

5586

2009-2010 Regular Sessions

I N S E N A T E

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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.

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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.