ST 15-0022-GIL 04/06/2015 DELIVERY CHARGES

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 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 86 Ill. Adm. Code 130.415. (This is a GIL.)

April 6, 2015

Dear XXXX:

This letter is in response to your letter dated February 12, 2015, 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:

> We would like a non-binding General Information Letter in connection with sales tax on separately stated delivery fees charged by our client, a national restaurant chain (the "Taxpayer").
>
> **Facts:**
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> Some of the restaurants operated by Taxpayer in Illinois are owned by the Taxpayer, while some of the restaurants are owned and operated by franchisees. In either case, the same information systems (point of sale system, software, and programming) are used by the Taxpayer and the franchisees. Customers may order a meal in person at the restaurant, order by phone, or order over the website maintained by Taxpayer.

The Taxpayer imposes a charge to deliver the meals to customers. Based on the configuration of the information system by the Taxpayer or the franchisee, the software program calculates the amount due from the customer for the meals, the delivery charge and the sales tax. The delivery charge is separately stated; however, a customer is not given written or oral notification that the delivery charge can be avoided if the customer picks up the meals at the restaurant, whether the order is phoned in or placed on the Taxpayer's website.

Based on its interpretations of the Illinois sales tax laws, the Taxpayer has been collecting sales tax on the separately stated delivery charges because the Taxpayer does not give any notification to its customers that the delivery charge can be avoided if the customer picks up the meals.

Requested Advice:

We would request that you confirm whether or not the separately stated delivery fees are subject to Illinois sales or use tax, because customers have the option to avoid the delivery fees by arranging to pick up the meal themselves, taking into consideration that the customers are not given notice that they may avoid the delivery charge by picking up the meal themselves.

Please do not hesitate to contact me in the event you need any additional information.

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 the retailers' 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 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.

In order to document that a separate agreement for delivery exists, your client should separately state delivery fees on the invoice and disclose to customers that they have the option of choosing carryout for the purchase price or delivery for the purchase price plus an ascertained or ascertainable delivery charge. If your client does not notify its customers that they have the option of taking delivery of the food 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, the delivery charges are taxable, as no evidence of a separate agreement for delivery exists. Please note that this is the case even if such delivery charges are separately stated on the invoice because in order for delivery charges to be considered nontaxable, the taxpayer must also show that a separate agreement for delivery exists, such as documentation demonstrating that purchasers have the option of delivery or carryout at the taxpayer's business.

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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