



Memorandum

To : Mr. Verne Walton

Date : March 19, 1985

RECEIVED

MAR 20 1985

From : Robert R. Keeling

Division of Assessment Standards
SACRAMENTOSubject : Applicability of Soldier's and Sailor's Civil
Relief Act of 1940 to Taxable Mobilehomes;
Addendum to my Memorandum dated February 25, 1985

In my memorandum dated February 25, 1985, I advised you that servicemen's mobilehomes are not subject to California property tax. The basis for my advice was the federal case U.S. v. Shelby County, 385 Fed. Supp. 1187, where the court held that the Soldier's and Sailor's Civil Relief Act of 1940 (50 USCA App. 574) prevents the local taxation of servicemen's personal property. The exception I failed to communicate to you is that a mobilehome permanently affixed to realty is not subject to the servicemen's exemption. Characterizing the affixation necessary for the mobilehome to become realty becomes a dissertation in itself.

I suggest that any mobilehome installed on a foundation system in compliance with the provisions of subdivisions (a) and (b) of Health and Safety Code Section 18551, is clearly the type of installation which we could characterize as permanently affixing the mobilehome to realty. Also, where it appears from the degree of fixity that the serviceman clearly intends the mobilehome to be affixed to the realty, without any intent of ever removing the home for transportation and installation at another location, then the mobilehome would be considered permanently affixed to realty. Any mobilehome so affixed to realty will become real property and not subject to characterization as a serviceman's personal property subject to property tax exemption.

With few exceptions, a mobilehome will be installed in such a fashion that the home can be moved to a new location with reasonable effort. Mobilehomes installed on temporary piers, connected to utilities by means allowing for easy disconnection, and constructed in such a fashion that wheels and hitches are either in place or can be installed easily, are the kind of mobilehomes which should generally be characterized as personal property subject to the servicemen's property tax exemption unless other facts show it is permanently affixed. On the other hand, mobilehomes installed on permanent

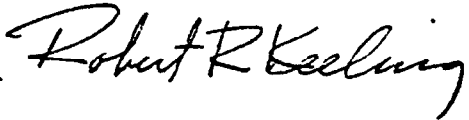
Mr. Verne Walton

-2-

March 19, 1985

concrete foundations, permanently connected with utilities, have stick built attached garages constructed on site, are the kinds which can be characterized as real property not subject to the serviceman's personal property tax exemption. Each case must be decided on a case-by-case basis. I would expect the court to use the standard fixtures test, looking to (1) the manner of the mobilehome's annexation; (2) its adaptability to the use and purpose for which the realty is used; and (3) the intention of the party making the annexation. (Tele-Vue Systems, Inc. v. Contra Costa County, 25 Cal.App.3d 340.)

RRK:fr



cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Pete Gaffney
Legal Section

Memorandum

RECEIVED

To : Charles Knudsen

OCT 13 1994

Date: October 12, 1994

Division of Assessment Standards
SACRAMENTO

From : Mary Ann Alonzo ~~MAA~~

Subject: Assessment of Manufactured Homes

This is in response to your memo of August 17, 1994 to Mr. Richard Ochsner in which you provided the following facts: The county assessor enrolls a value for a manufactured home on the secured assessment roll as of the lien date. On September 1, there is a change in ownership and the assessor revalues the manufactured home. The assessor also enters an assessment on the supplemental roll pursuant to Revenue And Taxation Code, Section 75 et seq. Upon notification of the supplemental assessment, the buyer, a serviceperson, files an application for tax relief under the Soldiers' and Sailors' Civil Relief Act.

You ask the following questions:

1. What effect does the Soldiers' and Sailors' Civil Relief Act have on the original lien date valuation?
2. What effect does the Soldiers' and Sailors' Civil Relief Act have on the supplemental valuation?
3. If the supplemental assessment is a negative amount, is the seller or the buyer entitled to a refund?

Law and Analysis

As you are aware, unless otherwise provided by the California Constitution or by federal law, "all property is taxable and...shall be taxed in proportion to its full value." Property taxes are levied upon "the possession of, claim to,

¹ Cal. Const., Art.XIII, Section 1.

ownership of,³ or right to the possession of land² and improvements. Improvements include buildings, structures, fixtures and fences erected on or affixed to the land. All forms of tangible personal property are generally taxable. Personal property includes "all property except real estate."⁴ Prior to 1980, manufactured homes generally were subject to vehicle license fees imposed by the Department of Motor Vehicles in lieu of property taxes. However, manufactured homes which were attached to permanent foundations were classified as improvements and subject to property taxation.

Starting in 1979, a series of statutes were enacted which significantly modified the method of assessing manufactured homes which will be discussed briefly. The first measure provided that manufactured homes installed on permanent foundations on the owner's land would be subject to property taxation beginning with the 1980 lien date.

