

## Encumbered by Illinois Qui Tam Litigation? A New Update from the AG May Spell Relief for Some

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If you are a Defendant in one of the infamous Illinois qui tam lawsuits related to tax on shipping and handling charges, there has been an important update. Based on some recent Private Letter Rulings from the Department of Revenue ("Department") and proposed amendments to the Department's regulations, the Attorney General has agreed to review (again) specific defendants who have a pick-up option included with their internet sales to Illinois customers. While no assurance has been provided by the AG, it appears that if you qualify and the proofs reflect that you offered a pick-up option for your Illinois internet purchasers during the past 6 years, then the AG will likely move to dismiss the case.

Time is of the essence! This option will likely not be available for cases in which a settlement has already been reached. The AG has also instituted a short deadline of September 15 for a response. For any qualifying defendants, this should be a much less expensive and trying process from this point forward.

The relevant language from the AG's letter on this issue is as follows:

*IDOR's clarified position is that if a seller offers the Illinois purchaser the option to pick up the property at the seller's location, then the shipping charges for such purchases are not subject to tax. This position is reflected in proposed amendments to IDOR's rules governing the taxability of transportation and delivery charges as well as private letter rulings issued by IDOR in response to specific requests from wine sellers.*

*IDOR's proposed amendments to the applicable rules, which are attached, were issued on August 28, 2015, and they provide guidance to sellers as to when shipping charges are subject to tax. In the private letter rulings, also attached, IDOR determined that under the facts of those cases, which included proof of a pick-up option, the shipping charges associated with those wine sales were not subject to tax.*

*Given these developments, the Office of the Attorney General is reviewing the facts in each case. To facilitate this review, we ask that defendants provide us with details in the form of an affidavit regarding the availability of a pick-up option on sales to Illinois customers. Details should include the specific nature of any pick-up option (e.g., website notification, past and*

*current screen captures of relevant web pages) that the defendants' businesses offered and the period of time that any such option has been available to Illinois customers. In addition, for any period of time that a pick-up option was not available to Illinois customers, please indicate the amount of potential shipping tax liability for that period of time. We ask that you provide the requested information no later than September 15, 2015.*

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