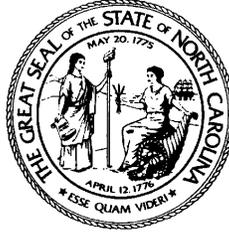

North Carolina Department of Revenue



DIRECTIVE

Subject: Modular Homes
Tax: Sales and Use Tax
Law: G.S. 105-164.4(a)(8)
Issued By: Sales and Use Tax Division
Date: October 15, 2003
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This Directive sets out information on the changes to the application of sales and use tax effective January 1, 2004 for sales of modular homes. The changes were enacted by the General Assembly in H.B. 1006, Session Law 2003-400.

Section I. The Law

A new subsection, G.S. 105-164.4(a)(8) was enacted imposing sales and use tax at the rate of 2.5% on the sales price of each modular home sold, including all accessories attached to the modular home when it is delivered to the purchaser. The retail sale is deemed to be the sale of a modular home to a modular homebuilder. Local sales and use taxes are not imposed on the sale of a modular home.

The definition of manufactured home under G.S. 105-164.3(20) was amended to exclude a modular home. A manufactured home is a structure that is designed to be used as a dwelling and is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development.

A new definition of modular home under G.S. 105-164.3(21a) and of modular homebuilder under G.S. 105-164.3(21b) were enacted. A modular home is a factory-built structure that is designed to be used as a dwelling, is manufactured in accordance with specifications for modular homes under the North Carolina Residential Building Code, and bears a seal or label issued by the Department of Insurance pursuant to G.S. 143.139.1. A modular homebuilder is 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.

Section II. Sales of Modular Homes

A modular home can be constructed on a permanent chassis, in which case, under the law in effect prior to January 1, 2004, such a home constitutes a manufactured home and the retail sale of the unit is subject to the 2% State rate of sales and use tax with a maximum tax of \$300.00 per article. A retail sale of a modular home that does not constitute a manufactured home is subject to the general State and applicable local rates of sales and use tax and no maximum tax applies.

Prior to January 1, 2004, it is necessary to determine whether the seller and purchaser of a modular home enter into a performance contract or a retail sales agreement in order to determine the proper application of tax. A modular home dealer or modular home manufacturer that enters into a performance contract to furnish and erect a home is liable for the general State and local rate of sales and use tax on the cost price of materials used to fulfill the contract. A seller that enters into a retail sales agreement is liable for collecting and remitting the 2% rate of tax with a maximum tax of \$300.00 per article on retail sales of modular homes that constitute manufactured homes and the general State and applicable local rates of tax on sales of modular homes that are not considered to be manufactured homes.

Effective January 1, 2004, modular homes no longer constitute manufactured homes notwithstanding that the structure is built on a permanent chassis. The retail sale of a modular home is subject to a 2.5% State rate of sales and use tax with no maximum tax. The retail sale is deemed to be the sale by a modular home manufacturer or other seller to a modular homebuilder. A modular homebuilder is the party that furnishes for consideration a modular home to a purchaser that will occupy the home. If a purchaser that will occupy a modular home acquires a home directly from a modular home manufacturer, the purchaser is considered to be the modular homebuilder and the sale to the purchaser is subject to the 2.5% rate of sales or use tax. Sales of modular homes that are delivered to modular homebuilders at a point outside the State are exempt from tax as sales in interstate commerce. On and after January 1, 2004, the type of agreement entered into by a modular homebuilder and a customer is not a factor in determining the application of tax.

Section III. Sales of Manufactured Homes

The application of sales and use tax for sales of manufactured homes is not changed other than the removal of modular home from the definition of manufactured home. Retail sales of manufactured homes remain subject to the 2% State rate of tax with a maximum tax of \$300.00 per article.

Section IV. Administration

Modular home manufacturers and other sellers that are engaged in business in North Carolina for sales and use tax purposes are required to collect the 2.5% rate of sales or use tax on the sales price of modular homes sold to modular homebuilders. Sales price includes the total amount or consideration for which the

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modular home is sold including charges for delivery of the property and all accessories attached to the home at the time of delivery. Separately stated charges for installation or erection are not subject to tax.

Charges made by modular home manufacturers for deposits on carriers constitute part of the sales price on which sales or use tax is due. A purchaser is not entitled to a refund or credit of tax paid on the carrier deposit charge when the carrier is returned and a credit or refund is issued by the seller for all or part of the deposit charge.

