

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

TSB-A-87(25)S  
Sales Tax  
August 12, 1987

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S870403B

On April 3, 1987, a Petition for Advisory Opinion was received from Elsa and Carlos Rosa, 99 Ella Street, Bloomfield, New Jersey, 07003.

The issues raised are (I) what qualifies as a mobile home for purposes of section 1101(b)(10) of the Tax Law, (II) who is liable for the payment of sales and use tax on the purchase of such a mobile home and (III) how is the applicable tax to be calculated.

Petitioners intend to purchase a mobile home to be permanently installed on a parcel of land. The land, owned by Petitioners, is located in the Town of Bethel, Catskill Mountains, New York State.

Issue I

Section 1101(b)(10) of the Tax Law sets forth the characteristics of a "mobile home" for purposes of the sales and use tax. It provides:

(10) Mobile home. (i) A structure which is:

(A) A type of manufactured housing; and

(B) Not self-propelled; and

(C) Transportable in one or more sections:

(I) that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity, or

(II) that may be separately towable and designed to be joined into one integral structure capable of being again separated into the sections for repeated towing; and

(D) Built on a permanent chassis, comprised of frame and wheels, that is to be connected to utilities; and

(E) Designed to be used as a permanent dwelling, with or without permanent foundation; and

(F) Used for residential or commercial purposes.

(ii) The term "mobile home" shall also include structures commonly called "double wides".

(iii) The term "mobile home" shall not include:

(A) Structures designed and constructed primarily for temporary living quarters, recreations, camping or travel; or

(B) Furniture, fixtures, furnishings, appliances, attachments or similar tangible personal property not incorporated as component parts of a mobile home at the time of manufacture.

In section 1101(b)(11), a new mobile home is stated to be one:

... which is sold for the first time at retail including all components incorporated into such mobile home at the time of manufacture and remaining unchanged at the time of the first retail sale thereof.

The "mobile home" to be purchased must meet the definition of mobile home to come within the special provisions of the Tax Law applicable to mobile homes.

## Issue II

Section 1105(a) of the Tax Law imposes a tax upon the receipts from every retail sale of tangible personal property, except as otherwise provided.

Section 525.2(a)(4) of the sales and use tax regulations provides, in part, that "the tax is imposed on the retail sale of tangible personal property .... and is collected from the person who purchases at retail - the consumer."

Section 1101(b)(4) of the Tax Law defines "retail sale" as "[A] sale of tangible personal property to any person for any purpose, other than for resale as such .... (however) a sale of any tangible personal property to a contractor, subcontractor or repairman for use or consumption in erecting structures or buildings, or building on, or otherwise adding to altering, improving .... real property .... is deemed to be a retail sale regardless of whether the tangible personal property is to be resold as such .... except that a sale of a new mobile home to a contractor, subcontractor, or repairman who, in such capacity, installs such property is not a retail sale."

Section 525.2(b) of the sales and use tax regulations provides, that a "compensating use tax is imposed on the use within the State of tangible personal property and services which would have been subject to sales tax if purchased in this state."

In addition, section 531.4(a) of the regulations states "when tangible personal property is purchased outside of the State by a resident of the State, for use outside of the State, and is subsequently used in the State, the compensating use tax is due on the purchase price."

Section 1118(2) of the Tax Law exempts from the compensating use tax:

...property purchased by the user while a nonresident of this state, except in the case of tangible personal property which the user, in the performance of a contract, incorporates into real property located in the state. A person while engaged in any manner in carrying on in this state any employment, trade, business or profession, shall not be deemed a nonresident with respect to the use in this state of property in such employment, trade, business or profession.

A resident is described in part, in section 526.15(1) of the regulations as, "any individual who maintains a permanent place of abode in this State."

A permanent place of abode as stated in section 526.15(2) is a dwelling place maintained by a person, or by another for him, whether or not owned by such person, on other than a temporary or transient basis. The dwelling may be a house, apartment, or flat, a room including a room at a hotel, motel, boarding house or club; or at a residence hall operated by an educational or charitable or other institution, or a trailer, mobile home, houseboat or any other premises.

