

SECTION 9 - FLORISTS, NURSERYMEN AND GREENHOUSE OPERATORS**9-1 FLORISTS, NURSERYMEN AND GREENHOUSE OPERATORS**

- A. Retail sales of wreaths, bouquets, and similar items are subject to the general rate of State tax and any applicable local sales or use tax.
- B. Retail sales of flowers, potted plants, shrubbery, and similar nursery stock are subject to the general rate of State tax and any applicable local sales or use tax unless the product in question is a product of the farm and is sold in its original state by the producer of the product who is not primarily a retail merchant at the location where the product is sold pursuant to G.S. 105-164.13(4b).
- C. All delivery and service charges associated with taxable sales of wreaths, bouquets, or other tangible personal property in North Carolina whether delivered to the purchaser or to a person other than the purchaser, are considered to be a part of the sales price and subject to the general rate of State tax and any applicable local sales or use tax.

D. Nurserymen and Greenhouse Operators Are Considered Farmers

- 1. For the purpose of the exemption afforded by G.S. 105-164.13(4b), nurserymen and greenhouse operators are considered to be **farmers**.
- 2. The fact that nurserymen and greenhouse operators may be selling tangible personal property primarily as a retailer and not as a producer does not preclude certain of their purchases of tangible personal property from being exempt from tax pursuant to G.S. 105-164.13(1). **Prior to January 1, 2006**, qualifying purchases by farmers were subject to the 1% State rate of tax with a maximum tax of \$80.00 pursuant to G.S. 105-164.4A(1).

Note: Sales and Use Tax Technical Bulletin 8-2 provides additional information regarding the above levy.

- 3. Nursery stock which is not sold during the season in which it was purchased by the nurserymen, greenhouse operators, and other farmers but is retained until the next season and growth is added thereto by virtue of such retention is considered to be a product of the farm and is exempt from sales and use taxes when sold by such nurserymen, greenhouse operators, or farmers who are not selling primarily as retail merchants.

E. Farm Products Sold by Producers or Retail Merchants

Nurserymen, greenhouse operators, and other types of farmers that make retail sales of farm products that they have produced which are in their original state are not liable for collecting and remitting sales tax on these sales unless they are selling primarily in their capacity as retail merchants.

- 1. Such vendors are selling primarily as **producers** when the total dollar sales volume of their produced farm products in the original state regularly exceeds 50% of the total dollar sales volume of their purchased products and their produced products.
- 2. Such vendors are selling primarily in their capacity as **retail merchants** when their total dollar sales volume of purchased products regularly exceeds 50% of the total dollar sales volume of their purchased and produced products.

3. Such classification shall remain in effect until either category of sales on a regular basis has changed to another principal type.
 4. If such producers (vendors) operate more than one location, the preceding is applicable to the total dollar sales volume of each location separately.
 5. The total dollar sales volume to be used in determining the classification of “**producer**” or “**retail merchant**” shall include all sales of tangible personal property without regard to any items or sales that might otherwise be exempt from tax by the Sales and Use Tax Statutes.
 6. **Producers**
 - a. If vendors are classified primarily as **producers** on the basis of the total dollar sales volume, sales of their produced products in the original state are exempt from tax; however, retail sales of any farm products or any other taxable merchandise acquired by purchase are subject to any applicable tax.
 - b. If vendors who are classified primarily as **producers** make sales of farm products produced by them and products acquired by purchase, separate records must be maintained of sales of products produced by them. Records of purchased products, as well as sales thereof, must be kept and maintained in a manner that can be accurately and conveniently checked by the agents of the Secretary of Revenue; otherwise, all sales are subject to the tax.
 7. **Retail Merchants**

If vendors are classified primarily as **retail merchants** on the basis of the total sales volume, they shall be liable for tax accordingly; i.e., all retail sales of both types of products shall be subject to the tax unless specific sales are statutorily exempt from tax. Producers making taxable sales must register with the Department of Revenue for the purpose of collecting and remitting the tax due thereon.
- F. When nurserymen, greenhouse operators, florists, or other persons make taxable sales of shrubbery, young trees, or similar items and as a part of the transaction transplant them to the land of the purchaser for a lump sum or a flat rate, the entire amount of the transaction is subject to the general rate of State tax and any applicable local sales or use tax unless such vendors segregate on the invoice that portion of the charge which is for the property sold and that portion of the charge which is for transplanting.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-164.12;
105-164.13; 105-264;
Issued: June 1, 1996;
Revised: April 1, 2008; January 1, 2007; June 1, 2002;
October 1, 1999; October 15, 1998.

9-2 FLORISTS' DELIVERY ASSOCIATIONS

- A. Orders initially accepted by a florist within North Carolina and relayed to another florist within or without North Carolina for delivery within or without North Carolina are subject to the general rate of State tax and any applicable local sales or use tax. The florist initially accepting the order must collect and remit to the Department the tax on the total sales price. Service or relay charges to purchasers for orders accepted in North Carolina and forwarded to other florists through a florist delivery association constitute a part of the sales price and are subject to sales tax regardless of whether the charges are separately stated on the bill to the purchaser.

- B.** A North Carolina florist receiving orders from other florists within or without North Carolina for delivery within or without North Carolina is not liable for any tax on the receipts which he derives from such transactions.
- C.** All charges imposed by a retailer for preparation and delivery of tangible personal property to a location designated by a purchaser in connection with a taxable sale of tangible personal property are subject to sales or use tax. Therefore, all delivery and service charges associated with taxable sales of flowers or other tangible personal property in North Carolina, whether delivered to the purchaser or to a person other than the purchaser, are considered to be a part of the sales price and subject to the applicable State and local sales and use tax.

History Note: Authority G.S. 105-164.4; 105-164.6; 105-264;
Issued: June 1, 1996;
Revised: January 1, 2007; June 1, 2002; October 15, 1998.