

362.0000 MOBILEHOMES AND COMMERCIAL COACHES— Regulation 1610.2

362.0009 Aluminum Awnings—Installation Labor/Mobile Homes. When aluminum awnings are attached to the mobile home on a piece-by-piece basis with the finalization of the installation occurring at the time the metal supports are attached to the concrete, the method of “assembly” constitutes nothing more than installation labor charges which are not subject to tax.

However, if the so-called assembly labor was done by first fabricating the unit and then attaching it to the mobile home, the assembly would be taxable and only the actual affixation to the mobile home and concrete slab would be regarded as installation labor. 11/24/75.

362.0030 Dealer Assistance Program. A mobile home manufacturer offers its dealers a discount referred to as the Dealer Assistance Program. The amount of the discount is shown on the invoice, but the discount is not deducted so that the amount shown as the “balance due” is equal to the amount shown as the “total price.” The manufacturer then rebates the discount to the dealer shortly after receiving full payment from the dealer.

Under this method, the amount of the Dealer Assistance Program discount is excludable from the sales price. The amount of the discount is subtracted from the total amount paid to the manufacturer before applying the 75% factor under sections 6012.8 and 6012.9.

This opinion is limited to mobile homes which otherwise qualify for taxation on 75% of the sales price to the retailer. It is also assumed that the discount applies only to mobile homes and integral accessories (such as carpeting, wall paneling, room partitions and built-in appliances) and not to nonvehicle items (such as window awnings, skirting, furniture and free-standing appliances). 8/9/85.

362.0050 Mobilehomes at Edwards Air Force Base. There are three categories of mobilehome ownership at Edwards Air Force Base: nonresident military personnel, resident personnel, and civilian employees of the Air Force. In past years, the DMV has required registration only upon transfer of ownership of the mobilehomes. Voluntary registration of all mobilehomes has recently been completed by arrangement with DMV.

Tax application applies as follows:

(1) The registration by nonresident servicemen personnel does not require payment of the use tax. The nonresident military personnel are specifically exempted from local personal property taxes under the Sailors and Soldiers Relief Act. Accordingly, since there is no element of tax avoidance involved in registering the property, the registration will, in this instance, be considered to have been undertaken solely for the purpose of recording and transferring title.

(2) Payment of use tax is required of the resident military personnel or civil service employees who recently registered a mobile home. The Sailors and Soldiers Relief Act does not provide an exemption from personal property tax for persons in these classes. Thus, the effect of registration is to obtain an exemption from local property taxation. Accordingly, use tax will be applicable to sales of mobilehomes by personnel in these two categories.

(3) The revenue laws do not contain any provisions for the interim cancellation of a valid registration in order to become subject to local property taxation. It would be possible for resident military personnel and civilians who have registered mobilehomes to cancel their registration and thereby obtain a benefit of the mobilehome exemption for sales of mobilehomes subject to local property taxation if DMV determines that the mobilehomes were registered in error under a reasonable mistake of law. (See section 6012.9 re application of tax to used mobilehomes). 2/3/81.

362.0065 Price Paid by Mobilehome Park Operators for Used Mobilehomes. When the mobilehome park operator is the successful bidder at a sale authorized by Civil Code section 798.1, reference must be made to the judgment entered by the Municipal Court which authorized the sale to determine the price paid

and, thus, the measure of tax. That judgment will include the amount requested by and awarded to the park operator for rent, storage charges, attorney fees and costs. Unless the park operator's bid at the sale exceeds the judgment amount, the Board will assume that the judgment amount is the consideration or "price" for the sale.

A lienholder may transfer a mobilehome to the park operator in exchange for cancellation of a debt owed by the lienholder. When 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 paid by the mobilehome park operator for the transfer can be ascertained by examination of the rent 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 plus the number of days between the notice of termination of tenancy and the date of the foreclosure sale 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 consideration for the sale, and tax applies to this amount.

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 is the measure of tax. 8/8/96.

