



## **Illinois: Proposed Regulations Offer Guidance on Taxation of Shipping Charges, May Help Resolve False Claims Act Cases**

- On August 28, 2015, the Illinois Department of Revenue (the “Department”) issued proposed regulations to clarify the Department’s position on the sales taxation of shipping charges.
- Under the proposed regulations, which would be retroactive to November 19, 2009, a winery making online wine sales to Illinois customers would not have to collect sales tax on shipping charges so long as the following conditions are satisfied: (i) the shipping charges are stated separately from the price of the wine; (ii) there is an option to pick up the wine at the winery/tasting room/etc. instead of having it shipped to Illinois; *and* (iii) the price of the wine does not fluctuate depending on whether the shipping option or the pick-up option is chosen.
- An example in the proposed regulations deals with an internet retailer that sells property to an Illinois customer and offers the options to have the property shipped to Illinois for a separately-stated shipping fee or to pick up the goods free of charge from its San Diego, California location. In such a case, the shipping charges are not taxable. This proposed example directly contradicts the position taken by the plaintiff in the Illinois False Claims Act cases against Wine Institute members.
- The proposed regulations are consistent with the Department Letter Rulings obtained by Reed Smith LLP for two Wine Institute members under the existing regulation. The proposed regulations are simply a clarification of the Department’s longstanding regulation interpreting the sales tax statutes. Regardless of whether or not the proposed regulations are adopted, Wine Institute members who already state shipping charges separately and offer the option of pick-up at the winery/tasting room may continue the practice of not collecting tax on shipping charges to Illinois purchasers.
- The proposed regulations will not have the force of law until finalized. There is a 45-day period for the public to comment upon the proposed regulations before they can be approved by the Illinois Joint Committee on Administrative Rules, a committee of the Illinois Legislature. Wine Institute anticipates filing comments to the regulations to ensure the interests of our members who may have different shipment options or who have been subject to False Claims Act litigation are known to the Committee members.

- Wine Institute was advised by Reed Smith that, in light of the proposed regulations, the Illinois Attorney General has represented to the court that it will conduct a review of all pending False Claims Act cases against wineries to determine whether the cases should proceed further. In response to inquiries by Reed Smith, the Attorney General advised that its review includes all wineries that recently received the Attorney General's Settlement Proposal.

Wine Institute has retained the services of Reed Smith LLP to represent us and member winery plaintiffs (Chimney Rock Winery, Miner Family Winery, Staglin Family Vineyards, The Duckhorn Wine Company, and Long Meadow Ranch Winery) in our own lawsuit challenging the actions of the Attorney General and the Department of Revenue in relation to the False Claims Act suits filed by Steven Diamond in Illinois.

For more information on the proposed regulations or False Claims Act suits in Illinois, contact Steve Gross, Vice President of State Relations, Wine Institute at [sgross@wineinstitute.org](mailto:sgross@wineinstitute.org), phone: 415-356-7518, Michael J. Wynne, Partner, Reed Smith LLP at [Mwynne@reedsmith.com](mailto:Mwynne@reedsmith.com), phone: 312-207-3894 or Adam Beckerink, Counsel, Reed Smith LLP at [abeckerink@reedsmith.com](mailto:abeckerink@reedsmith.com), phone: 312-207-6528.