Section 525.2(a)(2) of the regulations provide, in part, that the sales tax is a destination tax in which the point of delivery or the time possession is transferred from the vendor to purchaser controls both the tax incident and the tax rate.

Section 1105(c)(3) of the Tax Law "imposes a tax on receipts from the service of installing tangible personal property .... except for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land.

Section 1101(b)(9) of the Tax Law states that "A mobile home shall not constitute an addition or capital improvement to real property, property or land regardless of the nature of its installation.

As a result of Chapter 986, Laws of 1983, effective September 1, 1983, all sales of new mobile homes by manufacturers to dealers, and all sales to contractors, subcontractors or repairmen who make installations .... are now sales for resale. (Technical Services Bureau Memorandum, Mobile Homes, September 1, 1983, TSB-M-83(24)S).

Section 1115(a)(23) exempts used mobile homes from the sales and use tax.

Accordingly, the Petitioners, as the purchaser, must pay compensating use tax on a new mobile home purchased outside the State if it is subsequently used within the State and if Petitioners were residents of the State at the time of purchase. A used mobile home purchased outside the State and subsequently used within the State is not subject to compensating use tax. The Petitioners must also pay sales tax on a new mobile home purchased within New York State regardless of their

residence. However, a used mobile home purchased within the State is exempt from tax. Tax must be paid irrespective of whether the mobile home is to be permanently installed on a parcel of land. A mobile home is not recognized in New York as a capital improvement to real property, therefore the exemption for capital improvements will not apply.

### Issue III

As a result of Chapter 986 of the Laws of 1983, the tax on new mobile homes is applied to 70% of the retail selling price. This rule is applicable to the selling price allocable to the mobile home including any furnishings permanently installed by the manufacturer. Examples of tangible personal property permanently installed by the manufacturer are water heaters, furnaces, sinks, cabinets, counter tops, exhaust fans, and ducted hoods. (Technical Services Bureau Memorandum, Mobile Homes, November 7, 1983, TSB-M-83(24.1)S).

Section 531.4(b) of the sales and use tax regulations further states, "where a resident affirmatively shows that he used such property outside the State for more than six months prior to its first use in New York, the use tax is based on the current market value of the property, not to exceed its cost, at the time of first use within New York."

The seventy percent rule above is not applicable to furniture, fixtures, furnishings, appliances, attachments or similar tangible personal property not permanently installed by the manufacturer. Also, it is not applicable to items installed by the dealer such as furniture and draperies. Items not permanently attached and those attached by the dealer are taxed to the purchaser at 100% of their selling price. The invoice given to the purchaser must list all items of tangible personal property individually, along with their applicable selling price. A copy should be retained by the dealer for his records. (Ibid.)

Any charge for installation of the mobile home is exempt from tax. However, items of tangible personal property intended to enhance the appearance of the home, but not necessary to make it habitable, are fully taxable to the purchaser. Labor to install such items is also fully taxable. Examples of such items are skirting, decks and awnings. (Mobile Homes, TSB-M-83(24.1)S.)

Section 531.3 of the sales and use tax regulations provides, in part, that for the use tax due "credit is allowed for tangible personal property accepted in part payment and intended for resale, and for transportation costs."

Regulation sections 526.5(f) and (g) explain further:

(f) Trade-in. Any allowance or credit ... accepted in part payment ... and intended for resale ... shall be excluded when arriving at the receipt subject to tax.

(g) Transportation. (1) The cost of transportation of tangible personal property sold at retail, which is separately stated in written contract, if any, and on the bill rendered to the purchaser is excluded from the receipts subject to the tax.

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(2) To qualify for the exclusion transportation costs must be for the delivery of the tangible personal property to the purchaser.

For further information regarding calculation of tax on mobile homes, see Technical Services Bureau, TSB-M-83(24.1)S.

DATED: August 12, 1987

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.