



DIRECTIVE

Subject: Modular Homes
Tax: Sales and Use Tax
Law: N.C. Gen. Stat. § 105-164.4(a)(8)
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Effective January 1, 2014, Session Law 2013-316 amends N.C. Gen. Stat. § 105-164.4(a)(8) and provides the 4.75% general State rate of sales and use tax applies to the sales price of each modular home sold at retail, including all accessories attached to the modular home when it is delivered to the purchaser. N.C. Gen. Stat. § 105-467(a) provides that the sale of a modular home is not subject to local and transit sales and use taxes. Prior to January 1, 2014, each modular home sold at retail, including all accessories attached to the modular home when it is delivered to the purchaser, is subject to the 2.50% State rate of tax.

The sale of a modular home to a modular homebuilder is considered a retail sale. The retail sale of a modular home occurs when a modular home manufacturer sells a modular home to a modular homebuilder or directly to the end user of the modular home. A person who sells a modular home at retail is allowed a credit against the tax imposed by N.C. Gen. Stat. § 105-164.4(a)(8) for sales or use tax due and paid to another state on tangible personal property incorporated in the modular home.

N.C. Gen. Stat. § 105-164.3(21b) defines “[m]odular home” as “[a] factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with the specifications for modular homes under the North Carolina State Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143-139.1.”

N.C. Gen. Stat. § 105-164.3(21c) defines “[m]odular homebuilder” as “[a] person who furnishes for consideration a modular home to a purchaser that will occupy the modular home. The purchaser can be a person that will lease or rent the unit as real property.”

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N.C. Gen. Stat § 105-164.3(34) defines “[r]etail sale or sale at retail” as “[t]he sale, lease, or rental for any purpose other than for resale, sublease, or subrent.”

N.C. Gen. Stat § 105-164.3(36) defines “[s]ale or selling,” in part, as “[t]he transfer for consideration of title . . . or possession of tangible personal property . . . or the performance for consideration of a service.”

Modular Home Sales Price

N.C. Gen. Stat. § 105-164.3(37) defines the term “[s]ales price” as “[t]he total amount or consideration for which tangible personal property . . . or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

a. The term includes all of the following:

1. The retailer’s cost of the property sold.
2. The cost of materials used, labor or service costs, interest, losses, all costs of transportation to the retailer, all taxes imposed on the retailer, and any other expense of the retailer.
3. Charges by the retailer for any services necessary to complete the sale.
4. Delivery charges.
5. Installation charges.
6. Repealed by Session Laws 2007-244, s. 1, effective October 1, 2007.
7. Credit for trade-in.
8. Discounts that are reimbursable by a third party and can be determined at the time of sale through any of the following:
 - I. Presentation by the consumer of a coupon or other documentation.
 - II. Identification of the consumer as a member of a group eligible for a discount.
 - III. The invoice the retailer gives the consumer.

b. The term does not include any of the following:

1. Discounts that are not reimbursable by a third party, are allowed by the retailer, and are taken by a consumer on a sale.
2. Interest, financing, and carrying charges from credit extended on the sale, if the amount is separately stated on the invoice, bill of sale, or a similar document given to the consumer.
3. Any taxes imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the consumer.”

An invoice, bill of sale, or similar document issued by the modular home manufacturer for a sale at retail to a modular homebuilder often contain carrier deposit fees, freight charges, engineering fees, and labeling fees imposed by the

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N.C. Department of Insurance. All such fees and charges constitute a part of the sales price of the modular home sold at retail where title or possession transfer in the State, even if such charges are separately stated in the invoice, bill of sale, or similar document given to the purchaser by the modular home manufacturer or other person at the time of the sale. Other charges by the modular home manufacturer necessary to complete the sale at retail of a modular home and accessories attached to the modular home when it is delivered to a modular homebuilder constitute a part of the sales price subject to sales and use tax.

N.C. Gen. Stat. § 105-164.13(49) provides an exemption from sales and use tax for the sale at retail and the use, storage, or consumption in this State of installation charges that are separately stated on an invoice, bill of sale, or similar billing document given to the purchaser by the retailer at the time of sale.

