

ST 16-0039-GIL 08/30/2016 DELIVERY CHARGES

This letter discusses transportation and delivery charges in light of the decision in *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009). (This is a GIL.)

August 30, 2016

Dear Xxxxx:

This letter is in response to your letter April 30, 2015, in which you requested 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:

This letter is in regards to sales tax on shipping charges for our account XXXX-XXXX. We file our ST-1 electronically and for our 1<sup>st</sup> Quarter returns for 20XX we have included shipping charges of \$\$\$\$ into our sales of \$\$\$\$, and are remitting sales tax upon these shipping charges. Enclosed is a copy of our sales to Illinois for the 1<sup>st</sup> Quarter of 20XX for reference.

Due to a pending litigation regarding the assessment of sales tax on shipping charges, we have decided to err on the side of caution and remit sales tax on shipping charges since we lack clarity on whether or not the tax is due. We would appreciate it if the Illinois Department of Revenue could please provide us with information on whether these taxes are due and how we should proceed in the future.

We appreciate your assistance in promptly resolving this matter.

**DEPARTMENT’S RESPONSE:**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 35 ILCS

120/2; 86 Ill. Adm. Code 130.101. In Illinois, Use Tax is imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer. See 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois and the seller is not registered to collect Illinois Use Tax, purchasers must self assess their Use Tax liability and remit it directly to the Department.

The Department's regulation regarding transportation and delivery charges, 86 Ill. Adm. Code 130.415, was recently amended in light of the decision in *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009). At issue in *Kean* was whether shipping charges for certain Internet purchases of tangible personal property were subject to Illinois sales tax. The court found that an "inseparable link" existed between the sale and delivery of the merchandise plaintiffs purchased from Wal-Mart's Internet store. Thus, the court in *Kean* concluded that the outgoing transportation and delivery charges were part of the gross receipts subject to the Retailers' Occupation Tax. 86 Ill. Adm. Code 130.415(b)(1)(B)(i). An inseparable link exists when (a) the transportation and delivery charges are not separately identified to the purchaser on the contract or invoice or (b) the transportation and delivery charges are separately identified to the purchaser on the contract or invoice, but the seller does not offer the purchaser the option to receive the property in any manner except by the payment of transportation and delivery charges added to the selling price of an item (e.g., the seller does not offer the purchaser the option to pick up the tangible personal property or the seller does not offer, or the purchaser does not qualify for, a free transportation and delivery option). 86 Ill. Adm. Code 130.415(b)(1)(B)(ii). In contrast, if the tangible personal property that the customer agreed to buy can be sold to the customer without adding a transportation or delivery charge to the selling price of the item, then an inseparable link does not exist and the delivery charges should not be included in the selling price of the tangible personal property. 86 Ill. Adm. Code 130.415(b)(1)(B)(ii)-(iii). *Kean*, 235 Ill. 2d at 375.

If a seller of tangible personal property offers the purchaser free transportation and delivery of the property, qualified transportation and delivery of the property for which the purchaser qualifies (e.g., purchases over \$25 qualify for free shipping, and the purchaser spends more than \$25), or the option to pick up the property, any separately identified transportation and delivery charges chosen by the purchaser (e.g., amounts paid for expedited transportation and delivery) will be nontaxable, as long as the selling price of the tangible personal property neither increases nor decreases depending on the method chosen by the purchaser to obtain the merchandise. If the selling price of the tangible personal property increases or decreases depending on the method chosen by the purchaser to obtain the merchandise, any transportation and delivery charges imposed will be subject to Retailers' Occupation Tax to the extent those charges exceed the actual cost of outgoing transportation and delivery. 86 Ill. Adm. Code 130.415(b)(1)(C).

Outgoing transportation and delivery charges are charges for the final transport or delivery of tangible personal property from the possession and control of the seller to the possession and control of the purchaser. Costs incurred by the retailer in moving property to some point from which the property will be delivered or shipped to the customer, or picked up by the customer, are not outgoing transportation and delivery charges; they are incoming transportation and delivery costs and are part of the retailer's costs of doing business. Any amounts the retailer charges a customer for moving the property cannot be deducted from gross receipts from that sale. 86 Ill. Adm. Code

130.415(b)(1)(D)(iii)-(iv) & 130.415(b)(2)(A). Incoming transportation and delivery costs are a business expense to the retailer and may not be deducted from the gross receipts, even though the retailer may pass those costs on to its customers by quoting and billing those costs separately from the price of the tangible personal property sold. 86 Ill. Adm. Code 130.415(b)(2)(B).

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,

Cara Bishop  
Associate Counsel

CB:bkl