

July 27, 2015

[Taxpayer Representative]  
[Address]  
[Address]  
[Address]

Re: Formal Ruling 15-03

Dear [Taxpayer Representative]:

This is a formal ruling for [Taxpayer], regarding the applicability of sales and use tax to its purchases of materials and its sales of manufactured housing. This ruling is based on representations in your letter of [Date], and our telephone conversation of [Date].

**FACTS**

[Taxpayer] (Taxpayer) is a company located in [Location, State]. Taxpayer manufactures modular houses and sells those structures to nonprofit organizations and to individuals who receive subsidies from State organizations and nonprofit organizations. These are not mobile homes, but are manufactured houses designed to fit on the same type of foundation as a mobile home and to be hooked up to utilities in the same manner as a mobile home.

Taxpayer has requested a ruling on whether the sales or use tax applies to Taxpayer's purchases of materials and to Taxpayer's sales of modular houses, in six fact patterns, as follows:

1. Taxpayer sells a housing unit to a "501(c)(3)" tax-exempt affordable housing entity. The housing entity then places the unit on a lot the entity owns. Someone other than Taxpayer

connects the housing unit to sewer and water systems. The housing entity then sells or rents the house to a qualified individual.

2. Taxpayer sells a housing unit to a “501(c)(3)” tax-exempt affordable housing entity. The housing entity then places the unit on a lot the entity owns. Under a separate contract with the tax-exempt entity, Taxpayer connects the housing unit to sewer and water systems. The entity then sells the house to a qualified individual.

3. Taxpayer sells a housing unit to an individual. Someone other than Taxpayer places the unit on a lot owned by a 501(c)(3) tax-exempt affordable housing entity. Under a separate contract with the tax-exempt entity or the individual unit owner, Taxpayer connects the housing unit to sewer and water systems. Payment for the housing unit and for the sewer/water hookup is partially (20-30%) from the individual, and partially (70-80%) from the tax-exempt entity.

4. Taxpayer sells a housing unit to an individual. Someone other than Taxpayer places the unit on a lot owned by a 501(c)(3) tax-exempt affordable housing entity and connects the housing unit to sewer and water systems. Payment for the housing unit is partially (20-30%) from the individual, and partially (70-80%) from the tax-exempt entity, the [Entity] and the [Entity].

5. Taxpayer sells a housing unit to an individual. Someone other than Taxpayer places the unit on a private lot, not owned by a tax-exempt entity. Under a separate contract, Taxpayer connects the housing unit to sewer and water systems. Payment for the housing unit and for the sewer/water hookup is partially (20-30%) from the individual and partially (70-80%) from the [Entity] and the [Entity].

6. Taxpayer sells a housing unit to an individual. Someone other than Taxpayer places the unit on a private lot, not owned by a tax-exempt entity. Under a separate contract, Taxpayer

connects the housing unit to sewer and water systems. Payment for the housing unit and for the sewer/water hookup is partially (80%) from the individual and partially (20%) from the [Entity].

## **DISCUSSION**

Taxpayer manufactures modular housing units for retail sale. In each of six fact patterns, Taxpayer sells the modular housing unit to an entity or person, and after the sale of the unit, someone other than Taxpayer places the unit on the lot. In some cases, there is a separate contract under which Taxpayer connects the unit to water and sewer utilities. Where the housing unit is sold to an individual, the individual pays 20-30% of the costs and other entities pay the remainder.

### Taxpayer is selling housing units subject to sales tax

Vermont sales tax applies to retail sales of tangible personal property. 32 V.S.A. § 9771(a). The tax is imposed on the sales price, and the sales price includes any delivery charge. 32 V.S.A. §§ 9771; 9701(4)(A)(iv).

Since Taxpayer is selling housing units and is not constructing houses on a real property site, Taxpayer's sales of the housing units are sales of tangible personal property, subject to the sales tax. Valgardson Housing Systems, Inc. v. State Tax Commission, 849 P.2d 618, 622 (Utah 1993); *see also* State v. Kelly-Ryan, Inc., 871 P.2d 331 (Nev. 1994).

There are three exemptions in the sales tax law which apply to the sales you describe and to Taxpayer's purchases of materials used to manufacture the housing units.

### Forty percent sales tax exemption for modular housing units

First, Vermont sales tax law exempts forty percent of the receipts from sales of mobile homes and modular housing, when sold as tangible personal property and not as real property. 32 V.S.A. § 9741(32). Thus, Taxpayer must collect sales tax on only sixty percent of the sales price for its housing units.

### Total exemption of sales of modular housing units to a 501(c)(3) with a certificate

Second, the sales tax does not apply to sales to an organization which qualifies for Federal tax-exempt status under 26 U.S.C. § 501(c)(3), if the entity first obtains a tax exemption certificate from the Commissioner of Taxes. 32 V.S.A. § 9743(3)(B). Thus, Taxpayer should not collect sales tax on sales to these types of entities if they hold a valid exemption certificate at the time of the sale.

A similar exemption is provided for sales to the State of Vermont and its agencies, instrumentalities, public authorities, public corporations and political subdivisions. 32 V.S.A. § 9743(1). The [Entity] is defined by law as a public instrumentality of the State. 10 V.S.A. § 311(a). Thus, if Taxpayer sells a housing unit to the [Entity], that sale would also be exempt from sales tax.

### Sales tax exemption for manufacturing materials, machinery and equipment

Third, the sales tax law exempts Taxpayer's purchases of the materials it uses to manufacture the housing units, and also exempts Taxpayer's purchases of the machinery and equipment used in its manufacturing process:

(14) Tangible personal property which becomes an ingredient or component part of, or is consumed or destroyed or loses its identity in the manufacture of tangible personal property for sale; machinery and equipment for use or consumption directly and exclusively, except for isolated or occasional uses, in the manufacture of tangible personal property for sale, or in the manufacture of other machinery or equipment, parts, or supplies for use in the manufacturing

process; and devices used to monitor manufacturing machinery and equipment or the product during the manufacturing process. Machinery and equipment used in administrative, managerial, sales, or other nonproduction activities, or used prior to the first production operation or subsequent to the initial packaging of a product, shall not be exempt from tax, unless such uses are merely isolated or occasional or unless the machinery used for initial packaging is also used for secondary packaging as part of an integrated process. Machinery and equipment shall not include buildings and structural components thereof. As used in this subdivision, it shall be rebuttably presumed that uses are not isolated or occasional if they total more than four percent of the time the machinery or equipment is operated. For the purposes of this subsection, "manufacture" includes extraction of mineral deposits, the entire printing and bookmaking process, and the entire publication process.

32 V.S.A. § 9741(14). To be exempt, a component must be consumed or destroyed in the manufacturing process or become incorporated into ("lose its identity in") the final product; and machinery and equipment is only exempt if used "directly and exclusively" in the manufacturing process. Further detail and examples are provided in the Department's Sales and Use Tax Regulations, which may be found at the Department Web site, [www.state.vt.us/tax](http://www.state.vt.us/tax), under "Publications." You may also request information or a ruling regarding the applicability of this sales tax exemption to specific materials, machinery and equipment.

Sales tax exemption for building materials used to construct a building for a 501(c)(3) does not apply

The law also exempts "sales of building materials and supplies to be used in the construction . . . of . . . (B) any building or structure owned by or held in trust for the benefit of any organization [which is a Vermont public instrumentality or qualifies for exempt status under 26 U.S.C. § 501(c)(3)]." 32 V.S.A. § 9743(4)(A), (B). In two of your scenarios, Taxpayer sells a unit of manufactured tangible personal property to a tax-exempt entity. This exemption does not apply to any of your six scenarios, however, because none involves Taxpayer's contracting with a tax-exempt entity to construct a building. In any case, since Taxpayer is the manufacturer of

the modular housing units, Taxpayer is already exempt from sales tax on its materials and supplies used to manufacture the units, under 32 V.S.A. § 9741(14) as described above.

Special rule, for collection of sales tax by manufacturer who improves real property for its customer, does not apply

Special rules apply if a manufacturer acts as a building contractor and uses an item it manufactured to improve the customer's real property. In such a case, the manufacturer either pays use tax on the item or, in certain cases, collects sales tax from the customer on the sales price of the item (unless the customer is a tax-exempt entity). 32 V.S.A. §§ 9771(1), 9773(2). These rules do not apply in your case, because you are not using the modular housing unit as a construction material.

#### Application of law to your scenarios

The laws described above apply to your scenarios as follows:

1. Taxpayer sells a housing unit to a 501(c)(3) affordable housing entity. The housing entity then places the unit on a lot the entity owns. The housing entity then sells or rents the house to a qualified individual.

*Your sale of a unit is a sale of tangible personal property. Because your sale is to a 501(c)(3) entity, the sale will be exempt from sales tax if the entity has obtained a sales tax exemption certificate from the Commissioner in advance of the sale.*

*Later sale of the unit by the 501(c)(3) entity once the unit is affixed to the real estate is not a sale of tangible personal property and not subject to sales tax. The provisions of the property transfer tax under 32 V.S.A., Chapter 231, would apply to that sale.*

2. Taxpayer sells a housing unit to a 501(c)(3) affordable housing entity. The housing entity then places the unit on a lot the entity owns. Under a separate contract with the tax-exempt

entity, Taxpayer connects the housing unit to sewer and water systems. The entity then sells the house to a qualified individual.

