

**Fallon-Houle, Nancy**

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**From:** Mark Mirsky [mmirsky@roibusinessservices.com]  
**Sent:** Tuesday, December 01, 2009 8:31 AM  
**To:** mmirsky@roibusinessservices.com  
**Subject:** Sales tax on shipping charges

Please see below for an IL Supreme Court case that has been decided in favor of IL in which shipping charges (which most taxpayers do not subject to sales taxes) were properly subjected to sales taxes. Please let me know if you would like to discuss this case. Please note that shipping charges may be subject to sales taxes on other transactions besides internet sales.

Regards,

Mark

## **State Tax Day - Current, S.6 Illinois—Sales and Use Tax: Shipping Charges on Purchases from Retailer's Internet Store Taxable, (Nov. 20, 2009)**

Shipping charges on purchases of merchandise from a certain retailer's Internet store were properly included in the selling price of the merchandise and thus were subject to Illinois retailers' occupation (sales) and use tax. In so ruling, the Illinois Supreme Court affirmed the judgment of an appellate court affirming the dismissal of the plaintiffs' class action complaints.

### **Selling Price**

The selling price on which tax is computed means the consideration for a sale valued in money determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost, or any other expense whatsoever.

The retailer in this case set up its Internet store so that the subtotal amount of purchases was provided to customers as they added items to their electronic shopping cart. When customers proceeded to checkout, they selected where and when the items would be delivered. Only after they chose a shipping option were customers provided with the total amount to be paid for the order. Customers could not submit their Internet orders unless and until they selected a shipping option. Because customers were required to buy the delivery service, the cost of shipping was part of the taxable selling price.

### **Absence of Separate Agreement for Shipping**

Although a statute provides that shipping charges are not taxable if a buyer and seller separately contract for shipping, in this case, no evidence of a separate agreement for shipping was

disclosed in the pleadings. Moreover, no separate agreement for transportation arose when ordering items from the retailer's Internet store. Rather, the plaintiffs entered into a single agreement that necessarily included shipping.

The fact that under its refund policy, the retailer would generally refund the price of a returned item but not shipping charges was not indicative of a separate agreement for shipping.

The court rejected the plaintiffs' reliance on several general information letters issued by the Illinois Department of Revenue which stated that shipping charges on mail order transactions were not taxable. These statements were based on a regulation that deleted the mail order references in 2000. Further, general information letters do not constitute statements of agency policy, are not binding on the department, and may not be relied upon by taxpayers.

*Kean v. Wal-Mart Stores, Inc.*, Illinois Supreme Court, , No. 107771, November 19, 2009, ¶[402-040](#)

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