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Commissioner

KY-PLR-21-02

June 22, 2021

LEGEND

NewCo =

Taxpayer =

This letter is in response to your private letter ruling request dated January 13, 2020, (the “Request Letter”) regarding the application of sales and use tax to sales of flowers and floral arrangements (collectively referred to as “flowers”).

FACTS

The substantial facts and details of Taxpayer’s transactions are contained in your Request Letter and are not repeated here.

LAW

Kentucky Revised Statutes 139.105, 139.200, and 139.240 establish the parameters for sales and use taxes for florists in Kentucky. Kentucky Administrative Regulation 103 KAR 27:050 contains guidance for the sourcing of sales for florists.

CONCLUSION

The Department of Revenue (the “Department”) has reviewed the Request Letter and makes the following conclusions exclusively for the Taxpayer based on the facts presented in your Request Letter. The Request Letter seeks guidance on how NewCo’s retail sales of flowers made from its Kentucky location should be sourced for purposes of the Kentucky sales and use tax.

As a new retailer engaged in business in this state, NewCo must file an application with the Department for a permit to conduct business in Kentucky. As a registered retailer, the company must collect and remit sales and use tax on all sales for delivery to Kentucky addresses. For legal reference, see KRS 139.240.

Pursuant to KRS 139.200 and 103 KAR 27:050(1), flowers and floral arrangements sold by NewCo to customers in this state are subject to the 6% Kentucky sales tax. Although special sourcing guidelines are outlined in KRS 139.105(3) and 103 KAR 27:050(2) for sales conducted through florists’ telegraphic delivery associations, flowers sold outside of these networks must be sourced according to the general sourcing guidelines in KRS 139.105(1).

Even though NewCo sells flowers through an affiliated website that will be purchased from an out of state entity that ships directly to NewCo’s customers, NewCo remains the retailer of those products. Since NewCo will not be a member of a telegraphic delivery association, pursuant to KRS 139.105(1), the company must collect and remit the tax imposed by KRS 139.200 on transactions in which customers take delivery of the flowers within Kentucky.

The above guidance is limited to the specific transactions in the Request Letter and is based solely upon the information presented by the Taxpayer as outlined herein. Additional facts or changes in the law could change some or all of our answers. Guidance does not constitute a final ruling, order, or determination of the Department. Therefore, Department guidance cannot be appealed to the Kentucky Board of Tax Appeals. Also, a taxpayer may not file a protest based on the issuance of Department guidance. If a taxpayer disagrees with Department guidance, he or she may file a return contrary to the Department guidance and may either seek a refund for any overpayment and protest its denial, or may protest an assessment issued by the Department as a result of the filing pursuant to KRS 131.110.

If you have any questions, do not hesitate to contact me (502) 564-0424 or Gary.Morris@ky.gov. Thank you for the opportunity to be of assistance to you.

Sincerely,



Gary Morris, Executive Director
Office of Tax Policy and Regulation