

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.)

December 15, 2010

Dear Xxxxx:

This letter is in response to your letter dated December 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 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:

Background

We are a direct sales company that markets items exclusively through independent distributors. Distributors recruit hostesses to hold home parties. A hostess holds a sales party for her friends and relatives in her home where the company's products are demonstrated and sold.

We currently charge shipping as a percentage of the total price with a minimum of \$3.95. Shipping is typically sent to the distributor or hostess who then delivers items to customers. Shipping is performed by common carrier and our contract is not specific on when title passes. If product is lost in transit, we replace product and seek reimbursement from the carrier. Shipping is stated separate on the invoice as 'shipping and handling charges'.

Issue

- Should we include shipping charges in our taxable amount?

If you have any additional questions concerning this issue, please call me.

DEPARTMENT'S RESPONSE:

The Department's regulation "Cost of Doing Business Not Deductible" 86 Ill. Adm. Code 130.410, provides that "[i]n computing Retailers' Occupation Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, idle time charges, incoming freight or transportation costs, overhead costs, processing charges, clerk hire or salesmen's commissions, interest paid by the seller, or any other expenses whatsoever. Costs of doing business are an element of the retailer's gross receipts subject to tax even if separately stated on the bill to the customer.

This principle is further explained in the Department's regulation, "Transportation and Delivery Charges" 86 Ill. Adm. Code 130.415, which provides in subsection (e) that transportation or delivery charges paid by a seller in acquiring property for sale are merely costs of doing business to the seller and may not be deducted by such seller in computing his Retailers' Occupation Tax liability, even though he passes such costs on to his customers by quoting and billing such costs separately from the selling price of tangible personal property which he sells. The same is true of transportation or delivery charges paid by the seller in moving property to some point from which the property (when subsequently sold) will be delivered or shipped to the purchaser.

Please be advised that where retailers send merchandise to party hosts or hostesses who then distribute the merchandise to purchasers, shipping and handling charges are generally considered part of the retailer's costs of doing business and are subject to tax. Please refer to Section 130.410.

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

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:msk