



COLORADO
Department of Revenue

Taxation Division

Office of Tax Policy
P.O. Box 17087
Denver, CO 80217-0087

dor_taxpolicy@state.co.us

PLR 25-001

May 8, 2025

XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

Via Electronic Mail: XXXXXXXXXXXX

Re: Sales and Use Taxes on Prefabricated Housing Modules

Dear XXXXXXXXXXXX:

You submitted a request for a private letter ruling on behalf of XXXXXXXXXXXX ("Taxpayer"), and XXXXXXXXXXXX ("Construction Affiliate"), a related party,¹ to the Colorado Department of Revenue ("Department") pursuant to 1 CCR 201-1, Rule 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in 1 CCR 201-1, Rule 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issues

1. Whether Taxpayer's products are "manufactured homes" as that phrase is defined in section 42-1-102(48.8), and used in section 39-26-721(1) and (2), C.R.S.
2. Whether Taxpayer's products are "modular homes" as that phrase is defined in section 39-1-102(8.3), and used in section 39-26-721(3), C.R.S.
3. Whether Taxpayer's purchases of materials and components from suppliers for incorporation into its prefabricated housing modules are exempt from state and state-administered local sales and use tax.
4. Whether 48% of the purchase price is exempt from sales tax for sales made prior to January 1, 2025 and 100% of the purchase price is exempt from state sales tax, and certain state-administered local sales taxes, for sales made on and after January 1, 2025.
5. Whether sales of the prefabricated housing modules are sourced to the Taxpayer's Manufacturing Facility or to the building site.

¹ The request disclosed Construction Affiliate as a related party. Under paragraph (10)(d) of 1 CCR 201-1, Rule 24-35-103.5, the Department agrees to apply this ruling to Construction Affiliate in addition to Taxpayer. However, the ruling will not be applied to the tax liability of any other person including those that the request defines as "Third-Party Contractors" in accordance with the rule.

6. Whether Construction Affiliate must pay local use taxes if the prefabricated housing modules are used in the construction of homes at a building site in a jurisdiction different from where the sale of the modules was sourced.
7. Whether Construction Affiliate must collect state and state-administered local sales tax when the home is conveyed to the ultimate owner.

Conclusions

1. Taxpayer's products are "manufactured homes" as that phrase is defined in section 42-1-102(48.8), and used in section 39-26-721(1) and (2), C.R.S.²
2. Taxpayer's products are "modular homes" as that phrase is defined in section 39-1-102(8.3), and used in section 39-26-721(3), C.R.S.
3. Taxpayer's purchases of materials and components from suppliers for incorporation into prefabricated housing modules are exempt from state and state-administered local sales and use tax.
4. Sales of the prefabricated housing modules in Colorado prior to January 1, 2025, qualify for the partial exemption from state sales tax provided under section 39-26-721(1), C.R.S. Sales of the prefabricated housing modules in Colorado on and after January 1, 2025, qualify for the full exemption from state sales tax provided under section 39-26-721(3)(b), C.R.S., as amended by House Bill 24-1036.³ Exemptions from state-administered local taxes will vary.
5. Sales of the prefabricated housing modules are sourced to the location where the prefabricated housing modules are received by Construction Affiliate or other Third-Party Contractors.
6. The Department declines to rule on this issue for the reasons discussed below.
7. The conveyance of the completed home to its ultimate owner is not subject to state and state-administered local sales tax.

² As noted in the Department's publication *Sales Tax Topics: Prefabricated Housing*, section 39-26-721, C.R.S., defines the term "manufactured housing" in subsections (1) and (2) differently from subsection (3). The publication uses the term "manufactured housing" to refer exclusively to those homes exempt under subsection (3). To provide similar clarity, this ruling will generally refer to taxpayer's products as "prefabricated housing modules" and will use the term "manufactured housing" only to the extent necessary to explain its ruling for issues 1 and 2 related to the exemptions in subsections (1) and (2). Taxpayer does not suggest, nor does the Department conclude, that its prefabricated housing modules are "manufactured housing" as that term is used in subsection (3) and in the aforementioned guidance publication.

