

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.)

July 31, 2009

Dear Xxxxx:

This letter is in response to your letter dated May 1, 2009, 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:

This purpose of this letter is to request a written clarification of the Illinois Code as it relates to the taxability of freight. We are an Iowa corporation, based in Iowa, but we ship material into Illinois both via our own trucks and by common carrier. I have listed three examples below. Please confirm the taxability of each situation.

1. We order material from our supplier that is to be shipped directly from the vendor to our Illinois customer. Our supplier will have on its invoice to us a line item for material and a separate line item for freight. On our invoice to our Illinois customer, we will have the freight listed separately. We do not mark up the freight cost. The freight charged the customer will be what we were charged. Is this freight taxable?
2. We order material from a supplier for an Illinois customer. The material comes to us in Iowa. Included on our vendor's invoice is a freight line. We deliver the material into Illinois on our own truck. When we bill the Illinois customer, we include a line item for freight. We charge the customer, as freight, for the same amount that we were charged. We never mark up freight. Is this freight taxable?
3. We sell material out of stock to an Illinois customer. We send by carrier, e.g. UPS. On the subsequent invoice, we charge them freight as a separate line item. This charge will be for the same amount that we were charged by the carrier. Is this freight charge taxable?

Some customers have different opinions as to the taxability of these situations. The accountant in charge of our sales taxes called the Illinois DOR yesterday, April 30, in order to clarify the taxability. She spoke with someone named "Sundey". I also called yesterday, April 30. I spoke with "Romona". Their answers were opposite on each of the three situations. One of our customers contends that neither are correct and bases her opinion from phone calls she has made. When we have looked at the Code sections, it appears ambiguous to us. We respectfully request clarification so that we can ensure that we are properly collecting and remitting the tax.

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.

As noted in subsection (d) of Section 130.415, if the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property which is sold, then the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property which is sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes his Retailers' Occupation Tax liability.

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 transportation charges (freight) 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,

Debra M. Boggess
Associate Counsel

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