

Recently, a question came up about charging sales tax at our annual plant sale which we will hold with the John Clayton Chapter of the Native Plant Society (NPS) on April 25, 2009.. One of their board members indicated that they would be charging sales tax on all transactions made by NPS. A question was posed as to the propriety of our organization charging sale tax as well.

I have done some research on the website maintained by Virginia Tax Policy Library (www.policylibrary.tax.virginia.gov). The Tax Code of Virginia, Section 58.1-609.11, Retail Sales and Use Tax, was less than helpful as it contains a fair amount of legal terminology. However, the Virginia Tax Administrative Code, Section 23VAC10-210-1080, provided a much easier to understand interpretation and elaboration of the Virginia state tax laws.

Based on this research, our annual plant sale falls under the definition of an "occasional sale." This is defined as "the sale by an organization which engages in sales on three or fewer separate occasions within one calendar year." State sales tax does not apply to this type of sale. In the section of the policy library called Ruling of the Tax Commissioner, I found two cases (85-152 and 96-317) that somewhat parallel our own where written requests for rulings were made of the Tax Commissioner. Once again, in these rulings, the definition of "occasional sales" was used to make the determination that sales tax need not be collected. Although these cases occurred in 1985 and 1996, they are part of the tax policy library website, and should still be considered valid interpretations of the tax law.

In view of this research, it is my belief that:

- 1) We are not required to collect sales tax on merchandise that we sell at our annual plant sale because it is defined as an occasional sale. (However, we should be prepared to take five percent off the top of our gross sales in the event we owe the state sales tax.)
- 2) If the rest of the board members still feel uncomfortable with this prospect, we can appeal to the Tax Commissioner for a written ruling.
- 3) For the time being, we should limit all other sales (within our own organization as well as to the public) to a maximum of **two**. This will limit our bird house logo merchandise sales but it will be temporary until we have further researched the sales tax issue.
- 4) There is the possibility of applying to the state for an exemption to paying and collecting sales tax. We can do this on line once we have been granted our 501C3 status. If we do not apply for an exemption, we will be required to submit a monthly return to the taxation department by the 20th of the following month whether or not we have had taxable sales for the month. This ruling applies if we wish to have more than three sales of any kind in any calendar year.

I spoke with Pat Gibbs, NPS Treasurer, on Monday evening (3/16/09). She explained that the NPS is required to collect sales tax by mandate of their state treasurer. This is because they sell items at all their monthly meetings as well as at some of the other functions they are invited to participate in. They are sensitive, however, to the fact that we are not required to do the same. They will include the tax in their price structure and do not plan to advertise this at the plant sale. My discussion with Pat was very

congenial and I look forward to working with her in managing the financial aspects of our joint plant sale.

Respectfully submitted,

Sarah L. Dougherty, Treasurer

JCC/W Master Gardener Association