Subsequent legislation provided that all new manufactured homes first sold new on and after July 1, 1980 would be subject to property taxation. Furthermore, all manufactured homes acquired prior to July 1, 1980 would become subject to property taxation if their annual registration were allowed to lapse for a period of 120 days or more.⁵ In 1982, legislation amended the latter provision and allowed owners to reinstate their manufactured homes to vehicle license status.

Legislation enacted in 1991 replaced the term mobilehome with "manufactured home", and amended the assessment of manufactured

² Revenue And Taxation Code, Section 104, subdivision (a).

³ Rev. & Tax Code, Section 104, subdivision (c).

⁴ Cal. Const., Art. XIII, Section 2.

⁵ Rev. & Tax Code, Section 106.

⁶ Rev. & Tax Code, Section 105 and Property Tax Rule 122.5 (18 California Code of Regulations Section 122.5).

⁷ Assembly Bill 887 (Chapter 1160, Statutes of 1979).

⁸ Senate Bill 1004 (Chapter 1180, Statutes of 1979).

⁹ Assembly Bill 1400 (Chapter 40, Statutes of 1982).

homes.¹⁰ Currently, manufactured homes are generally considered personal property subject to supplemental assessments, and [t]hey become real property only when they are either affixed to the land as provided in Property Tax Rule 122.5 or installed on an approved foundation as provided in Health and Safety Code Section 18551.¹¹ Therefore, in order to properly assess manufactured homes, it is first necessary to classify them as real or personal property. Subdivision (b) of Section 5801 of the Revenue and Taxation Code provides:

"(1) 'Manufactured home,' as used in this part does not include a manufactured home which has become real property by being affixed to land on a permanent foundation system pursuant to Section 18551 of the Health and Safety Code and is taxed as all other real property is taxed.

(2) Except as provided in paragraph (1), a manufactured home, otherwise subject to taxation pursuant to this part, shall not be classified as real property for property tax purposes that would be excluded from taxation pursuant to this part."

Staff's interpretation of this statutory provision is stated in the August 31, 1992, Letter to Assessors, No. 92/57, Classification of Manufactured Homes (copy attached).

"While the language may be subject to more than one interpretation, we believe that the intent of subdivision (b) of Section 5801 is to require that all manufactured homes be classified as personal property, except those affixed on permanent foundation systems pursuant to Section 18551 of the Health and Safety Code. The new law provides the previously lacking statutory directive (see letter to assessors 81/118) to classify as personal property any manufactured home not installed on appropriate permanent foundation."

Section 18551 allows the owner of the manufactured home to either own or lease, under certain conditions, the real property where the home is to be installed on a foundation.¹²

¹⁰ Assembly Bill 2227 (Chapter 796 of the Statutes of 1991).

¹¹ The August 24, 1993, Letter to Assessors, No. 93/46, Supplemental Assessments on Manufactured Homes.

¹² Health and Safety Code, Section 18551, subdivision (b)(1).

Thus, a manufactured home installed in a mobilehome park on a leased lot under procedures described in Section 18551 (see attached) would be classified as real property and subject to property tax. However, a manufactured home which is not installed pursuant to Section 18551 is personal property:

"If the installation of any manufactured home fails to comply with Section 18551 of the Health and Safety Code, subdivision (b) of Section 5801 requires that the manufactured home be classified as personal property, regardless of outward appearances."¹³

With respect to your inquiry as to whether active military personnel are eligible for tax relief on a manufactured home under the Soldiers' and Sailors' Civil Relief Act of 1940,¹⁴ the answer depends on:

- 1) Whether the military service person claims residency in another state; and,
- 2) Whether the manufactured home is personal or real property.

Thus, the assessor must first determine if the military service person claims residency in another state, or if he or she has established permanent residency in California. The Soldiers' and Sailors' Civil Relief Act (see attached) provides that a person on active duty in military service may declare that the situs of his personal property is in his home state, thus rendering any personal property non-taxable in California. The court in U.S. v. Shelby, 385 F Supp. 1187, 1189 (1974), held that the Act applied to mobilehomes. Additionally, the United States Supreme Court held in California v. Buzard 382 U.S. 386, 443 (1966) that the California license fee was a personal property tax and its application to a non-resident military person's vehicle was prohibited.

Thus, if a non-resident military person purchases a manufactured home which has not been affixed to the land as provided in Section 105 and Property Tax Rule 122.5 or has not been installed on a permanent foundation pursuant to Health and Safety Code, Section 18551, it is personal property that has a

¹³ The August 31, 1992 Letter to Assessors, No. 92/57, Classification of Manufactured Homes.

¹⁴ Soldiers' and Sailors' Relief Act of 1940, Section 514, as amended 50 U.S.C.A. App. Section 574, subdivision 1, 2.

situs in the owner's home state and is not subject to California property taxation under the Soldiers' and Sailors' Civil Relief Act. Consequently, the original lien date valuation and supplemental valuation would not apply to the servicemember, requiring the assessor to correct both the regular and supplemental rolls.

Obviously, if the military person does not claim residency in another state, and the manufactured home is personal property, it can be taxed accordingly. As previously discussed, the August 24, 1993, Letter to Assessors, No. 93/46, Supplemental Assessments On Manufactured Homes states that manufactured homes are generally considered personal property subject to supplemental assessments by statutory provision, Section 75.5 of the Rev. & Tax. Code. Section 5810 of the Revenue and Taxation Code provides that manufactured homes shall be taxed in the same manner and to the same extent as any other personal property on the roll as defined by Section 109.

However, if the servicemember purchased a manufactured home that was affixed to the land as provided in Rev. & Tax. Code Section 105 and Property Tax Rule 122.5, or was installed pursuant to Health and Safety Code Section 18551, it is subject to local property taxation as a fixture and real property improvement. (See also Revenue And Taxation Code, Section 75.5 and Section 5800 and following). Therefore, if a service person applies for tax relief under the Soldiers' and Sailors' Relief Act, it would have no effect either on the original lien date valuation or the supplemental valuation because the statute does not apply to real property.

You also ask whether the seller or the buyer is entitled to the refund where there is a negative supplemental assessment. This situation would be caused by the sales price of the manufactured home coming in under the assessed value on the regular roll on the day of the sale.

When a manufactured home subject to local property tax changes ownership, the home is reassessed due to the change in ownership, pursuant to Section 5814 of the Rev. & Tax Code.¹⁵ And, as discussed previously, manufactured homes which are classified as personal property also are subject to supplemental assessments, pursuant to Rev. & Tax. Code, Section 75.5. and Section 5814. Whether the manufactured home is classified as personal or real property, the seller is entitled

¹⁵ The August 24, 1993, Letter to Assessors, No. 93/46, Supplemental Assessments on Manufactured Homes.

to the refund where a negative supplemental assessment occurs, provided that the seller has actually paid property taxes for that year, and he or she files a timely claim. (See Section 75.43, subdivision (c)).

Since questions relating to tax refunds are beyond the Board's jurisdiction, the following analysis is offered for academic purposes only. Board staff should not be providing advice on refund questions.

Section 75.10, subdivision (a) of the Revenue and Taxation Code, requires the assessor to appraise the property at its full cash value on the date the change in ownership occurs. This value becomes the new base year value of the property. Since the change in ownership occurs after June 1 but before the next March 1, there is only one supplemental assessment, which is the difference between the new base year value and the value on the current roll. (Section 75.11, subdivision (b)).

The provision of California law relating to refunds of property taxes which would be required where a negative supplemental assessment occurs is Section 75.31 of the Revenue and Taxation Code. The statute provides, in pertinent part, that when the assessor has determined a new base year value as provided in Section 75.10, the assessor shall send a notice to the assessee. Subdivision (f) of Section 75.31 indicates that the notice shall advise the assessee that if the supplemental assessment is a negative amount the auditor shall make a refund of a portion of taxes paid on assessments made on the current roll, or the roll being prepared, or both. Section 75.31 does not specify whether the buyer or seller is entitled to the refund since the term "assessee" is used. In our view, the term "refund" implies that any overpaid taxes are returned to the property owner who paid them. (See Section 5097, Subdivision (a)(1), requiring every claim for refund to be verified by the person who paid the tax.) Furthermore, subdivision (c) of Section 75.43 limits refunds to amounts previously paid, which staff interprets as meaning amounts paid by the person who paid the taxes:

"(c) Refunds made under this chapter shall be limited to the amount by which the tax, penalty, or interest paid exceeds the amount of tax, penalty or interest which is lawfully due and owing based upon the new base year value."

Your facts indicate that a change in ownership of the manufactured home occurred on September 1. As such, no property taxes would have been paid on the assessed value of

the manufactured home found on the regular roll since the taxes for the fiscal year, (hypothetically, July 1, 1993 to June 30, 1994) are due on November 1.

In summary, neither the seller nor the buyer would be entitled to a refund where there is a negative supplemental in your factual situation of a September 1 change in ownership of the manufactured home since the property taxes have not been paid. Where property taxes had been paid and a change in ownership resulted in negative supplemental, the seller would be entitled to a refund of overpaid taxes if he or she filed a timely claim for refund.

MAA:jd
precednt/astandiv/94009.maa
precednt/genaxemp/94009.maa

Attachment

✓
✓