

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 415 Transportation and Delivery Charges

Section 130.415 Transportation and Delivery Charges

- a) Until November 19, 2009:
- 1) Transportation and delivery charges are considered to be freight, express, mail, truck or other carrier, conveyance or delivery expenses. These charges are also many times designated as shipping and handling charges.
 - 2) The answer to the question of whether a seller, in computing his or her Retailers' Occupation Tax liability, may deduct, from his or her gross receipts from sales of tangible personal property at retail, amounts charged to customers on account of the seller's payment of transportation or delivery charges in order to secure delivery of the property to customers, or on account of the seller's incurrence of expense in making the delivery himself or herself, depends not upon the separate billing of transportation or delivery charges or expense, but upon whether the transportation or delivery charges are included in the selling price of the property that is sold or whether the seller and the buyer contract separately for transportation or delivery charges by not including those charges in the selling price. In addition, charges for transportation and delivery must not exceed the costs of transportation or delivery. If those charges do exceed the cost of delivery or transportation, the excess amount is subject to tax.
 - 3) If transportation or delivery charges are included in the selling price of the tangible personal property that is sold, the transportation or delivery expense is an element of cost to the seller within the meaning of Section 1 of the Retailers' Occupation Tax Act, and may not be deducted by the seller in computing Retailers' Occupation Tax liability.
 - 4) If the seller and the buyer agree upon the transportation or delivery charges separately from the selling price of the tangible personal property that is sold, the cost of the transportation or delivery service is not a part of the "selling price" of the tangible personal property sold, but instead is a service charge, separately contracted for, and need not be included in the figure upon which the seller computes Retailers' Occupation Tax liability. Delivery charges are deemed to be agreed upon separately from the selling price of the tangible personal property being sold so long as the seller requires a separate charge for delivery and so long as the charges designated as transportation or delivery or shipping and handling are actually reflective of the costs of the shipping, transportation or delivery. To the extent that delivery charges exceed the costs of shipping, transportation or delivery, the charges are subject to tax. 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 that 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.

- 5) Incoming Transportation Costs
Transportation or delivery charges paid by a seller in acquiring property for sale are merely costs of doing business to the seller and may not be deducted by that seller in computing Retailers' Occupation Tax liability, even though the seller passes those costs on to customers by quoting and billing those costs separately from the selling price of the tangible personal property that he or she sells. The same is true of transportation or delivery charges paid by the seller in moving property to some point from which the property (when subsequently sold) will be delivered or shipped to the purchaser.

b) On and after November 19, 2009:

1) Outgoing Transportation and Delivery Charges (e.g., Shipping and Handling)

A) Applicability

- i) Effective Date – Safe Harbor. Persons who have computed their tax liability for transportation and delivery charges according to the provisions of either subsection (a) or subsection (b) for periods between November 19, 2009 and April 1, 2016 shall be considered to have properly collected and remitted tax on those charges.
- ii) This Section applies equally to retailers making sales subject to Retailers' Occupation Tax, retailers required to collect Use Tax on sales to Illinois residents as a result of being a "retailer maintaining a place of business in this State" pursuant to Section 2 of the Use Tax Act, and to persons self-assessing Use Tax under Sections 9 and 10 of the Use Tax Act on purchases for which no tax was collected by a retailer. This Section also applies to persons that have been issued a winery shipper's license under Section 5-1(r) of the Liquor Control Act of 1934.
- iii) Outgoing transportation and delivery charges are charges for the final transport or delivery of tangible personal property from the possession and control of the seller to the possession and control of the purchaser. Outgoing transportation and delivery charges include, but are not limited to, charges for freight, express, mail, truck or other carrier, conveyance or delivery expenses, and shipping and handling.
- iv) Costs incurred by the retailer in moving property to some point from which the property will be delivered or shipped to the customer, or picked up by the customer, are not outgoing transportation and delivery charges; they are part of the retailer's costs of doing business. Any amounts the retailer charges a customer for moving the property cannot be deducted from gross receipts from that sale.

