

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

CH
11-18-91

RULE REVIEW CHECKLIST

File No. 1868 Docket No. 05 000 90739

DATE RECEIVED 11-15-91 ADOPTED W/O HEARING _____

REVIEW DATE ~~11-22-91~~ 11-25-91 EMERGENCY RULE _____

DUE DATE 11-29-91 TO REVISOR ON 11-18-91

(DIS)APPROVED 11-29-91 REVISOR (DIS)APPROVED _____

WITHDRAWN _____ FILED W/SEC. OF STATE 12/4/91

RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
Sept 4, 1990 Date published in State Register
_____ Comments

~~Petition for Adoption of a Rule~~

Board's Authorizing Resolution
_____ Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
270.06 subd 13 Statutory Authority
_____ Small Business Statement
_____ Expenditure of public money statement
May 3, 1991 Signature

✓ Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
May 15, 1991 Dated ~~30~~/25 days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
May 20, 1991 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) ~~amendments don't apply~~
✓ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

Resolution Adopting
_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
November 12, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Greg Howe Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

~~Affidavit~~ of Mailing Notice to Attorney General (if applicable)

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: December 4, 1991

TO: TERESE KOENIG SMITH
Department of Revenue
Appeals and Legal Services Divsiion
10 River Park Plaza
Mail Station 2220
St. Paul

FROM: CHARLENE HATCHER
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to Florists and Nurseries

The above-referenced rule has been approved as to its legality by the Attorney General on November 29, 1991.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

CH:sc
Enclosures
cc: Gregory P. Huwe
William Brown, Chief Judge
MaryAnn Hruby

Department of Revenue

Adopted Permanent Rules Relating to Florists and Nurseries

Rules as Adopted

8130.8900 FLORISTS AND NURSERIES.

Subpart 1. **Taxable transactions.** The following transactions are subject to sales or use tax:

A. Sales at retail by florists, nurseries, or other producers or vendors of flowers, wreaths, bouquets, potted plants, hospital baskets, funeral designs, seeds, nursery seedling stock, trees, shrubs, plants, sod, soil, bulbs, sand, rock, and all other floral or nursery products, whether grown by such vendors or not, are taxable sales of tangible personal property.

When a florist or nursery prepares a floral arrangement for a customer, the entire transaction is taxable, including all charges for labor and materials even if separately stated on the bill.

When a florist or nursery prepares a floral arrangement for a customer who has provided the flowers or other materials, the labor charge by the florist or nursery constitutes fabrication labor and is taxable.

B. Retailers of floral or nursery products who also perform lawn, garden, arborist, tree, bush, and shrub services must collect tax on those services. Lawn, garden, arborist, tree, bush, and shrub services are taxable pursuant to Minnesota Statutes, section 297A.01, subdivision 3, paragraph (j), clause (vi). These services are taxable even though the services are provided incident to the sale of tangible personal property.

C. Purchases of machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures, and fuel, electricity, gas, or steam used for space heating or lighting are taxable unless purchased for resale.

D. When a Minnesota florist or nursery sells flowers

or other tangible personal property to an out-of-state customer and delivers the items to the customer or a third person within this state, that transaction is taxable. An out-of-state customer is one who is not physically present in Minnesota when placing the order. This item only applies to orders taken directly from the customer by the Minnesota florist or nursery. This item does not apply to telegraphic orders as described in subpart 3.

E. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to someone other than the person who made the purchase, the transaction is taxable even if delivery is to a point outside of Minnesota. The transaction is a sale at retail made in this state and thus is subject to sales tax.

Subp. 2. **Exempt transactions.** The following transactions are not subject to sales or use tax:

A. Sales of trees, plants, seeds, or similar items to persons for use in agricultural production of tangible personal property for resale are exempt (upon presentation of proper exemption certificates to the vendors). For example, stock purchased for the purpose of reforestation where forest products will be later harvested in the form of Christmas trees, posts, poles, pulpwood, etc., are exempt. See part 8130.5500.

B. Purchases by florists, nurseries, or other like producers or vendors of plants and other tangible personal property which are ultimately sold with the plants, including nonreturnable containers, descriptive labels, stickers, and cards affixed to such containers, peat moss, sand, gravel, crushed rock, shavings, sticks, trellises, and plant ties, to be placed in pots or cans with plants, are exempt as purchases for resale. Purchases of nursery stock, seeds, plants, spray materials, and fertilizers to grow nursery stock for resale are exempt as items to be used or consumed in agricultural production. Purchases of electricity and fuel used or consumed in production are also exempt, except that the portion used for space heating or lighting is taxable. See part 8130.5500.

C. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to the customer outside the state by common carrier, parcel post, United States mail, or the florist's or nursery's own delivery vehicles, the transaction is exempt.

Subp. 3. **Telegraphic orders.** When florists or nurseries conduct transactions through a florist telegraphic delivery association, or otherwise by telephone, telegraph, or other means of communication with other florists or nurseries, the following rules apply in the application of the tax:

A. Where an order for flowers, wreaths, or other tangible personal property is taken from a customer by a Minnesota florist or nursery and transmitted to another florist or nursery located within or outside of Minnesota for delivery, the florist or nursery which initially takes the order from the customer is required to collect the tax.

B. Minnesota florists or nurseries who receive orders from other florists or nurseries, whether located within or outside this state, for delivery of flowers, wreaths, or other tangible personal property to locations either within or outside of Minnesota, are not required to collect the tax.

C. The sales tax does not apply to telegraph or telephone charges if such charges are separately stated from the price of the flowers or other tangible personal property ordered by the customer.

However, the tax does apply to relay or handling charges paid to the florist or nursery which sends an order whether these charges are separately stated or not.

The sales tax does not apply to transportation charges to the extent they are separately stated and the transportation occurs after the retail sale.

Subp. 4. [See repealer.]

REPEALER. Minnesota Rules, part 8130.8900, subpart 4, is repealed.

APPROVED AS TO FORM AND LEGALITY

November 29 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene H. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 4 1991

Joan Anderson Growe
Secretary of State

11:35 am
pc

Department of Revenue

Proposed Permanent Rules Relating to Florists and Nurseries

Rules as Proposed

8130.8900 FLORISTS AND ~~NURSERYMEN~~ NURSERIES.

Subpart 1. **Taxable transactions.** The following transactions are subject to sales or use tax:

A. Sales at retail by florists, ~~nurserymen~~ nurseries, or other producers or vendors of ~~trees,~~ flowers, wreaths, bouquets, potted plants, ~~shrubbery,~~ hospital baskets, funeral designs, ~~grass,~~ seeds, nursery seedling stock ~~(to be used for landscaping, windbreaks, shelterbelts, erosion control, soil conservation, wildlife cover, commercial production of fruit and cut flowers, and other such purposes),~~ and all other flowers, ~~plants, or merchandise~~, trees, shrubs, plants, sod, soil, bulbs, sand, rock, and all other floral or nursery products, whether grown by such vendors or not, are taxable sales of tangible personal property ~~to which the tax applies~~.

~~Sales by florists, nurserymen, or other persons of shrubbery, plants, sod, trees, and similar items which such vendors are required to transplant on the land of the purchaser for a lump sum or flat rate are subject to tax. The total sales price of such property and services shall be the basis of the tax unless the vendor separately states the charge for the services in transplanting, in which event the basis of the tax shall be the charge for the tangible property only.~~

When a florist or nursery prepares a floral arrangement for a customer, the entire transaction is taxable, including all charges for labor and materials even if separately stated on the bill.

When a florist or nursery prepares a floral arrangement for a customer who has provided the flowers or other materials, the labor charge by the florist or nursery constitutes fabrication labor and is taxable.

Approved by Revisor

B. Retailers of floral or nursery products who also perform lawn, garden, arborist, tree, bush, and shrub services must collect tax on those services. Lawn, garden, arborist, tree, bush, and shrub services are taxable pursuant to Minnesota Statutes, section 297A.01, subdivision 3, paragraph (j), clause (vi). These services are taxable even though the services are provided incident to the sale of tangible personal property.

C. Purchases ~~by such vendors~~ of machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures, and fuel, electricity, gas, or steam used for space heating or lighting are taxable unless purchased for resale.

D. When a Minnesota florist or nursery sells flowers or other tangible personal property to an out-of-state customer and delivers the items to the customer or a third person within this state, that transaction is taxable. An out-of-state customer is one who is not physically present in Minnesota when placing the order. This item only applies to orders taken directly from the customer by the Minnesota florist or nursery. This item does not apply to telegraphic orders as described in subpart 3.

E. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to someone other than the person who made the purchase, the transaction is taxable even if delivery is to a point outside of Minnesota. The transaction is a sale at retail made in this state and thus is subject to sales tax.

Subp. 2. **Exempt transactions.** The following transactions are not subject to sales or use tax:

A. Sales of trees, plants, seeds, or similar items to persons for use in agricultural production of tangible personal property for resale are exempt (upon presentation of proper exemption certificates to the vendors) ~~if such purchasers are commercial growers of the particular items purchased~~. For example, stock purchased for the purpose of reforestation where forest products will be later harvested in the form of Christmas

Approved
by Revisor _____

trees, posts, poles, pulpwood, etc., are exempt. See part 8130.5500.

B. Purchases by florists, ~~nurserymen~~ nurseries, or other like producers or vendors of plants and other ~~merchandise~~ tangible personal property which are ultimately sold with the plants, including nonreturnable containers ~~and~~, descriptive labels, stickers, and cards affixed to such containers, peat moss, sand, gravel, crushed rock, shavings, sticks, trellises, and plant ties, to be placed in pots or cans with plants ~~and ultimately sold along with the plants~~, are exempt as purchases for resale. Purchases of nursery stock, seeds, plants, spray materials, and fertilizers to grow nursery stock for resale are exempt as items to be used or consumed in agricultural production ~~and ultimately sold at retail~~. Purchases of electricity and fuel used or consumed in production are also exempt, except that the portion used for space heating or lighting is taxable. See part 8130.5500.

C. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to the customer outside the state by common carrier, parcel post, United States mail, or the florist's or nursery's own delivery vehicles, the transaction is exempt.

Subp. 3. **Telegraphic orders.** When florists or ~~nurserymen~~ nurseries conduct transactions through a florist telegraphic delivery association, or otherwise by telephone, telegraph, or other means of communication with other florists or ~~nurserymen~~ nurseries, the following rules ~~will~~ apply in the ~~computation~~ application of the tax:

A. Where an order for flowers, wreaths, or other ~~merchandise~~ tangible personal property is taken from a customer by a Minnesota florist or ~~nurseryman~~ nursery and transmitted to another florist or ~~nurseryman~~ nursery located within or outside of Minnesota for delivery, the florist or ~~nurseryman who~~ nursery which initially takes the order from the customer is required to collect the tax.

B. Minnesota florists or ~~nurserymen~~ nurseries who

Approved by Revisor _____

receive orders from other florists or ~~nurserymen~~ nurseries, whether located within or outside this state, for delivery of flowers, wreaths, or other ~~merchandise~~ tangible personal property to locations either within or outside of Minnesota, ~~do~~ are not required to collect the tax.

C. The sales tax does not apply to telegraph~~,~~ or telephone~~,-or-service~~ charges if such charges are separately stated from the price of the flowers or other ~~merchandise~~ tangible personal property ordered by the customer.

However, the tax does apply to relay or handling charges paid to the florist or nursery which sends an order whether these charges are separately stated or not.

The sales tax does not apply to transportation charges to the extent they are separately stated and the transportation occurs after the retail sale.

Subp. 4. [See repealer.]

REPEALER. Minnesota Rules, part 8130.8900, subpart 4, is repealed.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Florists and Nurseries

AGENCY: Department of Revenue

MINNESOTA RULES: Chapter 8130

The attached rules are approved for publication in the State Register

Janet M. Rahm
Senior Assistant Revisor

and collection of parental fees by county boards or the Department of Human Services from parents of children in 24-hour care outside of the home. The rule amendments are authorized by *Minnesota Statutes* 1990, section 252.27, which governs parental contribution for the cost of children's services. The proposed amendments include revisions which are needed to make the rule consistent with the provisions of *Minnesota Statutes* 1990, section 252.27.

The State Department of Human Services requests information and opinions regarding the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Laura Plummer, Rules and Bulletins Division, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816. Oral statements will be received during regular business hours over the telephone at 612/297-4997 and in person at above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 21 August 1990

Laura Plummer
Rules and Bulletins Division
Department of Human Services

Department of Revenue

Appeals and Legal Services Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Sales and Use Taxation: Florists and Nurseries

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rule governing sales and use tax on florists and nurseries. The adoption of this rule is authorized by *Minnesota Statutes*, section 297A.29 which requires the commissioner of revenue to promulgate all needful rules for the administration and enforcement of *Minnesota Statutes*, sections 297A.01 to 297A.44 not inconsistent with its provisions.

The Minnesota Department of Revenue requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

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

Oral statements will be received during regular business hours over the telephone at (612) 296-3438 and in person at the above address.

All statements of information and opinions shall be accepted until October 1, 1990. Any written material received by the Minnesota Department of Revenue shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law judge in the event that the rule is adopted.

Dated: 27 August 1990

Terese Koenig Smith
Attorney

Teachers Retirement Association

Notice of Regular Meeting

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Thursday, September 20, 1990, at 9:00 a.m. in Suite 500, Gallery Building, 17 West Exchange Street, St. Paul, MN to consider matters which may properly come before the Board.

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

Department of Revenue

In the Matter of the proposed Adoption of the Sales and Use Tax Rule of the Minnesota Department of Revenue Governing Florists and Nurseries.	NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the Minnesota Department of Revenue intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes section 270.06, subdivision 13 (1990).

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the

proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20 (1990).

(5) Comments or written requests for a public hearing must be submitted to:

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

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A copy of the proposed rule is attached to this notice. A free copy of the rule is also available upon request from:

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

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Terese Koenig Smith upon request.

(13) Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, fix or adjust any fees, or have an impact on agricultural land. The affect, if any, that the proposed rule may have on small businesses is further discussed in the Statement of Need and Reasonableness. (14)

The proposed rule will have an impact on small businesses to the extent that the business is involved in making retail sales of floral or nursery products. Although there are large and small florist and nursery businesses, this rule will not impart competitive advantage to a company that is not a small business.

The qualitative impact of the proposed rule on small businesses will be positive as a result of simplification of the reporting requirements through clarification of the application of the sales tax to situations involving sales of floral or nursery products. The quantitative impact will be minimal, since the proposed rule will not result in an economic impact on small businesses. In addition there are no new reporting, filing, fee, or compliance requirements.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney

General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to:

Terese Koenig Smith.
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

May 3, 1991

Date

Dorothy A. McClung
Commissioner of Revenue of
the State of Minnesota

Stat. Authority 270.06 subd 13

(13) administer and enforce the assessment and collection of state taxes and, from time to time, make, publish, and distribute rules for the administration and enforcement of state tax laws. The rules have the force of law.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

November 15, 1991

HAND DELIVERED

rec'd 11-15

Christie Eller
Assistant Attorney General
Capitol Office Building
525 Park Street
St. Paul, Minnesota 55103

Re: **Proposed Permanent Rule Relating to Sales and Use Tax Governing Florists and Nurseries**

Dear Ms. Eller:

Enclosed please find the following documents in the matter of the proposed rules of the Department of Revenue amending provisions relating to sales and use tax governing florists and nurseries.

1. a photocopy of the notice of solicitation of outside opinion as published in the State Register;

2. a copy of the proposed rule with certificate of approval as to form by the revisor of statutes;

3. the notice of intent to adopt a rule without a public hearing as mailed;

4. the statement of need and reasonableness;

5. the affidavit of mailing the notice of intent;

6. a copy of the notice of intent as published in the State Register;

7. four copies of the rule as adopted, reflecting all modifications and approved as to form by the revisor of statutes;

8. the Findings of Fact, Conclusions, and Order adopting rule;

9. the written submissions and comments on the rule received by the Department of Revenue; and

10. the Declaration of Counsel.

The above-listed documents are submitted for your review and approval pursuant to Minnesota Statutes chapter 14.

Sincerely,

Terese Koenig Smith

Terese Koenig Smith, Attorney
Appeals and Legal Services Division
10 River Park Plaza
Mail Station 2220
St. Paul, MN 55146-2220
(612) 296-1902, ext. 129

TKS/ml
Enclosures

The Minnesota
State Register

Department of Administration—Print Communications Division



Rules edition
Published every Monday
(Tuesday if Monday is a holiday)

Monday 20 May 1991

Volume 15, Number 47

Pages 2461-2516

State Register

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official notices, state and non-state contracts, contract awards, grants, a monthly calendar of cases to be heard by the state supreme court, and announcements.

***A Contracts Supplement* is published every Thursday and contains additional state contracts and advertised bids, and the most complete source of state contract awards available in one source.**

Printing Schedule and Submission Deadlines

Vol. 15 Issue Number	*Submission deadline for Adopted and Proposed Rules, Commissioners' Orders**	*Submission deadline for Executive Orders, Contracts, and Official Notices**	Issue Date
47	Monday 6 May	Monday 13 May	Monday 20 May
48	Monday 13 May	Monday 20 May	Tuesday 28 May
49	Monday 20 May	Friday 24 May	Monday 3 June
50	Friday 24 May	Monday 3 June	Monday 10 June

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the ***State Register*** editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

The ***State Register*** is published every Monday (Tuesday when Monday is a holiday) by the State of Minnesota, Department of Administration, Print Communications Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to *Minnesota Statutes* § 14.46. A ***State Register*** *Contracts Supplement* is published every Thursday. The Monday edition is the vehicle for conveying all information about state agency rulemaking, including official notices; hearing notices; proposed, adopted and emergency rules. It also contains executive orders of the governor; commissioners' orders; state contracts and advertised bids; professional, technical and consulting contracts; non-state public contracts; state grants; decisions of the supreme court; a monthly calendar of scheduled cases before the supreme court; and other announcements. The Thursday edition contains additional state contracts and advertised bids, and the most complete listing of contract awards available in one source.

In accordance with expressed legislative intent that the ***State Register*** be self-supporting, the following subscription rates have been established: the Monday edition costs $140.00 per year and includes an index issue published in August (single issues are available at the address listed above for $3.50 per copy); the combined Monday and Thursday editions cost $195.00 (subscriptions are not available for just the *Contracts Supplement*); trial subscriptions are available for $60.00, include both the Monday and Thursday edition, last for 13 weeks, and may be converted to a full subscription anytime by making up the price difference. No refunds will be made in the event of subscription cancellation.

Both editions are delivered postpaid to points in the United States, second class postage paid for the Monday edition at St. Paul, MN, first class for the Thursday edition. Publication Number 326630 (ISSN 0146-7751).

Subscribers who do not receive a copy of an issue should notify the ***State Register*** circulation manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

Arne H. Carlson, Governor

Dana B. Badgerow, Commissioner
Department of Administration

Stephen A. Ordahl, Director
Print Communications Division

Robin PanLener, Editor

Paul Hoffman, Assistant Editor

Debbie George, Circulation Manager

Bonita Karels, Staff Assistant

FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

7409.4300 REINSTATEMENT AFTER CANCELLATION.

The commissioner shall reinstate the driver's license of a person whose license is canceled when the following conditions have been satisfied:

A. no withdrawal of the person's license is outstanding;

B. the person's driver's license was surrendered under *Minnesota Statutes*, section 171.20;

C. the person has applied for a new license, has paid the application fee for the class of license involved, and has passed the driver's license examination, as required for issuing an original license; and

D. the person is otherwise eligible for a driver's license under *Minnesota Statutes*.

HEARINGS

7409.4500 PRELIMINARY HEARING.

Subpart 1. **Preliminary hearing required.** The commissioner shall require a person to attend a preliminary hearing when the commissioner has sufficient cause to believe that the person:

A. has committed a violation under *Minnesota Statutes*, section 171.22, for an unlawful or fraudulent act regarding a driver's license or Minnesota identification card;

B. has committed a second violation under *Minnesota Statutes*, section 171.09, for a violation of a restriction imposed on the person's driver's license;

C. has committed a violation under *Minnesota Statutes*, section 171.30, of a condition or limitation of a limited license; or

D. was not previously sent a warning letter under part 7409.2200, subpart 1, and is convicted of:

(1) two misdemeanor traffic offenses within a 12-month period;

(2) four traffic offenses within a 12-month period; or

(3) five traffic offenses within a 24-month period.

Subp. 2. **Scope of review.** The commissioner shall review the evidence upon which the preliminary hearing was based, and any other material information brought to the attention of the commissioner.

The commissioner may seek additional information from the person undergoing the preliminary hearing or from an agency or person believed to have information relating to the facts underlying the preliminary hearing. The person required to undergo a preliminary hearing may present additional information to the commissioner at the hearing.

Subp. 3. **Suspension period.** If, after reviewing the evidence presented at the preliminary hearing, the commissioner has sufficient cause to believe that the person has committed an offense listed in subpart 1, the commissioner shall suspend the driver's license of the person for a minimum period of 30 days or in accordance with the number of traffic convictions accumulated, as set forth in part 7409.2200, subpart 1, unless the person agrees to enter into a driver improvement agreement, as set forth in part 7409.4600, subpart 5.

Subp. 4. **Failure to attend preliminary hearing.** The commissioner shall suspend the driver's license of a person who fails to attend a preliminary hearing for a minimum period of 30 days or in accordance with the number of traffic convictions accumulated, as set forth in part 7409.2200, subpart 1.

Subp. 5. **Notice of preliminary hearing.** The commissioner shall send a notice to the person who is required to attend a preliminary hearing by first class mail to the person's last known address or to the address listed on the person's driver's license informing the person:

A. the reason for the preliminary hearing;

B. of the time, date, and place of the hearing and, if necessary, instructions to reschedule the hearing; and

C. that failure to attend the hearing will result in suspension of the person's driver's license.

7409.4600 ADMINISTRATIVE HEARING.

Subpart 1. **Right to hearing.** The commissioner shall grant a hearing to a person whose driver's license has been withdrawn or is subject to withdrawal.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 2. **Procedure for requesting hearing.** A hearing is initiated by a request for review at the department. The hearing may be held by written correspondence, by telephone, or by a personal appearance. The person requesting the review must inform the department of the person's full name, date of birth, driver's license number, and the date of the incident for which review is being requested.

Subp. 3. **Scope of review.** On receiving a request for a hearing, the commissioner shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner to determine whether sufficient cause exists to sustain the order.

The commissioner may seek additional information from the person requesting the review or from an agency or person believed to have information relating to the facts underlying the order of withdrawal. The person requesting the review may present additional information to the commissioner at the hearing.

Subp. 4. **Decision.** Upon reviewing the evidence, the commissioner shall sustain the withdrawal order if there is sufficient cause to believe that the withdrawal is authorized by law. If the commissioner finds that there is not sufficient cause to believe the withdrawal order is authorized by law, the order must be rescinded.

The commissioner shall give a prompt decision to the person and shall issue a copy of the decision to the person upon request.

Subp. 5. **Driver improvement agreement.** The commissioner may waive department action on the person's driver's license if:

A. the person's driver's license has been suspended under *Minnesota Statutes*, section 171.09 or 171.18;

B. after reviewing the person's entire driving record, the commissioner has sufficient cause to believe that the person will improve the person's driving conduct or has demonstrated improved driving conduct; and

C. the person agrees to enter into a driver improvement agreement with the commissioner.

A driver improvement agreement is an agreement between a driver and the commissioner whereby the driver agrees to improve driving conduct in consideration for the department taking no action on the suspension that the person currently has pending.

The driver improvement agreement must not be for a period less than the period of suspension that the person currently has pending.

If the person commits a violation arising out of the operation of a motor vehicle while a driver improvement agreement is in effect, the person's driver's license will be withdrawn for 30 days or according to this chapter, chapter 7503, or *Minnesota Statutes*, whichever is the longer period.

Department of Revenue

Proposed Permanent Rules Relating to Florists and Nurseries

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Revenue intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* section 270.06, subdivision 13 (1990).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20 (1990).

Comments or written requests for a public hearing must be submitted to:

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

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice. A free copy of the rule is also available upon request from:

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

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Terese Koenig Smith upon request.

Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, fix or adjust any fees, or have an impact on agricultural land. The affect, if any, that the proposed rule may have on small businesses is further discussed in the Statement of Need and Reasonableness.

The proposed rule will have an impact on small businesses to the extent that the business is involved in making retail sales of floral or nursery products. Although there are large and small florist and nursery businesses, this rule will not impart competitive advantage to a company that is not a small business.

The qualitative impact of the proposed rule on small businesses will be positive as a result of simplification of the reporting requirements through clarification of the application of the sales tax to situations involving sales of floral or nursery products. The quantitative impact will be minimal, since the proposed rule will not result in an economic impact on small businesses. In addition there are no new reporting, filing, fee, or compliance requirements.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to:

Terese Koenig Smith
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

Dated: 3 May 1991

Dorothy A. McClung
Commissioner of Revenue of
the State of Minnesota

Rules as Proposed

8130.8900 FLORISTS AND ~~NURSERYMEN~~ NURSERIES.

Subpart 1. **Taxable transactions.** The following transactions are subject to sales or use tax:

A. Sales at retail by florists, ~~nurserymen~~ nurseries, or other producers or vendors of ~~trees,~~ flowers, wreaths, bouquets, potted plants, ~~shrubbery,~~ hospital baskets, funeral designs, ~~grass,~~ seeds, nursery seedling stock ~~(to be used for landscaping, windbreaks, shelterbelts, erosion control, soil conservation, wildlife cover, commercial production of fruit and cut flowers, and other such purposes), and all other flowers, plants, or merchandise~~, trees, shrubs, plants, sod, soil, bulbs, sand, rock, and all other floral or nursery products, whether grown by such vendors or not, are taxable sales of tangible personal property ~~to which the tax applies~~.

~~Sales by florists, nurserymen, or other persons of shrubbery, plants, sod, trees, and similar items which such vendors are required to transplant on the land of the purchaser for a lump sum or flat rate are subject to tax. The total sales price of such property and~~

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

~~services shall be the basis of the tax unless the vendor separately states the charge for the services in transplanting, in which event the basis of the tax shall be the charge for the tangible property only.~~

When a florist or nursery prepares a floral arrangement for a customer, the entire transaction is taxable, including all charges for labor and materials even if separately stated on the bill.

When a florist or nursery prepares a floral arrangement for a customer who has provided the flowers or other materials, the labor charge by the florist or nursery constitutes fabrication labor and is taxable.

B. Retailers of floral or nursery products who also perform lawn, garden, arborist, tree, bush, and shrub services must collect tax on those services. Lawn, garden, arborist, tree, bush, and shrub services are taxable pursuant to *Minnesota Statutes*, section 297A.01, subdivision 3, paragraph (j), clause (vi). These services are taxable even though the services are provided incident to the sale of tangible personal property.

C. Purchases ~~by such vendors~~ of machinery, equipment, implements, tools, accessories, appliances, contrivances, furniture and fixtures, and fuel, electricity, gas, or steam used for space heating or lighting are taxable unless purchased for resale.

D. When a Minnesota florist or nursery sells flowers or other tangible personal property to an out-of-state customer and delivers the items to the customer or a third person within this state, that transaction is taxable. An out-of-state customer is one who is not physically present in Minnesota when placing the order. This item only applies to orders taken directly from the customer by the Minnesota florist or nursery. This item does not apply to telegraphic orders as described in subpart 3.

E. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to someone other than the person who made the purchase, the transaction is taxable even if delivery is to a point outside of Minnesota. The transaction is a sale at retail made in this state and thus is subject to sales tax.

Subp. 2. **Exempt transactions.** The following transactions are not subject to sales or use tax:

A. Sales of trees, plants, seeds, or similar items to persons for use in agricultural production of tangible personal property for resale are exempt (upon presentation of proper exemption certificates to the vendors) ~~if such purchasers are commercial growers of the particular items purchased~~. For example, stock purchased for the purpose of reforestation where forest products will be later harvested in the form of Christmas trees, posts, poles, pulpwood, etc., are exempt. See part 8130.5500.

B. Purchases by florists, ~~nurserymen~~ nurseries, or other like producers or vendors of plants and other ~~merchandise~~ tangible personal property which are ultimately sold with the plants, including nonreturnable containers ~~and~~, descriptive labels, stickers, and cards affixed to such containers, peat moss, sand, gravel, crushed rock, shavings, sticks, trellises, and plant ties, to be placed in pots or cans with plants ~~and ultimately sold along with the plants~~, are exempt as purchases for resale. Purchases of nursery stock, seeds, plants, spray materials, and fertilizers to grow nursery stock for resale are exempt as items to be used or consumed in agricultural production ~~and ultimately sold at retail~~. Purchases of electricity and fuel used or consumed in production are also exempt, except that the portion used for space heating or lighting is taxable. See part 8130.5500.

C. When a Minnesota florist or nursery sells flowers or other tangible personal property and delivers the items to the customer outside the state by common carrier, parcel post, United States mail, or the florist's or nursery's own delivery vehicles, the transaction is exempt.

Subp. 3. **Telegraphic orders.** When florists or ~~nurserymen~~ nurseries conduct transactions through a florist telegraphic delivery association, or otherwise by telephone, telegraph, or other means of communication with other florists or ~~nurserymen~~ nurseries, the following rules ~~will~~ apply in the ~~computation~~ application of the tax:

A. Where an order for flowers, wreaths, or other ~~merchandise~~ tangible personal property is taken from a customer by a Minnesota florist or ~~nurseryman~~ nursery and transmitted to another florist or ~~nurseryman~~ nursery located within or outside of Minnesota for delivery, the florist or ~~nurseryman who~~ nursery which initially takes the order from the customer is required to collect the tax.

B. Minnesota florists or ~~nurserymen~~ nurseries who receive orders from other florists or ~~nurserymen~~ nurseries, whether located within or outside this state, for delivery of flowers, wreaths, or other ~~merchandise~~ tangible personal property to locations either within or outside of Minnesota, ~~do~~ are not required to collect the tax.

C. The sales tax does not apply to telegraph~~,~~ or telephone~~, or service~~ charges if such charges are separately stated from the price of the flowers or other ~~merchandise~~ tangible personal property ordered by the customer.

However, the tax does apply to relay or handling charges paid to the florist or nursery which sends an order whether these charges are separately stated or not.

The sales tax does not apply to transportation charges to the extent they are separately stated and the transportation occurs after the retail sale.

Subp. 4. [See repealer.]

REPEALER. *Minnesota Rules*, part 8130.8900, subpart 4, is repealed.

STATE OF MINNESOTA
DEPARTMENT OF REVENUE
APPEALS AND LEGAL SERVICES DIVISION

IN THE MATTER OF THE PROPOSED ADOPTION OF THE SALES AND USE TAX RULE OF THE MINNESOTA DEPARTMENT OF REVENUE GOVERNING FLORISTS AND NURSERIES.

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Margaret A. Connolly, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state Department of Revenue rulemaking mailing list is accurate, complete, and current as of this 15th day of May, 1991.

That on the 15th day of May, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt A Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all two hundred thirty-five persons and associations on the aforementioned mailing list.

PATRICK J. FINNEGAN
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires 9-10-96

Margaret A. Connolly
MARGARET A. CONNOLLY
SECRETARY, SENIOR TYPIST 4

Subscribed and sworn to
before me this
15th day of May, 1991

Patrick J. Finnegan
PATRICK J. FINNEGAN

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.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Proposed Adoption of the Sales and Use Tax Rule of the Minnesota Department of Revenue Governing Florists and Nurseries	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner of Revenue's intent to adopt the above-entitled rule was published in the State Register May 20, 1991, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on May 15, 1991. (2) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the agency.

No submissions or comments on the rule were received by the agency. No requests for a notice of submission to the attorney general were received by the agency.

Based on the comments and evidence in the record before the Department, I find the following:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rule Part 8130.8900 is adopted this 12 day of November 1991, pursuant to authority vested in me by Minnesota Statutes, section 270.06, subdivision 13.

Dorothy A. McClung
Commissioner of Revenue
of the State of Minnesota

MNLA
Minnesota Nursery and Landscape Association
P. O. Box 130307 • St. Paul, Minnesota 55113 • (612) 633-4987 • Fax (612) 633-4986

September 6, 1990

Business Trust Tax
SEP - 7 1990

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

Dear Mrs. Smith:

I am certain that it comes as no surprise to you that the Minnesota Nursery and Landscape Association is strongly in favor of an amendment to the current rule governing sales and use tax on florists and nurseries. (If we were not in favor of changes, we certainly wasted a great deal of your time and that of Greg Heck, Rod Hoheisel, Tom Ellerbe and various other DOR officials with whom we have met during the last couple of years.)

I don't know the nature of the amendment you are in the process of developing, but I hope there is some similarity to the MNLA's proposed legislation that didn't make it through the Senate Tax Committee hearing during the 1989 session when Greg Heck and Jim Nichols testified in favor of its passage.

Hoping the enclosed copy of our proposed legislation and basis for our request may be of value to you, I will call you within the next couple of days to see if you feel our position has merit and can be included in the amendment being developed by the Department of Revenue.

Thank you for your consideration of our recommendations.

Sincerely yours,

James C. McCarthy
Executive Director

BRAD PEDERSON,
President
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& Landscape Co.
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Bloomington, MN 55420
(612) 854-8148

ROBERT VELANDER,
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PAUL L. MORLOCK
Secretary-Treasurer
Law's Nursery, Inc.
13030 Maycrest Ave. Ct. S.
Hastings, MN 55033
(612) 437-9119

JIM & GEN McCARTHY,
Executive Directors
Post Office Box 130307
St. Paul, MN 55113
(612) 633-4987

A bill for an act

relating to taxation; sales and use tax; providing that the installation of shrubbery, plants, sod, trees, and similar items is an improvement to real estate and providing that services under a construction contract for tree, bush, and shrubs are non-taxable; amending Minnesota Statutes 1988, section 297A.01 subd. 4 and section 297A.01 subd. 3(j)(vi).

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1988, Section 297A.01, subd. 4, is amended to read:

Subd. 4. A "retail sale" or "sale at retail" means a sale for any purpose other than resale in the regular course of business. Property utilized by the owner only by leasing such property to others or by holding it in an effort to so lease it, and which is put to no use by the owner other than resale after such lease or effort to lease, shall be considered property purchased for resale. Master computer software programs that are purchased and used to make copies for sale or lease are considered property purchased for resale. Sales of building materials, supplies and equipment to owners, contractors, subcontractors, or builders for the erection of buildings or the alteration, repair or improvement of real property are "retail sales" or "sales at retail" in whatever quantity sold and whether or not for purpose of resale in the form of real property or otherwise. A sale of carpeting, linoleum, or other similar floor covering which includes installation of the carpeting, linoleum or other similar floor covering is a contract for the improvement of real property.

A sale of shrubbery, plants, sod, trees, and similar items which includes installation of the shrubbery, plants, sod, trees, and similar items is a contract for the improvement of real property. Aircraft and parts for the repair thereof purchased by a nonprofit, incorporated flying club or association utilized solely by the corporation by leasing such aircraft to shareholders of the corporation shall be considered property purchased for resale. The leasing of the aircraft to the shareholders by the flying club or association shall be considered a sale.

Leasing of aircraft utilized by a lessee for the purpose of leasing to others, whether or not the lessee also utilizes the aircraft for flight instruction where no separate charge is made for aircraft rental or for charter service, shall be considered a purchase for resale; provided, however, that a proportionate share of the lease payment reflecting use for flight instruction or charter service is subject to tax pursuant to section 297A.14.

Section 2. Minnesota Statutes 1988, Section 297A.01, subd. 3(j)(vi), is amended to read:

(vi). Lawn care, fertilizing, mowing, spraying and sprigging services; garden planting and maintenance; arborist services; tree, bush, and shrub planting, pruning, bracing, spraying, and surgery; and tree trimming for public utility lines. The services listed in this paragraph are taxable

under section 297A.02 if the service is performed wholly within Minnesota or if the service is performed partly within and partly without Minnesota and the greater proportion of the service is performed in Minnesota, based on the cost of performance. In applying the provisions of this chapter, the terms "tangible personal property" and "sales at retail" include taxable services and the provision of taxable services, unless specifically provided otherwise. Services performed by an employee for an employer are not taxable under this paragraph. Services performed by a partnership or association for another partnership or association are not taxable under this paragraph if one of the entities owns or controls more than 80 percent of the voting power of the equity interest in the other entity. Services performed between members of an affiliated group of corporations are not taxable. For purposes of this section, "affiliated group of corporations" includes those entities that would be classified as a member of an affiliated group under United States Code, title 26, section 1504, and who are eligible to file a consolidated tax return for federal income tax purposes;. Services performed under a construction contract for the installation of shrubbery, plants, sod, trees, bushes, and similar items are non-taxable.

Section 3. [Effective date]. Sections 1 and 2 are effective the day after enactment.

Basis For Proposed Sales Tax Bill

Senate File #814 (Morse) **House File #1465 (Welle)**

Current Regulation: Sales by florists, nurseries, or other persons of shrubbery, plants, sod, trees, and similar items which such vendors are required to transplant on the land of the purchaser for a lump sum or flat rate are subject to tax. See Sales and Use Tax Reg. 81300.8900, Subpart 1. There is no specific statutory provision covering the installation of shrubbery, plants, etc. In 1987, the services of planting trees, bushes, shrubbery, etc. were made subject to the sales tax. See Minn. Stat. 297A01 Subd. 3 (j) (vi).

Proposal: This bill would provide that transplanting of trees, shrubbery, etc. is a construction contract because it is an improvement to real estate. That is, the contractor would be subject to sales tax at his cost of materials and the cost to the purchaser would not be subject to sales tax.

Reasons for Modification: The amendments are proposed for the following reasons:

1. The unarticulated premise of the Regulation is that "shrubbery, plants, sod, trees and similar items" retain their character as personal property when transplanted on the land of the purchaser, which doesn't seem to make a great deal of sense.
2. It would clarify and simplify a confusing area of sales tax law and would be consistent with the sales and use tax treatment received by real property contractors.
3. It would comport to what the general public would feel the law is. It is not rational nor logical to think of an installed tree or sod as remaining personal property because these items are fixtures or improvements to real estate. (They would also be quite difficult to move to another location.)
4. The nature of the retail nursery and florist business has changed. It has expanded to include many real property improvements such as grading, landscaping, installing patios, decks, sidewalks, fences, etc. The amendments would put the transplanting of trees, sod, etc. on the same basis as other real property improvements made by contractors.
5. The amendments would encourage and increase the competitive edge for horticulture, a rapidly growing sector of farming and of agriculture in Minnesota.
6. The State would be revising and conforming its sales and use treatment on installation and transplanting of trees, shrubs, sod, etc. to that of the surrounding states.
7. Trees, shrubs, and like landscaping improvements are classified as real property improvements and add to the property value of the real estate while personal property does not.
8. We feel the administration of the compliance with the sales and use tax would be improved and streamlined if our proposed amendments are approved. Greg Heck, Rod Hoheisel, Tom Ellerbe and other DOR officials with whom we have met several times during the past year have expressed agreement with this position.

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

In the Matter of the Adoption of the Rule of the State of Minnesota Department of Revenue Relating to Sales and Use Tax Governing Florists and Nurseries.

DECLARATION OF COUNSEL.

I, Gregory P. Huwe, Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0739.

Nov. 14, 1991
Dated

Gregory P. Huwe
Assistant Attorney General