

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 01-19**

WARNING

Letter rulings are binding statements on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of Tennessee sales and use tax to modular homes

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] is a modular¹ home installer in [CITY A], Tennessee. The taxpayer purchases these homes from manufacturers in [CITY B], Tennessee and [CITY IN STATE OTHER THAN TENNESSEE]. The homes are delivered to the job site by the manufacturer on a chassis. The modular homes are unbolted from the chassis and set on

¹ The taxpayer states: "When I say modular, I mean 'manufactured'". However, a manufactured home and a modular home are clearly not the same.

a pre-laid block foundation. All home units will be erected by the Taxpayer on the property of the Taxpayer's customer. For purposes of this ruling, it is assumed all homes become realty upon installation by the Taxpayer. The Taxpayer will not maintain any inventory of these units. The homes will either be purchased by the Taxpayer from [CITY B] manufacturer, 70% complete when received, or from a [STATE OTHER THAN TENNESSEE] manufacturer, 90% complete when received. The Taxpayer indicates that presently, state and local use taxes are only being paid on the additional materials used to finish these homes when erected by the Taxpayer in Tennessee.

QUESTION

1. Does the Taxpayer owe use tax on the full purchase price of the homes obtained from the [STATE OTHER THAN TENNESSEE] manufacturer or only on the additional material it uses to erect the homes?
2. How are freight charges taxed?
3. Is the correct state tax rate to be applied to these homes the three per cent (3%) tax rate of T.C.A. § 67-6-216?

RULINGS

1. The Taxpayer owes sales or use taxes on the full purchase price of the modular homes as well as on the other materials the Taxpayer uses to complete and erect the homes.
2. Application of the tax to freight charges is controlled by rule. If title to the modular home passes at the point of destination or job site in Tennessee, tax applies to freight charges. If the home is delivered to the Tennessee job site by the manufacturer's own vehicle, freight charges are included in the sales and use tax base.
3. No. T.C.A. §67-6-216 establishes a special three per cent (3%) tax rate on the gross proceeds from the sale of a "manufactured home", including installation labor. This statute does not apply to modular homes.

ANALYSIS

Manufactured Homes

T.C.A. § 67-6-216 establishes a unique sales tax provision for manufactured homes:

- (a) Notwithstanding any other provisions of this chapter to the contrary, state tax equal to one half (1/2) the rate of tax provided for in § 67-6-202 is levied on the gross receipts or gross proceeds from the retail sale of a manufactured home, including any accessories, parts, furniture, appliances, delivery fees, installation fees, and other additional or incidental items or services that are part of the sale of the manufactured home, whether or not separately billed.
- (b) As used in this section, "manufactured home" means a structure as defined in § 68-126-202.
- (c) The tax levied by this section shall apply whether or not the manufactured home is installed as an improvement to the realty.

The gross proceeds from the sale of a “manufactured home”, including proceeds for installation labor, are taxed at the reduced rate whether or not the “manufactured home” dealer installs the home as an improvement to realty. The statute relies upon T.C.A. § 68-126-202(4) of the "Uniform Standards Code for Manufactured Homes and Recreational Vehicles Act" for the definition of “manufactured home”.

(4) “Manufactured home” means a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width, or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that “manufactured home” includes any structure which meets all the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under this title;

The Taxpayer contends that a modular home fits this definition. However, the homes the taxpayer erects do not fit this definition. Instead, modular building units are defined by T.C.A. § 68-126-303(6) of the "Tennessee Modular Building Act" as follows:

(6) “Modular building unit” means a structural unit, or preassembled component unit including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and transported to the point of use for installation or erection, with or without other specified components, as a finished building and not designed for ready removal to another site. “Modular building unit” does not apply to temporary structures used exclusively for construction purposes or nonresidential farm buildings.

There are apparent differences in these definitions. Among other things, a “manufactured home” must be built on a permanent chassis since it is designed to be movable. This is not the case with a modular home. However, it is not necessary to make a detailed examination of these statutory definitions to determine if a unit is a “manufactured home”. A “manufactured home” will be labeled as a “manufactured home”.

