ST 15-0017 GIL 03/18/2015 DELIVERY CHARGES
This letter explains the rules regarding the taxability of shipping and handling charges. See 86 Ill. Adm. Code. 130.415. See also *Nancy Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009). (This is a GIL.)

March 18, 2015

Dear XXXX:

This letter is in response to your letter dated November 24, 2014, 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:

> COMPANY ("Taxpayer") respectfully requests a private letter ruling from the Illinois Department of Revenue ("Department") pursuant to 2 Ill. Adm. Code § 1200.110, to obtain guidance on whether Taxpayer is required to collect and remit Illinois retailers' occupation tax ("ROT") and/or use tax ("Use Tax") on shipping and handling fees ("S&H Fees") charged to customers in Illinois.
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> As required by 2 Ill. Adm. Code § 1200.110, Taxpayer provides the following disclosures: (1) Taxpayer is not under audit by the Department; (2) Taxpayer is not engaged in litigation with the Department; (3) to the best of the Taxpayer's knowledge, the Department has not previously ruled on the same or a similar issue for the Taxpayer or a predecessor; (4) Taxpayer has not previously submitted the same or a similar issue to the Department for a letter ruling and withdrawn the request before a letter ruling was issued; (5) this request for a Ruling describes all authorities relevant to the request. This Ruling is intended to address current and

future tax periods to which the facts described below apply. Taxpayer requests the opportunity to delete any identifying information prior to public dissemination of the Ruling.

I. Facts

Taxpayer sells tangible personal property listed on the COMPANY website to Illinois customers. The distribution, fulfillment, and related services (*e.g.*, inventory storage, packaging, and shipping services) for such sales are handled by fulfillment centers ("FCs") which are leased and operated by Taxpayer's affiliated entities, all of which are located outside of Illinois. FCs purchase products from various vendors and hold the inventory for resale to both related and unrelated parties. When a customer purchases tangible personal property from Taxpayer listed on the COMPANY website, an FC will drop ship the tangible personal property to the customer via common carrier.[1] Additionally, FCs provide packaging, labeling, shipping and other related services to Taxpayer.

When a customer purchases tangible personal property from Taxpayer, the customer is required to select a shipping speed and the customer will generally be charged a S&H Fee. The S&H Fee is a charge for the following: (1) preparing the order for shipment, which includes picking, packaging, and fulfilling the order; and (2) shipping the order from the FC to the customer via common carrier. The S&H Fee is separately stated on the customer's order summary or receipt as a single line item, separate from the total sales price of the tangible personal property and any applicable ROT, Use Tax, or other charges.

The S&H Fee contains a shipping component and a handling component. Taxpayer's shipping charges for tangible personal property shipped within the contiguous U.S. vary based on the following: (1) the product category of the item(s) shipped, and (2) the shipping speed selected by the customer. Depending on the item and the delivery address, Taxpayer offers the following various shipping speeds: (1) standard (delivery within 3 to 5 business days); (2) two-day (delivery within 2 business days); (3) one-day (delivery within 1 business day); and (4) local express delivery (same-day delivery on items ordered before the cut-off time). Generally, the quicker the delivery method, the greater the total shipping cost. In addition to the shipping charge, the S&H Fee also includes a handling charge. The handling fee is a charge for picking, packing, and fulfilling the customer's order. The customer is required to

[1] The FC sells the tangible personal property ordered by the customer to Taxpayer; the FC prepares the shipment and a common-carrier picks up the shipment at the FC. Title passes immediately from the FC to the Taxpayer and then to the customer when the item is placed with the common carrier for delivery.

select a shipping and handling option during the checkout process as customers cannot pick up packages at FCs.

II. Issues

Are the S&H Fees charged by Taxpayer on sales of tangible personal property shipped to customers in Illinois taxable under the ROT and/or Use Tax when the item purchased is taxable? Is Taxpayer permitted, when a shipment contains both taxable and exempt items, to apportion the S&H Fee between such items based on the selling price of each item and collect tax only on that portion of the S&H Fee attributable to taxable items?

