



STATE BOARD OF EQUALIZATION

Date: August 8, 1996

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To: Ms. Oveta L. Rime, Supervisor
Consumer Use Tax Section

From: John S. Butterfield
Tax Counsel

Subject: Transfers of Used Mobilehomes

We have your memorandum of June 19, 1996 for response. In your memo, you indicated that the Department of Housing and Community Development ("HCD") believes that it is required to collect use tax on the actual sales price of mobilehomes as defined in Regulation 161 0.2(b) (4) (B) (3), but that persons who give 'other consideration' will continue to be referred to the Board for determination of the taxable value, collection of the tax, and issuance of a BT-111 to allow title transfer. Apparently, HCD believes that it is not required to collect the use tax when the purchaser has given something other than cash in exchange for the mobilehome.

"Price" and "consideration" are not exclusive terms. Blacks Law Dictionary defines "price" as: "The cost at which something is obtained. Something which one ordinarily accepts voluntarily in exchange for something else. The consideration given for the purchase of a thing." Consideration is not just the payment of money, it is anything of value (including, but not limited to money) given by one person to another in fulfillment of a contract.

Thus, "actual sales price," for purposes of Regulation 1610.2, includes anything of value given in exchange for the purchased item, and if the value of the "other consideration" included as part of the "actual sales price" is readily ascertainable, HCD should routinely collect the tax without need to refer taxpayers to the Board.

In fact, we believe that HCD routinely does collect tax based on other consideration. When a person who purchases a mobilehome has a "trade-in" or something else of value which they give to the seller as part of the purchase price, the value of the trade-in is clearly included in the measure of tax, and we do not believe that HCD has any difficulty in assessing and collecting tax on such "other consideration." The problem here seems to be that HCD is not initially provided with a value for the other consideration in question and does not wish to have to

ascertain it from the buyer. We should therefore direct HCD's attention to Annotation 362.0200 (5/15/94) in the Business Taxes Law Guide.

Annotation 362.0200 explains that the purchase price of a used mobilehome may include money and other valuable consideration; that the measure of tax must be on the whole consideration, not just the cash exchanged component; and how to determine the value of the non-monetary consideration. Application of the rules set out in the annotation should be relatively straightforward, and we believe that HCD can apply them to most transactions without having to refer the taxpayer to the Board.

In the case of mobilehomes which are acquired at a sale authorized by Civil Code section 798.61, if the successful bidder is other than the mobilehome park operator, the price paid at the sale is self evident. In the case of an acquisition by the mobilehome park operator, reference should be made to the judgment entered by the Municipal Court which authorized the sale. That judgment will include the amount requested by and awarded to the park operator for rent, storage charges, attorneys fees and costs. Unless the park operator's bid at the sale exceeds the judgment amount, we will assume that the judgment amount is the consideration or "price" for the sale. HCD is in as good a position as the Board to obtain and review the judgment document.

If a lienholder exercises its right to foreclose on a mobilehome, it must undertake certain obligations to the park owner. These include payment of current rental charges after foreclosure and, if the park owner has commenced proceedings to terminate the tenancy, the lienholder must agree to pay the owner's past due rent obligations for 90 days prior to the date the notice of termination was given, plus current charges from the date of the notice of termination until the date the foreclosure sale was conducted. If, after foreclosure, the lienholder has not paid any of the amounts which it undertook to pay and transfers the mobilehome to the park operator in satisfaction of the obligation, the consideration, or "price," for the transfer can be ascertained by examination of the rental contract which establishes the rent due. Applying that rental amount to a period computed as 90 days prior to the date of notice of termination of tenancy (which the park operator as the giver of the notice can surely provide) plus the number of days between the notice of termination of tenancy and the date of the foreclosure sale (a matter of public record) plus the number of days between the foreclosure sale and the transfer to the park operator will provide the initial amount. Any moneys actually paid by the lienholder to the park operator prior to the transfer are deducted from that amount, and the result is the measure of consideration for the sale.

Finally, in the case where an estate conveys the mobilehome to the operator in satisfaction of a probate claim, the amount of the claim submitted by the operator to the probate court (also a public record, and accessible to the operator as the maker of the claim) is the measure of consideration.

In conclusion, we believe that the steps necessary to compute the non-cash portion of the sales price are not so complicated as to require the special expertise of the Board of Equalization, but may be routinely done by HCD.

JSB/cmm
Cc: Mr. David H. Levine

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