

## Questions for the State of NE Department of Revenue

Nebraska FDA

February 23, 2014

There is confusion in our profession as to what sales taxes are supposed to be collected as a result of a burial vault being delivered. Could you please try and answer some of the below questions for us.

- 1.) Tax Reg 53 does not include any language that indicates funeral establishments or vault companies must collect sales or use tax on delivery and rental items? Are you claiming that there is a sales tax based upon your ruling regarding delivery?

**Department of Revenue's Response, 04-07-2014.** The Nebraska Department of Revenue (Department) is not claiming that the taxability of delivery charges resulted from the issuance of the Information Guide titled "Nebraska Sales and Use Tax Guide on Delivery Charges." Due to a law change, delivery charges became taxable beginning October 1, 1985, provided the charges for delivery were paid to the retailer. The Information Guide that was published as of April 2011 is intended to provide a general overview of issues related to delivery charges. Information Guides do not supersede, alter, or otherwise change any provisions of the Nebraska Revenue Act, regulations, Department rulings, or court decisions.

In addition to reviewing the provisions of Sales and Use Tax Regulation [1-053](#), other sales and use tax regulations must be read in conjunction with this regulation, such as Sales and Use Tax Regulations [1-079](#), Delivery Charges, and [1-018](#), Rent or Lease of Tangible Personal Property, in order to fully understand the tax ramifications surrounding these types of transactions.

Sales and Use Tax Regulation 1-079.01 specifically states that charges for delivery, freight, postage, shipping, crating, packing, or transportation of an item are taxable whenever the item being purchased is taxable and the charges are paid to the retailer of the item. Therefore, when the vault company sells and delivers the vault to a location in Nebraska, the vault company is required to collect sales tax on the total amount charged for the vault, including any delivery charges. If the funeral home is purchasing the vault, the funeral home can purchase the vault and related delivery charges for resale by issuing to the vault company a Nebraska Resale or Exempt Sale Certificate, Form 13. If the funeral home does purchase the vault and delivery charges for resale, the funeral home is required to collect sales tax on the total amount charged to its customers for the vault and delivery charges.

Sales and Use Tax Regulation 1-018 specifically states that charges for the rental or lease of property for storage, use, or other consumption in this state are subject to tax. The total amount for which the property is leased or rented includes charges for any services which are a part of the lease or rental. The vault company is required to collect sales tax on the total amount charged for the rental or lease of the tent, chairs, artificial grass and any other related charges including the set-up and tear down of such equipment. The funeral home cannot purchase the rental or lease of these items for resale because the funeral home is using the tent, chairs, and artificial grass as part of the funeral services it is providing.

- 2.) If this is a taxable item, If a vault company fails to include sales tax on delivery and set-up charges on their invoices, are we required to report the tax on our sales tax form as a sales tax? This is a resale item that the families pay. Thus it would not be a use tax?

**Department of Revenue's Response, 04-07-2014.** Included in our response to your first question, the funeral home can purchase the vault, vault lowering equipment, and related delivery charges for resale by issuing to the vault company a Nebraska Resale or Exempt Sale Certificate, Form 13. In that event, the funeral home is required to collect sales tax on the total amount charged to its customer for the vault and any other related charges associated with the sale of the vault such as delivery charges, set-up and tear down charges, and charges for the vault lowering equipment.

- 3.) Most funeral establishments have vault companies provide the graveside set-up for them. These items are rented from the vault company and include tent, lowering devices, artificial grass and chairs. Because we don't purchase these items, but rather rent them, is this still a collectable tax?

**Department of Revenue's Response, 04-07-2014.** As noted in Sales and Use Tax Regulation 1-001.01, sales tax is imposed upon the gross receipts from all sales, leases, and rentals of tangible personal property. Therefore, vault companies that rent or lease a tent, chairs, and artificial grass to the funeral home are required to collect sales tax on the total amount charged for the rental of the tent, chairs, artificial grass and related charges for set-up and tear down of such equipment, and any delivery charges. The funeral home is using the tent, chairs, and artificial grass as part of the funeral services that it provides.

As noted in our response to question 1, the funeral home can purchase the vault and related delivery charges for resale. In addition, any charges for the graveside lowering devices can be purchased for resale provided the vault company is billing the funeral home for the vault, graveside lowering devices, and delivery charges.

- 4.) It would be helpful once your review is completed, that the Dept. publish a "sales and use tax information guide" for our profession. Is this something you can do for us?

**Department of Revenue's Response, 04-07-2014.** The Department is reviewing Sales and Use Tax Regulation 1-053 and as part of this review process, the Department will assess the need for an information guide specifically for funeral homes.

- 5.) The Dept. should include the wording "cemeteries" in your review process. We realize that for-profit cemeteries sell non-taxable property and services, however, they also sell taxable property.

**Department of Revenue's Response, 04-07-2014.** The Department recognizes that both for-profit and not-for-profit cemeteries that sell property are required to collect sales tax on such sales. In some instances; however, cemeteries also provide funeral services, and in those cases, the applicable provisions of Sales and Use Tax Regulation 1-053 will apply. In addition, cemeteries that sell and install

memorial markers are considered contractors under Nebraska law and must pay or remit tax on the memorial markers based on the contractor “option” they have elected. See Sales and Use Tax Regulation, [1-017](#), Contractors.