

Charges designated as delivery or transportation charges are not taxable if it can be shown that they are both agreed to separately from the selling price of the tangible personal property which is sold and that such charges are actually reflective of the costs of shipping. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

October 7, 2010

Dear Xxxxx:

This letter is in response to your letter dated September 2, 2010, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Our company purchases many different products from various vendors including, but not limited to, office supplies, such as printer toners. We are currently having a dispute with one of our out-of-state vendors, VENDOR located in STATE.

VENDOR uses a third party distributor to drop-ship product (namely printer toners) directly to us without taking possession of the merchandise themselves. Based on information from VENDOR, they are not an 'Illinois Retailer'. They have stated, in an e-mail that they neither accept purchase orders in the State of Illinois nor maintain an inventory in Illinois. Therefore, they are collecting Use Tax under the 'retailer maintaining a place of business in the State' (see 86 Ill. Adm. Code Sec. 150.201).

VENDOR has stated, also in an e-mail, 'The freight quoted and charged to the customer at the point of order entry is just an estimate by the salesperson and is not reflective of the actual charges, which don't become known to us until several days after the shipment. The customer is billed for freight as initially quoted and not based upon the actual cost of the transportation. No reconciliation is done even after the actual charges are known to us'. They are taxing ALL the 'freight' charges even though they don't know the actual cost of the freight. They do not state 'shipping & handling', but 'freight' only on their invoices.

It is our understanding the rule to be that ONLY the cost over and above the actual cost of freight is taxable and therefore the tax on freight would be exempt as VENDOR can not prove the cost that is over and above when they have invoiced us.

We requested a brief inquiry on this subject with IDOR on 6/3/10 with a Question Reference #. We were referred to you, the Legal Service Office, for a legal ruling. We have decided to pursue this line of action as VENDOR continues to dispute this matter.

We are requesting that you please give us a legal ruling on this issue so we may settle this dispute once and for all with VENDOR. If for any reason you need to contact us for further information pertaining to this dispute, please feel free to call me.

We appreciate your time with this matter and look forward to hearing from you soon.

#### **DEPARTMENT'S RESPONSE:**

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i). This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

As noted in subsection (d) of Section 130.415 of the Department's regulations, if the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his or her tax liability. A separate listing on an invoice of such charges is not sufficient to demonstrate a separate agreement. See 86 Ill. Adm. Code 130.415(d).

The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price is a separate and distinct contract for transportation or delivery. However, documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. As stated in Section 130.415 of the Department's regulations, if the charges for transportation or delivery exceed the cost of delivery or transportation, the excess amount is subject to tax.

Please note, however, in light of the recent Supreme Court of Illinois case of *Kean v. Wal-Mart Stores, Inc.*, 235 Ill.2d 351, 919 N.E.2d 926 (2009) concerning the taxation of delivery charges, the Department is considering amending Section 130.415.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters  
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