

# Retailers Operating in Illinois Must Collect Sales Tax on Shipping and Handling for Internet Orders to Illinois Residents or Face Steep Penalties

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Retailers with stores in the state of Illinois could face steep penalties if they fail to comply with the state's policy on sales tax for internet sales. A number of retailers are facing lawsuits for failing to collect sales tax on shipping charges to Illinois customers. These suits are being brought under the False Claims Act, a whistleblower statute which allows individuals to bring claims on behalf of the government and in return collect a portion of the proceeds of the case. Penalties under the False Claims Act are very steep and include treble damages, civil penalties, costs, expenses, and attorney's fees. The cases allege that retailers who fail to collect sales tax on shipping charges are misrepresenting to customers that tax does not apply, and falsely reporting their tax liability on their monthly state tax returns.

These cases were made possible by the 2009 decision of the Illinois Supreme Court in *Kean v. Wal-Mart Stores, Inc.*, a case brought by a plaintiff class of Illinois residents who had placed orders with Wal-Mart's internet store, and were charged sales tax on the shipping and handling charges for the orders. The plaintiffs alleged that Wal-Mart did not have the statutory authority to collect the tax on shipping because, under Illinois regulations, retailers are not required to collect sales tax on shipping charges if the buyer and seller enter into a separate agreement for shipping. The court found that Wal-Mart was correct to collect the tax. The decision held that because customers had to select a shipping option before they could submit their orders, shipping was not a separate transaction but rather part of the "selling price" for goods on which tax is required to be collected.

Given the high penalties involved, many retailers are choosing to settle out of court, and it may be some time before the courts rule on whether the False Claims Act appropriately applies to such tax claims. The Illinois Tax Department is also expected to update and clarify its regulations in the wake of *Kean*, but has yet to do so at this time. In the interim, retailers may be advised to take proactive steps to ensure that they are complying with the law under *Kean* and collecting sales tax on shipping charges for all internet sales to Illinois residents.