³ 2024 Colo. Sess. Laws 2523, 2536.

Background⁴

Taxpayer manufactures prefabricated housing modules at its Colorado manufacturing facility, which is located within a state-administered city/town (the “Manufacturing Facility”). These prefabricated housing modules do not have motive power, nor are they licensed as a vehicle. Rather they are designed to be permanently affixed to land at a residential site and used as a residential dwelling. Furthermore, Taxpayer’s prefabricated housing modules are not subject to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.) and do not require a certification label also known as a “HUD tag.”

Taxpayer purchases materials and components from unrelated vendors or suppliers, some of which are located in Colorado, and some of which are located outside the State. These materials and components include things like lumber, drywall, carpeting and flooring, shelving, insulation, windows, doors, roofing materials, connectors, fasteners, electrical and plumbing system components, and heating and air conditioning system components. The vendors and suppliers either deliver these materials using their own vehicles, or they arrange for delivery of the materials by common carrier. Delivery is to Taxpayer’s Manufacturing Facility. Taxpayer uses the materials and components to manufacture various prefabricated housing modules.

Taxpayer sells all of these prefabricated housing modules to Construction Affiliate or to unrelated third-party contractors (each, a “Third-Party Contractor” and collectively, the “Third-Party Contractors”). Construction Affiliate (or a Third-Party Contractor) either takes title and possession, itself, of the prefabricated housing modules at the Manufacturing Facility and then transports the prefabricated housing modules to the ultimate building sites, or engages a third-party shipping company to pick up the modules at the Manufacturing Facility and transport them to the building sites. At those building sites, Construction Affiliate incorporates the prefabricated housing modules onto building foundations that have been prepared for that purpose. At that time, Construction Affiliate conveys the completed residences to either individual customers that will use them as their primary home residence, or to entities (including Internal Revenue Code section 501(c)(3) tax-exempt entities) that will make them available to individuals and families for residential use.

Discussion

Colorado imposes a sales tax on most sales of tangible personal property at retail, as well as certain services.⁵ The term “tangible personal property” does not include real property, such as land and buildings.⁶ However, until tangible personal property is built into real property such that it becomes an integral and inseparable part of the realty, its retail sale remains subject to Colorado sales tax.⁷

⁴ Paragraph (4)(b)(ii) of 1 CCR 201-1, Rule 24-35-103.5 requires the request for a private letter ruling to include a statement of facts. This section generally recites the statement of facts provided in the request, which is not an indication that the Department found such facts relevant to its analysis. Some relevant facts may be omitted to ensure confidentiality as required by section 24-35-103.5(5), C.R.S. The terms used in this section to describe the factual background are generally those of the requester.

⁵ Section 39-26-104, C.R.S.

⁶ 1 CCR 201-4, Rule 39-26-102(15)(2)(a).

⁷ *Id.*

The Colorado Revised Statutes authorize cities, towns, counties, and certain types of special districts to impose a sales tax.⁸ These sales taxes are collected, administered, and enforced by the Department in the same manner as the state sales tax.⁹ In most cases, these local sales taxes are imposed upon the same property and services subject to the state sales tax.¹⁰ Cities, towns, and counties are, however, permitted to deviate from the state sales tax base with respect to certain exemptions.¹¹ Special district sales taxes differ in very limited respects, and those deviations are normally mandatory.¹² This ruling will refer to the sales taxes imposed by these cities, towns, counties, and special districts collectively as state-administered local sales taxes.

In addition to these state-administered local sales taxes, certain self-collecting home-rule cities may impose sales and use taxes under the independent authority allowed to them by the state constitution.¹³ This ruling does not extend to the sales taxes imposed by those home-rule cities.

1. *Taxpayer's products are "manufactured homes" as that phrase is defined in section 42-1-102(48.8), and used in section 39-26-721(1) and (2), C.R.S.*

Construction contractors are generally regarded as retail purchasers of tangible personal property that they will build into a building or structure.¹⁴ As such, contractors must generally pay Colorado sales tax when purchasing such property.¹⁵ Accordingly, contractors will not normally collect sales tax on the materials incorporated into a building or structure.¹⁶ Furthermore, because real property construction is not a taxable service, contractors will not normally collect sales tax on separately stated charges for their labor.¹⁷

However, the taxable purchase price of tangible personal property sold after manufacturing includes the gross value of all the materials used, labor and service performed, and the profit

⁸ Section 29-2-102, C.R.S. (regarding incorporated towns and cities); 29-2-103, C.R.S. (regarding counties). The taxing authority for those entities that the Department refers to generally as "special districts" is found in the statutes establishing or permitting the establishment of the entity. See, e.g., section 32-9-119(2)(a), C.R.S. (empowering the board of the Regional Transportation District to impose a sales tax); 32-13-107(1)(a), C.R.S. (same with respect to the board of the Scientific and Cultural Facilities District); 43-4-605(1)(j)(l) (same with respect to regional transportation authorities).

⁹ Section 29-2-106, C.R.S. For special districts, refer to the enabling statutes as described in note 8, above.

¹⁰ Section 29-2-105, C.R.S. (with respect to cities and towns). For special districts, refer to the enabling statutes as described in note 8, above.

¹¹ Section 29-2-105(1)(d), C.R.S.

¹² The most common deviation requires special districts to exempt sales of cigarettes from the districts' sales taxes. E.g., 29-1-204.5(3)(f.1), C.R.S. (regarding multi-jurisdictional housing authorities); 32-1-1003.5(5) (health assurance districts).

¹³ Colo. Const. art. XX, § 6. Section 29-2-106(4) permits the Department to collect the sales taxes of home-rule cities at their request. The Department generally does not distinguish these state-administered home-rule cities from other state-administered cities and towns because subsection (4)(a)(l)(A) of that section requires them to conform their ordinances to the requirements under article 2 of title 29 applicable to statutory cities and towns. This ruling applies to state-administered home-rule cities accordingly.

¹⁴ 1 CCR 201-5, Special Rule 10(2).

¹⁵ *Id.*

¹⁶ *Id.* Paragraph (3) of the special rule discusses the circumstances when a contractor is required to collect sales tax on the sale of building materials and other property.

¹⁷ See *A.D. Store Co., Inc. v. Dep't of Revenue*, 19 P.3d 680, 683 (Colo. 2001) ("[N]o service is taxable, except those services specifically listed in the statute itself.").

thereon.¹⁸ Recognizing that this rule could create a disparity between the taxes applied to prefabricated homes and site-built homes, Colorado's statute allows a partial exemption from sales tax for certain prefabricated homes.¹⁹

For purposes of the partial exemption in section 39-26-721(1) and (2), the term "manufactured home" is defined by reference to section 42-1-102(48.8), C.R.S., which states:

"Manufactured home" means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

As described in the factual basis for the request, Taxpayer's products are within this definition of "manufactured home."

2. *Taxpayer's products are "modular homes" as that phrase is defined in section 39-1-102(8.3), and used in section 39-26-721(3), C.R.S.*

During the pendency of this request, the General Assembly enacted House Bill 24-1036 concerning the adjustment of certain tax expenditures.²⁰ Section 36 of the bill amended section 39-26-721(3), C.R.S. Under prior law, subsection (3) provided a complete exemption for "manufactured homes" and "tiny homes." The term "manufactured home" in subsection (3) referred to the definition at 39-1-102(7.8), C.R.S., which differs from the definition at section 42-1-102(48.8), C.R.S. Taxpayer's products do not meet the definition of "manufactured home" used by subsection (3) primarily because they are not subject to the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. § 5401 et seq.).

House Bill 24-1036 expanded the subsection (3) exemption to include "modular homes" as defined in section 39-1-102(8.3), C.R.S., and any closed panel system utilized in construction of a factory-built residential structure as defined in section 24-32-3302(10), C.R.S.²¹ Section 39-1-102(8.3), C.R.S., defines "modular home" to mean:

any preconstructed factory-built building that:

- (a) Is ineligible for a certificate of title pursuant to part 1 of article 29 of title 38, C.R.S.;
- (b) Is not constructed in compliance with the "National Manufactured Housing Construction and Safety Standards Act of 1974", 42 U.S.C. sec. 5401 et seq., as amended; and

¹⁸ 1 CCR 201-4, Rule 39-26-102(7)(a)(8).

