

ST 16-0063-GIL 11/14/2016 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.)

November 14, 2016

Dear Xxxxx:

This letter is in response to your letter dated August 30, 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 am requesting a binding ruling on the following questions;

If we ship items from our hub in Illinois to a destination in Illinois is the freight taxable?

If we ship items from our hub in Illinois to a destination in the United States outside of Illinois is the freight taxable.

Please send your ruling to our corporate office at:

COMPANY NAME
ADDRESS

You may reply via email:
XXXX@COMPANY.com

or fax:
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DEPARTMENT'S RESPONSE:

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.

The taxability of transportation and delivery charges is not based on the destination of the property that is being shipped. 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 amended regulation provides that retailers who have computed their tax liability for transportation and delivery charges according to the provisions of either the old rule or the amended rule for periods between the *Kean* decision (November 19, 2009) and April 1, 2016 (the effective date of the new rules) shall be considered to have properly collected and remitted tax on those charges. See the Department's regulation at 86 Ill. Adm. Code 130.415(b)(1)(A)(i). The regulation further 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 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.

Based on the limited information contained in your letter, we cannot determine whether you are making sales in interstate commerce. Sales of property originating in Illinois are

ST 16-0063-GIL

specifically addressed at 86 Ill. Adm. Code 130.605. Subpart (d) of this regulation states that the gross receipts from such sales are not subject to tax when a sale is conducted in which the seller is obligated, under the terms of an agreement with the purchaser, to make delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. See 86 Ill. Adm. Code 130.605(d). Such sales are considered to be sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax.

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
Senior Counsel

CB:bkl