

IL Supreme Court: Internet shipping charges are subject to sales tax

GUEST COLUMN

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When Nancy Kean purchased a trampoline through Wal-Mart's internet store, little did she realize that she would ignite a controversy that would find its way to the Illinois Supreme Court.

The controversy resulted from [Wal-Mart's](#) decision to charge Ms. Kean sales tax on the shipping for the trampoline. Ms. Kean eventually became the named plaintiff in a class action lawsuit that was filed against Wal-Mart. The Illinois Supreme Court ultimately concluded that Wal-Mart properly collected sales tax on the shipping charges.

The question of whether shipping or delivery charges are subject to sales tax is one of the most misunderstood questions in Illinois sales tax.

Many retailers view shipping as a non-taxable service. The [Illinois Department of Revenue](#) views shipping very differently. The Department of Revenue, in fact, has a regulation which provides that transportation and delivery charges are generally taxable unless the buyer and seller reach a separate agreement on the delivery.

Under the Department's regulation, simply billing the delivery separately on an invoice is not enough to avoid sales tax. Instead, there must be evidence that the seller and buyer agreed upon the transportation or delivery charges separately from the selling price of the tangible personal property.

According to the Department, the best evidence that transportation or delivery charges were agreed to separately is a separate and distinct contract for transportation or delivery. Absent such a contract, a retailer can still avoid sales tax on delivery charges if it is able to demonstrate that the purchaser had the option of taking delivery of the property at the retailer's location.

The Department's rules on shipping charges have caught many unwary retailers by surprise over the years. Many companies, including caterers, ready-mix concrete vendors and fuel sellers, have all been audited by the Department and assessed for the failure to collect sales tax on shipping charges.

Nancy Kean's class action lawsuit against Wal-Mart provided a different twist on the shipping charge saga because it concerned internet purchases. Ms. Kean and her class argued that Wal-Mart should not have charged sales tax on the shipping charges because those charges were "post-sale" and were therefore not part of the selling price of the product.

The Illinois Supreme Court disagreed. The Court was especially persuaded by the fact that neither Ms. Kean nor any Wal-Mart internet customer could complete an on-line transaction without paying for shipping.

Shipping, in other words, was not optional; it was instead a necessary part of any internet purchase from Wal-Mart. For this reason, the Supreme Court concluded that Wal-Mart properly collected sales tax on its shipping charges because those charges were an integral part of any internet purchase of goods.

In the end, a story that began with Ms. Kean's on-line purchase of a trampoline ended with vindication for Wal-Mart.

Nevertheless, this case should serve as a cautionary tale for Illinois retailers who charge for shipment or delivery. In accordance with the Department of Revenue's longstanding position as recently upheld in the Wal-Mart litigation, such retailers are expected to collect tax on their delivery charges unless they can establish that they have a separate transportation or delivery agreement in place with their customer.