

ST 25-0037-GIL 07/08/2025 GROSS RECEIPTS

If an “inseparable link” exists between the sale of tangible personal property and related service charges, including delivery charges, the related service charges are part of the gross receipts subject to the Retailers’ Occupation Tax. See 86 Ill. Adm. Code 130.415(b)(1)(B)(i). (This is a GIL.)

July 8, 2025

NAME
ADDRESS
EMAIL

Dear NAME:

This letter is in response to your letter dated May 5, 2025, 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 <https://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:

I am submitting this General Inquiry Letter in an attempt to request clarification regarding the application of Illinois sales tax to specific line items in fulfillment contracts used with our customers. I will attempt to explain below, plus give details about our business.

Our business is in the advertising specialties industry. Our business sells customized, embellished apparel, accessories, and promotional items to schools and businesses. We also offer, for select customers, a fulfillment and shipping service. With this service, customers order customized products from our company and then store these items at our facility. They are billed for storage fees and maintenance fees, and various other line items as outlined below. Then, as THEIR customers order and need merchandise, we receive

these orders and pull from the shelf, package, and ship out to end users. We have several customers that use this fulfillment service. The scope of each program is a bit different, and we receive orders a bit differently with each one. With some, orders are ALWAYS shipped. With other programs, there is a combination of delivery and shipments. The same fulfillment contract is used for all customers, and a sample program fulfillment contract is listed at the end of this letter. My questions surround the taxability of the various line items on this contract.

My questions are as follows:

- 1.) For each of the line items in this contract (Set-Up Fee, Storage Fees, Fulfillment Fees, Outbound Shipping, Account Management Fee, Order inserts, and order adhesives) which line items should have sales taxes assessed and collected?
- 2.) Does the taxation of sales tax on the "outbound shipping" line item in our contract (see sample contract at the end of this letter) have any variables that would/could change its taxability?
- 3.) A.) Regarding the potential taxability of the outbound shipping line item, we have one particular contract in which the end user (our customer's customers) receive [sic] these items as a GIFT from our customer as part of a customer loyalty program. Does this fact change the taxability of my outbound shipping amounts to my customer?

B.) In this same program as stated in A.) above, ALL end users receive their items through shipment. Our facility normally does offer customers the option of picking up merchandise at our facility. However, for this program, the end user does not have an option to pick up their orders. Does this change the taxability of this line item in any way?

C.) In a separate contract, managers of a company order merchandise on a monthly basis. These orders are pulled, packaged by manager, with some being delivered by our company to their local sales office, and others shipped to other locations. Does this change the taxability of this line item in any way?
- 4.) I pose these questions because a customer is currently disputing some sales tax we've assessed them on this contract.

Customer concerns:

Our customer contends that shipping fees related to fulfillment services are classified as a service and are therefore not subject to tax. No sale of tangible items occur [sic] in these fulfillment services. All items are gifts. (As is [sic] relates to outbound shipping line item of our contract.)

Our customer also contends that tangible packaging materials provided in the performance of services do not comprise a significant percentage of service fees and are therefore "de minimus." [sic] (As they relate to Fulfillment Fee line item of our contract.)

Do these valid points change the taxability of this in any way?

I am asking for clarification on questions 1-4 above. Please note that my questions above each have several parts to them. Any information you can provide would be greatly appreciated, as I do want to do what's right for the State of Illinois, my business, and my customer. Please feel free to contact me if additional details are needed.

Thank you for your time and attention to this matter.

DEPARTMENT'S RESPONSE:

Sales at Retail vs. Sales of Service

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, purchasers must self-assess their Use Tax liability and remit it directly to the Department.