B) Taxability of Outgoing Transportation and Delivery

- i) Outgoing transportation and delivery charges are part of the gross receipts subject to Retailers' Occupation Tax when there is an

inseparable link between the sale of tangible personal property and the outgoing transportation and delivery of the property. (See *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351 (2009).)

- ii) An inseparable link exists when the transportation and delivery charges are not separately identified to the purchaser on the contract or invoice or when 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 tangible personal property in any manner except by the payment of transportation and delivery charges added to the selling price of the 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). (See *Kean v. Wal-Mart Stores, Inc.*, 235 Ill. 2d 351, 367 (2009) (Does the purchaser have the option to purchase the tangible personal property for the stated selling price, with no added transportation and delivery charge, or must transportation and delivery charges always be added to the selling price of the item in order to obtain the item?)).
- iii) Except for cases in which an inseparable link exists as provided in subsection (b)(1)(B)(ii), 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 is excluded from the gross receipts subject to the Retailers' Occupation Tax.

C) **Safe Harbor.** If a seller of tangible personal property offers the purchaser free transportation and delivery of the property, qualified transportation and delivery of the property for which the purchaser qualifies, or the option to pick up the property, any separately identified transportation and delivery charges chosen by the purchaser (e.g., amounts paid for expedited transportation and delivery) will be nontaxable, as long as the selling price of the tangible personal property neither increases nor decreases depending on the method chosen by the purchaser to obtain the merchandise. When the selling price of the tangible personal property increases or decreases, the transportation and delivery charges will be subject to Retailers' Occupation Tax to the extent those charges exceed the actual cost of outgoing transportation and delivery as described in subsection (b)(1)(A)(iii).

D) **EXAMPLES:**

- i) **Internet Purchase by an Illinois Customer from a Retailer Who Also Has Brick-and-mortar Stores.** A customer selects property from a retailer's website on the Internet, clicks the "add to shopping cart" button and proceeds to "check out". The online retailer adds the price of the items in the shopping cart, for a total price of \$200. The online retailer then prompts the customer to click on the box corresponding to the method by which the customer prefers to obtain the merchandise (e.g., USPS or other common ground

carrier for \$12.99, two-day delivery for \$18.50, Next Day Air for \$33.50, or the option to pick up the property at the retailer's store). The customer clicks on the ground carrier box for delivery to the purchaser's home. The retailer then calculates the total price of the order ($\$200 + \$12.99 = \$212.99$). The cost of the property and the cost of shipping are separately identified on the invoice when the property is delivered. Because the delivery charge is separately identified on the purchaser's invoice, and the purchaser had the option to pick up the property rather than having it shipped, there is no inseparable link between the purchase of the property and the outgoing transportation and delivery charges. Therefore, the delivery is a service separate and distinct from the sale of the items and is not part of the retailer's gross receipts subject to the Retailers' Occupation Tax. The taxable amount is \$200.

- ii) Internet Purchase from Retailer without a Brick-and-mortar Store. Assume the same facts as the example in subsection (b)(1)(D)(i), except, because the retailer has no brick-and-mortar store, the customer is not given the option of picking up the item. Because the tangible personal property could not be sold to the customer without including delivery, there is an inseparable link between the purchase and the delivery, and the charges for delivery are included in taxable gross receipts. The taxable amount is \$212.99.
- iii) Internet Purchase from Retailer with Out-of-state Pick Up Option. Assume the same facts as the example in subsection (b)(1)(D)(i). However, the retailer's only pick up location is in San Diego, California. Because the retailer offers an option to pick up the property, there is no inseparable link between the sale of tangible personal property and the delivery of that property. The transportation and delivery charges are not taxable. The taxable amount is \$200.
- iv) Internet Purchase from Retailer Offering Unqualified Free Delivery. Assume the same facts as the example in subsection (b)(1)(D)(i), except that no pick up option is available but the retailer offers free shipping. Assume also that the customer elects to pay for Next Day Air delivery for \$33.50. Because the customer had the choice of obtaining the items without paying a delivery charge to the retailer (the free delivery option), there is no inseparable link between the sale of the tangible personal property and the delivery of that property. The transportation and delivery charges are not taxable. The taxable amount is \$200.
- v) Internet Purchase from Retailer Offering Qualified Free Delivery. Assume the same facts as the example in subsection (b)(1)(D)(i), except that no pick up option is available but the retailer offers free shipping on orders above \$250. Assume also that the customer elects to pay for Next Day Air delivery for \$33.50. Because the amount of the order (\$200) did not qualify for the free shipping option, the customer did not have the choice of obtaining the items without paying a delivery charge to the retailer. As a result, there is

an inseparable link between the sale of the tangible personal property and the delivery of that property. The transportation and delivery charges are taxable. The taxable amount is \$233.50.

- vi) **Delivery Charges Need Not Reflect Actual Costs.** Assume the same facts as the example in subsection (b)(1)(D)(i). However, the actual cost to ship the goods to the customer by ground carrier is \$11. The transportation charge exceeds the actual cost of shipping. However, because the customer has an option to pick up the property and avoid the transportation cost, and because the price of the property is the same regardless of whether the customer picks up the property or has it delivered, the charges identified as transportation and delivery are nontaxable. Therefore, the taxable amount is \$200.
- vii) **Price Includes Delivery.** A customer telephones a retailer who sells propane. The retailer offers to sell propane to the customer for \$2/pound if the retailer delivers the propane or \$1/pound if the customer picks up the propane or arranges for the delivery with a third party. If a customer chooses to have the retailer deliver the propane for \$2/pound, the gross receipts for the delivered propane are \$2/pound, and the retailer may not make any deductions for transportation and delivery. There is an inseparable link between the purchase of the propane and its delivery because the retailer charges a single indivisible price. The taxable amount is \$2/pound.
- viii) **A Transportation Company Offers to Purchase Material from a Quarry and Sell It to a Customer for \$15/Metric Ton, Including Delivery.** The purchaser accepts the offer and orders three metric tons of gravel. The transportation company purchases three metric tons of gravel from a quarry for \$10/metric ton and delivers it to the customer. The transportation company is a retailer responsible for the Retailers' Occupation Tax on the material it sells. Because it offered to sell and deliver gravel for a single indivisible price, there is an inseparable link between the sale and delivery of the tangible personal property. The taxable amount is \$15/metric ton.
- ix) **Delivery by a Retailer's Affiliated Business.** A customer purchases \$1,500 worth of furniture from a local furniture retailer. The retailer has no trucks of its own to make any deliveries. There is a delivery company affiliated with the furniture retailer that frequently delivers furniture to customers who make purchases from the furniture retailer. The furniture retailer offers to arrange for the delivery of the furniture through its affiliated company for an additional cost of \$100, which is identified separately as the delivery cost of the affiliated company. In the alternative, the customer may arrange to pick up the furniture or to have it delivered at his or her own cost. Because the customer can pick up the furniture or separately arrange for its delivery by a company of his or her choosing, the delivery of the furniture is a service separate and apart from the sale of tangible personal property. The \$100 delivery fee is not part of gross receipts and is not taxable. The taxable amount is \$1,500.

x) Assume the same facts as in the example in subsection (b)(1)(D)(ix), except that the retailer does not permit customers to pick up their purchases and requires that its affiliated delivery company makes all deliveries. When a retailer requires the customer to contract for shipping with a specific delivery company (or to choose one company among several with whom to contract), the retailer is deemed to be the provider of the shipping service. Because the tangible personal property could not be sold to the customer without including delivery, there is an inseparable link between the sale and delivery of the tangible personal property, and the delivery charge is taxable. The taxable amount is \$1,600.

E) Mixed Transaction – Calculation of Tax on Purchase Containing Both Taxable Delivery Charges and Nontaxable Delivery Charges

i) Itemized Delivery Charge. Tax on delivery charges may be calculated for each separately listed item on an invoice if the invoice itemizes the delivery charge for the items.

EXAMPLE:

A customer orders a rug for \$250, candlesticks for \$50 and a tablecloth for \$25 from an internet retailer. In order to obtain the rug, the customer must have delivery made by the retailer (\$20 for standard delivery and \$40 for expedited delivery). The customer chooses the \$20 standard delivery. The retailer offers free pick up at its local store for the candlesticks and tablecloth. The customer, however, chooses to have them delivered for a \$10 delivery charge. The invoice separately lists the \$20 delivery charge for the rug and the \$10 delivery charge for the candlesticks and tablecloth. The \$20 delivery charge for the rug is taxable because there is an inseparable link between the purchase of the rug and the \$20 delivery charge (the purchase of the rug cannot occur without payment of the \$20 delivery charge). In contrast, the \$10 delivery charge for the candlesticks and tablecloth is not taxable since no inseparable link exists between the sale of these items and the delivery charge (the customer had the choice of picking up these items). The taxable amount is \$345 (a selling price of \$270 for the rug comprised of \$250 for the rug plus a delivery charge of \$20; and a selling price of \$75 for the candlesticks and tablecloth).

ii) Lump Sum Invoice. When an invoice contains a lump sum delivery charge for separately listed items, the lump sum delivery charge will not be taxable if the selling price of the items for which delivery is nontaxable is greater than the selling price of the items for which delivery is taxable.

EXAMPLE:

Assume the same facts as in the example in subsection (b)(1)(E)(i), except that the invoice contains a lump sum delivery charge of \$30.

Since the selling price of the items for which delivery is nontaxable (\$75 for the candlesticks and tablecloth) is not greater than the selling price of the items for which delivery is taxable (\$250 for the rug), the entire delivery charge is taxable. The taxable amount is \$355 (\$250 for the rug, \$75 for the candlesticks and tablecloth, and a \$30 delivery charge).

- F) **Taxable Shipping: Exemptions and Rates.** If a retailer has determined that the delivery charges are part of its gross receipts, then the retailer must determine if any exemptions apply and, if not, determine the appropriate tax rate for that transaction by utilizing either the method established in subsection (b)(1)(F)(i) or one of the applicable methods established in subsections (b)(1)(F)(ii) through (vi).
- i) The tax rate on delivery charges may be calculated for each separately listed item on an invoice if the invoice itemizes the delivery charge for each of the items. Using this method, the tax rate for delivery charges could be separately calculated at the high rate on high rate items, the low rate on low rate items and as exempt on items that are tax exempt. If this method is not chosen, one of the applicable methods outlined in subsections (b)(1)(F)(ii) through (vi) must be utilized.

EXAMPLE:

A customer orders insulin testing equipment for \$25, artificial sweetener for \$10, hand lotion for \$15 and shampoo for \$10 from an internet retailer. The customer cannot purchase the items without choosing a delivery option by the retailer. The invoice separately lists each item and an associated delivery charge of \$2. In this case, tax is applied at the low 1% rate to \$39 (\$25 for the insulin testing equipment plus a \$2 delivery charge; \$10 for the artificial sweetener plus a \$2 delivery charge). Tax is applied at the high rate to \$29 (\$15 for the hand lotion plus a \$2 delivery charge; \$10 for the shampoo plus a \$2 delivery charge).

- ii) **Exempt Tangible Personal Property.** If the retailer determines that either the purchaser or all of the tangible personal property being sold is tax exempt, the entire gross receipts from the sale are not taxable, including the delivery charge.

EXAMPLE:

A church with an active exemption identification number purchases new choir robes for \$600. The retailer charges the church \$20 to deliver the robes. All amounts the retailer charges the church, including for delivery, are not taxable because the sale to the church was a tax-exempt sale.

- iii) **Exempt Tangible Personal Property with Taxable Tangible Personal Property.** If a retailer makes a sale of multiple items of tangible personal property, some of which are exempt and some of

which are taxable, the outgoing transportation or delivery charges are exempt if the total selling price of the exempt tangible personal property is greater than the selling price of the taxable tangible personal property.

