



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

December 22, 2016

[REDACTED]

Re: [REDACTED]

Dear [REDACTED]:

Thank you for your letter dated October 18, 2016. You have requested a technical advice letter regarding the sales and use tax treatment of components for modular homes manufactured by

[REDACTED]¹ [REDACTED]²

Facts:

[REDACTED] manufactures and installs components for modular housing units. [REDACTED] manufactures these components at its plants located in [REDACTED] and Michigan for sale, delivery, and installation on behalf of dealers/contractors within Michigan. Sales of modular housing components for delivery and installation in Michigan are made pursuant to orders submitted by dealers/contractors to [REDACTED] for one or more particular housing components desired by the person or persons on whose behalf the dealer/contractor is constructing a home at a site located in Michigan.

[REDACTED] maintains sample floor plans and configurations for dealers/contractors to choose from. However, each modular home is custom designed for each order; individuals work with the dealer/contractor to custom design a home. After the custom design is complete the dealer/contractor contracts with [REDACTED] for the manufacturing of the home according to the specific contract design specifications and for the installation of the home on the customer's site in Michigan.

¹ You have written on behalf [REDACTED] and [REDACTED]; this letter collectively refers to them as "[REDACTED]" unless otherwise indicated.

² Your letter references RAB 1989-34, however, the Department replaced RAB 1989-34 with RAB 2016-20 on October 5, 2016.

does not maintain an inventory of modular home units; none of its modular home sales are from existing inventory. Rather, each home is manufactured to the specific order based on the individual purchase order of a dealer/contractor for its home buyer customer.

All manufacturing of the modular home components takes place at either 's or Michigan manufacturing location. The components are then delivered to the site where the components will be incorporated into a residential home.

You state that is contractually responsible for installation of the modular home components at the site where the home will be constructed. Additionally, typically subcontracts with a subcontractor to set the home on its behalf; however, the responsibility of setting the home as between and the dealer/contractor rests with . In all transactions, is responsible for affixing the manufactured home to the foundation. then sells the installed home to the dealer/contractor.

Contracts provided by indicate that the sale of the modular homes to builders is “for resale to various customers of the Builder.” The contracts further provide the following:

Title to the home and loose materials shall remain with until the home is set or installed and/or the home is delivered, as designated on the order and is paid in full for the home.

is requesting confirmation that, under the Use Tax Act (UTA), its proper tax base is as a manufacturer-contractor under MCL 205.93a(1)(g) (i.e., a “type II manufacturer-contractor).

Law and Analysis:

1. Manufacturer-Contractor Tax Base

The General Sales Tax Act (GSTA) imposes tax at rate of 6% of the sales price on retail sales of tangible personal property in Michigan unless otherwise exempt.³

The UTA imposes tax at a rate of 6% of the purchase price of property that is used, stored, or consumed in Michigan.⁴ Therefore, the tax base for use tax is generally established by the “purchase price” of the property.⁵ However, the UTA establishes a separate tax base for persons that manufacture tangible personal property and affix it to real estate itself or through the use of a subcontractor (i.e., a manufacturer-contractor).⁶ When acts as a manufacturer-contractor it must establish its tax base based on the UTA. The UTA establishes two potential tax bases for a manufacturer-contractor that affixes its product to real estate:

For a manufacturer who affixes its product to real estate in this state and maintains an inventory of its product that is available for sale to others or who

³ MCL 205.52(1).

⁴ MCL 205.93(1).

⁵ MCL 205.92(f).

⁶ MCL 205.93a(1)(f) and (g) (discussed in detail below). Entities that engage in this type of business are typically referred to as “manufacturer-contractors.”

makes its product available for sale to others by publication or price list, the price is the direct production costs and indirect production costs of the product affixed to the real estate in this state that are incident to and necessary for production or manufacturing operations or processes, as defined by the department [commonly referred to as a “type I manufacturer-contractor”].

