
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE ADVISORY BULLETIN 00-02

SUBJECT: Factory-Fabricated Homes Built on Permanent Chassis
(Sales and Use Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous advisory opinions and any oral directives in conflict
herewith.

REFERENCES: S. C. Code Ann. Section 12-36-910 (Supp. 1999)
S. C. Code Ann. Section 12-36-910 (Supp. 1999)
S. C. Code Ann. Section 12-36-1310 (Supp. 1999)
S. C. Code Ann. Section 12-36-100 (Supp. 1999)
S. C. Code Ann. Section 12-36-2110 (Supp. 1999)
S. C. Code Ann. Section 40-29-20 (Supp. 1999)
S. C. Code Ann. Section 12-36-2120(34) (Supp. 1999)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1999)
S. C. Code Ann. Section 1-23-10(4) (Supp. 1999)
SC Revenue Procedure #99-4

SCOPE: The purpose of a Revenue Advisory Bulletin is to provide guidance to
the public and to Department personnel. It is a written statement issued
to apply principles of tax law to a specific set of facts or a general
category of taxpayers. A Revenue Advisory Bulletin does not have the
force or effect of law, and is not binding on the public. It is, however,
the Department's position and is binding on agency personnel until
superseded or modified by a change in statute, regulation, court
decision, or advisory opinion.

Question:

Is a factory-fabricated home built on a permanent chassis taxed under the provisions of the sales
and use tax code as a modular home or as a manufactured home?

Conclusion:

It is the opinion of the department that:

- (A) a factory-fabricated home built on a permanent chassis is a modular home for purposes
of the sales and use tax if the structure is:

1. designed to be used as a single family dwelling; and
 2. more than eight feet in width or thirty-five feet or more in length.
- (B) a factory-fabricated home built on a permanent chassis is a manufactured home for purposes of the sales and use tax if the structure is:
1. designed to be used as a dwelling; and
 2. eight or more feet in width or forty feet or more in length or three hundred and twenty or more square feet.
- (C) a factory-fabricated home built on a permanent chassis meeting both the requirements in (A) and (B) above is a manufactured home for purposes of the sales and use tax.
- (D) a factory-fabricated home built on a permanent chassis that does not meet either of the requirements in (A) or (B) above is neither a modular home nor a manufactured home for purposes of the sales and use tax.

Note: This revenue advisory bulletin deals solely with sales and use taxation. The department intends no implication for licensing, building code requirements, zoning or other regulation of factory-fabricated homes.

Facts:

Recently, the issue arose concerning the taxation of a factory-fabricated home built on a permanent chassis. A permanent chassis is a rectangular steel frame which is attached to an axle with wheels so that it can be used as the vehicle by which the home is transported on the highways and roads to the residential home site. The steel frame is also used as a permanent part of the structure of the home.

A “manufactured home” is taxed at a rate of 5% of 65% of the gross proceeds from the sale of the home; however, the tax cannot exceed \$300 for a home meeting the energy efficiency requirements of the statute or \$300 plus 2% for home not meeting the energy efficient requirements of the statute. A modular home is taxed at a rate of 5% (plus local taxes if applicable) of 65% of the gross proceeds from the sale of the home.

Since manufactured homes and modular homes are taxed differently for purposes of sales and use taxes, it is important to determine if a factory-fabricated home built on a permanent chassis is a modular home or a manufactured home.

Discussion:

Code Section 12-36-910(A) imposes a sales tax and reads, in part:

A sales tax, equal to five percent of the gross proceeds of sales is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310(A) imposes a use tax and reads, in part:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Therefore, for the sales or use taxes to apply there must be a retail sale or purchase of tangible personal property.

Code Section 12-36-100 defines the terms "sale" and "purchase", in part, as:

... any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration ...

Based on the above, the sales tax and use tax are transactional taxes imposed upon the privilege of the business of selling at retail, or using, storing, or consuming tangible personal property in South Carolina.

Code Section 12-36-2110(B), however, provides an exception to the five percent state tax rate for manufactured homes. This section reads, in part:

For the sale of a manufactured home, as defined in Section 40-29-20, the tax is calculated as follows:

- (1) subtract trade-in allowances from the sales price;
- (2) multiply the result from (1) by sixty-five percent;
- (3) if the result from (2) is no greater than six thousand dollars, multiply by five percent for the amount of tax due;
- (4) if the result from (2) is greater than six thousand dollars, the tax due is three hundred dollars plus two percent of the amount greater than six thousand dollars.

