S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

May 13, 2009

Introduced by M. of A. DESTITO -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to sales and compensating use taxes imposed by or pursuant to the authority of articles 28 and 29 of such law with respect to modular homes

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph 6 of subdivision (b) of section 1101 of the tax law, as amended by chapter 498 of the laws of 1994, is amended to read as follows:

(6) Tangible personal property. Corporeal personal property of any nature. However, except for purposes of the tax imposed by subdivision (b) of section eleven hundred five OF THIS ARTICLE, such term shall not include gas, electricity, refrigeration and steam. Such term shall also include pre-written computer software, whether sold as part of a package, as a separate component, or otherwise, and regardless of the medium by means of which such software is conveyed to a purchaser. Such term shall also include newspapers and periodicals where the vendor ships or delivers the entire edition or issue of the newspaper or periodical, with or without the advertising included in the paper edition or issue, but not including anything, other than advertising, not in such paper edition or issue, to the purchaser by means of telephony or telegraphy or other electronic media, but only where the amount of the sale price to such purchaser of such newspaper or magazine or the subscription price, in the case of a subscription to a newspaper or periodical, including any charge by such vendor for shipping or delivery to the purchaser, is separately stated to such purchaser. HOWEVER, SUCH TERM SHALL NOT INCLUDE A MODULAR HOME THAT IS PERMANENTLY AFFIXED TO REAL PROPERTY, PROVIDED THAT, IF A MODULAR HOME IS TO BE REMOVED FROM THE REALTY, WHETHER AS A WHOLE OR DISASSEMBLED, IT AND ITS COMPONENT PARTS

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SHALL BE TANGIBLE PERSONAL PROPERTY WHETHER IT IS TO BE SOLD AS A WHOLE OR AS PIECES.

S 2. Subdivision (b) of section 1101 of the tax law is amended by adding three new paragraphs 33, 35 and 36 to read as follows:

(33) MODULAR HOME. A ONE- TO THREE-FAMILY RESIDENTIAL STRUCTURE CONSTRUCTED AT THE BUILDING SITE FROM MODULAR HOME MODULES, WHERE THE MODULES ARE CONNECTED AND SUCH STRUCTURE IS FINISHED USING BUILDING MATERIALS OR OTHER TANGIBLE PERSONAL PROPERTY AT THE BUILDING SITE, SUCH MODULAR HOME CONFORMS TO THE BUILDING AND OTHER CODES APPLICABLE TO ONE- TO THREE-FAMILY SITE-BUILT HOMES IN THE JURISDICTION WHERE SUCH BUILDING SITE IS LOCATED, AND SUCH FINISHED MODULAR HOME CONSTITUTES A CAPITAL IMPROVEMENT. "MODULAR HOME" SHALL NOT INCLUDE (I) A STRUCTURE OR PORTION OF A STRUCTURE BUILT ON-SITE, WHETHER BUILT BY THE MODULAR HOME INSTALLER OR ANOTHER PERSON, USING BUILDING MATERIALS DELIVERED TO THE SITE, EVEN IF SOME OF SUCH MATERIALS WERE MANUFACTURED, PRODUCED, OR ASSEMBLED OFF-SITE, SUCH AS, BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, CONCRETE BLOCKS, WINDOWS, DOOR UNITS, WALL OR ROOF PANELS, TRUSSES AND DORMERS; (II) A SHED, GAZEBO, ANY UNATTACHED GARAGE OR THE LIKE (EVEN IF MADE OR BUILT BY A MANUFACTURER OF MODULAR HOME MODULES); OR (III) A MOBILE HOME.

(35) MODULAR HOME MODULES. THE COMPONENT SECTIONS THAT WILL BE INSTALLED ON-SITE TO CONSTRUCT A MODULAR HOME, EACH OF WHICH SECTIONS IS (I) ENGINEERED AND MANUFACTURED IN A FACTORY, (II) SHIPPED OR DELIVERED TO THE BUILDING SITE ON A TRUCK OR OTHER VEHICLE, (III) INSTALLED AT THE SITE, ON A PERMANENT FOUNDATION, TO BECOME PART OF THE MODULAR HOME AND (IV) NOT BY ITSELF SUITABLE FOR OCCUPANCY. EVERY GROUP OF MODULES THAT WILL BE INSTALLED IN THIS STATE AS A MODULAR HOME, OR, IF A MODULAR HOME IS TO BE BUILT FROM A SINGLE MODULE, THAT SINGLE MODULE, SHALL, PRIOR TO SHIPMENT FROM THE PLACE WHERE IT IS MADE, BEAR THE INSIGNIA OF APPROVAL ISSUED BY THE DEPARTMENT OF STATE PURSUANT TO THE AUTHORITY OF ARTICLE EIGHTEEN OF THE EXECUTIVE LAW AND REGULATIONS THEREUNDER; AND THE DEPARTMENT OF STATE SHALL COOPERATE WITH THE COMMISSIONER AND FURNISH SUCH INFORMATION AS THE COMMISSIONER REQUESTS TO CARRY OUT THIS ARTICLE AND ITS PURPOSES. A MODULAR HOME MODULE SHALL INCLUDE TANGIBLE PERSONAL PROPERTY SHIPPED OR DELIVERED WITH THE MODULE FROM THE FACTORY BY THE MANUFACTURER AT THE SAME TIME THE MODULE IS SHIPPED OR DELIVERED, SUCH AS EXTERIOR SIDING, ROOF SHINGLES, ROOF VENT PIPES, INTERIOR TRIM PIECES, PAINT, AND INTERIOR DOORS, AND SUPPLIES REQUIRED AND USED TO INSTALL THEM, BUT ONLY IF THAT PROPERTY (I) WAS ENGINEERED OR DESIGNED TO BE AN INTEGRAL COMPONENT PART OF THE MODULE, (II) MATCHES, OR IS ESSENTIAL TO THE FUNCTIONING OF, THE MODULE, (III) WAS NOT INSTALLED IN THE MODULE AT THE TIME THE MODULE WAS MADE ONLY BECAUSE IT WOULD BE DAMAGED DURING, OR INTERFERE WITH, SHIPPING OR DELIVERY OF THE MODULE TO THE BUILDING SITE, (IV) WILL BE PERMANENTLY INSTALLED IN THE MODULE AT THE BUILDING SITE BY THE MANUFACTURER OR BY THE PURCHASER OF THE MODULE OR BY THE CONTRACTOR OF EITHER OF THEM, (V) IS LISTED IN FULL ON THE CONTRACT, BILL OF SALE, INVOICE OR OTHER MEMORANDUM OF PRICE GIVEN TO THE PURCHASER OR BUYER, OR IN AN ADDENDUM THERETO, TRUE COPIES OF WHICH THE MANUFACTURER SHALL RETAIN AS PART OF THE RECORDS REQUIRED TO BE KEPT BY THIS ARTICLE AND MAKE AVAILABLE ON REQUEST, AND (VI) IS INCLUDED IN THE SALE PRICE OF THE MODULE, WITHOUT ANY ADDITIONAL CHARGE. A MODULAR HOME MODULE SHALL NOT INCLUDE (I) FURNITURE, FIXTURES, FURNISHINGS, APPLIANCES, ATTACHMENTS OR SIMILAR TANGIBLE PERSONAL PROPERTY NOT INCORPORATED AS COMPONENT PARTS OF THE MODULE AT THE TIME OF ITS MANUFACTURE OR (II) BUILDING MATERIALS OR OTHER TANGIBLE PERSONAL PROPERTY USED TO CONNECT THE MODULES OR FINISH THE MODULAR HOME AT THE BUILDING SITE.

(36) NEW MODULAR HOME MODULE. A MODULAR HOME MODULE SOLD FOR THE FIRST TIME AT RETAIL.

