing from the manufacturer. Consequently, any item purchased for resale may be purchased, tax exempt, by issuing a properly completed Resale Certificate. The responsibility for collecting the tax then falls on the seller when the item is resold to the final purchaser.

Exempt Use

The final result of a sale may be put to an exempt use, for instance promotional materials delivered to a client in New York but to be distributed out of state. In this instance, the vendor must verify the tax exempt status by obtaining an Exempt Use Certificate from the purchaser.

Sales To Exempt Organizations

Nonprofit and educational institution, and most federal and New York state governmental agencies are granted tax exempt status. In this instance, the vendor must verify the tax exempt status by obtaining an Exempt Organization Certificate or government purchase order from the purchaser.

Grants Of Reproduction Rights

At the end of a creative process, if there is no transfer of ownership of tangible personal property, as in the case where specific restricted rights are granted for reproduction in one form or another, the transaction is not taxable. This is because there is no sale of tangible personal property, and grants of rights are not subject to sales tax.

Tax Exempt Services

Purchases of certain services that do not result in the transfer of tangible personal property are, by their very nature, not taxable. For example, professional fees for consultation services provided by doctors, attorneys or accountants are not taxable

Out of State Sales

The sale of work to out of New York state clients delivered out of New York state is not subject to New York state sales tax. There must be evidence of out of New York state delivery.

Graphic designer and illustrator responsibility to pay and collect New York state sales tax

Responsibility to collect and pay

Transfer of tangible property

The issue of whether graphic designers' or illustrators' services are taxable or not depends upon whether or not there is a final transfer of tangible personal property. If there is, the entire contract is taxable, including all consultation, design, preparation of artwork, etc. The results of graphic designers' or illustrators' services are considered to be transferable personal property if the graphic designer or illustrator transfers comps, mechanicals, computer data, printed materials, or fabricated materials such as exhibits or signs to the client.

Non transfer of tangible property

Conversely, sales tax is not chargeable if there is no transfer of personal property. The results of graphic designers' and illustrators' are not considered to be transferable personal property if the graphic designer or illustrator does not provide printing or fabrication



services, the graphic designer or illustrator only grants reproduction rights to the mechanicals or computer data and ownership of all the designs, comps, mechanicals or computer data remain with the graphic designer or illustrator and are transferred only temporarily to the printer or fabricator for the purpose of reproduction after which they are returned un-retouched, unaltered, and un-exhibited to the graphic designer or illustrator.

Corporate identity and logotype

A special case arises in the instance of corporate identity and logotype programs. Conceivable, one could contractually state that only specific limited reproduction rights are being granted. In practice however, the concept that a client does not have complete rights to their own logotype, or corporate identity system, is not credible, and therefore such a project should be considered as resulting in a taxable sale.

Combination of taxable and nontaxable services

In most cases, graphic designers and illustrators will discover that some of their projects are taxable and some are not. In this event sales tax must be collected on taxable projects and not on non taxable or otherwise tax exempt projects. As will be described below, it is important that taxable and non taxable work be subject to separate contracts.

Proof of nontaxable status

Graphic designers and illustrators must always remember that the onus is always on them to prove that a project is not taxable and therefore it is essential with non taxable contracts, to very clearly state both in agreements, on invoices, and on mechanicals or comps, that ownership remains with the graphic designer or illustrator, only right for reproductions are being granted, and any graphic representations or artwork are only being temporarily transferred for the purpose of reproduction, after which they are to be returned (un-retouched, unaltered, and un-exhibited) to the graphic designer or illustrator.

In the event that services are taxable the graphic designer or illustrator must charge sales tax, both state and local, and add it to the total bill.

If you are required to charge sales tax, you should consult with an experienced accountant to determine your specific responsibilities. You will have to register as a vendor and, as a collector of taxes on the state's behalf, will be issued a resale number to enable you to purchase certain materials free of tax that will be used in work that you sell to your clients.

Sales tax paid for items used

Resale and exempt use certificates

It is important to remember that you may only claim exemption from the sales tax on materials you purchase for use in projects that will be:

- Physically incorporated into a final product sold to a client
- Sold unaltered to a client
- Used directly and predominantly in the production of a product to be sold to a client

There are two basic exemption documents to be used by graphic designers and illustrators when making tax exempt purchases; they are the Resale Certificate or the Exempt Use Certificate.



The Resale Certificate is to be used only when the items or services being purchased are to be an actual part of the item being sold to a client. For example, the illustration board used for a mechanical.

The Exempt Use Certificate is to be used when the items being purchased are to be used in the production of the items being sold to a client but which do not become an actual part of those items, for example, knife blades used to trim the illustration board.

Graphics designers and illustrators are required to keep accurate records of all items so purchased and for which project they were used. They will also be required to present the subsequent invoice, indicating that sales tax has been charged on that item directly, or on the item into which it was incorporated. Accurate record keeping is essential to reduce potential audit time to a minimum.

