

Charges designated as delivery or transportation charges are not taxable if it can be shown that they are both agreed to separately from the selling price of the tangible personal property which is sold and that such charges are actually reflective of the costs of shipping. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

December 23, 2009

Dear Xxxxx:

This letter is in response to your letter dated June 9, 2008, 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:

ABC is writing the Department of Revenue to get clarification on the proper taxation of shipping charges and handling charges.

ABC is a nationwide distributor of small maintenance parts. Our sales to customers in Illinois are generated through phone, internet, or scanner orders. Therefore we do not have a location in Illinois nor do we have salesmen the [sic] make a sales at our customer's location.

We have had several customer's [sic] call us from Illinois stating that they should not be charged tax on the shipping charges as ABC has separtley [sic] stated them on the invoice. Our interpretation of 86 Ill. Amn. [sic] Code Sec. 130.415 is different. Our understading [sic] is that if we do not have a document, in writing, for the agreed upon shipping charges of the product that we should be charging tax on those shipping charges. Our customers will call in an order to us. The salesman takes the order and the customer knows that we will have to ship the product to them via common carrier. The customer accepts the fact that they will have to pay a shipping charge to get the product to them (Most customers are telling me that this is stating that they have agreed to pay and should be evidence). Is a verbal understanding sufficient evidence that the customer has agreed to have the seller make the delivery for an agrred [sic] upon price?

Our question is should we continue to charge tax on the shipping charges, or are our customers correct and we should not be charging tax on the shipping charges?

In addition, we sometimes have a line item on our invoices that say Hazardous/Handling Charge. It is my understanding that handling charges should be taxable as they are a cost of the company to do business. Our customer believes that it should not be taxable. Would their [sic] be any reason for the handling charges to be exempt for tax?

Any assistance in this matter would be helpful as I seem to be interpreting the rule different than may [sic] of my customers.

DEPARTMENT'S RESPONSE:

Charges designated as delivery or transportation charges are not taxable if it can be shown that they are both agreed to separately from the selling price of the tangible personal property which is sold and that such charges are actually reflective of the costs of shipping. See 86 Ill. Adm. Code 130.415. In these circumstances, to the extent that shipping and handling charges exceed the costs of shipping, the excess charges are subject to tax. The best evidence that transportation or delivery charges are agreed to separately and apart from the selling price, is a separate and distinct contract for transportation or delivery. A separate listing on an invoice of such charges is not sufficient to demonstrate a separate agreement. See subsection (d) of Section 130.415.

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 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.

Please note, however, in light of the recent Supreme Court of Illinois case of Nancy Kean v. Wal-Mart Stores, Inc., ___ N.E.2d ___, 2009 WL 3856184, IL, November 19, 2009 (107771) concerning the taxation of delivery charges, the Department is considering amending Section 130.415.

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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