EXAMPLE:

A customer places an order for subscriptions to 3 magazines for a total of \$36 and purchases 2 children's books for a total of \$12 through an online retailer. The retailer charges \$4 for shipping and handling. The magazines qualify for the newsprint and ink exemption, but the books do not. As a result, the selling price of the exempt tangible personal property (\$36) is greater than the selling price of the taxable tangible personal property (\$12). The shipping and handling charges (\$4) are exempt.

- iv) Delivery of Tangible Personal Property Taxed Entirely at the Low Rate of Tax or Entirely at the High Rate of Tax. If a retailer makes a sale of multiple items of tangible personal property that are either all taxable at the high rate of tax or all taxable at the low rate of tax, it must apply that rate to all the gross receipts from the sale, including delivery charges.

EXAMPLE:

A customer purchases a wheelchair online for \$500. The retailer charges \$40 for delivery. The \$40 delivery charge is taxed at the low rate of tax.

- v) Delivery of Multiple Items of Tangible Personal Property, Some of Which are Taxed at the High Rate and Some of Which are Taxed at the Low Rate. In order to qualify for the low rate, the selling price of the tangible personal property that is taxed at the low rate must be greater than the total selling price of the tangible personal property that is taxed at the high rate.

EXAMPLE:

A customer orders crackers, cheese and fruit for \$200 and 6 bottles of wine at \$75 per bottle (\$450). The retailer charges the customer \$20 for delivery. The retailer's outgoing transportation and delivery charges are part of the retailer's costs of doing business and may not be deducted from its gross receipts from that sale. The transportation and delivery charges are taxable at the high rate of tax because the total selling price for tangible personal property taxed at the high rate (\$450) is greater than the total selling price for the tangible personal property taxed at the low rate (\$200).

- vi) Delivery of Multiple Items of Tangible Personal Property, Some of Which are Taxed at the High Rate, Some of Which are Taxed at the Low Rate, and Some of Which are Exempt. The outgoing transportation or delivery charges are exempt if the total selling

price of the exempt tangible personal property is greater than the selling price of the taxable tangible personal property. If the total selling price of the exempt tangible personal property is not greater than the selling price of the taxable tangible personal property, the transportation and delivery charges will qualify for the low rate if the total selling price of the tangible personal property that is taxed at the low rate is greater than the total selling price of the tangible personal property that is taxed at the high rate.

2) Incoming Transportation and Delivery Costs

- A) **Applicability.** Incoming transportation and delivery costs are costs incurred by a retailer in acquiring tangible personal property for sale or moving tangible personal property from one location to another location, up to and including transportation to a point from which the property will be delivered or shipped to the customer, or picked up by the customer.
- B) **General Rule.** Incoming transportation and delivery costs are a business expense to the retailer and may not be deducted from the gross receipts from sales of tangible personal property at retail, even though the retailer may pass those costs on to its customers by quoting and billing those costs separately from the price of the tangible personal property sold.
- C) **EXAMPLES:**
 - i) A customer purchases \$25 worth of books on the internet. The retailer is advertising a \$10 transportation and delivery charge special on orders over \$20 or a \$1 transportation and delivery charge special on orders shipped to its brick-and-mortar store for in-store pick up by the customer. The customer chooses the in-store pickup option. The incoming transportation and delivery costs incurred by the retailer for the customer's order shipped to its brick-and-mortar store for in-store pickup are part of the retailer's costs of doing business. Any amounts the retailer charges the customer for shipping the books to its brick-and-mortar store are part of the retailer's gross receipts from that sale and cannot be deducted. The taxable amount on the sale of the books to the customer is \$26.
 - ii) A customer goes to an appliance store (Store A) to purchase an oven for \$300. The store only has the display model at that location, but there are several in stock at a second store at another store location (Store B). The retailer offers to have Store B ship the oven to Store A for \$25, and the customer accepts. Any transportation costs to move the merchandise from Store B to Store A are part of the retailer's costs of doing business, and any amounts the retailer charges the customer for moving that merchandise cannot be deducted from the retailer's gross receipts from that sale. The taxable amount on the sale of the appliance is \$325.

(Source: Amended at 40 Ill. Reg. _____, effective April 1, 2016.)