[or]

For a manufacturer who affixes its product to real estate in this state but does not maintain an inventory of its product available for sale to others or make its product available for sale to others by publication or price list, the price is the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property affixed to the real estate in this state, but not the cost of labor to cut, bend, assemble, or attach the property at the site for affixation to real estate in this state [commonly referred to as a “type II manufacturer-contractor”].⁷

products as described in its pamphlets are not available for sale to others as a finished product. Rather, it offers general floor plan layouts that a purchaser could choose for their home and then customize. Therefore, is a type II manufacturer-contractor for transactions where it acts as a manufacturer-contractor and its tax base is the sum of the materials cost of the property and the cost of labor to manufacture, fabricate, or assemble the property affixed to the real estate in Michigan, but not the cost of labor to cut, bend, assemble, or attach the property at the site for affixation to real estate in Michigan.

When acts as a manufacturer-contractor and it hires a subcontractor to perform the installation of the home, may still treat itself as a manufacturer-contractor so long as the subcontractor is not billed for the home or materials it affixes.⁸

2. Industrial Processing Exemption

The UTA exempts property sold to an industrial processor for use or consumption in industrial processing.⁹ An “industrial processor” is “a person who performs the activity of converting or conditioning tangible personal property for *ultimate sale at retail* or use in the manufacturing of a product to be *ultimately sold at retail or affixed to and made a structural part of real estate located in another state.*”¹⁰ “Industrial processing” is defined as:

[T]he activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product

⁷ MCL 205.93a(1)(f) and (g).

⁸ See RAB 1993-5 and the Michigan Department of Treasury, *Contractor Manual* <http://www.michigan.gov/documents/taxes/Contractor_Manual_-_June_2015_492778_7.pdf?20160526083440> (accessed May 26, 2016).

⁹ MCL 205.94o(1)(a).

¹⁰ MCL 205.94o(7)(b) (emphasis added).

to be *ultimately sold at retail or affixed to and made a structural part of real estate located in another state.*¹¹

If property is used for both an industrial processing purpose and a nonexempt use, “[t]he exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.”¹²

There are two instances that [REDACTED] may claim the industrial processing exemption:

1. when it is manufacturing a home that will be sold at retail; and,
2. when acting as a manufacturer-contractor and the home is affixed to real estate in another state.

[REDACTED] may not claim the industrial processing exemption when it acts as a manufacturer-contractor and affixes the home to real estate located in Michigan. To the extent that [REDACTED] uses or consumes property for both an exempt and a taxable purpose, the exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the Department.

3. Retail Sales

The contract between [REDACTED] and its builders contemplates that it could be acting as either a manufacturer-contractor or a seller of tangible personal property.¹³ To the extent that [REDACTED] engages in transactions that constitute sales of tangible personal property, the tax base of its products would be 6% of the sales price,¹⁴ absent a valid claim of exemption.¹⁵

Please contact me if you have any further questions regarding this matter.

Sincerely,

Lance R. Wilkinson, Administrator
Tax Policy Division

¹¹ MCL 205.54t(7)(a); MCL 205.94o(7)(a) (emphasis added).

¹² MCL 205.94o(2).

¹³ Specifically, the contract provides that the sale of the homes to builders is for purposes of “resale to various customers of the Builder.” This language implies that there is a sale of tangible personal property for purposes of resale, rather than a manufacturer-contractor type of transaction. The contract also provides that title may transfer when the home is merely delivered (i.e., not yet affixed to real estate) if [REDACTED] has been paid in full for the home prior to or at the time of delivery. This type of transaction would constitute the sale of tangible personal property, and would not invoke the manufacturer-contractor tax base. If [REDACTED] engages in this type of transaction it is liable for sales tax based on the sales price of the home unless it obtains a proper claim of exemption from its purchaser.

¹⁴ MCL 205.52(1).

¹⁵ MCL 205.62. See also, RAB 2016-14.