S 3. Subdivision (a) of section 1111 of the tax law, as amended by chapter 473 of the laws of 1969, is amended to read as follows:

(a) The retail sales tax imposed under subdivision (a) of section eleven hundred five OF THIS PART and the compensating use tax imposed under section eleven hundred ten OF THIS PART, when computed in respect to tangible personal property wherever manufactured, processed or assembled and used by such manufacturer, processor or assembler in the regular course of business within this state, shall be based on the price at which items of the same kind of tangible personal property are offered for sale by him, except to the extent otherwise provided in THIS SECTION OR section eleven hundred ten of this [chapter] PART.

S 4. Section 1111 of the tax law is amended by adding a new subdivision (p) to read as follows:

(P) NOTWITHSTANDING ANY CONTRARY PROVISION OF LAW: (1) THE SALES TAX IMPOSED BY SUBDIVISION (A) OF SECTION ELEVEN HUNDRED FIVE OF THIS PART ON RECEIPTS FROM THE RETAIL SALE OF A NEW MODULAR HOME MODULE SHALL BE COMPUTED ON THE SUM OF (I) SIXTY PERCENT OF THE VENDOR'S RECEIPTS FROM THE SALE OF THE MODULE, EXCLUDING ANY CHARGES BY THE VENDOR TO THE PURCHASER FOR SHIPPING OR DELIVERY, AS DESCRIBED IN PARAGRAPH THREE OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE AND (II) ONE HUNDRED PERCENT OF ANY CHARGES BY THE VENDOR TO THE PURCHASER FOR SHIPPING OR DELIVERY OF THE MODULES AS DESCRIBED IN SUCH PARAGRAPH THREE OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE.

(2) THE COMPENSATING USE TAX IMPOSED BY CLAUSE (A) OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TEN OF THIS PART ON THE USE OF A NEW MODULAR HOME MODULE BY ITS PURCHASER SHALL BE COMPUTED ON THE SUM OF (I) SIXTY PERCENT OF THE AMOUNT DESCRIBED IN SUBDIVISION (B) OF SUCH SECTION ELEVEN HUNDRED TEN, EXCLUDING ANY CHARGES FOR SHIPPING OR DELIVERY AS DESCRIBED IN PARAGRAPH THREE OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, AND (II) ONE HUNDRED PERCENT OF ANY CHARGES FOR SHIPPING OR DELIVERY AS DESCRIBED IN SUCH PARAGRAPH THREE OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE.

(3) THE COMPENSATING USE TAX IMPOSED BY SUBCLAUSE (I) OR (II) OF CLAUSE (B) OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED TEN OF THIS PART ON THE USE OF MODULAR HOME MODULES BY THEIR MANUFACTURER TO BE INSTALLED AT A BUILDING SITE TO CONSTRUCT A MODULAR HOME THAT CONSTITUTES A CAPITAL IMPROVEMENT SHALL BE COMPUTED ON THE SUM OF (I) SIXTY PERCENT OF THE CONSIDERATION FOR WHICH THE MANUFACTURER CONVEYS THOSE MODULES TO THE MODULAR HOME BUYER ON AN INSTALLED BASIS, EXCLUDING ANY CONSIDERATION FOR SHIPPING OR DELIVERY AS DESCRIBED IN PARAGRAPH THREE OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS ARTICLE, AND EXCLUDING THE CONSIDERATION FOR THE INSTALLATION OF THOSE MODULES AT THE BUILDING SITE AS A MODULAR HOME IF SUCH INSTALLATION CHARGE IS REASONABLE AND STATED SEPARATELY FROM EVERY OTHER CHARGE, AND (II) ONE HUNDRED PERCENT OF ANY CHARGES FOR SHIPPING OR DELIVERY AS DESCRIBED IN SUCH PARAGRAPH THREE OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE.

S 5. This act shall take effect on the first day of a sales tax quarterly period, as described in subdivision (b) of section 1136 of the tax law, next commencing at least 90 days after this act shall have become a law and shall apply in accordance with the applicable transitional provisions in sections 1106 and 1217 of the tax law.