

ST 17-0026-GIL 06/28/2017 DELIVERY CHARGES

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

June 28, 2017

Dear Xxxxx:

This letter is in response to your letter dated May 3, 2017 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:

COMPANY received a Private Letter Ruling (attached) concerning delivery fees within your state. At the end of your response you indicated that you could be contacted with any questions. I would like to have some clarification to a couple of questions.

The pickup option listed in our ruling has diminished from when we requested the ruling. This pickup option is still used by will only decrease over time and at some point this option could very well be eliminated.

1. Since the pickup option has changed (decreased) since the ruling request will the sales tax treatment still be the same for the pickup option – taxable?
2. If the pickup option is eliminated and delivery only is the only option available to a customer would Illinois than require sales tax to be collected on the taxable products purchased using the delivery only option?

Thank you for your response. I appreciate your help because I want to be in compliance with Illinois State Laws.

**DEPARTMENT'S RESPONSE:**

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property at retail to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales tax" in Illinois.

As we mentioned in previous correspondence, the Court found in *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009), 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.

Your letter states that though COMPANY continues to offer its customers a pickup option, the pickup option activity has decreased over time. However, if COMPANY's customers have the option to obtain the property without having a delivery charge added to the price of the item, then there is no inseparable link, and the delivery charges are not taxable. If property can only be obtained by paying transportation or delivery charges, then an inseparable link exists, and the delivery charges are taxable.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, 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,

Richard S. Wolters  
Associate Counsel

RSW:bkl