

ALABAMA DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

810-6-1-.105. Modular Buildings.

(1) The Alabama Supreme Court has interpreted the language relative to modular buildings in Sections 40-23-1(a)(10) and 40-23-60(5), Code of Alabama 1975, as “designed to make the sale of materials going into the construction of such buildings subject to the tax and to exempt the sale of the building itself” from sales or use tax. This interpretation places “modular building components on a par with conventional building materials” and makes “the sale of all building materials, modular or otherwise, sales at retail.” The attachment of the building components or units to realty and the subsequent sale of the components or units as a completed building is not treated as a taxable transaction. In making this interpretation, the Supreme Court ruled that use tax is due on modular building units manufactured by an out-of-state manufacturer and sold by the manufacturer to a contractor who attached the units to realty in Alabama. The measure of the use tax is the manufacturer’s selling price of the modular units. (Boswell v. Alcoa Construction Systems, Inc., 368 So. 2d 18 (S.Ct.1979))

(2) Sales tax is due on modular building components or units manufactured in Alabama as follows:

(a) An instate builder or manufacturer of modular building components or units who builds or manufactures the components or units for resale in the form of tangible personal property to persons who affix them to realty, shall obtain a sales tax license and purchase all building materials, fixtures and other equipment becoming part of the modular building components or units without payment of sales or use tax to the suppliers. The builder or manufacturer of the modular building components or units shall (i) collect sales tax on any retail sales of the components or units sold in Alabama measured by the selling price of the components or units and (ii) report and pay the sales tax to the Department of Revenue on those retail sales.

(b) In the event an instate builder or manufacturer of modular building components or units, who has obtained a sales tax license pursuant to paragraph (2)(a), also contracts to affix modular building components or units to realty either inside or outside Alabama, the builder or manufacturer shall be liable for sales tax computed on the cost price of the materials withdrawn from inventory and used to build or manufacture the components or units which the builder or manufacturer affixes to realty pursuant to the contract.

(3) Use tax is due on modular building components or units as follows:

(a) Out-of-state builders or manufacturers of modular building components or units, who do not have a place of business in Alabama but for whose business sufficient nexus exists, shall (i) register to collect sellers use tax on their Alabama sales of modular building components or units which are sold in the form of tangible personal property to persons who affix them to realty and (ii) report and pay the tax to the Department of Revenue on their Alabama sales. The measure of the sellers use tax is the selling price of the components or units. Purchases of modular building components or units from out-of-state builders or manufacturers who are not registered to collect sellers use tax are subject

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810-6-1-.105. (Continued)

to consumers use tax. Consumers use tax should be computed and paid by the purchaser measured by the purchase price of the components or units. (Section 40-23-60(5))

(b) An out-of-state builder or manufacturer of modular building components or units, who contracts to affix modular building components or units to realty inside Alabama, is liable for consumers use tax computed on the cost price of the materials incorporated into the components or units which the builder or manufacturer affixes to realty in Alabama pursuant to the contract. Credit for legally imposed sales and use taxes paid to any other state or its subdivisions will be allowed against the Alabama use tax due as outlined in Rule 810-6-5-.04. (Sections 40-23-60(5) and 40-27-1, Article V.1, Code of Alabama 1975) (Adopted August 15, 1974, readopted through APA effective October 1, 1982, amended October 20, 1998)