¹⁹ Section 39-26-721(1), C.R.S.

²⁰ 2024 Colo. Sess. Laws 2523.

²¹ *Id.* at 2536.

(c) Is constructed in compliance with building codes adopted by the division of housing in the department of local affairs.

As described in the factual basis for the request, Taxpayer's products are within this definition of "modular home." As discussed further below, this brings Taxpayer's products within the expanded exemption created by House Bill 24-1036 effective January 1, 2025.

3. *Taxpayer's purchases of materials and components from suppliers for incorporation into the prefabricated housing modules are exempt from state and state-administered local sales and use tax.*

Colorado sales and use taxes are imposed upon the vast majority of retail sales of tangible personal property and the storage, use, or consumption of tangible personal property purchased at retail.²² Retail sales include all sales made within the state except wholesale sales.²³ Likewise, the sale and purchase of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use, any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished is deemed to be an exempt wholesale sale.²⁴

Taxpayer is engaged in the business of manufacturing prefabricated housing modules, which constitute "articles" of tangible personal property. To manufacture these prefabricated housing modules, Taxpayer purchases materials including lumber, drywall, carpeting and flooring, shelving, insulation, windows, doors, roofing materials, connectors, fasteners, electrical and plumbing system components, and heating and air conditioning system components. Taxpayer combines these materials to create these prefabricated housing modules, which it then sells to Construction Affiliate and other Third-Party Contractors. These materials are essential components of the finished product.²⁵ Therefore, their purchase by Taxpayer, and their subsequent storage and use by Taxpayer, is exempt from Colorado sales and use tax. Because the wholesale sale exemption set forth in section 39-26-102(20)(a), C.R.S., is not an optional exemption, it applies to state-administered local jurisdictions.²⁶

4. *Sales of the prefabricated housing modules in Colorado prior to January 1, 2025, qualify for the partial exemption from state sales tax provided under section 39-26-721(1), C.R.S. Sales of the prefabricated housing modules in Colorado on and after January 1, 2025, qualify for the full exemption from state sales tax provided under section 39-26-721(3)(b), C.R.S., as amended by House Bill 24-1036.²⁷ Exemptions from state-administered local taxes will vary.*

As discussed above, Taxpayer's prefabricated housing modules are "manufactured homes" as defined in section 42-1-102(48.8), C.R.S. Therefore, 48% of their purchase price is exempt

²² Sections 39-26-713(1)(a) and 39-26-202(1)(b), C.R.S.

²³ Section 39-26-102(9), C.R.S.

²⁴ Section 39-26-102(20)(a), C.R.S. A corresponding use tax exemption allowed by section 39-26-713(2)(b), C.R.S.

²⁵ See *C.F. & I. Steel Corp. v. Charnes*, 637 P.2d 324, 328 (Colo. 1981).

²⁶ See, section 29-2-105(1)(d), C.R.S. For special districts, refer to the enabling statutes as described in note 8, above.

²⁷ 2024 Colo. Sess. Laws 2523, 2536.

from state sales tax when the prefabricated housing modules are sold at retail to Construction Affiliate and other Third-Party Contractors in this state prior to January 1, 2025.

Taxpayer's prefabricated housing modules are also "modular homes" as defined in section 39-1-102(8.3), C.R.S. Therefore, sales made on and after January 1, 2025, will be fully exempt for state sales tax purposes. The full exemption allowed by section 39-26-721(3)(b), C.R.S., will also apply to state-administered local jurisdictions other than cities, towns, and counties.

Pursuant to section 29-2-105(1)(d), C.R.S., state-administered cities, towns, and counties are granted the option whether to enact certain state sales tax exemptions and apply them to their local taxes collected by the Department. The full exemption in section 39-26-721(3), C.R.S., is one of the option exemptions.²⁸ Therefore, the full exemption will apply in those cities, towns, and counties that have expressly adopted the option exemption.²⁹ Conversely, the 48% exemption allowed by section 39-26-721(1), C.R.S., is not an option exemption.³⁰ As a result, sales in those cities, towns, and counties that do not adopt the option in section 29-2-105(1)(d)(I)(P), C.R.S., are still subject to the 48% exemption.³¹

Department publication DR 1002 (available on the Department's website) details whether state-administered local jurisdictions apply a particular option exemption. Exemptions can also be reviewed for a particular address or location using the Department's geographic information system, which is also accessible from the Department's website.

5. *Sales of the prefabricated housing modules are sourced to the location where the prefabricated housing modules are received by Construction Affiliate or other Third-Party Contractors.*

State statute provides a series of rules for purposes of determining where a sale of tangible personal property is made.³² Those rules provide:

- (I) If tangible personal property, commodities, or services are received by the purchaser at a business location of the seller, the sale is sourced to that business location;
- (II) If tangible personal property, commodities, or services are not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser occurs, including the location indicated by instructions for delivery to the purchaser, if that location is known to the seller;
- (III) If rules (I) or (II) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller

²⁸ Section 29-2-105(1)(d)(I)(P), C.R.S.; 2024 Colo. Sess. Laws at 2536–37.

²⁹ See section 29-2-105(1)(d)(III), C.R.S. (clarifying that in the absence of an express provision regarding the exemptions listed in subsection (1)(d)(I), the ordinances and resolutions must be construed as imposing the tax).

³⁰ See section 29-2-105(1)(d)(I), C.R.S.

³¹ See *id.* (stating that sales exempt pursuant to article 2 of title 29 are the same as sales exempt pursuant to part 7 of article 26 of title 39 except for those optional exemptions listed in that subsection).

³² Section 39-26-104(3)(a), C.R.S.

that are maintained in the ordinary course of the seller's business, when use of this address does not constitute bad faith;

- (IV) If rules (I), (II), or (III) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including, if no other address is available, the address of a purchaser's payment instrument, when use of this address does not constitute bad faith; or
- (V) If rules (I), (II), (III), or (IV) do not apply, or if the seller is without sufficient information to apply the rules set forth in rules (I), (II), (III), or (IV), the sale is sourced to the location indicated by the address from which the tangible personal property, commodity, or service was shipped.³³

As used in these rules, "receipt" or "receive" means taking possession of tangible personal property or commodities but does not include possession by a shipping company on behalf of the purchaser.³⁴

The request states that in some cases Construction Affiliate or Third-Party Contractors take title and possession of the prefabricated housing modules at the Manufacturing Facility and then transports the prefabricated housing modules to the ultimate building sites. In these cases, the sales of the prefabricated housing modules are sourced to the Manufacturing Facility.³⁵ All or part of the purchase price is exempt from tax as discussed above.³⁶ In other cases, Construction Affiliate or Third-Party Contractors engage a third-party shipping company to pick up the prefabricated housing modules at the Manufacturing Facility and transport them to the building sites.

Because the taking of possession by a third-party shipping company does not constitute "receipt" by Construction Affiliate or the Third-Party Contractor, "receipt" occurs at the location where Construction Affiliate or the Third-Party Contractor takes such possession.³⁷ In these cases, the sourcing rules must be applied in turn. That is, the sale is not sourced to the Manufacturing Facility under rule (I).³⁸ If Taxpayer knows the location where Construction Affiliate or the Third-Party Contractor takes possession, the sale is sourced to that location under rule (II).³⁹ If Taxpayer does not know that location, the sale is sourced to the location indicated by an address for the purchaser available from the business records of the seller or obtained during the consummation of the sale under rules (III) or (IV), respectively.⁴⁰ At last, if none of these rules can be applied, the sale would ultimately be sourced to the Manufacturing Facility under rule (V) as the location from which the prefabricated housing modules were

³³ *Id.*

³⁴ *Id.* at (3)(d)(II).

