

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

TSB-A-88(35)S
Sales Tax
July 24, 1988

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S871216A

On December 16, 1987, a Petition for Advisory Opinion was received from John Raspante, CPA, 477 - 86th Street, Brooklyn, New York 11209.

The issue raised is the taxability of flower sales when the orders are taken in New York State for deliveries within or without the State.

Petitioner is an accountant who represents a client who is engaged in the business of selling flowers and who is located in New York State. Petitioner's client receives orders for flowers from the general public and then subcontracts the actual preparation and delivery of the orders to other florists. Petitioner's client does not grow, stock or deliver flowers. However, he does contract with his customers for the sale of flowers and does bill his customers and collect the charge for the flowers delivered by the other florists.

Sales tax is imposed on the receipts, unless specifically exempt, from every retail sale of tangible personal property; the tax liability is established at the time of the transaction and at the tax rate in effect at the point of transfer of possession of property by the vendor to the purchaser or designee. 20 NYCRR 525.2(a)(1), (2) and (3).

However, special rules apply to transactions conducted between members of a florist's telegraphic or telephonic delivery association.

A New York State member florist who receives an order from a customer pursuant to which he gives telegraphic or telephonic instructions to a second member florist for delivery of flowers, is liable for collection of tax at the rate in effect in the jurisdiction where the order is taken, irrespective of whether the second florist's business or the point of delivery is situated inside or outside of New York State. Conversely, a New York State member florist need not collect tax on receipts from flower deliveries within the State if they result from telephone or telegraph orders received from other member florists whether located inside or outside the State. 20 NYCRR 526.7(e).

Accordingly, when Petitioner's client receives an order for flowers and arranges delivery of flowers through a second member florist, Petitioner's client must collect tax on the receipts from the sale of such flowers because the order was received in New York State.

However, when flower sales are not made through a florist's telegraphic or telephonic delivery association, they are taxable in accordance with the rules contained in regulation section 525.2(a), quoted above. Accordingly, under such circumstances, Petitioner's client would be required to collect tax only on those sales of flowers delivered within New York State. The applicable rate of tax is the rate in effect in the jurisdiction where delivery takes place.

TSB-A-88(35)S
Sales Tax
July 24, 1988

Petitioner should also refer to Technical Services Bureau Memorandum TSB-M-82(31)S, Flowers by Wire.

It should be noted that when a flower sale is taxable, expenses for all service, telephone calls, relays and any other charges incurred in connection with the sale are not deductible from the taxable selling price. 20 NYCRR 526.5(e).

DATED: June 24, 1988

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.