

ST 15-0043 GIL 07/01/2015 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.

July 1, 2015

Dear Ms. XXXX:

This letter is in response to the complaint that you filed on March 27, 2015 with the Illinois Office of the Attorney General regarding COMPANY's collection of sales tax. The Office of the Attorney General forwarded your complaint to the Illinois Department of Revenue. 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:

I just received my credit card statement from COMPANY and had some questions so I called customer service. In my discussions with them, they advised me that in Illinois, they charge taxes on shipping. Since I have never before been charged taxes on shipping, I did some research and discovered that if the shipping is shown separately, there would be no tax. I discovered this at Title 86 Part 130 Section 130.415 Transportation and Delivery Charges of the Illinois Department of Revenue Regulations.

COMPANY was kind enough to give me a refund of the sales tax, however, I am concerned about the rest of the consumers who are being charged sales taxes – is there, in fact, a sales tax to be charged to their customers? COMPANY is adamant that a tax is to be charged, even though it is shown separately. Why would they give me a credit of the sales tax?

I know that this is an issue that may have been ambiguous over the years, but I would like to know if my only recourse is to stay away from COMPANY if I don't wish to be charged sales tax on shipping, or if they are, in fact, misguided in their belief that it is legal to charge sales tax to Illinois consumers.

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.

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).

Retailers are required to remit the tax collected from customers to the Department. If COMPANY chose to credit you some portion of your purchase price, this was likely a business decision, and we cannot speculate as to the reason.

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

CB:mdb