



STATE BOARD OF EQUALIZATION

April 28, 1987

(916) 322-3684

Dear Mr. ---:

Your letter received by the Board of Equalization on March 1, 1987 has been referred to me for a reply. You request an opinion concerning the correct application of tax to charges for mobilehome remodeling and repair.

As I understand the facts, in a January 18, 1987 letter to the Board of Equalization's Santa Ana District office you requested, on behalf of your client, (--- --- ---), an opinion concerning the correct application of tax to charges for the repair and remodeling of mobilehomes under a lump sum contract. In a February 10, 1987 response to your letter, Senior Tax Auditor Geoffrey B. Lyle responded that a major factor in determining how tax should apply depended on whether the mobilehome was considered to be real property or tangible personal property. Mr. Lyle wrote that "mobile homes fastened or pinned to a permanent foundation are considered real property," whereas, in most cases, "mobile homes ... situated on a non-permanent foundation, commonly referred to as piers or jack and pads ... remain tangible personal property." Further, Mr. Lyle wrote, in pertinent part, that if the mobilehome was considered tangible personal property, repair contracts were covered by the rules set forth in Sales and Use Tax Regulation 1546 (Installing, Repairing, Reconditioning In General), whereas if the mobilehome was considered real property, Regulation 1521 (Construction Contractors) sets forth the rules for repair contracts.

In your most recent letter, you write that most mobilehomes are not "fastened" or "pinned" to a permanent foundation but are "sited" on "piers" or "jacks". You also write county property tax assessors treat "sited" mobilehomes purchased after July 1, 1980 as real property. Therefore, you see no logic in treating "sited" mobilehomes as tangible personal property, and it is your opinion they should be viewed as real property.

Except where the sales are specifically exempted by statute, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property in this state (Rev. and Tax. Code § 6051). Tangible personal property is defined to mean personal property which may be seen, felt, measured, weighed or touched or which is perceptible to the human senses in any manner (Rev. & Tax. Code § 6016). A construction contract is defined as a contract to erect, construct, or repair any building or other improvement on or to real property (Sales and Use Regulation 1521 (a)(1)(A)). A construction contractor is one who performs a construction

contract (Reg. 1521 (a)(2)). A construction contractor may pay tax reimbursement on the cost of materials and fixtures to be furnished and installed by him when contracting on a lump sum basis (Reg. 1521 (a)(8), 1521 (b)(2)(A)1, 1521 (b)(2)(B)1 and 1521 (b)(2)(B)2). A person who repairs tangible personal property is a retailer of the parts and materials used on a repair job provided the retail value of the parts and materials furnished in connection with the repair job is more than 10% of the total charge or the repairman makes a separate charge for such property (Reg. 1546 (b)(1)).

Applying the above criteria, it is our opinion that whether or not a mobilehome is classified as tangible personal property determines how tax should apply. Although all new mobilehomes sold on or after July 1, 1980 and all new mobilehomes sold prior to July 1, 1980 and subsequently transferred to the property tax rolls are subject to property taxation (Rev. & Tax. Code § 6012.8, 6012.9 and 6379), it is our opinion that generally only mobilehomes placed on permanent foundation systems qualify as real property. A permanent foundation system for mobilehomes is defined as an assembly of materials constructed below, or partly below grade, not intended to be removed from its installation site, which is designed to support the mobilehome and engineered to resist the imposition of external natural forces such as wind, rain and snow (Cal. Admin. Code, Tit. 25, Ch. 2, Subch. 1, § 1002, which interprets and applies Cal. Health & Saf. Code § 18551). It is our opinion that to be classified as being on a permanent foundation system, the mobilehome must be fastened or pinned to the foundation, and mobilehomes not fastened or pinned to permanent foundation systems are not considered real property but are items of tangible personal property.

Accordingly, if the mobilehome is classified as real property pursuant to the above discussion, the provisions of Sales and Use Tax Regulation 1521 apply to charges for mobilehome repair and remodeling. Conversely, if pursuant to the above discussion the mobile home is classified as tangible personal property, the provisions of Sales and Use Tax Regulation 1546 apply to contracts for repair or remodeling.

We hope the above information is helpful. Enclosed for your review and reference is a copy of Regulation 1521 and 1546 as well as a copy of Tax Tips Pamphlet 47 (Mobilehomes and Factory-Built Housing). If you have any further questions concerning this topic, please do not hesitate to contact this office.

Very truly yours,

Robert J. Stipe
Tax Counsel

RJS:sr
Encs.