

ST 16-0047-GIL 09/21/2016 DELIVERY CHARGES

This letter discusses into plane fees in light of the decision in *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 919 N.E.2d 926 (2009). See 86 Ill. Adm. Code 130.415. (This is a GIL)

September 21, 2016

Dear Xxxxx:

This letter is in response to your letter dated June 29, 2016, 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 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:

Our Company, COMPANY 1 and its subsidiary, COMPANY 2 (together ABC) is in the business of selling aviation fuel nationwide and internationally to both commercial aircraft, fractional aircraft operators and to private aircraft owners. The majority of the fuel we purchase is from major oil companies as well as from local fixed based operators (“FBO’s”).

We generate our revenue by adding a margin to the fuel price received from the supplier. All other charges, including all taxes and costs of delivery of the fuel into the aircraft (“into plane fees”) are passed directly onto the customer at cost and shown separately on invoices as the cost of delivery of the fuel, other charges and taxes.

We currently add tax to the “into plane fee” when charging our customers. We are now requesting your consideration as to whether this is in fact the correct treatment or whether the “into plane fees” should be exempt from tax on the basis that a separable link exists between the purchase price of the fuel and the delivery of the fuel into the aircraft, as described in Part 130 Section 415.

We are requesting the Illinois Department of Revenue to consider the “into plane fees” as being exempt from Retailers’ Occupation Tax on the basis that:

1. The “into-plane fees” represent a charge to the company of aviation fuel by an airport agent to deliver or cause fuel to be delivered directly into a purchaser’s aircraft from a storage facility at the airport.
2. The company is not selling the fuel at a “delivered price”, rather, the price for the fuel is agreed upon per transaction and the separately stated amount representing the charge for the transportation of the fuel directly to the customer is added to that price.
3. The company separately states such transportation charges in an amount that does not exceed the amount charged by the airport agent.
4. The “into plane fee” is generally negotiated between the end customer and the company delivering the fuel into the aircraft. ABC provides the service of collating all charges related to the fueling of the aircraft to simplify the billing process for both the supplier and end customer and these charges are “passed on” to the customer at the same rate charged by the airport agent, with no mark up.

We attach an example of both the invoice from the airport agent and our invoice to our customer as an example, as well as other invoices for a different customers at the same location to show the different “into plane fee” negotiated by the customer directly with the airport agent. We also attach examples of email correspondence advising ABC of the “into plane fee” to charge different customers at various locations.

ABC’s customer has the option to choose another delivery process or provider to deliver the fuel into the aircraft. ABC, as a convenience to both the airport agent and the customer, allows a single invoice to be raised by the airport agent and the end customer receives a single invoice for the fueling of their aircraft.

We can provide any further information or documentation the Department may require to make their determination.

DEPARTMENT’S RESPONSE:

The Department’s regulation regarding transportation and delivery charges, 86 Ill. Adm. Code 130.415, was recently amended 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.

We are unable to determine the exact contractual relationship between your company, the aircraft owner or operator and the company delivering, or loading, the fuel and so cannot provide you with a definitive answer regarding the arrangement you describe in your letter. However, if an aircraft owner or operator contracts with you to buy and load fuel on an aircraft and you select the person to load the fuel, there is an inseparable link between the purchase of the fuel and the delivery of the fuel, and the "into plane fee" is subject to Retailers' Occupation Tax, regardless of whether you separately state the "into plane fee" on the invoice. 86 Ill. Adm. Code 130.415(b)(1)(B). If an aircraft owner or operator contracts with you to buy fuel and instructs you to use a specific ground-based operator that he has contracted with to load fuel, there is no inseparable link between the purchase of the fuel and the delivery of the fuel, and the "into plane fee" would not be subject to Retailers' Occupation Tax. This is the case even if the company selling the fuel facilitates the transaction between the customer buying the fuel and the company loading the fuel by separately stating the delivery charges on its invoice.

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,

Richard S. Wolters
Associate Counsel

RSW:bkl