

5586

2009-2010 Regular Sessions

I N   S E N A T E

May 19, 2009

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Introduced by Sen. VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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:

1     Section 1. Paragraph 6 of subdivision (b) of section 1101 of the tax  
2     law, as amended by chapter 498 of the laws of 1994, is amended to read  
3     as follows:  
4     (6) Tangible personal property. Corporeal personal property of any  
5     nature. However, except for purposes of the tax imposed by subdivision  
6     (b) of section eleven hundred five OF THIS ARTICLE, such term shall not  
7     include gas, electricity, refrigeration and steam. Such term shall also  
8     include pre-written computer software, whether sold as part of a pack-  
9     age, as a separate component, or otherwise, and regardless of the medium  
10    by means of which such software is conveyed to a purchaser. Such term  
11    shall also include newspapers and periodicals where the vendor ships or  
12    delivers the entire edition or issue of the newspaper or periodical,  
13    with or without the advertising included in the paper edition or issue,  
14    but not including anything, other than advertising, not in such paper  
15    edition or issue, to the purchaser by means of telephony or telegraphy  
16    or other electronic media, but only where the amount of the sale price  
17    to such purchaser of such newspaper or magazine or the subscription  
18    price, in the case of a subscription to a newspaper or periodical,  
19    including any charge by such vendor for shipping or delivery to the  
20    purchaser, is separately stated to such purchaser. HOWEVER, SUCH TERM  
21    SHALL NOT INCLUDE A MODULAR HOME THAT IS PERMANENTLY AFFIXED TO REAL  
22    PROPERTY, PROVIDED THAT, IF A MODULAR HOME IS TO BE REMOVED FROM THE  
23    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.

LBD11124-02-9

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

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

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

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

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

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

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

14 S 4. Section 1111 of the tax law is amended by adding a new subdivi-  
15 sion (p) to read as follows:

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

26 (2) THE COMPENSATING USE TAX IMPOSED BY CLAUSE (A) OF SUBDIVISION (A)  
27 OF SECTION ELEVEN HUNDRED TEN OF THIS PART ON THE USE OF A NEW MODULAR  
28 HOME MODULE BY ITS PURCHASER SHALL BE COMPUTED ON THE SUM OF (I) SIXTY  
29 PERCENT OF THE AMOUNT DESCRIBED IN SUBDIVISION (B) OF SUCH SECTION ELEV-  
30 EN HUNDRED TEN, EXCLUDING ANY CHARGES FOR SHIPPING OR DELIVERY AS  
31 DESCRIBED IN PARAGRAPH THREE OF SUBDIVISION (B) OF SECTION ELEVEN  
32 HUNDRED ONE OF THIS ARTICLE, AND (II) ONE HUNDRED PERCENT OF ANY CHARGES  
33 FOR SHIPPING OR DELIVERY AS DESCRIBED IN SUCH PARAGRAPH THREE OF SUBDI-  
34 VISION (B) OF SECTION ELEVEN HUNDRED ONE.

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

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