

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-83(8)S  
Sales Tax  
March 8, 1983

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S820505D

On May 5, 1982 a Petition for Advisory Opinion was received from Neal W. Murray, d/b/a Hess Brothers Florist, 28 Main Street, Hamburg, New York 14075.

Petitioner, a florist located in New York, inquires as to the taxability of orders taken for flowers to be delivered outside the State by means of a wire service, as well as the filling of orders on behalf of out-of-state florists where such orders are delivered by means of a wire service.

Section 526.7(e) of the Sales and Use Tax Regulations provides as follows: "(1) Except as otherwise provided in paragraph three of this subdivision, a sale is taxable at the place where the tangible personal property or service is delivered or the point at which possession is transferred by the vendor to the purchaser or his designee.

(2) Except as otherwise provided in paragraph three of this subdivision, a sale of tangible personal property, in which the title to the property passes in New York State, but in which delivery occurs outside of New York State, is not subject to tax.

(3) Where florists conduct transactions through a florist's telegraphic or telephone delivery association, the following rules apply in the determination of tax liability on sales through such an association:

(i) A New York State florist who receives an order pursuant to which he gives telegraphic or telephonic instructions to a second florist for delivery of flowers, is liable for collection of the tax at the rate in effect in the jurisdiction where the order is taken. It is immaterial whether the second florist is located in or outside of New York State, or whether delivery occurs in or outside of New York State. All service, telephone calls, relays and any other charges for the orders shall be considered to be a part of the selling price.

(ii) In cases where New York State florists receive telegraphic or telephonic instructions from other florists either inside or outside of New York State for the delivery of flowers, the receiving florist is not required to collect tax with respect to any receipts which he may realize from the transaction.

Example 7: A customer places an order for flowers with a florist located within New York State in an area in which the combined rate of State and local sales tax is 7%. The flowers are to be delivered in Florida. Arrangements are made through a telegraphic delivery association by the New York State florist to have a florist in Florida make up the floral arrangement and deliver it. The New

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York florist is required to collect sales tax at the rate of 7% on the total receipts paid by the customer.

..."

Accordingly, when a customer places an order with Petitioner for a floral arrangement requiring out-of-state delivery and Petitioner gives delivery instructions to a second florist via a wire service, and where both are members of a telegraphic or telephonic delivery association, Petitioner is liable for collection of sales tax at the combined State and local tax rate in effect in the jurisdiction where the order is taken. If either of the florists is not a member of a telegraphic or telephonic delivery association, Petitioner is not liable for the collection of tax.

When Petitioner receives instructions, via a wire service, from another florist located inside or outside of New York State, Petitioner is not required to collect tax with respect to any receipts which he may realize from the transaction, provided both Petitioner and the other florist are members of a florists' telegraphic or telephonic delivery service. If Petitioner and/or the other florist are not members of a florists' telegraphic or telephonic service, Petitioner will be required to collect New York State and local sales tax on any receipts which Petitioner realizes from the transaction.

DATED: February 17, 1983

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau