

**FINANCE AND ADMINISTRATION CABINET**  
**Department of Revenue**  
**(Amendment)**

**103 KAR 27:050. Sourcing of retail sales by florists.~~[Florists and nurserymen.]~~**

RELATES TO: KRS 139.010, 139.105, 139.200, 139.310, 139.330

STATUTORY AUTHORITY: KRS 131.130(1), 139.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the administration and enforcement of Kentucky tax laws. KRS 139.105 requires florist wire sales to be sourced in accordance with an administrative regulation promulgated by the department. This administrative regulation interprets the sales and use tax law as it applies to sales by florists~~[and nurserymen].~~

Section 1. Sales of the following are examples of items that shall be subject to the sales and use tax:

(1) Balloons;

(2) Bouquets;

(3) Candy;

(4) Flowers;

(5) Potted plants;

(6) Shrubbery;

(7) Vases;

(8) Wreaths; and

(9) Other similar items of tangible personal property.~~[flowers, wreaths, bouquets, potted plants, shrubbery, and other such items of tangible personal property are subject to the sales and use tax.]~~

Section 2. Florist transactions through a florists' wire delivery association. ~~If~~ ~~[Where]~~ florists conduct transactions through a florists' wire ~~[telegraphic]~~ delivery association, the following rules shall ~~[will]~~ apply in the computation of tax liability:

(1) On all orders taken by a Kentucky florist and sent ~~[telegraphed]~~ to a second florist in Kentucky for delivery in Kentucky, the sending florist shall ~~[will]~~ be liable for the tax based upon gross receipts from the customer who places the order;

(2) If a ~~[In cases where a]~~ Kentucky florist receives an order and subsequently sends~~[pursuant to which he gives telegraphic]~~ instructions to a second florist located outside Kentucky for delivery of flowers to a point outside Kentucky, the Kentucky tax owed shall be based upon gross ~~[tax will likewise be owing with respect to the total]~~ receipts of the sending florist from the customer who places the order; and

(3) If ~~[In cases where]~~ Kentucky florists receive ~~[telegraphic]~~ instructions from another florist ~~[other florists]~~ either within or outside of Kentucky for the delivery of flowers, the receiving florist shall~~[will]~~ not be held liable for tax with respect to any receipts realized~~[which he may realize]~~ from the transaction. In this instance, if the order originated in Kentucky, the tax shall ~~[will]~~ be due ~~[from]~~ and payable by the Kentucky florist who first received the order and then sent ~~[gave the telegraphic]~~ instructions to the second florist.

Section 3. Florist transactions not through a florists' wire delivery association. ~~If~~ florists conduct transactions through any other means other than a florists' wire delivery association, all

orders shall be sourced to the destination where the tangible personal property is delivered, pursuant to KRS 139.105. The florist shall collect and remit the sales and use tax accordingly on the retail sale of the tangible personal property. [~~When a nurseryman or florist sells shrubbery, young trees or similar items, and as part of the transaction transplants them to the land of the purchaser for a lump sum or a flat rate, the vendor so selling and installing must make a segregation of that portion of the charge which is for tangible personal property sold and that portion of the charge which is for installation. Failure to segregate the charge will subject the entire amount of the transaction to the sales tax.~~]

THOMAS B. MILLER, Commissioner

APPROVED BY AGENCY: July 13, 2021

FILED WITH LRC: July 13, 2021 at 1:16 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 22, 2021, at 10:00 a.m. in Room 11A, State Office Building, 501 High Street, Frankfort, Kentucky 40601. The hearing may be conducted by video teleconference at the discretion of the agency. An individual interested in being heard at this hearing shall provide written notification to the agency of the intention to attend the hearing at least five (5) business days prior to the date scheduled for the hearing.. If no notification of intent to attend the hearing is received by that date, the hearing will be cancelled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Gary Morris, Executive Director, Office of Tax Policy and Regulation, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, phone (502) 564-0424, fax (502) 564-3875, email Gary.Morris@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Gary Morris

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 27:050 to insert language clarifying guidance for the interpretation of the sales and use tax law as it applies to florists.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide guidance to florists on how to apply recent changes in the sales tax law.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed regulatory language conforms with the provisions of KRS Chapter 13A that require an agency to maintain the most up to date guidance and statutory references in its regulations to avoid deficiency.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulatory language will provide florists with the most up to date guidance on the sourcing of sales pursuant to updated statutory requirements so they can efficiently file returns, and remain in good standing with the Department of Revenue.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the existing administrative regulation by adding a necessary statutory reference related to florist sourcing; updating the promulgation statement within the NECESSITY, FUNCTION, AND CONFORMITY section; updating the regulations to meet KRS Chapter 13A requirements; adding additional tangible personal property sales examples; providing clarifying language; and deleting previous guidance related to the taxability of certain sales that are now taxable as the furnishing of landscaping services.

(b) The necessity of the amendment to this administrative regulation: See (1)(b) above.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All florists and their customers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No additional actions are necessary to comply with this amendment. Florists are currently collecting sales tax on transactions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This regulation does not add any additional fees or costs to be incurred by florists.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Florists will collect sales tax as required by law and remain in good standing with the department.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Any new costs that may have been created by the statutory changes (for example, taxpayer outreach efforts to inform the general public of the changes in KRS 139.200) have already been, and will continue to be absorbed through current staff and budgeted funding. Current staff are already answering questions to provide guidance to florists.

(b) On a continuing basis: There are no expected additional costs as a result of this amendment in the future, as the collection process is ongoing.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current budget funding and department staff will be used to implement and enforce this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed regulation will be applied equally to all entities impacted by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Fi-

nance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130(1) and KRS Chapter 13A.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenues will be generated. The amendment provides language to clarify guidance and make KRS Chapter 13A conforming technical changes to this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs are expected in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs are expected in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: