

**WEST VIRGINIA HOUSING INSTITUTE, INC.
ANNUAL CONVENTION
STONEWALL RESORT, ROANOKE, WV
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Dale W. Steager
Tax Commissioner

TAXES ON SALES OF FACTORY-BUILT HOMES,

Questions

1. Please explain the correct procedure for calculating the sales tax on a modular home versus a manufactured home.
2. Please explain how tax is computed on adds-ons such as a driveway, or porch or air conditioner or a stove.

General observation:

1. West Virginia imposes A 6% consumers sales and use taxes on all sales of tangible personal property, unless an exemption applies. Sales are presumed to be taxable.
2. West Virginia imposes 6% consumers sales and use taxes on more services than most other states. Services are presumed to be taxable.
3. Municipal sales and use taxes are currently imposed by 39 municipalities. This number grows to 43 beginning July 1, 2018. Municipal sales and use taxes are administered, collected and enforced by the Tax Commissioner.
4. W. Va. Code § 11-15-2, § 11-15-3, § 11-15A-3, enacted more than 30 years ago, provide rules for taxation of "mobile homes," a term not defined in those sections. The State Tax Department's 1993 legislative rule extends the tax treatment of mobile homes to other types of manufactured housing
5. W. Va. Code § 11-15-7a and § 11-15A-2b, enacted in 1998, provide a rule for taxation of building supplies and materials used in the manufacture of modular dwellings that do not comply with building requirements of the National Manufactured Housing Construction Safety Standards Act of 1974.
6. Businesses need to make and preserve adequate records to establish that they properly collected and remitted sales tax and properly paid sales and use taxes on their purchases for use in business. When records are inadequate or incomplete, then on audit, an estimated assessment will be issued.
7. Approximately 117 municipalities impose businesses and occupation taxes that may apply depending upon where the seller of factory build housing is located and where the factory-built home will be used by the consumer.

Some Specifics

1. Retailers of mobile, manufactured homes, and certain modular homes, purchase them for resale. The purchase is generally exempt from West Virginia sales and use taxes when the retailer provides the seller with a properly executed exemption certificate claiming the purchase for resale exemption.

As used in this paragraph, "certain modular homes" means those manufactured in conformity with requirements of the National Manufactured Housing Construction Safety Standards Act of 1974.

2. Sales of mobile homes, manufactured homes, and modular homes (factory-built home) to consumers who will use the home as their principal year-round residence and dwelling are subject to a 6% State sales and use tax computed on 50% of the gross sales price of the factory-built home.

a. To claim this tax treatment, the purchaser of the home must provide the seller with a properly executed form WV/CST-281. The seller must retain the executed certificate as part of the seller's records for the calendar year in which the sale occurs. If on audit, form WV/CST-281 cannot be found, an assessment will be issued for 6% sales tax computed on the other 50% of the gross sales price of the home.

b. Sales of factory-built housing that will be used as a second home, such as a vacation home, are taxable at 6% of the sales price of the factory-built home.

3. Modular homes subject to the rule in paragraphs 1 and 2 are those built to comply with requirements of the National Manufactured Housing Construction Safety Standards Act of 1974. Compliance is determined by examining the certificate required to be affixed to the home by the National Manufactured Housing Construction Safety Standards Act.

4. When a modular home does **not** comply with the requirements of the National Manufactured Housing Construction Safety Standards Act, the rules get a bit more complicated. For sales and use tax purposes, these homes are called "modular dwellings. W. Va. Code § 11-15-7a(c). These homes are built to standards in State Fire Codes.

a. The manufacturer must pay 6% sales tax on the value of the building supplies and materials used in the manufacture of the modular dwelling and preparation of the site for the permanent installation of the modular home.

b. Credit is allowed for sales taxes lawfully paid to another state when the building supplies and materials are purchased.

c. The certificate required to be affixed to the modular dwelling by the National Manufactured Housing Construction Safety Standards Act of 1974 will state whether, or not, the dwelling was manufactured in conformity with requirements of the National Manufactured Housing Construction Safety Standards Act, or with requirements of some other building code.

d. When the manufacturer pays sales and use taxes on the building supplies and materials the invoice to the retail dealer or contractor should so state.

5. When the modular dwelling described in paragraph 4 is sold to a West Virginia retail dealer, or contractor, but the manufacturer does not pay sales tax on the building supplies and materials, the retail dealer, or contractor, must pay 6% sales tax on the value of the building supplies and materials used in the manufacture and installation of the modular dwelling.

a. The invoice from the manufacturer to the retail dealer must show that it paid sales tax on the value of the building supplies and materials and the amount of tax paid.

b. When the cost of these building supplies and materials is not delineated on the invoice from the manufacturer to the retail dealer, the retail dealer must pay 6% sales tax computed on the 60% of the total cost to the dealer of the modular dwelling.

c. The credit allowed for sales taxes paid to another state on the value of the building supplies and materials used in the manufacture of the modular dwelling may not exceed the 6% West Virginia sales tax due on the cost of the building supplies and materials.