³⁵ *Id.* at (3)(a)(I).

³⁶ Sections 39-26-104(1)(a) and 39-26-721(1), C.R.S.

³⁷ Section 39-26-104(3)(d)(II), C.R.S.

³⁸ *Id.* at (3)(a)(I).

³⁹ *Id.* at (3)(a)(II).

⁴⁰ *Id.* at (3)(a)(III) and (3)(a)(IV).

shipped.⁴¹ If the sale is sourced to a location in Colorado, all or part of the purchase price is exempt from state sales tax as discussed above.⁴²

6. *The Department declines to rule on whether Construction Affiliate must pay local use taxes if the prefabricated housing modules are used in the construction of homes at a building site in a jurisdiction different from where the sale of the prefabricated housing modules was sourced.*

Your request logically proceeds next to question whether Construction Affiliate must pay local use taxes if the prefabricated housing modules are used in the construction of homes at a building site in a jurisdiction different from where the sale of the prefabricated housing modules was sourced. The Department is required to issue private letter rulings at the request of a taxpayer in most circumstances.⁴³ However, by definition, a private letter ruling is limited to a written determination “on the tax consequences of a proposed or completed transaction under any tax *administered by the department* pursuant to section 39-21-102. . . ”⁴⁴ Except for the use taxes imposed upon motor vehicles and collected pursuant to section 39-26-208, C.R.S., the use taxes imposed pursuant to section 29-2-109, C.R.S., are collected, administered, and enforced by the city, town, or county imposing them.⁴⁵ Because it lacks the authority to do so, the Department declines to issue a private letter ruling on this question.

7. *The conveyance of the completed home to its ultimate owner is not subject to state and state-administered local sales tax.*

Colorado imposes a sales tax on most sales of tangible personal property at retail, as well as certain services.⁴⁶ The term “tangible personal property” does not include real property, such as land and buildings.⁴⁷ At various building sites, Construction Affiliate incorporates the prefabricated housing modules sold to it by Taxpayer onto building foundations that have been prepared for that purpose. Construction Affiliate then conveys the completed residences to either individual customers that will use them as their primary home residence, or to entities (including Internal Revenue Code § 501(c)(3) tax-exempt entities) that will make them available to individuals and families for residential use. When conveyed to Construction Affiliate’s customers, the prefabricated housing modules have become an integral and inseparable part of the realty. Therefore, the conveyance is not subject to state or state-administered local taxes, which apply only to the sale of tangible personal property and certain services.⁴⁸

Miscellaneous

This ruling is premised on the assumption that Taxpayer has completely and accurately disclosed all material facts, that all representations are true and complete, and that Taxpayer has otherwise complied with the requirements of section 24-35-103.5, C.R.S., and the rules

⁴¹ *Id.* at (3)(a)(V).

⁴² Sections 39-26-104(1)(a) and 39-26-721(1), C.R.S.

⁴³ Section 24-35-103.5(2), C.R.S.

⁴⁴ *Id.* at (1)(b).

⁴⁵ Section 29-2-106(3)(a), C.R.S.

⁴⁶ Section 39-26-104, C.R.S.

⁴⁷ 1 CCR 201-4, Rule 39-26-102(15)(2)(a).

⁴⁸ See sections 39-26-104(1)(a), C.R.S. and 29-2-105(1)(d), C.R.S. For special districts, refer to the enabling statutes as described in note 8, above.

promulgated pursuant thereto. The Department reserves the right, among others, to independently evaluate Taxpayer's facts, representations, and assumptions. The ruling is null and void if any such fact, representation, or assumption is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is binding on the Department and is subject to modification or revocation, in accordance with 1 CCR 201-1, Rule 24-35-103.5.

As discussed above, the Department administers state and state-administered local sales and use taxes. This letter does not address sales and use taxes administered by self-collected home-rule cities. You may wish to consult with those local governments that administer their own sales or use taxes about the applicability of those taxes. Visit our website at tax.colorado.gov for more information about state and local sales taxes.

Thank you for your request.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.