

This letter discusses transportation and delivery charges in light of the decision in *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009). (This is a GIL.)

October 26, 2015

Dear Xxxxx:

This letter is in response to your letter dated May 28, 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:

ABC, respectfully requests a letter ruling on the tax treatment of shipping and handling items under 86 Ill. Adm. 130.415. ABC has also reviewed ST-03-0087-GIL and could not come to a clear determination if items #1 and #2 under the facts below are taxable.

Item #3 below is not related to shipping but was previously considered taxable in an audit. ABC believes the charge should not be taxable based on 86 Ill. Adm. 130.120(d).

FACTS

1. ABC ships materials to customers in company vehicles for a flat fee in a predetermined geographical radius. ABC lists the fee as a **delivery charge** on the invoice.
 - The delivery charge is separately stated on the invoice.
 - The delivery charge is optional because the customer can pick up the materials at the branch location and waive the delivery charge.
 - There is not a separate and distinct contract for the delivery charge.
 - The actual cost of delivery cannot be determined as every delivery is unique, therefore, ABC cannot determine if the delivery charge exceeds the actual cost of shipping.

2. ABC may charge an additional delivery fee called a *fuel charge* for deliveries outside the normal delivery radius. This fee is to recoup extra driver time, gas, and attrition of vehicle.
3. ABC charges a flat fee listed as *dumpster fee* for the service and use of company dumpsters.
 - ABC delivers a dumpster to a job site, allows customers to dispose of trash in the dumpster, then ABC picks up the dumpster of [sic] disposes of the trash.

To the best of our knowledge, IL DOR has not previously ruled on the same or a similar issue for ABC, nor have any representatives of ABC previously submitted the same or similar issue to the IL DOR or withdrew a request before a letter ruling was issued. ABC is not currently under audit nor has any pending litigation with the IL DOR. ABC does not identify any authorities contrary to ABC views. A properly executed power of attorney is included with this letter ruling request.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. *See* 35 ILCS 120/2; 86 Ill. Adm. Code 130.101. In Illinois, 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* 35 ILCS 105/3; 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois. If the purchases occur in Illinois, the purchasers must pay the Use Tax to the retailer at the time of purchase. The retailers are then allowed to retain the amount of Use Tax paid to reimburse themselves for their Retailers' Occupation Tax liability incurred on those sales. If the purchases occur outside Illinois and the seller is not registered to collect Illinois Use Tax, purchasers must self assess their Use Tax liability and remit it directly to the Department.

The Department's regulation regarding transportation and delivery charges, 86 Ill. Adm. Code 130.415, is under review 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.

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 delivery from the seller (i.e., no pick-up option). In contrast, if the tangible personal property that the customer agreed to buy can be sold to the customer without the retailer rendering the delivery service, then an inseparable link does not exist and the delivery charges should not be included in the selling price of the sale of tangible personal property. *Kean*, 235 Ill. 2d at 375.

Thus, when charges for outgoing transportation and delivery are separately identified and the purchaser has the option to pick up the tangible personal property, outgoing transportation and delivery is considered a service separate and distinct from the sale of tangible personal property that is being transported or delivered and charges for such services should be excluded from the gross receipts subject to the Retailers' Occupation Tax or Use Tax in the case of out-of-state retailers who sell directly to Illinois residents. When a seller offers the purchaser the option to pick up the property at the seller's location, the seller must maintain documentation which demonstrates that the purchaser had that option.

Regarding the additional fuel charges that you mention in your letter, such charges are considered costs of doing business and are not deductible from gross receipts. "Gross Receipts" means all the consideration actually received by the seller, except traded-in tangible personal property. See 86 Ill. Adm. Code 130.401. Therefore, fuel charges are subject to Retailers' Occupation Tax even if separately stated on an invoice. See 86 Ill. Adm. Code 130.410.

Your letter also mentions that you provide the use of dumpsters to your customers, and you charge a flat fee listed as a "dumpster fee." Based on the limited information provided in your letter, we cannot determine the exact nature of these transactions.

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,

Cara Bishop
Associate Counsel

CB:mdb

