



SALES TAX COLLECTION RESPONSIBILITIES OF FLORISTS

This publication provides general information. It is not a substitute for tax laws or regulations.

GENERAL INFORMATION

- This publication is designed to provide information to florists pertaining to the proper collection of sales tax on sales of cut flowers and floral arrangements delivered either in-state or out-of-state, including delivery charges, made either on-site at the floral shop or through floral association networks.
- Since January 1, 2004, sellers of tangible personal property and providers of taxable services are required to charge and collect West Virginia sales and use taxes using the **destination sourcing rules** found in W. Va. Code § 11-15B-15.
- The West Virginia Code provided an exception for florists whose gross receipts from sales of cut flowers and floral arrangements, including delivery charges, exceeded 50% of their annual gross receipts from all sales and services. However, this exception does not apply after December 31, 2009.

WHAT ARE THE GENERAL DESTINATION SOURCING RULES?

- For most sales transactions, one of the following two general sourcing rules will apply:
Rule 1. When the sale is completed at the store, the sales transaction is sourced to the location of the store. A sale is completed at the store, when the customer leaves the store carrying the item purchased.

EXAMPLE:

Customer goes to a store in Charleston, West Virginia, and purchases a birthday card and some candles. The customer leaves the store with the purchased items. For sales tax purposes, the transaction is sourced to the location of the store. The merchant collects from the customer the State's 6% sales tax and Charleston's 1% sales tax. The merchant remits all tax collected to the Tax Commissioner and identifies on Schedule M of the sales tax return the portion of the remittance that goes to the City of Charleston.

- **Rule 2.** When the sale is not completed at the store, the sales transaction is sourced for sales tax purposes to the location where the customer, or the customer's agent or beneficiary, takes delivery of the item purchased.

EXAMPLE:

Customer goes to a store in Charleston, West Virginia, and purchases a washer and dryer to be delivered by the merchant to the customer's home located in South Charleston, West Virginia (a municipal taxing jurisdiction separate from Charleston, WV). The merchant collects from the customer the State's 6% sales tax and South Charleston's 1% sales tax. The merchant remits all tax collected to the Tax Commissioner and identifies in Schedule M of the sales tax return the portion of the remittance that goes to the City of South Charleston.

EXAMPLE:

Customer goes to a store in Charleston, West Virginia, and purchases a washer and dryer to be delivered to the customer's home located in South Charleston, West Virginia. The merchant contracts with ZYZ delivery service to deliver and install the washer and dryer at the customer's home. The merchant collects from the customer the State's 6% sales tax and South Charleston's 1% sales tax. The merchant remits all tax collected to the Tax Commissioner and identifies in Schedule M of the sales tax return the portion of the remittance that goes to the City of South Charleston.

- In general, the rules discussed above apply to sales by florists, whether the florist sells cut flowers, floral arrangements, or other tangible personal property. More specific examples are given below.

IN-STATE SALES BY WEST VIRGINIA FLORISTS

- When the sales transaction is completed at the local floral shop, the florist collects the State 6% sales tax and any applicable municipal sales tax from the customer.
- When the sales transaction is not completed at the local floral shop because the item(s) purchased must be delivered to the location in West Virginia specified by the customer, the florist must collect from its customer the State 6% sales and any municipal sales taxes applicable to the location where

delivery occurs. The taxes collected are remitted to the Tax Commissioner and the municipal sales taxes collected are reported on Schedule M of the sales tax return.

OUT-OF-STATE SALES BY WEST VIRGINIA FLORISTS

- As part of the floral business, the West Virginia florist may sell flowers for delivery to a location outside West Virginia. The delivery may occur in one of two ways.

First, the florist may belong to a floral association network, and delivery to the customer's intended recipient will be made by a florist who is also a member of the floral association network.

Second, the florist may use the telephone or the Internet to contact a florist located in another state to fill the order.

Except when delivery is in West Virginia, the florist will not charge and collect West Virginia state and municipal sales taxes from the florist's customer. (The florist may be required to collect State and local sales taxes imposed by the jurisdiction in which the flowers are delivered.)

SALES BY OUT-OF-STATE FLORISTS WITH WEST VIRGINIA DELIVERY

- As part of the floral business, an out-of-state florist may contact a West Virginia florist to make a floral delivery in West Virginia.
- This request may come in one of two ways.

First, the out-of-state florist may directly contact the West Virginia florist by telephone or the Internet.

Second, the out-of-state florist may be a member of a floral association network, and the request of the out-of-state florist for delivery of a floral arrangement in West Virginia may come through the network. While the out-of-state florist should be collecting and remitting West Virginia State and local sales taxes applicable to the transaction, the out-of-state florist will not have direct taxable nexus with West Virginia unless the out-of-state florist has a physical location in West Virginia. The out-of-state florist **does** have indirect taxable nexus with West Virginia because its agent for delivery of the floral arrangement is physically located in West Virginia. Because of this agency relationship, the out-of-state florist selling flowers for delivery in West Virginia should be collecting from its customer, West Virginia State sales taxes and any applicable municipal sales taxes. The out-of-state florist should be remitting the tax collected to the West Virginia Tax Commissioner. When the out-of-state florist selling flowers for delivery in West Virginia belongs to a floral association network, the floral association network should be collecting and remitting the West Virginia State sales tax and any applicable municipal sales taxes collected by the originating florist.

EXAMPLE:

A customer in Florida goes to an Orlando, Florida, florist to purchase flowers to be delivered to his mother in Charleston, West Virginia. The Orlando florist is a member of one of the "flowers-by-wire associations" which facilitates fulfillment of the order by a Charleston, West Virginia, florist who is a member of the association. In this transaction, there is a retail sale of flowers by the Orlando florist to its customer in Florida for delivery in Charleston, West Virginia. However, the sales transaction is not complete until the flowers are delivered in Charleston, West Virginia.

The Orlando florist transmits the order through the floral network clearinghouse for fulfillment by the receiving florist in Charleston, West Virginia. The Charleston florist fulfills the order using its own inventory and delivery equipment.

Under rules of the floral association, the transmitting florist (e.g., the Orlando florist) is credited a percentage of the order price. The fulfilling florist (e.g., the Charleston florist) also receives a percentage of the order price. The percentages are set through the terms of the floral network agreement.

Payment transmittal is through the floral network: on a monthly basis, each florist gets a statement from the floral network. The florist owes on orders it transmitted, and is entitled to payment for orders it fulfilled. Depending on the florist's net orders, it may owe money to the floral network or be entitled to payment from the floral network. There is no direct communication or payment between florists. Transactions are accomplished through the floral network which acts as a clearinghouse.

For a given order, the floral network also charges a clearinghouse fee to the transmitting florist (e.g., the Orlando florist), typically a small percentage of the sale, for the service of providing the network and serving as a clearinghouse of both the

order and payment. The floral network also is charging other various fees not tied to specific orders, such as monthly membership fees. The floral network fees also are invoiced on the florists' monthly floral network statements.

The clearing house agreement does not provide for payment of state and local sales taxes. The clearing house assumes that the originating florist will collect and remit applicable state and local sales taxes.

AUDIT OF WEST VIRGINIA FLORISTS

- When the State Tax Department audits a West Virginia florist for compliance with West Virginia State and municipal sales and use tax laws, the audit will determine whether West Virginia State and municipal sales and use taxes were properly charged, collected, and paid by the florist and whether the sales tax returns filed by the florist correctly accounted for the amount of State and municipal sales taxes remitted to the Tax Commissioner.
- When the florist being audited is the delivering florist in a multistate sales transaction, the audit will not hold the West Virginia delivering florist responsible for payment of State and municipal sales taxes applicable to flowers it delivered on behalf of the out-of-state florist originating the floral transaction, **unless** the originating florist collected the West Virginia State and municipal sales taxes and remitted that amount collected to the West Virginia delivering florist for remittance to the Tax Commissioner.

ASSISTANCE AND ADDITIONAL INFORMATION

- For assistance or additional information, you may call a Taxpayer Service Representative at:

**1-800-WVA-TAXS
(1-800-982-8297)**

Or visit our website at:

www.tax.wv.gov

File and pay taxes online at:

<https://mytaxes.wvtax.gov>
