

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-M-83 (24)S  
Sales Tax  
September 1, 1983

Mobile Homes

August 1, 1965 through December 31, 1981

Mobile homes or factory manufactured homes purchased or sold uninstalled during this period were deemed to be tangible personal property and subject to sales and compensating use tax the same as any other tangible personal property. Installations were taxable unless they resulted in capital improvements.

January 1, 1982 through August 31, 1983

With the enactment of Chapter 861 of the Laws of 1981, §1115(a) of the Tax Law was amended to provide that (1) the sale of a mobile home or factory manufactured home by the manufacturer thereof to a dealer, or (2) the sale of a mobile home or factory manufactured home by a manufacturer to anyone other than a dealer (e.g. the user), was subject to sales or compensating use tax. Subsequent sales of these homes were not subject to sales tax. Mobile homes or factory manufactured homes purchased by a New York State resident outside the State were subject to the compensating use tax when brought into the State. Installations were exempt.

During this period, a mobile home was defined as follows: "Mobile home means a moveable or portable unit designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year round living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity, as well as two or more separately towable components designed to be joined into one integral unit capable of being again separated into the components for repeated towing. 'Mobile home' shall mean units designed to be used exclusively for residential purposes, excluding travel trailers."

A factory manufactured home was defined as a structure designed primarily for residential occupancy constructed by a method or system of construction whereby the structure or its components are wholly or in substantial part manufactured in manufacturing facilities intended or designed for permanent installation, or assembly and permanent installation, on a building site.

Effective September 1, 1983

As a result of Chapter 986 of the Laws of 1983, all sales of new mobile homes by manufacturers to dealers, and all sales to contractors, subcontractors or repairmen who make installations in such capacity are now sales for resale. Such persons must be registered for sales and use tax purposes and collect the tax from their customers on seventy percent of the receipts or consideration given. (The 70% rule does not apply to factory manufactured homes.) All such sales of new mobile homes are subject to sales or compensating use tax unless the purchaser is qualified for exemption and tenders a properly completed exemption document. Form ST-124, Certificate of Capital Improvement, cannot be used in lieu of paying sales tax

Effective September 1, 1983 (Cont'd.)

on the purchase of a new mobile home, as mobile homes can never become capital improvements as of September 1, 1983. Installations remain exempt, as do receipts from sales of used mobile homes.

A mobile home is defined as a structure which is:

1. a type of manufactured housing; and
2. not self-propelled; and
3. transportable in one or more sections:
  - (a) that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity, or
  - (b) that may be separately towable and designed to be joined into one integral structure capable of being separated again into sections for repeated towing; and
4. built on a permanent chassis, comprised of frame and wheels, that is to be connected to utilities; and
5. designed to be used as a permanent dwelling, with or without permanent foundation; and
6. used for residential or commercial purposes.

The term "mobile home" shall also include structures commonly called "double wides," but shall not include the following:

1. Structures designed and constructed primarily for temporary living quarters, recreation, camping or travel; or
2. Furniture, fixtures, furnishings, appliances, attachments or similar tangible personal property not incorporated as component parts of a mobile home at the time of manufacture.

A new mobile home is defined as one which is sold for the first time at retail, including all components incorporated into such mobile home at the time of manufacture and remaining unchanged at the time of the first retail sale thereof.

It should be noted that the features of any mobile or factory manufactured home offered for sale after September 1, 1983 must be compared to the qualifications of a mobile home as provided under Chapter 986, to determine who is liable for collecting or paying sales or use taxes on the sale of such home.

Note: Effective September 1, 1983, sales of factory manufactured homes will be treated as they were for the period August 1, 1965 through December 31, 1981. The definition of factory manufactured homes on page 1 of the memorandum remains applicable.

### Refunds and Credits

Where a manufacturer of a mobile home or factory manufactured home collected sales tax or compensating use tax prior to September 1, 1983 from a person who held the property for resale, such person (dealer) is entitled to a credit or refund in the amount of tax (but not penalties or interest) remitted to the State Tax Commission by the manufacturer under the following conditions:

- (1) the manufacturer actually remitted the tax to the State Tax Commission,
- (2) such property is or will be sold at retail for the first time on or after September 1, 1983 and will be subject to sales or compensating use tax (pursuant to the provisions of Chapter 986 of the Laws of 1983), and
- (3) such person (dealer) has proved to the Tax Commission that sales tax paid to the manufacturer was not also collected directly or indirectly from the purchaser of the property as an element of the selling price upon which the purchaser's sales tax is computed.

However, such refund or credit shall be limited to any excess remaining after application of such refund or credit against any outstanding liability such person may have for state or local sales or use taxes.

Example: A dealer purchases a mobile home from the manufacturer before September 1, 1983 and pays sales tax to the manufacturer. He sells the same mobile home to a user after September 1, 1983, increasing his mark-up by the amount of sales tax paid to the manufacturer. He then collects sales tax from the user on 70% of his cost plus total mark-up (including sales tax paid to the manufacturer). The dealer is not entitled to a credit or refund in this instance.

An application for the credit or refund of such tax must be filed within seven months from the time such person (dealer) resells the mobile home or factory manufactured home, or within seven months from the time that the manufacturer actually remits the sales or use tax to the Tax Commission, whichever is later. No interest shall be allowed or paid on the credit or refund of this tax.