

ST 16-0053-GIL 10/03/2016 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). See 86 Ill. Adm. Code 130.415. (This is a GIL.)

October 3, 2016

Dear Xxxxx:

This letter is in response to your letter dated August 2, 2016, 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 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 recently purchased a computer from COMPANY via the Internet. COMPANY charged sales tax on the shipping and handling fees (please see attached). The explanation I received from COMPANY as to why the company charges sales tax on this line item for Illinois shipments is that the amount does not necessarily equal the actual charge incurred by COMPANY. The way I interpreted Illinois Department of Revenue Regulations Title 86 Part 130 Section 415, since the shipping and handling charges are listed separately and are not indicated as being in excess on the actual cost to COMPANY, sales tax should not be charged.

Please provide the proper interpretation of the law and/or any rulings. If, in fact, COMPANY is charging sales tax improperly on shipping and handling, it is entirely possible that their customers have been overcharged by hundreds of thousands of dollars over the years.

Thank you for your attention to this matter. In addition to return mail, I may be reached at [email](mailto:) and at ###-###-#### (mobile phone).

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.

The Department's regulation regarding transportation and delivery charges, 86 Ill. Adm. Code 130.415, was recently amended to incorporate the provisions of *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.

As *Kean* notes, outgoing transportation and delivery charges are part of the gross receipts subject to Retailers' Occupation Tax when there is an inseparable link between the sale of tangible personal property and the outgoing transportation and delivery of the property. The regulation clarifies that an inseparable link exists when the transportation and delivery charges are (1) not separately identified to the purchaser on the contract or invoice or (2) when 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 tangible personal property in any manner except by the payment of transportation and delivery charges added to the selling price of the 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). See 86 Ill. Adm. Code 130.415(b)(1)(B)(ii).

Except for cases in which an inseparable link exists, outgoing transportation and delivery is otherwise considered a service separate and distinct from the sale of tangible personal property and is excluded from the gross receipts subject to the Retailers' Occupation Tax.

The regulation provides that if a seller of tangible personal property offers the purchaser free transportation and delivery of the property or free transportation and delivery of property for which the purchaser qualifies (e.g., purchases of \$50 or more receive free delivery), or the option to pick up the property, any separately identified transportation and delivery charges chosen by the purchaser (e.g., amounts paid for

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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. When the selling price of the tangible personal property increases or decreases, the transportation and delivery charges will be subject to Retailers' Occupation Tax to the extent those charges exceed the actual cost of the outgoing transportation and delivery.

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:bkl