*Your sale of a unit to the 501(c)(3) entity will be exempt from sales tax if the entity has obtained a sales tax exemption certificate from the Commissioner in advance of the sale. Any separate charge for connecting the unit is a charge for a service and not subject to sales tax.*

*Later sale of the unit by the 501(c)(3) entity once the unit is affixed to the real estate is not a sale of tangible personal property and not subject to sales tax. The provisions of the property transfer tax under 32 V.S.A., Chapter 231, would apply to that sale.*

3. Taxpayer sells a housing unit to an individual. Someone other than Taxpayer places the unit on a lot owned by a 501(c)(3) tax-exempt affordable housing entity. Under a separate contract with the tax-exempt entity or the individual owner, Taxpayer connects the housing unit to sewer and water systems. Payment for the housing unit and for the sewer/water hookup is partially (20-30%) from the individual, and partially (70-80%) from the tax-exempt entity.

*Your sale of a unit to an individual is subject to sales tax on sixty percent of the sales price. It does not matter what the source of funds is, if the individual is the person who will own the unit. If the tax-exempt entity supplying funds is a co-purchaser, with co-ownership of the unit, then its portion of the price will be exempt from sales tax, if the entity has obtained a sales tax exemption certificate from the Commissioner in advance of the sale.*

4. Taxpayer sells a housing unit to an individual. Someone other than Taxpayer places the unit on a lot owned by a 501(c)(3) tax-exempt affordable housing entity. Taxpayer does not connect the housing unit to sewer and water systems. Payment for the housing unit is partially (20-30%) from the individual, and partially (70-80%) from the tax-exempt entity, the [Entity] and the [Entity].

*Your sale of the unit to an individual is subject to sales tax on sixty percent of the sales price. It does not matter what the source of funds is, if the individual is the person who will own the unit. If [Entity] is a 501(c)(3) tax-exempt entity, and is a co-purchaser, with co-ownership of the unit, then its portion of the price will be exempt from sales tax, if it has obtained a sales tax exemption certificate from the Commissioner in advance of the sale. If the [Entity] is a co-purchaser, with co-ownership of the unit, then its portion of the price will be exempt from sales tax because it qualifies as an “instrumentality of the State.”*

5. Taxpayer sells a housing unit to an individual. Someone other than Taxpayer places the unit on a private lot, not owned by a tax-exempt entity. Under a separate contract, Taxpayer connects the housing unit to sewer and water systems. Payment for the housing unit and for the sewer/water hookup is partially (20-30%) from the individual and partially (70-80%) from the [Entity] and the [Entity].

*Your sale of the unit to an individual is subject to sales tax on sixty percent of the sales price. It does not matter what the source of funds is, if the individual is the person who will own the unit. If a tax-exempt entity supplying funds is a co-purchaser, with co-ownership of the unit, then its portion of the price will be exempt from sales tax if the entity has obtained a sales tax exemption certificate from the Commissioner in advance of the sale. The charge for connection of the unit to sewer and water is a service and not subject to sales tax.*

6. Taxpayer sells a housing unit to an individual. Someone other than Taxpayer places the unit on a private lot, not owned by a tax-exempt entity. Under a separate contract, Taxpayer connects the housing unit to sewer and water systems. Payment for the housing unit and for the sewer/water hookup is partially (80%) from the individual and partially (20%) from the [Entity].

*Your sale of the unit to an individual is subject to sales tax on sixty percent of the sales price. It does not matter what the source of funds is, if the individual is the person who will own the unit. If a tax-exempt entity supplying funds is a co-purchaser, with co-ownership of the unit, then its portion of the price will be exempt from sales tax, if the entity has obtained a sales tax exemption certificate from the Commissioner in advance of the sale. The charge for connection of the unit to sewer and water is a service and not subject to sales tax.*

Note that if Taxpayer sells a housing unit to a 501(c)(3) tax-exempt entity, that sale is not subject to sales tax; but if the tax-exempt entity then sells the unit to an individual (who is not a 501(c)(3) exempt entity) before it is affixed to real property, that sale would likely be subject to sales tax (on sixty percent of the sales price). A 501(c)(3) entity is only exempt from collecting sales tax on its sales if the entity had prior-year taxable sales of \$20,000 or less. 32 V.S.A. § 9743(3)(C). If Taxpayer sells a unit to an “instrumentality of the State,” such as the [Entity], and that entity then sells the unit to an individual before it is affixed to real property, that sale would also be subject to sales tax (on sixty percent of the sales price), because the sale would be of the type of “property ordinarily sold by private persons.” 32 V.S.A. § 9743(1).

## **GENERAL PROVISIONS**

This ruling will be made public after deletion of the parties’ names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to determine the department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.

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Emily Bergquist

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Date

Approved:

\_\_\_\_\_  
Mary N. Peterson  
Commissioner of Taxes

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Date