362.0080 Registration with DHCD. A person purchases a used mobilehome which prior to the sale was registered with the Department of Motor Vehicles but not the Department of Housing and Community Development (DHCD). Subdivision (a)(3) of Regulation 1610.2 defines "used mobilehome" as "a mobilehome that was previously sold and registered or titled with DHCD . . .". "Previously" as used here modifies "sold." The new owner may register the mobile home with DHCD to obtain the benefits of the regulation. It is not necessary that the prior owner have registered it. 6/2/94.

362.0095 Repairs. Only mobilehomes which are placed on a permanent foundation qualify as real property. A permanent foundation is one which is an assembly of materials constructed below grade or partly below grade which is designed to support the mobilehome and engineered to resist the imposition of natural forces such as wind, rain, and snow. The mobile home also must be fastened or pinned to the foundation. If not, it is personalty

Generally, if the mobilehome is classified as real property, Regulation 1521 is applicable to repairs. If the mobilehome is personalty, Regulation 1546 governs the application of tax to repairs. 4/28/87.

362.0135 Sale of a New Mobilehome Installed on an Indian Reservation. A mobilehome dealer (dealer) sold a new mobilehome to an Indian for residency and had a subcontractor install the mobilehome on an Indian reservation as required by the sales contract. The mobilehome was installed onto a nonpermanent foundation, i.e., piers or jacks and pads. The dealer claims that the sale of the new mobilehome should be excluded from the application of tax because the customer purchasing the mobilehome is an Indian residing on a reservation and requests a refund of the tax it paid.

The gross receipts for the sale of a mobilehome are subject to tax, as are other sales of tangible personal property, unless the sale is exempt, or is a sale of a new mobilehome for occupancy as a residence. (Regulation 1610.2.) Under subdivision 1610.2(b)(3)(B), a mobilehome dealer is the retailer-consumer of any new mobilehome sold to a customer for occupancy as a residence if the transaction would otherwise have been subject to the sales tax and the mobilehome is thereafter subject to local property taxation. Retailer-consumer status applies only if both the requirements of Regulation 1610.2(b)(3)(B) above are met.

If a sale is excluded from the application of tax, there is no reason to determine whether a dealer is a retailer-consumer with regard to that sale. If the dealer delivered the mobilehome to the reservation with its own trucks, title to the mobilehome transferred to the Indian purchaser on the reservation pursuant to Regulation 1628(b)(3)(D) and the sale is excluded from tax pursuant to Regulation 1616(d)(4)(A). However, if the mobilehome was delivered to an independent carrier who transported it to the reservation without delivery terms specifying delivery F.O.B. reservation, title to the mobilehome passed to the Indian purchaser off the reservation and tax applied to the sale. In the latter situation, the first requirement of Regulation 1610.2(b)(3)(B) is met, i.e., the sale is otherwise subject to the sales tax.

The second requirement, that the mobilehome be subject to property tax, is fulfilled when the mobilehome is the *type* of property subject to local property tax, regardless of the fact that the mobilehome is excluded from local property tax by applicable law concerning the taxability of Indian personal property on Indian reservations. Therefore, under Regulation 1610.2(b)(3), a dealer qualifies as a retailer-consumer in a taxable sale of a new mobilehome for occupancy as a residence when that mobilehome is sold to an Indian purchaser for installation on a temporary foundation on a reservation and the sale occurs off of the reservation. Conforming to Regulation 1610.2(b)(3)(B)1., the dealer must declare and pay tax based on 75 percent of its purchase price of the new mobilehome and 75 percent of the subcontractor's labor charge for installing the mobilehome. 2/5/04. (2005-2).