However, a manufactured home is exempt from any tax that may be due above three hundred dollars as a result of the calculation in item (4) if it meets these energy efficiency levels: storm or double pane glass windows, insulated or storm doors, a minimum thermal resistance rating of the insulation only on R-11 for walls, R-19 for floors, and R-30 for ceilings. However, variations in the energy efficiency levels for walls, floors, and ceilings are allowed and the exemption on tax due above three

hundred dollars applies if the total heat loss does not exceed that calculated using the levels of R-11 for walls, R-19 for floors, and R-30 for ceilings. The edition of the American Society of Heating, Refrigerating, and Air Conditioning Engineers Guide in effect at the time is the source for heat loss calculation. The dealer selling the manufactured home must maintain records, on forms provided by the State Energy Office, on each manufactured home sold which contains the above calculation and verifying whether or not the manufactured home met the energy efficient levels provided for in this subsection. These records must be maintained for three years and must be made available for inspection upon request of the Department of Consumer Affairs or the State Energy Office.

As cited above, the provisions for the maximum sales and use tax for manufactured homes under Code Section 12-36-2110(B) refers to Code Section 40-29-20(9) for the definition of the term "manufactured home." This code section, which can be found in the "Uniform Standards Code for Manufactured Housing Act," reads:

"Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or forty body feet or more in length, or, when erected on site, is three hundred twenty 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 in it.

Code Section 12-36-2120(34) provides an exemption from the sales and use tax for "thirty-five percent of the gross proceeds of the sale of modular homes as defined in Section 31-17-20...."

Code Section 31-17-20 has been repealed; however, as a general rule when a statute adopts a part or all of another statute by specific reference, the adoption takes the statute as it exists at that time and does not include modifications to the statute. See, 73 Am. Jur. 2d. Statutes, Section 29. In other words, the repeal of Code Section 31-17-20 does not affect the definition of "modular home" for purposes of Code Section 12-36-2120(34).

Prior to its repeal the following definition for "modular home" was provided:

'Modular home' means a manufactured single family dwelling or an integral part over thirty-five feet in length, or over eight feet in width, so constructed that it may be transported from one site to another, temporarily or permanently affixed to real estate, made up of one or more components, and constructed with the same or similar electrical, plumbing, heating and sanitary facilities as on-site constructed housing.

The same definition for "modular home" found in Code Section 31-17-20 was adopted in Regulation 117-178.

The following provides a comparison of the two definitions:

<u>Manufactured Home</u>	<u>Modular Home</u>
1. Eight feet or more in width OR Forty feet or more in length OR When constructed, it is 320 or more square feet	1. More than eight feet in width OR Thirty-five feet or more in length
2. Constructed with or without a permanent foundation	2. Temporarily or permanently affixed to real estate
3. Built on a permanent chassis	3. Permanent chassis not required
4. Dwelling	4. Single family dwelling

Based on the above, the main differences in the two definitions is (1) that a manufactured home must be built on a permanent chassis while a modular home may or may not be built on a permanent chassis and (2) that the measurement requirements are not the same.

Therefore, it is the opinion of the department that:

- (A) a factory-fabricated home built on a permanent chassis is a modular home for purposes of the sales and use tax if the structure is:
 - 1. designed to be used as a single family dwelling; and
 - 2. more than eight feet in width or thirty-five feet or more in length.
- (B) a factory-fabricated home built on a permanent chassis is a manufactured home for purposes of the sales and use tax if the structure is:
 - 1. designed to be used as a dwelling; and
 - 2. eight or more feet in width or forty feet or more in length or three hundred and twenty or more square feet.
- (C) a factory-fabricated home built on a permanent chassis meeting both the requirements in (A) and (B) above is a manufactured home for purposes of the sales and use tax.

- (D) a factory-fabricated home built on a permanent chassis that does not meet either of the requirements in (A) or (B) above is neither a modular home nor a manufactured home for purposes of the sales and use tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth Carpentier
Elizabeth Carpentier, Director

March 27, 2000
Columbia, South Carolina