

5/20/91



STATE OF MINNESOTA

DEPARTMENT OF REVENUE

July 22, 1991

Maryanne V. Hruby, Director
Legislative Commission to Review Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155-1201

Dear Ms. Hruby:

Enclosed is a copy of the Statement of Need and Reasonableness for the proposed sales and use tax rule relating to florists and nurseries, required to be submitted pursuant to Minnesota Statutes, section 14.131.

Please contact me if you have any questions.

Sincerely,

Terese Koenig Smith

Terese Koenig Smith, Attorney
Business Tax Unit
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902 Extension 128

TKS/ml

Enclosure

**The Legislative Commission to
Review Administrative Rules**

JUL 23 1991



STATE OF MINNESOTA
DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of
Amendments to the Sales and Use Tax Rule Relating
to Florists and Nurseries
(Minnesota Rule Part 8130.8900)

STATEMENT OF NEED
AND REASONABLENESS

GENERAL STATEMENT

This document has been prepared as a verbatim affirmative presentation of the facts necessary to establish the statutory authority, need for, and reasonableness of the proposed amended rule. It is submitted pursuant to Minnesota Statutes section 14.23 (1990) and Minnesota Rules Part 1400.0500 (1989) requiring a Statement of Need and Reasonableness.

A Notice of Intent to Solicit Outside Opinion regarding the sales and use tax rule relating to Florists and Nurseries, was published in the State Register on September 4, 1990. The notice specifically mentioned this rule and invited interested persons to submit comments or suggestions in writing to the Department by October 1, 1990. The Minnesota Nursery and Landscape Association submitted written comments, see attached. The comments submitted by this association do not relate directly to the issues covered by this rule. The comments relate to the sales tax on lawn, garden, arborist, tree, bush, and shrub services which will be covered in a separate rule. The association has been informed of this and the Department will be in contact with them when drafting that rule.

This rulemaking proceeding proposes to amend the sales and use tax rule relating to Florists and Nurseries. This rule was last amended in 1978.

It is necessary to amend this rule so that it is brought up to date with current developments in sales and use tax laws and administration of those laws.

Some of the changes proposed by this rule involve repeal of outdated information and duplicative statutory language; grammatical changes; and some form clarifications involving nonsubstantive changes. Where indicated, "form" changes are changes in writing style which clarify, modernize, or simplify the meaning of a rule but do not make a material change to the rules' substance or effect.

IMPACT ON SMALL BUSINESS.

The impact of this rule on small businesses has been considered. The proposed rule does not impose new filing, or payment requirements on small businesses and therefore is not expected to place any additional financial or administrative burden on small businesses. The compliance requirements are clarified and thus simplified for small businesses making sales of florist or nursery products. Because small businesses do not have a statutory exemption from collecting sales tax on retail sales, to exempt small businesses from any provisions of this rule would result in a conflict with the statutes.

All persons (including small businesses) currently possessing a sales tax permit and filing monthly or quarterly returns, were given direct notification of the Department's rulemaking activities, pursuant to Minnesota Statutes section 14.115, subd. 4 (1990). This notification was published in the Department's April 1991 quarterly newsletter which was sent to all permit holders filing monthly and quarterly returns (approximately 90,000). Permit holders filing annual or seasonal returns did not receive direct notification because they do not usually receive the quarterly newsletter which is sent out with the returns.

AUTHORITY TO ADOPT RULES.

Minnesota Statutes section 270.06, subd. 13 (1990) grants the Commissioner of Revenue authority to make, publish, and distribute rules for the administration and enforcement of state tax laws.

RULE ANALYSIS

General

Wherever it appears, the term Nurserymen is changed to Nurseries so it is gender neutral. This is done in order to be consistent with the gender neutral revision of the Minnesota Statutes which was done in 1986, see 1986 Minn. Laws ch. 444.

Subpart One Taxable Transactions

Item A. The list of examples set forth in this paragraph is updated and rearranged. The new arrangement groups like items together. Language regarding what certain items were to be used for, is stricken because that language is not relevant for purposes of the taxability of the items. This is a form, rather than substantive change. The second paragraph in this item is stricken because the statutory definition of a taxable sale was amended in 1987 to include tree, bush, shrub, and other various nursery services, Minn. Stat Section 297A.01, subd. 3(j)(vi). This change made the language in the second paragraph obsolete. Language is added to clarify the sales tax treatment in situations where the florist provides labor in preparing floral arrangements. It is necessary to include this information because this is an area where florists frequently have questions or are unclear on the sales tax treatment of their labor. It is reasonable to add this language since it provides a clear explanation of how the florist's fabrication labor is taxed.

Item B. This item is added because of the previously mentioned statutory change. Its purpose is to notify taxpayers that there is a tax on lawn and garden services and to give them the statutory citation for reference.

Item C. A form change was made to this paragraph.

Items D & E. These are new items which clarify information previously found in subpart 4 which is being repealed. It is both necessary and reasonable to clarify this information here because the items describe sales common to the florist industry and inform florists of the sales tax consequences of these sales. It is reasonable to include the information under this subpart (taxable transactions), rather than a separate subpart, because the items describe taxable sales.

Subpart 2. Exempt Transactions

Item A. Unnecessary language is stricken from this item. If goods are purchased for agricultural or industrial production, the exemption of part 8130.5500 will apply and the language regarding purchasers needing to be commercial growers is unnecessary. It is necessary to add the rule citation for reference since it governs the explanation of the agricultural/industrial production exemption.

Item B. The term merchandise is changed to tangible personal property since that is the term defined in the sales tax statutes. The term "merchandise" is not defined in the statute so it should not be used here. Other form changes are also made. On line 6, the word "descriptive" is added before the word "labels" to clarify that the labels and tags referred to in the rule are not price tags or labels. Again, a cross-reference to the agricultural/industrial production rule is added to aid the taxpayer when considering the issue of tax on electricity and fuel.

Item C. This is a new item. It contains information previously found in subpart 4 which is being repealed. The information was moved here because it describes an exempt sale and so belongs under the exempt sales subdivision.

Subpart 3 Telegraphic orders.

Items A. and B. The word "merchandise" is changed to "tangible personal property", see explanation in item B. above. The word "nurseryman" is changed to "nursery", see general explanation, above. Other form changes are also made.

Item C. The tax treatment of relay charges is clarified. A relay charge represents the charge for the salesperson's time and labor. Relay charges are taxable because the statutory definition of sales price does not allow a deduction for labor or service cost, see Minn. Stat., section 297A.01, subd. 8. Since services charges are not deductible, the word "service" is stricken from the first sentence. The taxation of transportation charges is clearly set out, to reflect the statutory requirements for applying sales tax to transportation charges, which are found in Minn. Stat., section 297A.01, subd. 8.

Subpart 4. Sales to nonresidents.

This subpart is repealed and the information is moved to subparts 1 and 2.

LCRAR



Legislative Commission

to Review Administrative Rules

Representative Peter Rodosovich
Chair

Senator Phil Riveness
Vice Chair

55 State Office Building
St. Paul, Minnesota 55155-1201
Telephone 612/296-1143

Maryanne V. Hruby, Director

July 19, 1991

Terese Koenig Smith, Attorney
Department of Revenue
Business Tax Unit
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, Minnesota 55146-2220

proposed 5/20/91

received 7/23/91

Dear Ms. Koenig Smith:

I write to request a copy of the Department of Revenue's Statement of Need and Reasonableness (SONAR) for recently published rules relating to florists and nurseries.

As you may know, Minnesota Statutes, sections 14.131 and 14.23 now require state agencies to provide copies of SONAR's to the LCRAR when they become available for public review.

If you have not already done so, please send a copy of the SONAR for these proposed rules to:

The Legislative Commission to Review Administrative Rules
Maryanne Hruby, Director
55 State Office Building
St. Paul, Minnesota 55155

Please contact me at 296-1143 if you have any questions.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Michele Swanson".

Michele Swanson
Commission Secretary