If a modular homebuilder makes a purchase of a modular home from an out-of-state seller that does not collect sales or use tax, the modular homebuilder is liable for use tax on the purchase of the home. The modular homebuilder is required to accrue and remit the 2.5% rate of tax on the purchase price of the modular home directly to the Department.

A modular homebuilder is liable for accruing and remitting the 2.5% rate of use tax on the purchase price of modular homes withdrawn from an on-site inventory and sold to a homebuyer after January 1, 2004. The tax is due to be reported and paid to the Department for the period in which the withdrawal from inventory occurs.

When a modular home manufacturer delivers and transfers ownership of a modular home to a modular homebuilder at the location of the erection of the home prior to January 1, 2004, the manufacturer should apply tax based on the laws in effect prior to January 1, 2004 notwithstanding that the modular homebuilder and homebuyer do not complete the sale to the homebuyer until after this date. The general State and applicable local rates of tax will be due on the purchase price of materials used to fabricate the home if a performance contract was entered into or the applicable State and/or local rates of tax will be due on the sales price of a home if a retail sale was made.

A modular homebuilder is not required to collect sales or use tax on charges for a modular home to a customer. A modular homebuilder should not indicate on a sales invoice or like document issued to a customer that sales tax is being collected. If a modular homebuilder presents a customer with a list of the costs or expenses associated with the sale of the modular home, the amount of the sales or use tax paid by the modular homebuilder can be shown as a cost or expense.

Section V. Add-Ons

Add-ons provided by a modular homebuilder, such as decks, garages, and storage buildings, are not considered a part of the sale of the modular home to the homebuyer. If a modular homebuilder enters into a performance contract to construct a structure, such as a deck or garage, the modular homebuilder is liable for the general State and applicable local sales and use tax on the purchase of materials used to complete the contract. If a modular homebuilder engages a subcontractor to perform the construction, the subcontractor is liable for the general State and applicable rates of sales and use tax on purchases of building materials. The subcontractor and modular homebuilder, in its capacity of general

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contractor, are jointly and severally liable for the tax, and the modular homebuilder should secure an affidavit from the subcontractor prior to final settlement certifying that tax has been paid in order to satisfy the modular homebuilder's liability. If a modular homebuilder makes a retail sale of a freestanding structure, such as a storage building, the modular homebuilder is liable for collecting and remitting the combined general State and local rates of tax on the sales price of the property.

Section VI. Modular Home Manufacturers

A modular home manufacturer that primarily fabricates and makes outright sales of modular homes is deemed to be a manufacturer for sales and use tax purposes. A modular home manufacturer's purchases of ingredient or component materials used to fabricate modular homes are not subject to sales or use tax. Purchases of mill machinery and mill machinery parts and accessories used in a firm's production process are subject to the 1% State rate of tax with a maximum tax of \$80.00 per article.

For periods prior to January 1, 2004, a firm that fabricates modular homes could operate as a manufacturer that makes outright sales of modular homes or as a contractor that enters into performance contracts to furnish and install modular homes, and sales and use tax applies accordingly. A firm that primarily enters into performance contracts is deemed to be a contractor for sales and use tax purposes. A contractor is liable for sales or use tax on its purchases of tangible personal property used to fulfill a contract and is liable for the general State and applicable local rates of tax on equipment used to fabricate any articles necessary to complete a contract.

Effective January 1, 2004, a sale to a modular homebuilder is deemed to be a retail sale. A firm that fabricates and transfers modular homes to modular homebuilders is considered to be a manufacturer for sales and use tax purposes without regard to the nature of the agreements entered into with the modular homebuilders. Such a firm is not subject to sales or use tax on its purchases of ingredient or component materials and is liable for collecting and remitting the 2.5% rate of sales or use tax on sales to modular homebuilders in the State. As a manufacturer, purchases of mill machinery and mill machinery parts and accessories are subject to the 1% rate of tax with a maximum tax of \$80.00 per article.

Section VII. Returns

The sales and use tax return, E-500, is revised to reflect the 2.5% State rate of tax. Taxpayers are alerted to be aware that liability for the county 2.5% tax should continue to be reported on the appropriate line for county tax and not on the new line for reporting modular home sales.

Questions about this Directive may be directed to the Taxpayer Assistance Division of the North Carolina Department of Revenue, P. O. Box 1168, Raleigh, N. C. 27602 or by telephone toll free to (877) 252-3052.