

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-A-83(10)S
Sales Tax
March 8, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830118A

On January 18, 1983 a Petition for Advisory Opinion was received from Titan Homes, Inc., 5573 East North Street, Dryden, Michigan 48428.

The issue raised is the proper application of the sales tax to certain transactions.

Petitioner is a mobile home manufacturer and as such is required to charge New York State and local sales taxes when it sells a mobile home to a New York dealer. On June 14, 1982, Petitioner lowered the base unit price of each mobile home by \$1,000.00. The dealers have been given an option as to how this price reduction is to be effectuated, as described in the following:

Method #1 - The price reduction is shown directly on the original invoice, as follows:

| | |
|---------------------|--------------------|
| Base Unit Price | \$10,500.00 |
| Unit Options | 500.00 |
| Price Reduction | <u>(1,000.00)</u> |
| Subtotal | \$10,000.00 |
| NY Sales Tax @ 7% | 700.00 |
| Freight Charges | <u>200.00</u> |
| Total Invoice Price | <u>\$10,900.00</u> |

Method #2 - The price reduction is not included on the original invoice. A check for the price reduction is subsequently sent to the dealer. Using this method tax is computed by Petitioner as follows:

| | |
|---------------------|---------------|
| Base Unit Price | \$10,500.00 |
| Unit Options | <u>500.00</u> |
| Subtotal | \$11,000.00 |
| NY Sales Tax @ 7% | 770.00 |
| Freight Charges | <u>200.00</u> |
| Total Invoice Price | \$11,970.00 |

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| | |
|----------------------|-------------------|
| Check sent to dealer | <u>(1,000.00)</u> |
| Total dealer cost | \$10,970.00 |

Section 1105(a) of the Tax Law imposes a sales tax on the receipts from every retail sale of tangible personal property, except as otherwise provided. The word "receipt" is defined, in section 1101(b)(3) of the Tax Law, as "the amount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser" Section 526.5(d)(2) of the Sales and Use Tax Regulations provides that "Discounts which represent a reduction in price are deductible in computing receipts."

Under Method #1, described above, the sales tax is computed correctly. However, where Method #2 is utilized the dealer is also entitled to a refund of that portion of the tax which is attributable to the \$1,000.00 price reduction. In such case the check sent to the dealer should be in the amount of \$1,070.00.

Accordingly, in each case where Method #2 has been employed in the past, the dealer would be entitled to a refund of a portion of the tax paid. Such refund may be made by Petitioner, who may thereupon claim a credit for such tax refunded to his customers on its quarterly Sales and Use Tax Return (ST-100), at line 2a, page 1, or it may claim a refund of such amount, apart from the filing of a return, using form AU-11. In either instance, Petitioner must maintain appropriate documentation to substantiate that the amount so claimed was in fact refunded to the dealers. Tax Law, § 1139(a). Alternatively, a dealer who does not receive a refund from Petitioner may claim such a refund directly from the State Tax Commission. Such credits and refunds must be claimed within three years from the date the tax collected was payable to the State Tax Commission.

DATED: February 17, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau