

The Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act may be found at 86 Ill. Adm. Code 130.415. (This is a GIL.)

November 13, 2009

Dear Xxxxx:

This letter is in response to your inquiry to the Illinois Attorney General's Office, which was forwarded to this office. 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:

Is it necessary to pay sales tax on the shipping and handling charge for an order placed with a company within the state? Shipping and handling is not a product but a service and I do not feel it is necessary to pay sales tax on a service.

I hope you understand this question and respond soon. Thank you.

DEPARTMENT'S RESPONSE:

For information regarding the Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act please see 86 Ill. Adm. Code 130.415 which can be found on the Department's website. The taxation of transportation and delivery charges, also designated as shipping and handling charges, are not dependent upon the separate billing of such transportation or delivery charges or expense, but upon whether the transportation or delivery charges are included in the selling price of the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in the selling price. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax.

The best evidence that transportation or delivery charges were agreed to separately and apart from the selling price is a separate and distinct contract for transportation or delivery. However,

documentation which demonstrates that the purchaser had the option of taking delivery of the property, at the seller's location, for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice.

We cannot tell from the information that you have provided whether the shipping and handling charges you refer to have been separately contracted for or not under the guidelines of Section 130.415. Please note that the Department has indicated on its latest Regulatory Agenda that it may make a change to Section 130.415, to add language to better clarify the taxation of transportation and delivery charges.

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,

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