

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 March 23, 2009, 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:

The Requested Ruling

ABC is requesting a Private Letter Ruling (pursuant to 2 Ill. Adm. Code 1220.1110 [sic]) stating whether freight / shipping charges on customer invoices should be subject to Illinois ROT liability.

Statement of Facts

ABC is a for-profit Sub-chapter S corporation organized under the existing laws of the State of Illinois. ABC is in the business of soliciting orders for promotional advertising items such as pens, glassware, shirts, or any other type of items that can display a company's name, logo or any other identifying feature or branding of that company.

In the normal course of business ABC will receive an order for 1,000 sweatshirts (for example) and then ABC will place an order with a vendor and once the order is complete, that vendor will ship the finished product to the customer directly. On the invoice to our customer, freight / shipping charges is [sic] separately stated from the rest of the items being sold to that customer as agreed upon between ABC and our customer.

Approximately January 2007, ABC was audited by the State of Illinois and it was determined by the auditor that freight / shipping charges are subject to ROT under 86, Ill. Adm. Code Section 130.415(e) for 'Incoming Transportation Costs' and ABC has been in full compliance with this determination. Upon further review, we believe freight / shipping charges are applicable to 86, Ill. Adm. Code, Section 130.415(d) in which 'freight / shipping charges are not subject to ROT as the product is never shipped incoming to our location in Illinois. We do understand, of course, to the extent that such freight / shipping charges exceed the costs of shipping, transportation or delivery then we concur the excess charges are subject to ROT.

In addition, if our customer supplied us with their shipping account number, would freight / shipping be subject to ROT?

Conclusion

We respectfully request the Department issue a Private Letter Ruling stating whether ABC should continue to collect ROT for the freight / shipping charges on these orders or whether these orders are applicable to 86, Ill. Adm. Code Section 130.415(d) and are not subject to ROT.

To the best of our knowledge, the Department has not previously ruled on the same or a similar issue for the taxpayer or any predecessor and neither the taxpayer nor any representative has ever previously submitted the same or similar issue to the department at any time, including such requests that may have been withdrawn prior to the issuance of a letter ruling.

If we can be if [sic] further assistance, please call.

DEPARTMENT'S RESPONSE:

The Department's regulation "Public Information, Rulemaking and Organization" provides that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored." 2 Ill. Adm. Code 1200.110(a)(4). The Department has decided to respond with a GIL.

For information regarding the Department's regulation on the treatment of transportation and delivery charges under the Retailers' Occupation Tax Act please see 86 Ill. Adm. Code 130.415 which can be found on the Department's website. The taxation of transportation and delivery charges, also designated as shipping and handling charges, are not dependent upon the separate billing of such transportation or delivery charges or expense, but upon whether the transportation or delivery charges are included in the selling price of the property which is sold or whether the seller and the buyer contract separately for such transportation or delivery charges by not including such charges in the selling price. To the extent the transportation and delivery charges exceed the costs of shipping, the charges will be subject to tax.

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 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,

Debra M. Boggess
Associate Counsel

DMB:msk