Add-Ons Provided by a Modular Homebuilder

Add-ons provided by a modular homebuilder pursuant to a performance contract, such as decks, garages, sidewalks, well installations, brick foundations, central air-conditioning units, and HVAC systems, are not considered a part of the retail sale of a modular home between the modular home manufacturer and the modular homebuilder. Where a modular homebuilder enters into a performance contract to provide such items to a customer, the modular homebuilder is liable for the applicable State and local and transit rates of sales and use tax on the purchase price of the items used to fulfill the contract. If a modular homebuilder engages a subcontractor to perform the construction or any part thereof, the subcontractor is liable for the sales and use tax on the purchase price of items used to fulfill the contract. The subcontractor, the modular homebuilder, in its capacity as general contractor, and the owner are jointly and severally liable for the tax. N.C. Gen. Stat. § 105-164.6(b) provides, in part, “[t]he liability of a contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the [sales and use] tax has been paid.”

Effective Date of Rate Change for Sale at Retail of a Modular Home

The date of transfer of title or possession, typically the delivery date, of a modular home determines the State rate of sales and use tax applicable to the retail sale or purchase. The date a retail sales invoice, bill of sale, or similar document is signed for the sale or purchase of a modular home does not determine the rate of State sales or use tax applicable to the sale or purchase where such date is different from the date of transfer of title or possession of the modular home to the modular homebuilder or other person. For example, a sales agreement is signed December 15, 2013, between a modular home manufacturer (retailer) and a modular homebuilder (contractor), and the modular home is delivered to the modular homebuilder on January 30, 2014. The applicable rate of tax due on the sales price of the modular home and accessories attached to the modular home when it is delivered is the 4.75%

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general State rate of tax, notwithstanding that the agreement by or between the parties was signed on December 15, 2013.

Land/Home Package That Includes a Modular Home

A lump-sum or unit-price contract generally means a contract under which a principal (purchaser or owner) agrees to pay a contractor a specified amount for completing work without receiving a cost breakdown. An example includes a modular homebuilder that enters into a lump-sum contract with a purchaser to provide a modular home and land. This type of transaction is commonly referred to as a “land/home” package by which a modular homebuilder enters into a performance contract with a purchaser where title to both a modular home and land transfer by deed to the purchaser as a transfer of real property. A modular homebuilder responsible for a land/home package is commonly referred to as a contractor. A contractor is the consumer of tangible personal property and taxable services used to fulfill such contracts, and the contractor is liable for payment of the applicable State and local and transit rates of sales or use tax on such items, unless such items are exempt from sales and use tax.

When a contractor or subcontractor, who is a modular homebuilder, makes a taxable purchase of a modular home for use in a land/home package pursuant to a performance contract, the contractor or subcontractor must pay the applicable rate of sales or use tax on the sales price or purchase price of the modular home including all accessories attached to the modular home when it is delivered to the purchaser. N.C. Gen. Stat. § 105-164.3(33) provides “[t]he term [purchase price] has the same meaning as the term ‘sales price’ when applied to an item subject to use tax.”

N.C. Gen. Stat. § 105-164.6(b) provides, in part, “[i]f the property purchased becomes a part of a building or other structure in the State and the purchaser is a contractor or subcontractor, the contractor, the subcontractor, and the owner . . . are jointly and severally liable for the tax. The liability of a contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the [sales and use] tax has been paid.”

An out-of-state retailer or other person who withdraws a modular home from an out-of-state inventory for use in fulfilling a performance contract for a land/home package in the State shall remit the applicable State rate of use tax due on the purchase price of the modular home and accessories attached to the modular home when it is delivered, except as noted below.

Rate of Tax Applicable to a Modular Home Used in a Land/Home Package

A modular home purchased, sold or withdrawn from an out-of-state inventory on or after January 1, 2014 for use in fulfilling a performance contract for a land/home package in this State, entered into or awarded on or after January 1,

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2014, or entered into or awarded pursuant to a bid made on or after January 1, 2014, is subject to the 4.75% general State rate of tax.

