



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 21

FLORISTS

This bulletin is intended solely as advice to assist persons in determining and complying with their legal obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by florists. Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services (“MRS”) do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of the document.

The Sales and Use Tax Law is found in Part 3 of MRSA (“Maine Revised Statutes Annotated”) Title 36. Both Title 36 and all MRS rules may be seen by clicking on “laws and rules” on the MRS website.

A sales tax is imposed on the value of all tangible personal property and taxable services sold at retail in Maine. Sales at retail by florists or other producers or sellers of flowers, wreaths, bouquets, potted plants, hospital baskets, funeral design, and any and all other flowers, plants, or merchandise sold by them, are sales of tangible personal property to which the tax applies.

1. SALE PRICE

“Sale price” means the total amount of a retail sale valued in money, whether received in money or otherwise, including any consideration for services which are part of a retail sale (§ 1752(14)).

Charges for delivery of a product by a florist are taxable except as provided below, and should be included in the total sale price when computing the sales tax. This rule also applies to delivery charges in connection with FTD orders where the receiving florist provides the delivery.

Delivery charges are taxable unless the following three conditions are met:

- 1) Shipment is made directly to the purchaser,
- 2) Shipping is separately stated from other charges, like handling or COD surcharges, and
- 3) Shipment is made by common or contract carrier or the US mail

In most cases, a florist will be making deliveries using its own vehicles, rather than a common or contract carrier. Thus shipping or delivery charges will ordinarily be part of the taxable sale price.

Example: A florist receives an order from a customer and is instructed to send the order via FTD to an out-of-state address. For this service, the florist charges a service charge of \$3.50. This charge includes the services of the florist and overhead costs such as telephone or telegraph charges involved in sending the message. Sales tax applies to the entire charge, including the service charge, regardless of whether or not it is separately stated.

Example: A florist receives an order from a customer and is instructed to deliver the order to a local residence. The charge for the flowers is \$32.00. The florist charges a delivery fee of \$3.00 to cover the cost of fuel. Sales tax applies to the entire \$35.00, regardless of whether the delivery fee is separately stated to the customer.

“Sale price” does not include discounts allowed and taken on sales. Coupons or rebates are issued by either a manufacturer of the product or by the retailer. Each is treated differently for sales tax purposes.

When a retailer accepts a manufacturer’s coupon or rebate, the retailer does not recognize any loss in the profit made on the sale. The retailer is reimbursed for the face value of the coupon or rebate by the manufacturer. In these situations, the coupon or rebate does not reduce the taxable sale price of the transaction.

When a retailer reduces the sale price of a product and the value of the discount is not recovered from any other party, the seller’s discount is deducted from the sale price before computing sales tax. Refer to Instructional Bulletin No. 25 “Coupons and Gifts” for more information.

2. TELEGRAPHIC DELIVERY (FTD)

Where florists conduct transactions through a florist telegraphic delivery association, or otherwise by telephone, telegraph, or other means of communication with other florists, the following rules apply in the computation of the tax.

- (1) On all orders taken by a Maine florist and transmitted to a second florist in Maine for delivery in the State, the initial sending florist is held liable for the tax on the total sale price of the flowers and other merchandise included in the sale.
- (2) On all orders taken by a Maine florist and transmitted to a second florist located outside Maine, for delivery of flowers to a point outside Maine, the initial sending florist is held liable for the tax on the total sale price to the customer who placed the order.
- (3) In cases where a Maine florist receives instructions from other florists located either within or outside of Maine, for the delivery of flowers within Maine, the receiving florist is not liable for the tax. In such instances, if the order originated in Maine, the tax will be payable by the initial Maine florist who received that order and transmitted instructions to the second florist.

3. RENTALS

Florists may be engaged in renting items specifically purchased for rental (such as candelabras, plant stands, and arbors) or renting items for a short period of time that were originally purchased for resale (such as plants and vases).

If items are specifically purchased for rental purposes, the florist should pay tax to the seller. If the seller does not collect Maine sales tax, it is the florist's responsibility to report use tax directly to the State. Purchases subject to use tax should be reported on the sales and use tax return as "taxable purchases."

When a retailer purchases tangible personal property for resale, then removes the property from inventory to rent out, the retailer is generally required to pay a use tax based on its cost of the property. However 36 MRSA § 1758 allows the retailer, in lieu of paying this use tax, to collect a sales tax on all the rental payments received if the rental qualifies as an "interim rental." In order to qualify for this provision:

- (1) The property must be purchased for resale; and
- (2) The property cannot be rented to any one person for more than 12 months.

If retailers wish to execute interim rental transactions, they must maintain adequate records for audit purposes, detailing when the item is withdrawn from inventory, to whom the property is rented, the duration of the rental, and the amount of rental income and tax collected. If, after electing to execute an interim rental, a retailer makes any other taxable use of the property, including the rental to one customer for more than a year, the retailer becomes liable for the use tax based on the purchase price of the property less the amount of tax collected on the rentals.

If an item which has been rented is later sold, the sale is subject to sales tax.

4. PURCHASES

a. Purchases for Resale. When a retailer purchases tangible personal property for resale, the retailer should provide the supplier with a resale certificate as provided in Rule 301. The certificate will enable the retailer to purchase tangible personal property for resale without payment of sales tax. Only one certificate need be filed with each supplier to cover subsequent purchases. However, the retailer must inform the supplier whether or not the purchase is for resale and will be held responsible for the tax on any item purchased for resale but subsequently used by the retailer.

When a florist creates an arrangement of flowers or plants, all items incorporated in the arrangement qualify as a purchase for resale by the florist. This includes, but is not limited to, pots, baskets or vases, balloons, florist tape and wire, ribbons and bows, cello wrap, floral foam, wire forms, enclosure cards, and card holders. These items are considered part of the sale price of the arrangement being sold.

Purchasers who avoid payment of tax through deliberate misuse of resale certificates may be subject to criminal prosecution.

b. Purchases for Own Use. On items the retailer uses rather than sells in the form of tangible personal property, tax should be paid to the supplier at the time of purchase. If tax was not paid to the supplier, the retailer should report and pay use tax on those items. Similarly, if the retailer has purchased items tax free for resale, and later withdraws them from inventory for use, use tax must be reported and paid at the time of withdrawal. Items used rather than resold will include tools, supplies and items purchased for rental.

c. Purchases of Packaging Materials. Purchases of containers, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels, and other packing, packaging, and shipping materials used to pack or ship goods sold to customers are exempt from tax. The florist should provide the supplier with a resale certificate as provided in Rule 301 when purchasing these items.

5. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to:

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