Retailers' Occupation Tax and Use Tax do not apply to sales of service. Under the Service Occupation Tax Act, businesses providing services (i.e., servicemen) are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. If no tangible personal property is being transferred to the customers, then neither

Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax and Service Use Tax would also not apply. 86 Ill. Adm. Code 140.101 and 160.101. The Service Occupation Tax and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. 86 Ill. Adm. Code 140.101 and 160.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon serviceman's activities. The serviceman's liability may be calculated in one of four ways:

- 1) Separately-stated selling price of tangible personal property transferred incident to service;
- 2) 50% of the serviceman's entire bill;
- 3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or
- 4) Use Tax on the serviceman's cost price if the serviceman is de minimis and is not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. See 86 Ill. Adm. Code 140.106.

Gross Receipts and Delivery Charges

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).

If an "inseparable link" exists between the sale of tangible personal property and related service charges, including delivery charges, the related service charges are part of the gross receipts subject to the Retailers' Occupation Tax. See, for example, 86 Ill. Adm. Code 130.415(b)(1)(B)(i). An inseparable link exists when (a) the service charges are not separately identified to the purchaser on the contract or invoice or (b) the service charges are separately identified to the purchaser on the contract or invoice, but the retailer does not offer the purchaser the option to purchase the property without the payment of service charges added to the selling price of an item (e.g., the retailer does not offer the purchaser the option to purchase the tangible personal property separately from the related service, or the retailer does not offer, or the purchaser does not qualify for, a free service option). 86 Ill. Adm. Code 130.415(b)(1)(B)(ii). In contrast, if the purchaser can purchase the tangible personal property

without payment of service charges to the retailer, then an inseparable link does not exist, and the service 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 computing Retailers' Occupation Tax liability, no deductions shall be made by a taxpayer from gross receipts or selling prices on account of the cost of property sold, the cost of materials used, labor or service costs, idle time charges, incoming freight or transportation costs, overhead costs, processing charges, clerk hire or salesmen's commissions, interest paid by the seller, or any other expenses whatsoever. Costs of doing business are an element of the retailer's gross receipts subject to tax even if separately stated on the bill to the customer. 86 Ill. Adm. Code 130.410. Set-up, application, and rush and minimum charge fees generally are costs of doing business and are included when determining retailers' occupation tax liability.

Physical Storage

The tax liabilities of warehousemen who hold themselves out to the public as being engaged in the business of moving, storing, packing, and shipping tangible personal property belonging to other persons are generally engaged in a service transaction. See 86 Ill. Adm. Code 130.2170. The business of providing security and storage services would generally fall under this category. Again, if no tangible personal property is transferred to the service customer, then no Retailers' Occupation Tax, Use Tax, Service Occupation Tax, or Service Use Tax, is incurred. However, in cases in which warehousemen are engaged in the business of selling, to purchasers for use or consumption, tangible personal property such as cartons, boxes, and packing tape, they incur retailers' occupation tax liability.

Sale for Resale

A person who sells tangible personal property to a purchaser who may use or consume such property within the meaning of the Retailers' Occupation Tax Act, but who also may resell such property, must determine, at the time when he sells the property to such purchaser, whether the purchaser is buying the property "for use or consumption" within the meaning of the Act or whether the purchaser is buying the property "for resale". 86 Ill. Adm. Code 130.1401. A sale of tangible personal property shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that the sale to such purchaser is nontaxable because of being a sale for resale. See 86 Ill. Adm. Code 130.1405 for Certificate of Resale requirements. Purchases for use or consumption may not be made tax-free for resale. If a retailer purchases an item that the retailer intends to use or consume, that item may not be purchased tax-free for resale.

Donors of Tangible Personal Property

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If the arrangement between a business and a customer is such that the business provides tangible personal property to the customer free-of-charge, then a donor/donee situation may exist. A donor who purchases tangible personal property and gives the tangible personal property to a donee makes a taxable use of the property when making the gift. 86 Ill. Adm. Code 150.305(c). A donor owes Use Tax on the donor's cost price of the tangible personal property that is transferred.

I hope this information is helpful. If you require additional information, please visit our website at <https://tax.illinois.gov/> or contact the Department's Taxpayer Information Division at 800-732-8866.

Very truly yours,

Kimberly Rossini
Associate Counsel

KAR:slc