

240.0000 FLORISTS—Regulation 1571

240.0008 Decorating, Consulting, Installing. A florist's charges for labor to create or add to a flower arrangement or other decoration, e.g., decorating a premanufactured arch with flowers, are subject to tax as steps in the making of the final product. It is immaterial whether the customer owns the flowers, arch, or whether the labor is performed at the customer's event site.

A florist's charges for decorating services, such as planning a decorative scheme, designing decoration for a wedding reception, visiting the event site, and consulting with customers, are taxable when performed in conjunction with the sale or fabrication of tangible personal property.

A florist's installation charges are not subject to tax. Installing does not mean deciding where to place the property; it means the physical act of affixing or placing the property in position. For example, if the florist sells a customer a wreath or garland, the charges for the wreath or garland (including the fabrication labor) are subject to tax, but a charge for actually hanging the wreath or garland is nontaxable installation labor. However, charges for the removal and return of decorations are not includible in nontaxable installation charges. 3/20/98. (M99-2).

240.0010 Fabrication Labor. A florist contracts with two customers to periodically deliver fresh flowers, remove old flowers from vases and leave them on a nearby table or counter and arrange the fresh flowers in the now empty vases, all for a specified lump-sum price.

The action of arranging the flowers in the vases is a taxable fabrication of flower arrangements rather than exempt installation, because the customers are not merely purchasing flowers but are purchasing aesthetically arranged flowers. In addition, installation generally connotes the anchoring, attaching, and connecting of property to other property by means of such items as glue, bolts, screws, etc., to make the connection. In this case, no such attachment has been made. 5/29/91.

240.0030 Flower Arrangement—Customer's Flowers. A firm goes to a customer's garden and cuts flowers and greenery from the garden. After cutting she reconditions them (e.g., dethorns and strips some leaves from the stems) and then arranges them in a floral display. Once a week she returns and refreshes each arrangement with additional flowers and discards the spent ones. The customer is charged on an hourly basis. Occasionally, the flowers used are from the firm's own supply for which a separate charge is made.

The gathering of flowers from the garden is neither fabrication labor nor the sale of tangible personal property and the charge for this function is not subject to tax. The "reconditioning," refreshing, and arranging constitutes fabrication labor, and charges for these functions are subject to sales tax. 4/29/97.

240.0033 Florist Delivery Service—Tele-Florist. A firm headquartered in California intends to direct its customers to place orders for flowers to its designated "800" number. The firm will bill its customers at the time the order is taken and will place the order with an unidentified vendor who will deliver the flowers to the intended recipient. The vendor will prepare and deliver the floral arrangement and

bill the firm at wholesale cost. The firm will not maintain any inventory of plants or flowers, and asserts that it is not a florist.

The California courts have consistently held that persons making sales of tangible personal property which are delivered by the manufacturer or creator of the property will nonetheless be considered retailers if they hold themselves out as the suppliers of the merchandise purchased. (See *Meyer v. State Board of Equalization* (1954) 42 Cal.2d 376 and *Bank of America v. State Board of Equalization* (1962) 209 Cal.App.2d 780.) The *Meyer* court, in finding that the party that solicited the order was a California retailer, based its decision on its conclusion that these transactions constituted sales for resale from the supplier to the solicitor followed by a subsequent retail sale by the solicitor to the purchaser. Here, the firm's transactions come within the facts of the *Meyer* case. Therefore, the firm is a retailer (a florist) who purchases, for resale, the flowers from the delivering florist. This conclusion is further supported by the fact that the firm will be billed, by the delivering florist, "on a wholesale basis."

Accordingly, all orders received by the firm, which is headquartered in California, are subject to sales tax regardless of whether the flowers are delivered inside or outside of California. On the other hand, if the firm was located in Oregon, California sales tax would not apply to any of the orders taken at the Oregon location regardless of the place of delivery or the residency of the person placing the order. (Regulation 1571.) 12/23/96.

240.0035 **Flower Ordering Service.** A firm contracts with a multi-state retailer to fill orders for flowers which have been placed with the multi-state retailer. The firm receives the order for the flowers via a WATS line. It does not have an inventory of flowers, refrigeration equipment, trucks, or any other equipment generally owned or possessed by a retailer. The firm is a "florist" for the purposes of Regulation 1571 and it is subject to its provisions. 8/13/85.

240.0040 **Out-of-State Shipments.** Flowers shipped out-of-state by California florists are exempt from sales tax if the seller makes delivery through a common carrier or his own delivery facilities. 3/6/53.