The manufactured home law in Tennessee is administered by the Commissioner of Commerce and Insurance in cooperation with federal law on the same subject. T.C.A. § 68-126-102. The federal law requires certification of manufactured homes by means of an inspection plate attached to each transportable section:

- (a) A permanent label shall be affixed to each transportable section of each manufactured home for sale or lease in the United States. This label shall be separate and distinct from the data plate which the manufacturer is required to provide under § 3280.5 of the standards.
- (b) The label shall be approximately 2 in. by 4 in. in size and shall be permanently attached to the manufactured home by means of 4 blind rivets, drive screws, or

other means that render it difficult to remove without defacing it. It shall be etched on 0.32 in. thick aluminum plate. The label number shall be etched or stamped with a 3 letter designation which identifies the production inspection primary inspection agency and which the Secretary shall assign. Each label shall be marked with a 6 digit number which the label supplier shall furnish. The labels shall be stamped with numbers sequentially.

- (c) The label shall read as follows: As evidenced by this label No. ABC 000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this manufactured home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal manufactured home construction and safety standards in effect on the date of manufacture. See date plate.
- (d) The label shall be located at the tail-light end of each transportable section of the manufactured home approximately one foot up from the floor and one foot in from the road side, or as near that location on a permanent part of the exterior of the manufactured home unit as practicable. The road side is the right side of the manufactured home when one views the manufactured home from the tow bar end of the manufactured home.

24 CFR § 3280.11. Accordingly, a manufacturer's inspection plate will identify a "manufactured home". Modular homes are not "manufactured homes", and will not have this identification plate.

Modular Home Units and Contractor's Use Tax

Since the Taxpayer is not installing a "manufactured home", the Taxpayer is liable for tax as a contractor. Normally, a contractor who installs tangible personal property as part of the realty is liable for use tax on the purchase price of these materials. T.C.A. § 67-6-209(b). Credit is given for any sales tax previously paid by the contractor. *Id.* The transfer of tangible personal property by a contractor who contracts for the installation of such tangible personal property as an improvement to realty does not constitute a sale. T.C.A. § 67-6-209(c). When the Taxpayer contracts to install a modular home as an improvement to realty, the Taxpayer is not selling tangible personal property to its customers. Accordingly, sales or use taxes at the usual rate² must be paid upon the purchase price of modular homes installed by the Taxpayer.

Contractors engaged in constructing or improving real property, whether on a lump sum or a cost-plus basis, are purchasers and consumers of the materials used by them, and are required to pay the Sales or Use Tax on such materials or equipment purchased or imported into this State for use in connection with their contracts.

Tenn. Admin. Comp. 1320-5-1-.07(1). The Taxpayer is the user and consumer of the modular homes it purchases. If the supplier does not collect the Tennessee sales tax, the taxpayer must remit use tax directly to the Department of Revenue based upon its

² The state rate is presently six percent (6 %). The local rate will vary by applicable local jurisdiction.

purchase price. Credit will be given against the use tax for any applicable sales taxes previously imposed by other states. T.C.A. § 67-6-507(a).

Freight Charges

Application of the sales or use tax to freight charges is controlled by rule.

Freight, delivery, or other like transportation charges are subject to the Sales and Use Tax if title to the property being transported passes to the vendee at the destination point. Where title to the property being transported passes to the vendee at the point of origin, the freight or other transportation charges are not subject to the Sales or Use Tax. It is immaterial whether the vendor or vendee actually pays for any charges made for transportation, whether the charges are actually paid by one for the other, or whether a credit or allowance is made or given for such charges. In cases where a vendor makes a separate charge for delivering tangible personal property in his own vehicle, or makes arrangements for delivering tangible personal property, other than by a common carrier, the delivery charges shall be considered a part of the selling price subject to the Sales or Use Tax.

Tenn. Admin. Comp. 1320-5-1-.71. If a modular home is delivered to a Tennessee job site and title passes there, freight charges are included in the tax base. If a modular home is delivered to the Tennessee job site by the manufacturer/vendor's own vehicle, freight charges are included in the sales and use tax base.

Charles Moore
Special Tax Counsel

APPROVED: Ruth E. Johnson
Commissioner of Revenue

DATE: October 2, 2001