

This letter discusses transportation and delivery charges. See 86 Ill. Adm. Code 130.415. (This is a GIL.)

December 4, 2019

Dear XXX:

This letter is in response to your letter dated May 21, 2019, 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 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:

COMPANY is a multistate architectural glass and metal fabrication company that is part of the GROUP group of companies. A situation arose out of one of its STATE locations. I had requested advice through the IL DOR website on the subject that did not jive with what I was reading, so it was suggested that I inquire of Legal Services.

Scenario: The STATE facility sent product to a Customer in IL via common carrier and charged the applicable ROT on the material and the freight. The freight is invoiced on a separate invoice once the bill is received from the common carrier. No mark up is applied to this charge.

The customer could pick up the glass; however, based on the volume of the order as well as the size of the glass, it is normally not a feasible option. COMPANY charged the ROT tax on an invoice to its IL customer for both the glass and the freight. The customer is arguing about the tax on the freight saying this should be not taxable.

Based on the research conducted I believe the tax on the freight charge is warranted as no inseparable link exists between the delivery of the product and the freight charges.

Below is the response received from the IL DOR website inquiry:

From: REV.TA-Sales REV.TA-Sales@illinois.gov

Sent: Thursday, May 16, 2019 12:04 PM

TO: TaxDept_EMAIL

Subject: FW: Shipping Charges – kn

Shipping can be taxable in Illinois. Here is the regulation that covers it:

<https://www.ilga.gov/commission/jcar/admincode/086/086001300d04150R.HTML>

Charges designated as “shipping and handling,” as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both separately contracted for and that such charges are actually reflective of the costs of shipping” per legal letter:

ST 19-0022-GIL 12/04/2019 DELIVERY CHARGES

So, if your item is \$10 and that includes the shipping, the whole \$10 is taxable. If you separate out the shipping charges on the invoice, only the excess amount is taxable. For instance, your item is selling for \$10 and you charge \$5 for shipping/handling. Your actual cost to ship is \$2. The \$3 excess you are charging would be taxable.

Kathy
Revenue Tax Specialist
Illinois Dept of Revenue

I questioned this answer as the research did not jive with what I had read prior to the inquiry or the decision in *Kean vs Walmart* decision (2009).

My question is whether the freight charge is taxable or whether the customer is due a refund of the tax on freight.

Thank you for your assistance with this matter and I look forward to your response.

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 at retail to purchasers for use or consumption. See 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 86 Ill. Adm. Code 150.101. These taxes comprise what is commonly known as "sales" tax in Illinois.

The Department’s regulation regarding transportation and delivery charges can be found at 86 Ill. Adm. Code 130.415 and incorporates the decision rendered 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 in *Kean* that an “inseparable link” existed between the sale and delivery of the merchandise plaintiffs purchased from Wal-Mart’s Internet store. Thus, the court concluded that the outgoing transportation and delivery charges were part of the gross receipts subject to the Retailers’ Occupation Tax. 86 Ill. Adm. Code 130.415(b)(1)(B)(i). 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 the payment of transportation and delivery charges added to the selling price of an item (e.g., the seller does not offer the purchaser the option to pick up the tangible personal property or the seller does not offer, or the purchaser does not qualify for, a free transportation and delivery option). 86 Ill. Adm. Code 130.415(b)(1)(B)(ii). In contrast, if the customer can purchase the tangible personal property without payment of transportation or delivery charges to the retailer (e.g., can pick up the tangible personal rather than have it delivered), then an inseparable link does not exist and the delivery charges should not be included in the selling price of the tangible personal property. 86 Ill. Adm. Code 130.415(b)(1)(B)(ii)-(iii). In your letter, you indicate that the “customer could pick up the glass.” Based on that fact, the delivery charges are not taxable.

I hope this information is helpful. If you require additional information, please visit our website at tax.illinois.gov or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Debra M Boggess
Associate Counsel

DMB:rkn