

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-15(52)S
Sales Tax
December 16, 2015

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S141223C

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED] (Petitioner).

Petitioner asks whether its sale of modular home modules to a dealer or builder that picks up the modules at Petitioner's factory in New York using the dealer's or builder's own trucks are sourced and subject to New York State and local sales taxes at its factory or at the home installation site in New York. Petitioner also asks whether its sale of such modules to a dealer or builder that picks up the modules at Petitioner's factory in New York using the dealer's or builder's own trucks are sourced and subject to New York State and local sales taxes at its factory if the dealer or builder installs them at a site outside of New York.

We conclude that, in each of these cases, Petitioner's sales of modular home modules are subject to New York State and local sales taxes at the rate in effect where Petitioner's factory is located. Petitioner must collect tax when it does not receive a properly completed exemption document or when it lacks good faith to accept one, including when it knows that the purchaser is installing the modules.

Facts

Petitioner is registered for sales tax purposes in New York. It manufactures modular home modules at a factory in New York and sells the modules to dealers and builders. Petitioner sells its modular home modules FOB origin, meaning that the purchaser takes ownership at Petitioner's location and is responsible for the modules at that point. Therefore, the sale is complete once the modules are picked up by the purchaser. Petitioner's sales contracts specify that title to the modules passes at the point the dealer or builder picks up the modules at Petitioner's factory dock. The dealer or builder picks up the modular home modules using its own trucks. Petitioner is not involved in installing the modular home modules sold to dealers or builders. Petitioner states that the dealer or builder is responsible for the installation of the modular home modules at an installation site in New York or in another state and will sell the modular home made from the installed modules to its customer.

Analysis

Modular home modules are tangible personal property. A new modular home module is one that is sold for the first time at retail. *See* Tax Law § 1101(b)(6), (35), and (36). Tax Law § 1105(a) imposes sales tax on retail sales of tangible personal property, unless an exemption or exclusion applies. As relevant here, Tax Law § 1101(b)(4)(i)(A) defines "retail sale" as the sale of tangible personal property to a person for any purpose, other than for resale as such or as a physical component part of tangible personal property. However, a sale of tangible personal

property to a contractor for use or consumption in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing or repairing real property is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such before it is so used or consumed. A person that engages in erecting, constructing, adding to, altering, or improving buildings, other structures, or improvements on or to real property is a construction contractor for sales tax purposes. *See* 20 NYCRR § 541.2(d).

The sales tax is a "destination tax." The point of delivery or point at which possession is transferred by the vendor to the purchaser, or to the purchaser's designee, controls both the tax incidence and the tax rate. *See* 20 NYCRR § 525.2(a)(3). Thus, if a vendor sells property and delivers it in this State, New York sales tax would apply, but if the vendor delivers the property to the purchaser outside the State, New York sales tax would not apply. The tax is due at the time that Petitioner transfers title or possession (or both) of the property. *See* 20 NYCRR § 525.2(a)(2).

When Petitioner sells modules to a dealer or builder and the dealer or builder picks up the modules in its own trucks at Petitioner's factory in New York, both title and possession of the modules are transferred to the dealer or builder at the location of Petitioner's factory. Thus, the sale is subject to State and local sales tax at the rate in effect at that location. Petitioner must collect tax at that time, unless it receives a properly completed exemption document, provided that it may not accept an exemption document if it lacks good faith to accept one, such as if it knows that the purchaser is responsible for installing the modules. For more information how sales tax applies to the sales of modular home modules, *see* TSB-M-09(19)S, *Sales and Use Tax Treatment for Sales of Modular Homes Modules Used to Build Modular Homes*, and TSB-M-10(1)S, *Supplemental Summary of Legislation Affecting Sales and Use Tax Enacted in 2009*. Also *see* TB-ST-130, *Contractors - Sales Tax Credits*, for information how Petitioner's contractor customers may be able to apply for a refund or credit of tax paid to Petitioner if the customer takes the modules outside the State and installs them in the other state and in certain other cases.

DATED: December 16, 2015

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.