



STATE BOARD OF EQUALIZATION

STATE OF CALIFORNIA
BOARD OF EQUALIZATION
LEGAL DIVISION, APPEALS REVIEW SECTION

In the Matter of the petition for)
Redetermination Under the Sales)
and Use Tax Law of:)
)
)
)
Petitioners)

REVISED
DECISION AND RECOMMENDATION

No.1 _____

In the original Decision and Recommendation issued March 9, 1994, we recommended no adjustment to the tax. Petitioners filed a timely Request for Reconsideration.

Summary

The facts are set out in the original Decision and Recommendation, incorporated herein by this reference. Briefly summarized, petitioners purchased a used mobilehome for \$17,000. The market value of the mobilehome listed in the Kelly Blue Book was \$5,630, and the difference was paid for "location value".

Petitioners registered the unit with the Department of Motor Vehicles (DMV) and paid tax to DMV on a measure of \$4,000. They did not register the unit with the Department of Housing and Community Development (DHCD) at that time. In response to our recommendation in this matter, however, petitioners have now registered the mobilehome with DHCD.

Analysis and Conclusions

Revenue and Taxation Code section 6012.2 adopts a special definition or "sales price" for "used mobilehomes" as defined in Health and Safety Code section 18014. With certain exceptions not relevant here, the taxable sales price of such mobilehomes is the "current value" as specified in a recognized value guide. In this case, the measure of tax under the special

provisions would be \$5,630, the Kelly Blue Book value of the unit, rather than the \$17,000 actual purchase price.

Health and Safety Code section 18014 defines "used mobilehome" as a mobilehome "that was previously sold and registered or titled with" DHCD or an appropriate agency from another jurisdiction. This definition is incorporated into subdivision (a) (3) of Sales and Use Tax Regulation 1610.2.

It has been suggested that the word "previously" in this definition modifies not only the word "sold ", but also the words "registered or titled". If this interpretation is correct, the special rules for used mobilehomes would not apply unless the unit was appropriately registered by the prior owner, even if the current owner registered it properly. We do not agree with this interpretation. We see no reason why the current owner's tax liabilities should depend on the actions (or inaction) of a prior owner.

Other provisions of Regulation 1610.2 indicate that the special rules for "used mobilehomes" apply to any previously owned mobilehome which is required to be registered with DHCD, even if the prior owner did not register it. For example, the first paragraph of subdivision (c) provides that purchasers of mobilehomes which are "required to be registered annually" shall pay the tax upon registration with DHCD. The last three paragraphs then provide:

"Whenever the purchaser of a mobilehome is required to pay use tax to the Department of Housing and Community Development, the measure of tax shall be determined in accordance with [the rules for new or used mobilehomes], whichever is applicable."

"If the purchaser of a mobilehome or commercial coach makes an application to the Department of Housing and Community Development which is not timely, and is subject to penalty because of delinquency in effecting registration or transfer of registration of the property, the purchaser then becomes liable also for penalty specified in Section 6591 of the Revenue and Taxation Code, but no interest shall accrue."

"If the purchaser of a mobilehome or commercial coach does not make application to the Department of Housing and Community Development, or does not pay the amount of use tax due, or files a return with the Board under Section 6455 of the Revenue and Taxation Code which is not timely, interest and penalties shall apply with respect to the unpaid amount as provided in Chapter 5 (commencing with Section 6451) of Part I, Division 2, of the Revenue and Taxation Code."

The obvious purpose of these provisions is to encourage current owners to register their units with DHCD. That purpose would be frustrated if the special rules for used mobilehomes were unavailable to a current owner whose unit had not previously been registered properly.

For these reasons, we conclude that the word "previously" in Regulation 1610.2, subdivision (a) (3), modifies the word "sold" but not the words "registered or titled". The special rules for used mobilehomes therefore apply to any mobilehome which was previously sold, and which is properly registered or titled by the current owner. Since petitioners have now registered

their unit with DHCD, the proper measure of tax is \$5,630. Allowing credit for the tax petitioners reported to DMV, the deficiency is measured by \$1,630.

Recommendation

Redetermine, reducing the measure of tax from \$13,000 to \$1,630.

James E. Mahler, Senior Staff Counsel

6/2/94

Date