**701—221.4(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client.**

**221.4(1)** *In general.*

*a.* A true agency relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers (collectively referred to herein this subrule as "agencies" or "agency") may act as agents on behalf of their clients in dealing with third persons, or they may act on their own behalf. To the extent agencies act as agents of their clients in acquiring tangible personal property, these agencies are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

*b.* When agencies act as agents of their clients in purchasing property for their clients, the tax applies to the sales price from the sale of such property to the agencies. Unless such agencies act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total sales price received for such property.

*c.* To establish that a particular acquisition is made in the capacity of an agent for a client, the agency shall act as follows:

(1) The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.

(2) The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.

(3) The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

*d.* Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an agency establishes that it has acquired tangible personal property as an agent for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency's services directly related to the acquisition of personal property. Such agencies acting as agents shall not issue resale certificates to suppliers.

*e.* Agencies act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Agencies are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

**221.4(2)** *Scope.* The scope of this rule is not confined simply to advertising agencies, commercial artists, and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

[**ARC 8163C**, IAB 7/24/24, effective 8/28/24]