A modular home purchased, sold or withdrawn from an out-of-state inventory for use in fulfilling a performance contract for a land/home package in this State entered into or awarded prior to January 1, 2014, or entered into or awarded pursuant to a bid made prior to January 1, 2014, continues to be subject to the 2.50% State rate of tax. Form E-589G, Affidavit to Exempt Modular Homebuilders from the Increase in State Tax Rate from 2.50% to 4.75%, must be executed by the modular homebuilder/contractor to obtain the 2.50% State rate of tax on the purchase of a modular home for a qualifying land/home package on or after January 1, 2014. Form E-589G is available on the Department's website at www.dornc.com. A modular homebuilder or other person that withdraws a modular home from an out-of-state inventory for use in a land/home package in the State pursuant to a performance contract where such modular home is subject to the 2.50% State rate of tax must retain adequate documentation to support the amount of tax due on the purchase price.

Other Items Sold at Retail

A modular homebuilder or other retailer that makes a sale at retail of other tangible personal property including a freestanding structure, such as a storage building, is liable for collecting and remitting the 4.75% general State and applicable local and transit rates of sales and use tax on the sales price of such property sold at retail. The sales of such items are not accessories of a modular home.

Use Tax Due

N.C. Gen. Stat. § 105-164.6(a) provides, in part, “[a]n excise tax . . . is imposed on . . . tangible personal property . . . purchased inside or outside this State for storage, use, or consumption in this State.”

A modular homebuilder or end user that purchases a modular home from an out-of-state retailer that does not collect sales or use tax is liable for accruing and remitting use tax directly to the Department per N.C. Gen. Stat. § 105-164.6 at the applicable rate of tax on the purchase price of the modular home including all accessories attached to the modular home at the time of purchase.

A modular homebuilder that purchases a modular home from an out-of-state retailer where the modular homebuilder takes title or possession of the modular home in another state is allowed credit for state sales and use tax due and paid to another state against the tax imposed per N.C. Gen. Stat. § 105-164.6. Such purchaser is allowed a credit per N.C. Gen. Stat. § 105-164.6(c) for . . . “[t]he amount of sales or use tax due and paid on the item to another state. If the amount of tax paid to the other state is less than the amount of tax imposed by this section, the difference is payable to this State. The credit allowed by this subdivision does not apply to tax paid to a state that does not grant a similar

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credit for sales or uses taxes paid in North Carolina.” Any local sales and use taxes paid to another state on the purchase of a modular home cannot be used as credit against the State tax due to North Carolina on the purchase price of the modular home and accessories attached to the modular home at the time of purchase.

General Administration

A modular homebuilder is not required to collect sales or use tax on charges to a customer for a modular home. A modular homebuilder should not indicate on a invoice, bill, or similar document issued to a customer for a modular home that sales tax is due on the transaction. If a modular homebuilder presents a customer with a list of the costs or expenses associated with the modular home transaction, the amount of sales or use tax paid by the modular homebuilder can be shown as a cost or expense, but such itemization should in no way indicate that the modular homebuilder is charging and collecting sales and use tax on the transaction with the customer.

Reporting

Line 6 of Form E-500, Sales and Use Tax Return, is revised to accommodate the change in the sales and use tax rate on the retail sale of a modular home by including a blank space in the rate column on the return. The 2.50% State rate of tax applies to the retail sale, purchase, storage, or use of a modular home in the State for periods October 1, 2013 through December 31, 2013. The 4.75% State rate of tax applies to the retail sale, purchase, storage, or use of a modular home in the State for returns due for a filing period beginning January 1, 2014, except as discussed above for certain modular homes sold, purchased, or withdrawn from inventory on or after January 1, 2014 for use in fulfilling qualifying land/home packages pursuant to qualifying performance contracts.

A taxpayer required to report both the 4.75% general and 2.50% State rates of tax on sales or purchases of modular homes for returns due for a filing period beginning January 1, 2014, should add the tax due for both rates together and enter the sum in the “Tax” column on Line 6 on each return. Divide the tax amount entered in the “Tax” column on Line 6 of the return by 4.75% (.0475) and enter the calculated Receipts/Purchases amount in the Receipts or Purchases column as appropriate on Line 6 on each return. A taxpayer should not mark through other lines on a return or make any stray marks in an attempt to report the tax due on modular homes at more than one rate for a reporting period.

Assistance

Questions regarding this notice should be directed to the Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052 (toll-free).