

8130.8900 FLORISTS AND NURSERIES.

Subpart 1. **Taxable transactions.** The following transactions are subject to sales or use tax:

A. Sales at retail by florists, nurseries, or other producers or vendors of flowers, wreaths, bouquets, potted plants, hospital baskets, funeral designs, seeds, nursery seedling stock, trees, shrubs, plants, sod, soil, bulbs, sand, rock, and all other floral or nursery products, whether grown by such vendors or not, are taxable sales of tangible personal property.

When a florist or nursery prepares a floral arrangement for a customer, the entire transaction is taxable, including all charges for labor and materials even if separately stated on the bill.

When a florist or nursery prepares a floral arrangement for a customer who has provided the flowers or other materials, the labor charge by the florist or nursery constitutes fabrication labor and is taxable.

B. Retailers of floral or nursery products who also perform lawn, garden, arborist, tree, bush, and shrub services must collect tax on those services. Lawn, garden, arborist, tree, bush, and shrub services are taxable pursuant to Minnesota Statutes, section 297A.01, subdivision 3, paragraph (j), clause (vi). These services are taxable even though the services are provided incident to the sale of tangible personal property.

C. Purchases of machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures, and fuel, electricity, gas, or steam used for space heating or lighting are taxable unless purchased for resale.

D. When a Minnesota florist or nursery sells flowers or other tangible personal property to an out-of-state customer and delivers the items to the customer or a third person within this state, that transaction is taxable. An out-of-state customer is one who is not physically present in Minnesota when placing the order. This item only applies to orders taken directly from the customer by the Minnesota florist or nursery. This item does not apply to telegraphic orders as described in subpart 3.

E. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to someone other than the person who made the purchase, the transaction is taxable even if delivery is to a point outside of Minnesota. The transaction is a sale at retail made in this state and thus is subject to sales tax.

Subp. 2. **Exempt transactions.** The following transactions are not subject to sales or use tax:

A. Sales of trees, plants, seeds, or similar items to persons for use in agricultural production of tangible personal property for resale are exempt (upon presentation of proper

exemption certificates to the vendors). For example, stock purchased for the purpose of reforestation where forest products will be later harvested in the form of Christmas trees, posts, poles, pulpwood, etc., are exempt. See part 8130.5500.

B. Purchases by florists, nurseries, or other like producers or vendors of plants and other tangible personal property which are ultimately sold with the plants, including nonreturnable containers, descriptive labels, stickers, and cards affixed to such containers, peat moss, sand, gravel, crushed rock, shavings, sticks, trellises, and plant ties, to be placed in pots or cans with plants, are exempt as purchases for resale. Purchases of nursery stock, seeds, plants, spray materials, and fertilizers to grow nursery stock for resale are exempt as items to be used or consumed in agricultural production. Purchases of electricity and fuel used or consumed in production are also exempt, except that the portion used for space heating or lighting is taxable. See part 8130.5500.

C. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to the customer outside the state by common carrier, parcel post, United States mail, or the florist's or nursery's own delivery vehicles, the transaction is exempt.

Subp. 3. **Telegraphic orders.** When florists or nurseries conduct transactions through a florist telegraphic delivery association, or otherwise by telephone, telegraph, or other means of communication with other florists or nurseries, the following rules apply in the application of the tax:

A. Where an order for flowers, wreaths, or other tangible personal property is taken from a customer by a Minnesota florist or nursery and transmitted to another florist or nursery located within or outside of Minnesota for delivery, the florist or nursery which initially takes the order from the customer is required to collect the tax.

B. Minnesota florists or nurseries who receive orders from other florists or nurseries, whether located within or outside this state, for delivery of flowers, wreaths, or other tangible personal property to locations either within or outside of Minnesota, are not required to collect the tax.

C. The sales tax does not apply to telegraph or telephone charges if such charges are separately stated from the price of the flowers or other tangible personal property ordered by the customer.

However, the tax does apply to relay or handling charges paid to the florist or nursery which sends an order whether these charges are separately stated or not.

The sales tax does not apply to transportation charges to the extent they are separately stated and the transportation occurs after the retail sale.

Subp. 4. [Repealed, 16 SR 2055]

Statutory Authority: *MS s 270.06; 270C.06; 297A.29*

History: *16 SR 2055; L 2005 c 151 art 1 s 114*

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