A graphic designer or illustrator will be entitled to make purchases for resale, or purchases of services or materials to be used in production, without paying tax even through the sale of the final product will be to an exempt client or will be shipped out of New York State, and will therefore be exempt from tax.

Sales tax on items not used in projects

The resale certificate may not be used if the services do not result in a sale, such as when restricted reproduction rights only are granted, or if the contract is solely for consultation with no tangible end result. On such projects, the designer must pay tax on all equipment, supplies, and services used for that project. It is essential that graphic designers and illustrators keep clear, thorough records of all projects, including all purchases for that project, so that in the event of an audit they can accurately show that they paid sales tax on their purchases.

Equipment, such as computers and printers which are predominantly used for the production of work for sale (i.e. more the 50% of the time), may also be purchased exempt from sales tax by submitting an exempt use certificate to the vendor. Don't forget, this means that if only half your work results in taxable sales, and you are using the equipment only half the time on your design work, then the equipment is only being used 25% of the time for the production of work for sale, and therefore is subject to full tax when purchased.

Paying tax to simplify record keeping

Depending on your type of practice, if most of your projects are not taxable, it may be a simpler strategy to pay tax on all the equipment, supplies, and services that you purchase, just to be on the safe side and simplify matters in the event of an audit.

Dividing work into multiple contracts

Where projects may result in a taxable sale it is permissible to divide the project into two entirely separate contracts, one which is taxable and one which is not. As an example, if a client wishes the designer or illustrator to provide printing or fabrication services, the designer or illustrator may set up one contract for design and production of artwork, and an entirely separate contract for printing and fabrication. The design and production contract must specifically result only in the transfer of limited reproduction rights, and the client must conceptually be able to terminate the relationship and go elsewhere for printing or

Multiple contracts



fabrication services upon completion of that work. A separate contract may then be entered into to provide printing services, which would be taxable (subject to any other relevant exemptions, i.e. exempt purchases, out of state delivery, etc.).

In the case described above, it is essential to keep the two contracts entirely separate. Separate proposals, separate agreements and separate invoices. Do not make the mistake of mixing the two. If any part of a contract is taxable, it can only be because there is a taxable sale, and consequently the entire project is taxable. You cannot have a contract where some items are taxable and some are not.

Freelancers must charge you sales tax

It is important for graphic designers and illustrators to understand that the services of freelancers, similar to any other services like those provided by typographers, are taxable. Any freelancer, as opposed to an employee, must charge sales tax on their services to the graphic designer or illustrator.

In certain circumstances, the graphic designer or illustrator who uses freelance services, for their own protection, should pay any tax due directly to New York State. A specific fill-in section on the sales tax reporting form, entitled "Purchases Subject to Use Tax," is provided for this purpose. Such an instance would be where the freelancer is a student, and not registered as a vendor or the freelancer does not bill and collect the tax.

Where the graphic design or illustration service results in a taxable sale, the graphic designer or illustrator may issue a resale certificate to the freelancer for their work.

In the event that the freelancer work is on a project which does not result in a taxable sale, i.e., where reproduction rights only are being granted to the end client, then the freelancer charge is subject to tax in full.

Importance of accurate record keeping

Again, to clarify the situation, in the event of an audit, it is essential to keep accurate records. Graphic designers and illustrators should keep carefully receipted invoices from freelancers, showing that, where appropriate, sales tax has been charged and paid. In the instance that the evidence is not clear, the sales tax authorities are going to expect the graphic designer or illustrator to pay the taxes rather than attempting to track down freelancers to check their records.

Special responsibilities for graphic designers and illustrators working in New York city

There are some special circumstances which affect graphic designers and illustrators who are working in the five boroughs of New York City, as opposed to those who are working elsewhere in New York State.

In these instances the New York City sales tax is payable on certain purchases, but not the New York State sales tax. These purchases are:



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- Consumable materials, used in the production of work for sale, which are not to be passed along to the client as part of the final product. Such items are knife blades, masking tape, tracing paper, sketch paper, markers, etc.
 - Maintenance and repair services used in maintenance and repair of equipment predominantly used for the production of work for sales, such as computer, printer or copier repair and maintenance.*
 - Freelance services used in the production of work for sale. An example of this work is when a freelancer is employed to work on presentation materials or mechanicals/files which are part of a contract on which sales tax will be charged. (This applies to all local taxes statewide.)

From a practical standpoint, it is easy to know whether freelance services are subject to New York City tax because the projects on which the work is performed are specific. With consumable materials or maintenance and repair it is not always so clear. It may be simpler to always pay the full New York City sales tax rather than attempt to try to guess on which project these are to be used.

When any of the above items or services are purchased, the graphic designer or illustrator must still issue a valid resale or exempt use certificate, to gain exemption from the New York State sales tax, even though the local tax will be paid.