362.0140 Sales Price of a Mobilehome. A mobilehome dealer purchases mobilehomes from a manufacturer for resale to the public. The manufacturer offers its dealers a discount referred to as "Dealer Assistance Program" (DAP). The dollar amount of the discount depends on competitive conditions and the size of the mobilehome, but not upon the number of units purchased by the dealer. There are two methods for implementing the discount: (1) the amount of the discount is deducted from the "total price" on the invoice so that the amount shown as the "balance due" is the discount price; (2) while the amount of the discount is shown on the invoice, it is not deducted so the amount shown as the "balance due" is equal to the amount shown as the "total price." In these cases, the manufacturer rebates the discount to the dealer shortly after receiving full payment from the dealer. The dealer believes that the amount of the discount does not reflect a cost of goods sold and should be excluded from sales tax computations.

This opinion assumes the retail sale of the mobilehomes qualifies for taxation on 75% of the sales price to the retailer under sections 6012.8 and 6012.9. It also assumes that the DAP discount applies only to mobilehomes and integral accessories (such as carpeting, wall paneling, room partitions and built-in appliances) and not to nonvehicle items (such as window awnings, skirting, furniture and free standing appliances). In such cases, the amount of either of the DAP discounts is excludable from the sales price. In other words, the dealer may subtract the amount of the discount from the total amount paid to the manufacturer before applying the 75% factor. 8/9/65.

362.0200 Transfers of Used Mobile Homes. The following three scenarios explain the application of tax to the transfer of used mobile homes which were previously registered and are not subject to property tax.

In the first scenario, the registered owner of a mobile home (and tenant of a mobile home park) either abandons the mobile home or dies while in possession of the mobile home. Past due space rental is owing. The lienholder of the mobile home releases its interest to the mobile home park. The legal recourse available to the mobile home park is to obtain a judgment of abandonment pursuant to Civil Code section 798.61 followed by a public sale of the mobile home. At the sale, the mobile home park may bid and have the right to offset its bid to the extent of the amount due to it.

At the sale, typically, no one other than the mobile home park makes an offer on the mobile home. The mobile home park now seeks to have title transferred to itself.

The sale of the mobile home is directed by Civil Code section 798.61 and is subject to tax. (Regulation 1573(b).) The taxable measure of the sale is the total consideration, monetary or otherwise, paid by the mobile home park at the sale, up to the "guide value." The sales price is deemed to be the total sum due to the mobile home park by the former owner under the terms of the space rental agreement, up to the "guide value."

In the second scenario, the lienholder of the mobile home repossesses the mobile home and then voluntarily gives the mobile home to the mobile home park in lieu of paying past due space rental owned by the registered owner and tenant.

Civil Code section 798.56a permits a lienholder to keep a liened mobile home on the mobile home park premises pending foreclosure if the lienholder satisfies all of the homeowner's obligations to the management for the 90 days preceding the notice of termination of tenancy and until the mobile home is sold. If the lienholder transfers title to the mobile home in consideration of a release of the lienholder's liability under Civil Code section 798.56a, the measure of tax is the amount of the lienholder's liability (total tenant liability under the rental agreement 90 days prior to notice until sale), up to the "guide value."

In the third scenario, the mobile home owner dies owing the mobile home park past due space rental. The mobile home park puts a claim into probate for the past due space rental and the beneficiary gives the mobile home to the mobile home park to settle the claim.

A creditor who files a claim in a probate action voluntarily submits its claim to the court for any possible distribution including accepting any tangible personal property. Any tangible personal property acquired in the proceeding is "consideration" for the cancellation of its claim against the decedent. The measure of tax is the amount of the claim submitted to the probate court, up to the "guide value." 5/15/94.

362.0900 Used Mobilehomes Subject to Property Taxation. A mobilehome that is more than 120 days delinquent in payment of the licensing fees is placed on the county property tax rolls pursuant to section 10759.5 of the Revenue and Taxation Code. Section 6379 of the Code provides an exemption from Sales and Use Tax for the sale or use of any used mobilehome which is subject to property taxation. Therefore, the sale of any used mobilehome more than 120 days delinquent in payment of fees by the owner is exempt from sales or use tax. 10/15/80.