6. When the retail dealer sells the modular dwelling describe in paragraph 4 to the West Virginia consumer, the retail dealer must charge the consumer 6% sales tax computed on the gross sales price of the modular dwelling, unless the consumer provides the retail dealer with a properly executed form WV/CST-281 certifying that the modular dwelling will be used as the consumer's principal year-round residence and dwelling. When this certificate is provided, the retail dealer charges the consumer 6% sales tax computed on 50% of the selling price of the home.

a. The retail dealer must retain the executed certificate as part of the seller's records for the calendar year in which the sale occurs. If on audit, form WV/CST-281 cannot be found, an assessment will be issued for 6% sales tax computed on the other 50% of the gross sales price of the home.

7. When the retail dealer sells the modular dwelling describe in paragraph 4 to a contractor who constructs a permanent foundation and then affixes the modular dwelling to the foundation, the retail dealer must charge the contractor 6% sales tax computed on the gross value of the building supplies and materials used in the manufacture of the modular dwelling. W. Va. Code § 11-15A-2b and § 11-15-7a.

a. A contractor cannot execute and provide the retail dealer with a properly executed form WV/CST-281 certifying that the modular dwelling will be used as the consumer's year-round residence and dwelling because the purchasing contractor will not be using the modular dwelling as its principal year-round residence and dwelling. The gross contract price the contractor charges the consumer is not subject to sales tax.

8 The charge for setting up a mobile home, manufactured home, or modular home, may be a service subject to 6% sales tax, or be contracting, which is not subject to sales tax. The nature and scope of work determines whether the work is a service or is contracting.

a. When the work is truly incidental to sale of the home, the work is a service. For example, sale of a mobile home which the dealer transports to the site and (1) places on blocks, (2) attaches the electric line, gas line, and/or sewer line, and (3) attaches the skirting is a service.

b. When the work is more involved, such as building a foundation, running sewer and water lines, building steps, building a deck, installing a septic system, making a driveway, or adding sidewalks, the work is contracting. In this situation, the charge for the work is not subject to 6% sales tax. However, the contractor must pay 6% sales tax on purchases of all building supplies and materials and taxable services used or consumed in the contracting activity.

9. **Add-ons.** When in addition to selling the factory-built housing, the retail dealer sells appliances, such as a refrigerator, stove, dishwasher, clothes washer and dryer, the retail dealer must charge the customer 6% sales tax measured by the sales price of those items as shown on the invoice to the customer.

10. **Landscaping.** Whether landscaping is contracting, or a taxable service, depends upon the scope of the landscaping project.

a. When the landscaping is new, or complete replacement of existing landscaping, the landscaping is contracting, and the contractor must pay 6% sales tax on purchases of bushes, shrubbery, plants, trees, fencing, and other tangible personal property use or consumed in the contracting activity.

b. When the landscaping involves pruning bushes or trees, repair of existing fences and gates, or the replacement of dead plants, shrubs and trees, the landscaping is a service subject to the 6% State sales tax.

11. **Warranties.** Sales of extended warranties on mobile home, manufactured homes, and modular

dwellings are subject to 6% sales tax. Similarly, sales of extended warranties on appliances, hot water tanks, furnaces, and central air conditioning units are subject to 6% sales tax.

Municipal Sales and Use Taxes

1. Currently, 39 municipalities impose sales and use taxes. All except two impose tax at the 1% rate. Two municipalities impose tax at a 0.5% rate. Beginning July 1, 2018, 43 municipalities will impose sales and use taxes. A list of these municipalities and the rates of tax are posted at our website.

a. Municipal sales and use taxes are administered, collected, and enforced by the Tax Commissioner.

b. Municipal sales and use taxes are remitted at the same time and using the same form used to remit State sales and use taxes.

2. With limited exceptions, sales subject to State sales and use taxes are subject to municipal sales and use taxes, when the sale is completed in a municipality that imposes a municipal sales and use tax.

3. **Exception.** Sales of modular homes, manufactured homes, and mobile homes, are not subject to municipal sales and use taxes. W. Va. Code § 11-15B-34(b). However:

a. When add-ons are sold within a municipality that imposes a municipal sales and use tax, the municipal sales and use tax will apply to the charge for the add-ons.

b. When the add-ons are used in a municipality that imposes a municipal sales and use tax, the purchase price of the items is subject to municipal sales and use tax. However, credit is allowed for sales taxes lawfully paid to another municipality when the add-ons were purchased.

4. Contracting activity is not subject to municipal sales and use taxes just as it is not subject to State sales tax. However, the contractor must pay municipal sales tax when the contractor's purchases tangible personal property and taxable services in a municipality that imposes a sales and use tax. If purchased items are then used in a municipality that imposes a municipal use tax, the contractor must pay use tax on the purchase price of the items so used. Credit is allowed for sales and use taxes lawfully paid to another municipality when the items were purchased.

Note: There may be situations where State sales tax is paid at the time an item is purchased but no municipal sales tax is paid at the time of purchase because the sale is made in a location that does not impose a municipal sales and use tax. When the item is then used by the contractor or other consumer in a municipality that does impose a municipal sales and use tax, use tax must be paid to the municipality in which the item is used or consumed.