

ST 16-0065-GIL 12/15/2016 DELIVERY CHARGES

This letter discusses transportation and delivery charges. 86 Ill. Adm. Code 130.415.
(This is a GIL.)

December 15, 2016

Dear Xxxxx:

This letter is in response to your letter dated July 2, 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 were advised to contact your department in order to verify that wine shipments directly from the winery to consumers in Illinois do NOT need to be billed for the sales tax on the freight charges if the amount charged to the customer is equivalent to the freight charge incurred by the winery.

Please forward a statement from your office to that effect.

Thank you in advance for your help in this matter. Please note that we do have a statement on our website stating that the wine purchaser has the option to either pick up the wine at the winery at no charge or have it shipped at standard freight charges.

DEPARTMENT’S RESPONSE:

We are unable to provide the statement you request based on the limited information provided. However, we hope the following information is helpful.

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).

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).

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,

Debra M. Boggess
Associate Counsel

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