III. Illinois Law

Under Illinois law, persons with nexus in Illinois who are selling tangible personal property to Illinois customers are subject to the ROT or have a Use Tax collection obligation. However, persons are not exclusively subject to the ROT or the Use Tax. Instead, the application of the specific tax is determined on a sale by sale basis.[2]

1. Retailers' Occupation Tax

Illinois imposes the ROT "upon persons engaged in the business of selling at retail tangible personal property…."[3] The legal incidence of the ROT is on the seller, rather than on the purchaser.[4] The "business of selling" is the composite of many activities extending from the preparation for, and the obtaining of, orders for goods to the final consummation of the sale by the passing of title and payment of the purchase price."[5] A "sale at

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[2] *Ex-Cell-O Corp. v. McKibbin*, 384 Ill. 316, 321-22 (Ill. 1943); *see also* Ill. Private Letter Ruling No. ST 12-0007-PLR (Aug. 17, 2012) (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." An "Illinois Retailer" is "liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers."); *see also Automatic Voting Machine Corp. v. Daley, 409 Ill. 438 (Ill. 1951) (*An out-of-state corporation selling voting machines to the city of Chicago was not liable for the Retailers' Occupation Tax when its activities in Illinois were limited to promotional work, delivery of bids, transfer of title, delivery of the machines and servicing them. The submission of bids, together with the promotional work of its agents was not sufficient to subject the company to the Retailers' Occupation Tax. Mere execution of contract in Illinois was not sufficient to constitute engaging in the business of selling at retail in Illinois.).

[3] 35 ILCS § 120/2.

[4] 86 IAC 130.101(d). A retailer who is "liable for Retailers' Occupation Tax on gross receipts from sales [] must collect the corresponding Use Tax incurred by the purchasers." Ill. Private Letter Ruling No. ST 12-0007-PLR (Aug. 17, 2012). Such a retailer, however, is "allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales." Ill. Dep't of Rev. General Info. Letter No. ST 11-0040-GIL (May 26, 2011).

[5] *Ex-Cell-O Corp. v. McKibbin*, 384 Ill. 316, 321-22 (Ill. 1943); *see also* Ill. Private Letter Ruling No. ST 12-0007-PLR (Aug. 17, 2012); *see also Automatic Voting Machine Corp. v. Daley, 409 Ill. 438 (Ill. 1951).*

retail" is defined as "any transfer of the ownership of or title to tangible personal property to a purchaser … for a valuable consideration."[6]

Under the ROT, tax is calculated as a percentage of the "gross receipts from sales of tangible personal property made in the course of business."[7] "Gross receipts from the sales of tangible personal property" is defined to mean "the total selling price or the amount of such sales[.]"[8] The "selling price" is generally the consideration received valued in money:

"Selling price" or the "amount of sale" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property, other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include charges that are added to prices by sellers on account of the seller's [ROT liability], or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by the Use Tax Act[.][9]

2. Use Tax

The Illinois Use Tax is "imposed upon the privilege of using in [Illinois] tangible personal property purchased at retail from a retailer…."[10] The use tax "shall be collected from a purchaser by a retailer maintaining a place of business in [Illinois] or a retailer authorized by the Department under Section 6 of [Illinois' Use Tax Act], and shall be remitted to the Department…."[11]

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[6] 35 ILCS § 120/1.
[7] 35 ILCS § 120/2-10.
[8] 35 ILCS § 120/1.
[9] 35 ILCS § 120/1.
[10] 35 ILCS § 105/3.
[11] 35 ILCS § 105/3-45. Persons who are considered to be "retailers maintaining a place of business" in Illinois "because of their Illinois activities are required to collect Use Tax on sales made to all Illinois purchasers regardless of the manner in which the orders are placed." Ill. Dep't of Rev. Gen. Info. Letter ST 05-0006-GIL (Jan. 11, 2005). A retailer who is considered to maintain a place of business in Illinois is required to "collect Use Tax on all his sales to Illinois purchasers, regardless of whether those sales are placed by mail order, telephone order or over the Internet." *Id.* Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in Illinois" are required to "register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department." Ill. Dep't of Rev. General Info. Letter No. ST 11-0040-GIL (May 26, 2011). A retailer who is liable for collecting Use Tax because it maintains a place of business in Illinois may not incur any Retailers' Occupation Tax Liability. *See* Ill. Private Letter Ruling No. ST 12-0007-PLR (Aug. 17, 2012).

The Use Tax is calculated as a percentage of "either the selling price or the fair market value, if any, of the tangible personal property."[12] The "selling price" is generally the consideration for a sale valued in money:

"Selling price" means the consideration for a sale valued in money whether received in money or otherwise, including cash, credits, property other than as hereinafter provided, and services, but not including the value of or credit given for traded-in tangible personal property where the item that is traded-in is of like kind and character as that which is being sold, and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but does not include interest or finance charges which appear as separate items on the bill of sale or sales contract nor charges that are added to prices by sellers on account of the seller's tax liability under the "Retailers' Occupation Tax Act", or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by this Act[.][13]

The Use Tax regulations provide that "[t]o avoid needless repetition, the substance and provisions of all [ROT] Regulations … which are now in effect or which may hereafter be amended or promulgated, and which are not incompatible with the Use Tax Act or any special Regulations that may be promulgated by the Department thereunder, are incorporated herein by reference and made a part [of the Use Tax regulations]."[14]

B. Transportation or Delivery Charges

The taxability of transportation and delivery charges depends upon "whether the transportation or delivery charges are included in the selling price of the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in such selling price."[15] The taxability of such charges does not depend on "the separate billing of such transportation or delivery charges or expense[.]"[16] "Transportation and delivery charges" are defined to include "freight, express, mail, truck or other carrier, conveyance or delivery expenses" and are "many times designated as shipping and handling charges."[17] Thus, while the ROT and Use Tax are broadly imposed on the "selling price," such taxes are not imposed on transportation or delivery charges if: (1) the charges are separately agreed

[12] 35 ILCS § 105/3-10.
[13] 35 ILCS § 105/2.
[14] 86 Ill. Adm. Code § 150.1201.
[15] 86 Ill. Adm. Code § 130.415(b).
[16] *Id*.
[17] 86 Ill. Adm. Code § 130.415(a).

upon between the seller and buyer; *and* (2) the charges do not exceed actual costs.[18]

1. Separately Agreed Upon

As noted above, whether transportation or delivery charges are included in the selling price depends on whether the seller and buyer contract for such charges separately.[19] The primary authorities for what constitutes separately agreed upon transportation and delivery charges for purchases made over the Internet[20] consists of a regulation issued by the Department (86 Ill. Adm. Code § 130.415) and a decision issued by the Illinois Supreme Court (*Kean v. Wal-Mart Stores, Inc.*).

a. 86 Ill. Adm. Code § 130.415

In Illinois, transportation and delivery charges are taxable if they are not *separately agreed upon*:

If the seller and buyer agree on 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 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 [ROT] liability.[21]

The regulation provides that delivery charges are "deemed to be agreed upon separately … so long as the seller requires a separate charge for delivery[.]"[22] The "best evidence" that such charges "were agreed to separately and apart from the selling price, is a separate and distinct contract for transportation or delivery."[23] However, the regulation also provides that "documentation which demonstrates that the purchaser had

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[18] 86 Ill. Adm. Code § 130.415. The ROT and the Use Tax are complementary taxes and the regulations interpreting "selling price," including the regulation explaining the application of ROT to transportation and delivery charges, also apply to the Use Tax. *See* 86 Ill. Adm. Code 150.1201; *see also Kean v. Wal-Mart Stores, Inc.*, 919 N.E.2d 926, 932 (Ill. 2009) ("The complementary nature of the two statues is further exemplified by the Department's incorporation in its Use Tax Act administrative regulations all ROTA regulations which are not incompatible with the Use Tax Act.").

[19] 86 Ill. Adm. Code § 130.415.

[20] In the context of mail order sales, the Department has issued general information letters explaining that mail order delivery charges "are deemed to be agreed upon separately from the selling price of tangible personal property being sold so long as the mail order form requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of such shipping, transportation or delivery." Ill. Dep't of Rev. GIL ST 01-0230-GIL (Oct. 29, 2001); *see also* Ill. Dep't of Rev. GIL ST 99-0327-GIL (Nov. 4, 1999); Ill. Dep't of Rev. GIL ST 99-0024-GIL (Jan. 7, 1999).

[21] 86 Ill. Adm. Code § 130.415(d).

[22] 86 Ill. Adm. Code § 130.415(d).

[23] 86 Ill. Adm. Code § 130.415(d).

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."[24]

b. *Kean v. Wal-Mart Stores, Inc.*

In *Kean v. Wal-Mart Stores, Inc.*, the Supreme Court of Illinois addressed when shipping charges are considered separately agreed upon in the context of Internet purchases of tangible personal property.[25] Kean, the original plaintiff, and Russell, an intervenor, bought tangible personal property from Wal-Mart's website, and Wal-Mart collected Use Tax on the tangible personal property and the shipping charges.[26] Kean argued that "the shipping charges for her internet purchase were separately agreed upon and were not part of Wal-Mart's 'selling price' or 'gross receipts' on which the sales tax is properly assessed."[27]

In holding that Wal-Mart appropriately collected sales tax on the shipping charges, the court stated that the issue is "whether the transportation or delivery charges are included in the selling price of the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in the selling price."[28] The court determined that "no separate agreement for transportation arose, nor could it" between the plaintiffs and Wal-Mart, because the "plaintiffs could not submit their internet orders unless and until they selected a shipping option."[29] Moreover, the "plaintiffs did not have option of buying the product on the internet and picking it up at a brick and mortar Wal-Mart."[30] Thus, the court determined the "selling price" actually included the cost of shipping.[31]

The court further explained that while "service occupations are beyond the reach of [the ROT], the line between the provision of a nontaxable service and a taxable retail sale of tangible personal property is not always clear."[32] However, a service is considered taxable in Illinois if it is "an 'inseparable' or 'indispensable' part of the retail sale."[33] The court agreed with Wal-Mart and the Department that "an 'inseparable link'

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[24] 86 Ill. Adm. Code § 130.415(d).
[25] 919 N.E.2d 926 (Ill. 2009).
[26] *Id*. at 928, 930.
[27] *Id*. at 929.
[28] *Id*. at 934. Furthermore, if the transportation and delivery charges "exceed the cost of delivery or transportation, the excess amount is subject to tax."
[29] *Id*. at 935.
[30] *Id*. at 936.
[31] *Id*. at 935.
[32] *Id*. at 939.
[33] *Id*.

exist[ed] between the sale and delivery of the merchandise plaintiffs purchased from Wal-Mart's internet store."[34]

2. Actual Costs

86 Ill. Adm. Code § 130.415 also states that to be exempt from tax, transportation and delivery charges must be "reflective of the costs of such shipping, transportation or delivery."[35] Thus, if transportation and delivery charges exceed actual costs, the excess is subject to tax.[36]

Recent general information letters issued by the Department and an order issued by the Circuit Court of Cook County confirm that the relevant authority on the taxability of delivery and transportation charges is 86 Ill. Adm. Code § 130.415 and the *Kean* decision.[37]

IV. Legal Analysis

The S&H Fee charged by Taxpayer is taxable by inclusion in the "selling price" of the product. The ROT and Use Tax are broadly imposed on the "selling price," which includes transportation or delivery charges if: (1) the charges are not separately agreed upon between the seller and buyer; or (2) the charges exceed actual costs.[38] Taxpayer's S&H Fee

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[34] *Id*. at 940. The Illinois Supreme Court also distinguished the appellate court's opinion in *Airco Industrial Gas Division,* where the customers had the option to either take delivery of the gases in their own storage tanks, by noting that the delivery service purchased by the plaintiffs was not optional (i.e., plaintiffs could not complete the transaction without selecting a delivery option). *Kean*, 919 N.E.2d at 940 (*citing Airco Industrial Gas Division, the BOC Group, Inc. v. Department of Revenue*, 223 Ill.App.3d 386, 392 (Ill. App. 1991)).

[35] 86 Ill. Adm. Code § 130.415(d).

[36] 86 Ill. Adm. Code § 130.415(b).

[37] *See* Ill. Dep't of Rev. GIL ST 14-0044-GIL (Aug. 12, 2014)("Please note that unless separately contracted for as provided above, [shipping and handling] charges are considered to be part of the selling price of the tangible personal property being sold. Such charges are considered a cost of doing business, which are always includable in the gross receipts subject to tax."); *see also* Ill. Dep't of Rev. GIL ST-14-0004-GIL (Mar. 4, 2014)("A separate listing on an invoice of such charges is not sufficient to demonstrate a separate agreement. 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."); Ill. Dep't of Rev. GIL ST 12-0029-GIL (June 15, 2012) ("A separate listing on an invoice of such charges is not sufficient to demonstrate a separate agreement. 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. Note, 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, then the excess amount is subject to tax. For further information, see *Nancy Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009)."); *Schad, Diamond and Shedden v. Fansedge Inforporated*, No. 11 L 9550 (Ill. Cir. Ct. Cook County June 5, 2014).

[38] 86 Ill. Adm. Code § 130.415. The ROT and the Use Tax are complementary taxes and the regulations interpreting "selling price," including the regulation explaining the application of ROT

does not meet the first of these two requirements, and as a result, we do not analyze the second requirement.

