

## ARIZONA DEPARTMENT OF REVENUE

### ARIZONA TRANSACTION PRIVILEGE TAX RULING

#### TPR 95-7

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

(Note: On 10/14/2020 the statute and Administrative Code references were updated to use the current numbers. See footnotes for details. No substantive changes were made.)

#### **ISSUE:**

Items of tangible personal property which may be purchased as nontaxable sales for resale by persons engaged in the business of selling flowers, floral arrangements, and plants at retail.

#### **APPLICABLE LAW:**

Arizona Revised Statutes (A.R.S.) § 42-5061<sup>1</sup> imposes the transaction privilege tax on persons engaged in the business of selling tangible personal property at retail, and states that the tax base is the gross proceeds of sales or gross income derived from the business.

A.R.S. § 42-5061(V)(4)<sup>2</sup> specifies that purchases of tangible personal property for the purpose of resale in the regular course of business are not subject to the transaction privilege tax.

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<sup>1</sup> This ruling originally cited A.R.S. 42-1310.01 which was renumbered as A.R.S. 42-5061.

<sup>2</sup> This ruling originally cited A.R.S. 42-1310.01.P.3 which was renumbered as A.R.S. 42-5061(V)(4).

A.R.S. § 42-5022<sup>3</sup> provides the requirements to establish nontaxable sales for resale.

A.R.S. § 42-5155<sup>4</sup> imposes Arizona's use tax on tangible personal property purchased from a retailer which is used, stored or consumed in Arizona, and stipulates that the use tax applies to any purchase of tangible personal property for resale which is subsequently used or consumed by the purchaser.

Arizona Administrative Code (A.A.C.) R15-5-122 provides that sales of articles incorporated into a manufactured or fabricated product are considered sales for resale, but supplies which are consumed in the manufacturing process do not qualify.

A.A.C. R15-5-123 provides that the sale of tools, supplies, and other articles that are used or consumed by persons in the operation of their businesses are taxable retail sales.

A.A.C. R15-5-2309<sup>5</sup> provides that purchases of tangible personal property from an out-of-state vendor by an Arizona purchaser are exempt from the use tax when such articles are purchased for resale in the regular course of business.

## **DISCUSSION:**

Florists, nurseries, and other persons (collectively: florists) who are engaged in the business of selling flowers, floral arrangements, and plants at retail purchase a variety of tangible personal property used in the creation of these products. These items comprise the following general categories:

Flowers, plants, and other horticultural items.

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<sup>3</sup> This ruling originally cited A.R.S. 42-1328 which was renumbered as A.R.S. 42-5022.

<sup>4</sup> This ruling originally cited A.R.S. 42-1408 which was renumbered as A.R.S. 42-5155.

<sup>5</sup> This ruling originally cited A.A.C. R15-5-2322 which was renumbered as A.A.C. R15-5-2309.

Vases, pots, and other containers and carrying boxes. Soil and other plant growing media.

Floral foam, floral tape, glitter, ribbons, cellophane, and other floral accessories.

Leaf shine agents, fragrances, paints, and other color-adding or enhancing agents.

Preservative packets and other packaged items for the consumer's use which are sold as part of the florist's product.

Cards, notes, envelopes, and balloons.

Other items of tangible personal property that become a part of the florist's product.

Preservatives, pesticides, herbicides, mold and bacteria retarding agents, and other life-extending chemicals and agents used on and/ or absorbed by the flowers and plants prior to sale.

Flower storage buckets and other storage containers, refrigerated display cases, assembly tables, store shelving, and other furniture and equipment used in the florist's business location.

Store displays, card racks, office supplies, promotional items, and other sales supplies.

While the purchase of tools, supplies, promotional items, in-store decorations and other articles that are used or consumed by persons in the operation of their businesses are subject to tax, items that become a part of the tangible personal property to be sold at retail may be purchased as **nontaxable sales for resale**. In order for the purchase of an item to qualify as a sale for resale, the item must be transferred to the customer for a

consideration. *Shamrock Foods Company v. City of Phoenix*, 157 Ariz. 276, 757 P.2d 80 (App. 1988), *rev'd in part*, 157 Ariz. 286, 757 P.2d 90 (1988).

Most of the purchases made by a florist may be easily identified as taxable supplies or other items used in the florist's business or as nontaxable purchases of tangible personal property for resale. However, the purchase of preservatives and other decay-preventing chemicals used by the florist to extend the life of flowers and cuttings prior to sale has presented an issue because these substances are partially absorbed by the flowers and cuttings.

Despite the fact that some of these life-extending substances are retained in the flowers and cuttings, they remain supplies used or consumed by the florist in the normal course of business. The substances play an integral and valuable part of the florist's business since they reduce loss of inventory and increase the product's useful life. While the customer also benefits from the increased longevity of the florist's product due to the life-extending agents, these substances remain an integral and valuable supply used and consumed by the florist. A.A.C. R15-5-123 states that the purchase of such supplies are taxable retail sales.

**RULING:**

A florist may purchase items of tangible personal property as a nontaxable sale for resale if the tangible personal property will be a physical component of the tangible personal property sold at retail by the florist. Purchases of items in the following general categories may qualify as nontaxable sales for resale if the items become a part of the finished product to be sold at retail:

Flowers, plants, and other horticultural items.

Vases, pots, and other containers and carrying boxes. Soil and other plant growing media.

Floral foam, floral tape, glitter, ribbons, cellophane, and other

floral accessories.

Leaf shine agents, fragrances, paints, and other color-adding or enhancing agents.

Preservative packets and other packaged items for the consumer's use which are sold as part of the florist's product.

Cards, notes, envelopes, and balloons.

Other items of tangible personal property that become a part of the florist's product.

In order to establish that a purchase of tangible personal property is a nontaxable sale for resale, the seller must obtain from the purchaser a certificate which contains the information required by A.R.S. 42-5022<sup>6</sup>.

Purchases of tangible personal property that will be used or consumed by florists in the operation of their businesses, and which do not become an integral part of a florist's final product, are taxable. Purchases of items included in the following general categories are subject to either the transaction privilege tax or the use tax if they are used or consumed by florists in the operation of their businesses:

Preservatives, pesticides, herbicides, mold and bacteria retarding agents, and other life-extending chemicals and agents which are used on and/or absorbed by the flowers and plants prior to sale.

Flower storage buckets and other storage containers, refrigerated display cases, assembly tables, store shelving, and other furniture and equipment used in a florist's business location.

Store displays, card racks, office supplies, tools, promotional items, and other sales supplies.

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<sup>6</sup> See footnote number 3.

Harold Scott, Director

Signed: April 15, 1995

#### Explanatory Notice

The purpose of a tax ruling is to provide interpretive guidance to the general public and to department personnel. A tax ruling is intended to encompass issues of law which are not adequately covered in statute, case law or administrative rules. A tax ruling is a position statement which provides interpretation, details or supplementary information concerning the application of the law. **Relevant statute, case law, or administrative rules, as well as a subsequent ruling, may modify or negate any or all of the provisions of any tax ruling.** See GTP 92-1 for more detailed information regarding documents issued by the Department of Revenue.