



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

DOR_TaxPolicy@state.co.us

GIL-14-002

January 14, 2014

XXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX

Re: Modular Homes

Dear XXXXXXXXXXXX,

You submitted a request for guidance to determine the applicability of Colorado sales and use tax on the purchase of a modular home manufacturer.

The Colorado Department of Revenue (“Department”) issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues and is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department but not on the taxpayer, and requires payment of a fee. For more information about general information letters and private letter rulings, please see Department regulation 24-35-103.5 at www.colorado.gov/revenue/tax > Tax Library > Rulings.

The Department initially treats your request as one of a general information letter. If you would like the Department to issue a private letter ruling on the issues you raise, you can resubmit a request and fee in compliance with regulation 24-35-103.5. It is important to remember that general information letters, such as this one, are general discussions of tax law and are not a determination of the tax consequence of any particular action or inaction.

Issue

Is the builder or manufacturer of modular homes responsible for collecting and remitting the tax from the homebuyer? If the manufacturer is not required to collect the tax, what documentation do they need from the builder?

Background

Company is looking to purchase the assets of a modular home manufacturer in Colorado. The manufacturer sells to builders who pick up the homes at the plant location in Colorado and transport the homes to the end customer’s (homebuyer) location, which may be inside or outside of Colorado. The builder affixes the home to the foundation and performs other finishing work.

Discussion

Colorado levies sales tax on fifty-two percent of the purchase price of a manufactured home.¹ The purchase price is the price paid by the final user.² Any subsequent sale of the manufactured home is not subject to Colorado sales taxes.³ Thus, the sales tax on the sale of a manufactured home by the manufacturer to a homeowner is fifty-two percent of the purchase price. However, in the case you describe, the sale of the manufactured home is to a builder, who then enters into a contract with a homeowner. The question then is whether the builder or homeowner is liable for sales tax. This will depend on the type of contract entered into between the builder and homeowner.

A lump-sum contract for the construction of fixtures to real property is treated as a contract for services and the contractor providing those services is treated as the end user and consumer of the tangible personal property used to construct such fixtures.⁴ This means that a builder who uses a lump-sum contract with the homeowner must pay sales tax to the manufacturer on fifty-two percent of the purchase price builder paid to the manufacturer. If, after the builder purchases the manufactured home from the manufacturer, the builder purchases additional materials to perform finish work on the manufactured home, then the builder pays sales tax (or use tax) on the entire purchase price for those materials. The homeowner is not liable for any sales or use tax.

If the builder uses a time-and-material contract with the homeowner, then the builder is not treated as the ultimate consumer of the manufactured home but, rather, is treated as a retailer who resells the home to the homebuyer. The builder's purchase of the manufactured home charged by the manufacturer is an exempt wholesale purchase for resale and the subsequent sale by the builder to the homeowner is subject to sales tax. The tax paid by the homeowner is calculated on fifty-two percent of both the price charged by the manufacturer to the builder and the markup, if any, on the manufacturer's price charged by the builder to the homeowner. For materials that were not purchased from the manufacturer but purchased by the builder to complete the finish work (e.g., plaster to finish drywall seams), sales tax is calculated on the full price charged by the builder to the homeowner for such materials.

The sales tax on materials that are not part of the manufactured home are taxed on one hundred percent of the price for such materials. For example, sales tax (whether paid by the builder who uses a lump-sum contract or paid by the homeowner under a time-and-material contract) applies to the entire purchase price of materials to construct the foundation, to bring electricity and other utilities to the home, kitchen appliances, and window coverings are not considered part of the manufactured home.

The manufacturer must presume that the sale to a builder is subject to tax and the burden is on the builder to claim the wholesale purchase exemption. If the builder is using a time-and-material contract, the builder claims the wholesale purchase exemption by presenting its Colorado sales tax license to the manufacturer. The manufacturer must verify that the builder's sales tax license has not expired and should retain a copy of the builder's license in the event the Department requests verification that the sale was not subject to tax.

Miscellaneous

¹ §39-26-721, C.R.S. You can view statutes on the Department's web site at www.colorado.gov/revenue/tax > tax library > statutes.

² Department Rule 39-26-721.

³ §39-26-721, C.R.S.

⁴ Department Special Rule Sales 10 "Contractors"

This letter represents the good faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination here on any of the issues raised and the Department is not bound by this general information letter.

The Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by home-rule cities and home-rule counties. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes. Visit our web site at www.colorado.gov/revenue/tax for more information about state and local sales taxes.

Enclosed is a redacted version of this letter. Pursuant to statute and regulation, this redacted letter will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted letter.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue