

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

TSB-A-83(5)S  
Sales Tax  
February 15, 1983

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S821224A

On December 24, 1982 a Petition for Advisory Opinion was received from Hawkins Manufactured Housing, Inc., R D # 1 Box 200, Harpursville, New York 13787.

The issue raised is whether Petitioner, a mobile home dealer, is eligible for a refund of the difference between the sales tax paid to a manufacturer of mobile homes and the sales tax which would have been paid if the Petitioner had been located in the county of its customer. Petitioner operates a mobile home dealership located in Broome County, which has a combined 7% New York State and local sales tax rate.

Section 1115(a)(23) of the Tax Law, applicable to sales made on or after December 31, 1981, provides for an exemption from sales and use tax with respect to receipts from sales of mobile homes and factory manufactured homes, except where sold by the manufacturer or where otherwise purchased outside the State by the user. It is also there provided that a purchase by a dealer from a manufacturer "shall not be deemed a sale for resale within the meaning of" section 1101(b)(4) of the Tax Law. Such sales to dealers thus constitute retail sales. Accordingly, where Petitioner purchases mobile homes which are delivered to its dealership in Broome County it must pay a sales tax of 7%.

There is no provision of law which would entitle a mobile home dealer to a refund of tax simply by reason of its having sold a mobile home to a customer located in a county (in New York) with a lower tax rate than that imposed in the county of the dealer's location. However, if such mobile home is not only sold and delivered but also installed in such a manner as to constitute a capital improvement to real property, the dealer would be entitled to an appropriate refund based on the difference between the applicable local tax rates. That is, the dealer would be entitled to a refund of the entire tax paid to the dealer's home county, but would be subject to a use tax in the county of installation. The net result would be entitlement to a refund based on the tax rate differential. In addition, where such installation takes place outside the State, the dealer would be entitled to a refund of all State and local taxes paid. See Tax Law, §1119(a)(1); State Tax Commission Model Resolution, November 1982, section 12(a)(1).

DATED: January 31, 1983

s/FRANK J. PUCCIA  
Director  
Technical Services Bureau