The S&H Fee charged by Taxpayer is not separately agreed upon between Taxpayer and its customers. Although it could be asserted that Taxpayer's S&H Fee is similar to mail order delivery charges and exempt because it is a separate line item charge, the Illinois Supreme Court in *Kean* determined that Wal-Mart's shipping charges for orders placed from its website were taxable when its customers were required to select a shipping option. Like the plaintiffs in *Kean*, Taxpayer's customers are required to select a shipping option for tangible personal property in order to complete their orders. Taxpayer does not enter into a separate agreement with its customers for shipping and handling services and Taxpayer's customers are required to select shipping and handling option because they do not have the option to pick up purchased products at a brick and mortar location. Moreover, Illinois law is clear that Taxpayer's practice of separately stating the S&H fees on an invoice is insufficient to render such fees not taxable. Thus, an "inseparable link" appears to exist between the sale and delivery of the merchandise to Taxpayer's customers, and therefore, Taxpayer's S&H Fee would not qualify as separately agreed upon.

Because Taxpayer and its customers do not separately agree upon the S&H Fee, it is not necessary to determine whether Taxpayer's S&H Fee exceeds its actual costs for such services. Based on the above analysis, the "selling price" of tangible personal property purchased by Taxpayer's customers includes any separately stated S&H Fees. Along the same lines, if a customer purchases an exempt item, the S&H Fee charged to ship the exempt item to the customer would also be exempt from tax by virtue of their being no "selling price."

V. Conclusions

Taxpayer seeks the Department's confirmation that the separately stated S&H Fee charged by Taxpayer on sales of tangible personal property shipped to customers in Illinois is taxable when the item purchased is taxable. Additionally, Taxpayer seeks confirmation that when a shipment contains both taxable and exempt items, the S&H Fee may be apportioned between such items based on the selling price of each item and only that portion of the S&H Fee attributable to taxable items will be subject to tax.

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to transportation and delivery charges, also apply to the Use Tax. *See* 86 Ill. Adm. Code 150.1201; *see also Kean v. Wal-Mart Stores, Inc.*, 919 N.E.2d 926, 932 (Ill. 2009) ("The complementary nature of the two statues is further exemplified by the Department's incorporation in its Use Tax Act administrative regulations all ROTA regulations which are not incompatible with the Use Tax Act.").

Prior to the issuance of the Ruling, Taxpayer respectfully requests that the Department contact us to discuss any facts or questions that may potentially result in a nontaxable Ruling. Taxpayer reserves the right to withdraw the request. Should you have any questions regarding this request, please contact me at [XXX-XXX-XXXX or NAME@EMAIL].

DEPARTMENT'S RESPONSE:

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property for use or consumption. Retailers' Occupation Tax is based upon the "selling price" of the tangible personal property sold. Section 1 of the Retailers' Occupation Tax Act defines the term "selling price" as the "consideration for a sale valued in money … and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever…." See 35 ILCS 120/1. As indicated by this definition, a retailer's cost of doing business is not deductible from his or her gross receipts. This principle is articulated in Section 130.410 of the Department's rules. This rule states that in calculating Retailers' Occupation Tax liability, "labor or service costs" . . . "overhead costs" . . . "or any other expenses whatsoever" are not deductible from gross receipts. The rule provides that these costs of doing business are an element of a retailer's gross receipts subject to tax even if separately stated on the bill to the customer.

If a seller delivers the tangible personal property to the buyer, and 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. See the Department's regulation at 86 Ill. Adm. Code 130.415(d). Note, 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.

A separate listing on an invoice of transportation and delivery charges is not sufficient to demonstrate a separate agreement. The best evidence that such 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.

The Illinois Supreme Court's decision in *Nancy Kean v. Wal-Mart Stores, Inc.* provides further guidance. In *Kean*, a customer purchased an item online and was required to choose a shipping method to complete the transaction. The subtotal could never represent the full selling price of the item, but rather had to include shipping

charges in order to complete the transaction. Thus, the Illinois Supreme Court held that the shipping charges were part of the selling price and therefore taxable as the customer did not have another option for obtaining the product she purchased. The court stated that this creates an inseparable link between the delivery of the item and the sale of the merchandise, and the delivery charge is included in the selling price of the merchandise. See *Nancy Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009).

In the event that you are collecting Use Tax, based on the descriptions of sales in your letter, your shipping and handling charges are taxable gross receipts when the item purchased is taxable.

To the extent that a sale includes both taxable and exempt items, and the shipping and handling charges are included in the selling price of each item, the shipping and handling charges for the exempt item(s) are not subject to tax. You may use a reasonable apportionment method to exclude shipping charges on nontaxable items from the taxable gross receipts. Please be sure to maintain records and ensure that the method can be documented at the time of an audit.

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,

Cara Bishop
Associate Counsel

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