

Sales and Use Tax Treatment for Sales of Modular Homes Modules Used to Build Modular Homes

Recently enacted legislation (Chapter 399 of the Laws of 2009) amended the Tax Law regarding the imposition of state and local sales and use taxes (sales and use tax) on new modular home modules.

General

Generally, sales and use tax is due on all purchases or uses of building materials. However, sales and use tax is not due on the charge for labor to install materials that when installed, constitute a capital improvement. Accordingly, the cost of labor to build a house at the site, with materials delivered to the site (a "stick-built home") is not subject to sales and use tax, because most houses, when built, qualify as a capital improvement. However, since nearly all of the labor to construct modular home modules occurs in the factories where the modules are manufactured, prior to this new law, 100% of the factory labor component was subject to sales and use tax as part of the sales price when the modules were sold.

The new law provides a special rule for computing the amount of the sales price that is subject to sales and use tax on new modular home modules used to build a modular home. Effective December 1, 2009, sales and use tax will be computed on the sales of these new modular home modules based on 60% of their purchase price. However, 100% of any charge by the vendor for shipping and delivery of the modules will continue to be subject to sales and use tax. The new law is explained in more detail below.

Definitions

For purposes of the new rules for new modular home modules, the following definitions apply:

Modular home means a one to three-family residential structure constructed at the building site from modular home modules, where the modules are connected and the structure is finished using building materials or other tangible personal property at the building site. The modular home must conform to the building and other codes applicable to one to three-family site-built homes in the jurisdiction where the building site is located, and the finished modular home must constitute a capital improvement.

A modular home does **not** include:

- a structure or portion of a structure built on-site, whether built by a modular home installer or other person, using building materials delivered to the site, even if some of the materials were manufactured, produced, or assembled off-site (examples of these materials include, but are not limited to, concrete blocks, windows, door units, wall or roof panels, trusses and dormers);

- a shed, gazebo, any unattached garage or the like even if made or built by a manufacturer of modular home modules; or
- a mobile home, including a double-wide or multi-section mobile home.

Modular home modules mean the component sections that will be installed on-site to construct a modular home, each of which sections is:

- engineered and manufactured in a factory;
- shipped or delivered to the building site on a truck or other vehicle;
- installed at the site, on a permanent foundation, to become part of the modular home; and
- not by itself suitable for occupancy.

In addition, every group of modules that will be installed in this state as a modular home, or, if a modular home is to be built from a single module, that single module, must, prior to shipment from the place where it is made, bear the insignia of approval issued by the New York State Department of State under the authority of Article Eighteen of the Executive Law and the corresponding regulations. The Department of State shall cooperate with the Tax Department and furnish any information the Tax Department requests.

A modular home module also includes tangible personal property shipped or delivered with the module from the factory by the manufacturer at the same time the module is shipped or delivered. This property (hereinafter referred to as eligible materials) includes exterior siding, roof shingles, roof vent pipes, interior trim pieces, paint, and interior doors, and supplies required and used to install the property, but only if the property:

- was engineered or designed to be an integral component part of the module;
- matches, or is essential to the functioning of, the module;
- was not installed in the module at the time the module was made only because it would be damaged during, or interfere with, shipping or delivery of the module to the building site;
- will be permanently installed in the module at the building site by the manufacturer or by the purchaser of the module or by the contractor of either of them;
- is listed in full on the contract, bill of sale, invoice or other memorandum of price given to the purchaser or buyer, or in an addendum to any of those documents (the manufacturer must retain true copies of these documents as part of its sales tax records and make them available on request to the department); and
- is included in the sale price of the module, without any additional charge.

A modular home module does **not** include:

- furniture, fixtures, furnishings, appliances, attachments, or similar tangible personal property not incorporated as component parts of the module at the time of its manufacture, or
- building materials or other tangible personal property that is not eligible materials used to connect the modules or finish the modular home at the building site.

New modular home module means a modular home module sold for the first time at retail.

Special rules for sales and use tax on new modular home modules

Sales tax

Effective December 1, 2009, 60% of the charge for the sale of a new module home module will be subject to sales tax. In addition, sales tax must be charged on 100% of the vendor's charge for shipping and delivery of the modules. The charges for the sale of modules, charges for shipping and delivery, and charges for installation of the modules at the building site must be reasonable and separately stated in order for the 60% rule to apply. If the installation of the modules at the building site will constitute a capital improvement, then charges for the installation will not be subject to sales or use taxes, provided the installation charges are reasonable and stated separately from all other charges.

