

Maryland Sales Tax on Creative Design and Services

Summary:

Historically, the ultimate factor in determining if sales tax was to be charged was whether the product being sold or the work completed was tangible. Tangible items in this case might include brochures, posters, flyers, mail pieces, reports, etc. With the increasing development of the Internet and new forms of creative services, sales tax within the graphic design industry becomes gray. Many are finding it difficult to separate a taxable service from non-taxable and defining a tangible and non-tangible product. The clarification can get tedious and a bit uncomfortable for both the designer and consumer.

Unfortunately, “outright sales tax is a state—and occasionally local—matter, which prevents graphic designers and companies from having a single national explanation of the issue.” Designers find themselves contacting each other for advice about sales tax issues (i.e. [Graphic Design Forum](#)) and while other opinions are helpful, no one answer is outright correct for every situation. “Statutes and the practice of taxing authorities will vary somewhat from jurisdiction to jurisdiction.” Furthermore, graphic design services are seldom addressed explicitly in state tax laws. The many things that graphic design embraces- “design services, illustrations, printing specifications and delivery of printed matter”- are viewed as different forms of property and are treated and grouped differently for tax reasons from state to state.

The Maryland State Perspective:

As far as a statewide statute is concerned, Maryland doesn’t have an outright “Graphic Design” sales tax regulation which leaves artists across the state without any handy guidance.

According to the [Maryland Code](#) on-line in Section § 11-215, Maryland does provide some guidance as follows as far as photographic materials and printing use are concerned:

(a) Photographic material. -- The sales and use tax does not apply to a sale of photographic material for use in the production of an item that is used in:

- (1) composition or printing; or
- (2) production of another item used in printing.

(b) Printing use. –

(1) The sales and use tax does not apply to a sale of art works, electros, electrotypes, hand or machine compositions, lithographic plates or negatives, mats, photo engravings, stereotypes, or typographies:

- (i) to a person engaged in the printing of tangible personal property for sale; and
- (ii) for direct use by the person to produce that property for sale.

(2) A vendor who sells any item under paragraph (1) of this subsection is not entitled to any exclusion under § 11-101(h)(3)(ii) or (n)(3)(ii) of this title for material that the vendor buys to produce that item.

When contacted, the **Assistant to the Director from the Comptroller of Maryland**, answered the question regarding what is taxable thusly:

"...the value, in money, of the consideration of any kind that is paid, delivered, payable, or deliverable by a buyer to a vendor in the consummation and complete performance of a sale without deduction for any expense or cost, including the cost of any labor or service rendered, any material used, or any property sold." In addition, Section 11-101(m) includes within the definition of "taxable service" the act of "fabricating, printing, or production of tangible personal property by special order."

Therefore, when a graphic designer produces artwork or design in tangible format, he or she must charge and remit the 6% sales and use tax on the final selling price of the product, including the cost of all materials used, and the cost of all of the labor and design incorporated into the price. This is true regardless of whether the price is allocated among the various items that make up the final price or lumped into one amount on the invoice or other record of sale. A separately stated charge to deliver or

ship the product to the customer may be excluded from the taxable price as long as that amount does not include a handling or other charge along with the charge for delivery.

It is important to note that if the artwork is delivered in electronic format it is not considered to be tangible personal property and therefore would not be subject to sales and use tax. Therefore if the terms of the sales agreement provide for the final product to be emailed or otherwise electronically delivered to the customer, and the customer does not receive a CD or other tangible product, no sales and use tax should be charged.

Defining the Deliverables:

It is important for designers to be able to define and understand the different categories their work falls under. One of the most important distinctions that need to be made is what is considered tangible and what is intangible as this will determine what is subject to sales tax.

While transfers of tangible goods are usually taxed, services and intangible property are usually exempt from tax. In most cases, in addition to providing tangible deliverables, graphic designers typically offer nontaxable services and grant or license clients' rights to reproduce their work. These licenses are considered intangible personal property and transfers of such are generally not subject to tax. Providing clients with finished printed material or disks containing materials ready for print is tangible personal property, and *is* subject to tax.

Printed matter, such as posters, stationary or brochures, is taxable as tangible property if the designer sells them to the client. This gets tricky, however, when a printer is involved. If the designer simply acts as the client's agent in dealing with the printer, with the client paying the printer directly, the transfer to the client will still be subject to tax; this time the printer, not the designer, will collect it.

Services are usually not subject to tax unless specifically included in a State code or regulation. Things like billable time for producing concept and designs, scanning and manipulation, time spent on press, time spent building and encoding a website and similar billables should be calculated as services and should be noted in all contracts and invoices separately. Separately stating these services will provide some assurance that they should not be subjected to sales tax however you must be careful to consider

which of these services were directly related to creating a deliverable such as a brochure, poster or the like. As we mentioned above, if there is labor involved in producing a final tangible product, then those costs are subject to sales tax.

Intangible property is defined differently than intangible services of time and labor; copyright licenses are intangible property, as opposed to the intangible services of time and labor. Graphic designers tend not to treat their client orders as copyright licensing transactions. “The images that a graphic designer creates are copyrightable works of graphic art that the designer licenses to the client.” Regarding sales tax, a clear paper trail that indicates the design is a copyright property being licensed to the client makes clear to a taxing authority that the portion of a job not tax-exempt as “services” is a nontaxable transfer of intangible property.

A common issue that arises is when the designer transfers tangible personal property to the client as well as performing services and licensing the design. Taxing authorities are usually concerned with a transaction of this nature. They worry that the bulk of the value will be calculated as nontaxable as a form of tax avoidance. For this reason, a clear paper trail is suggested, distinguishing the value of the intangible services and the licenses granted, from the taxable costs of the tangible printing and production. This way the designer can avoid a tax liability.

In general, States statutes are typically drafted under the premise that everything “sold” is subject to sales tax except certain things that are specifically stated in the statute as being exempt from sales tax. Once you understand this line of thinking, it becomes clear that ultimately the responsibility resides with the designer to differentiate between the goods and the services being delivered as making a differentiation will play a part in determining what should be exempt from tax collection.

Darryl Bodnar, CPA. Darryl, a partner with Naden/Lean, has a long and rich history of working with the creative industry. He can be reached at dbodnar@nlgroup.com or (410) 453-5500.