Modular home modules sold to a dealer that will be used to construct a model home are taxed on 100% of the charge to the dealer, including any charges for shipping and delivery. The sale of used modular home modules is also subject to sales tax on 100% of the charge, including any charges for shipping and delivery. Thus, if a dealer purchases modules to construct a model home and later sells those modules to a customer, the dealer would be required to collect sales tax on 100% of the selling price, since the dealer is selling used modules.

The sale of a modular home, once built, is not subject to sales tax, since it constitutes real property. But if a modular home is deconstructed and removed from the realty, its sale, whether whole or in pieces, would be subject to sales tax on 100% of the sale price.

Examples

Example 1: ABC Modular is a New York State vendor, registered for sales tax purposes, who sells new modular home modules to Mr. and Mrs. James (uninstalled), for a charge of \$156,000. The charge includes \$150,000 for the modules and miscellaneous materials included and shipped with the modules by the manufacturer that will be installed in the modules at a building site in Albany, New York, and a delivery charge of \$6,000. The total amount subject to sales tax and the total sales tax due is computed as follows:

<i>\$150,000 for the modules and materials x 60% (.60) =</i>	<i>\$ 90,000</i>
<i>\$6,000 for delivery x 100% (1.0) =</i>	<i>\$ <u>6,000</u></i>
<i>Total amount subject to state and local sales tax</i>	<i>\$ 96,000</i>
<i>State/Albany county sales tax rate-8%</i>	<i><u>x .08</u></i>
<i>Total tax due</i>	<i>\$ 7,680</i>

Example 2: Smithtown Modular is a New York State vendor, registered for sales tax purposes, who sells new modular home modules to a modular home dealer located in New York State for \$180,000. The modules will be used by the dealer as a model to display to its customers at the dealer's site. Therefore, Smithtown Modular must collect sales tax on 100% of the charge to the dealer for the modules, including any charges Smithtown makes for shipping and delivery and for installation. In addition, if the dealer subsequently sells the modules used to make the model home to a customer, 100% of the sale price of the modules, including any shipping and delivery charge, is subject to sales tax because the modular home modules are used, since they were already sold at retail to the dealer.

Use tax

If the manufacturer of new modular home modules sells the modules on an installed basis in this state, then the manufacturer will owe use tax under a special rule. "Sold on an installed basis" means the manufacturer will install the modules at the building site itself, or it will hire a contractor to install the modules at the site; and the modules, once installed will constitute a capital improvement. If the manufacturer sells modules on an installed basis, then the manufacturer will owe use tax computed on 60% of the price at which it sold the modules on an installed basis (not including any charge for shipping or delivery), plus 100% of the amount charged for shipping and delivery of the modules to the site. If the manufacturer's charge to the buyer to install the modules at the site is reasonable and separately stated from all other charges, the manufacturer may exclude that installation charge from the amount subject to use tax.

Example

Example 3: Georgetown Modular manufactures and installs modular homes in New York State. Georgetown sells a modular home on an installed basis to Mr. and Mrs. James. The total charge is \$275,000, which includes \$150,000 for the modular home modules, \$5,000 for delivery, and \$120,000 for installation. The separate \$120,000 charge for labor to install the modular home modules is not subject to use tax, so long as Georgetown states the installation charge separately from every other charge and so long as the amount of that charge is reasonable. The total amount on which Georgetown must remit use tax and the amount of use tax due is computed as follows:

<i>\$150,000 for the modules and materials x 60% (.60) =</i>	<i>\$ 90,000</i>
<i>\$5,000 for delivery x 100% (1.0) =</i>	<i>\$ <u>5,000</u></i>
<i>Total amount subject to state and local use tax</i>	<i>\$ 95,000</i>
<i>State/Albany county use tax rate-8%</i>	<i><u>x .08</u></i>
<i>Total tax due</i>	<i>\$ 7,600</i>

Effective date and transitional provisions

The amendments described in this memorandum apply to sales made or uses occurring on or after December 1, 2009. The amendments also apply to sales of modules made prior to December 1, 2009, if the modules are delivered to the purchaser after that date, unless all of the following conditions apply:

- the sales are pursuant to a prior written contract entered into before August 1, 2009;
- the property sold or agreed to be sold was segregated, before August 1, 2009, from any similar property in the possession of the vendor and identified as having been appropriated to the sale under that written contract; and
- the purchaser paid at least 10% of the sale price to the vendor prior to December 1, 2009.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.