

**STATE BOARD OF EQUALIZATION**

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October 18, 1990

Ms. B--- J. H---, EA
A---, H--- & A---
A--- and T--- S---
XXXXX --- ---, Suite --
---, CA XXXXX

F--- S--- M--- H--- S---
J--- H. & A--- F. T---, et al
SR --- XX-XXXXXX

Dear Ms. H---:

Your letter of August 8, 1990 to the Board of Equalization Legal Department has been referred to me for a response. You have requested a ruling as to who is responsible for the sales tax liability for extras such as awnings, skirtings, decks, carports, etc., which your client, a dealer, sells with mobilehomes.

I. FACTUAL BACKGROUND

In your letter you set forth the factual context as follows:

“My client is a mobile home dealer and mobile home park owner. They are the retailer of mobile homes for personal residence use in their own park. The consumer purchases the mobile home which includes extras such as awnings, skirting, decks, carports, etc. [hereinafter, generally, “extras”]

“The dealer sells the home including the extras and then contracts to have the extras installed or in some cases, installs the extras themselves such as airconditioning.

“The issue is whether or not the dealer can supply the installer of the extras with a resale certificate since the dealer is not the ultimate consumer. We have received different information from different offices of the Board of Equalization. Specifically, the awning contractor has been told that they cannot accept a resale

certificate from the dealer and that they must charge and pay the sales tax. Other contractors that install extras do accept the dealer's resale certificates and do not charge sales tax."

You kindly supplied additional information in our telephone conversation of September 11, 1990. Your client is F--- S--- A--- (hereinafter "F--- S---"). F--- S--- owns a mobilehome park. It has opened up a new addition to the park and has become a mobilehome dealer for the purpose of selling homes to go into the new addition. It also acts as a broker to sell mobilehomes within the park, but it is only the new homes which are at issue.

You confirmed that, upon sale, the mobilehome is placed on jacks or piers at its space, and the wheels and axles are normally removed. You indicated that the tenants have to be in a position to take their mobilehomes out of the park if they want to move. You indicated that such extras as the air conditioners and skirting are attached to the mobilehomes but that carports and decks rest on the real property on which it sits.

II. OPINION

A. Sales and Use Tax Generally

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) A "retailer" is one who engages in the business of making retail sales of tangible personal property (§ 6015(a).) The retailer owes the sales tax, but it may collect sales tax reimbursement from the purchaser pursuant to agreement. (Civ. Code § 1656.1.)

B. Tax Treatment of Mobilehomes

Sales and use tax treatment of such extras depends on whether or not the mobilehome to which they are affixed is treated as real property or personal property. 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 (§§ 6012.8, 6012.9, and 6379), it is our opinion that generally only mobilehomes placed on permanent foundation systems qualify as real property for sales and use tax purposes. 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 (25 Cal. Admin. Code, § 1002, interpreting and applying Health and 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.

Items which are installed on real property and which do not lose their identity as accessories when installed are termed "fixtures." (Reg. 1521(a)(5).) Construction contractors are retailers of fixtures which they furnish and install in the performance of construction contracts and tax, as measured in the regulation, applies to their sale of the fixtures. (18 Cal. Admin. Code § (hereafter "Regulation" or "Reg.") 1521(b)(2)(B).)

When the mobilehome to which the extras are to be attached is considered personal property, the installation contract is not a construction contract but one to furnish and install tangible personal property at retail. The installer is the retailer of the property and computes and pays tax measured by his or her own gross receipts from the sale. (§6012.) Installation labor is not included in the measure of tax. (§ 6012(c)(3); Reg. 1546(a).) In such a case, the dealer is selling tangible personal property to the customer and may purchase the extras free of sales tax from the installer by issuing them resale certificates. (§ 6091.)

C. Tax Consequences to F--- S---

You indicated that F--- S--- sometimes puts the accessory in place itself. In that case, the tax consequences of the installation apply directly to F--- S---. No resale certificate is involved. For the purpose of this discussion, I will assume that F--- S--- has hired a subcontractor to install the accessory and is acting merely as the dealer who may give a resale certificate if the installing transaction qualifies as a sale of tangible personal property.

Previous rulings of the Board of Equalization legal staff have applied the above analysis to mobilehome dealers, whether they deal in new or used mobilehomes. Since the mobilehomes at issue are not affixed to a permanent foundation as defined above, we conclude that they are personal property. Accordingly, any extras which are attached to the mobilehome are also regarded as personal property; the sale of the extra itself is subject to sales tax but the charges for the labor to install it on the mobilehome are not. Since the extra is personal property, F--- S--- is a retailer of that property and may purchase it free of tax by issuing its supplier a resale certificate.

Following are a few examples of accessories that are considered tangible personal property when the mobilehome is personal property; (1) window awnings; (2) skirting event though it may also be attached to the ground; and (3) air conditioning units affixed solely to the mobilehome.

The legal staff has previously determined that contracts for the permanent affixation or attachment of property to realty qualify as construction contracts even though the improvements are made to rented space in a mobilehome park and the mobilehome itself is considered personal property. Thus, the sales and use tax liability due with respect to such items as landscaping, decking when permanently attached to the ground, concrete slabs, and carports and deck coverings when permanently attached to the ground by auger devices, cement, etc., are the liability of the construction contractor as "materials" within Regulation 1521.

In sum, the mobilehomes which F--- S--- is selling are considered personal property since they are not permanently attached to the ground. In the case of the extras you mention, the window awnings and skirting are considered tangible personal property. F--- S--- may purchase the extras free of tax by giving the installer a resale certificate. If the carport and deck are permanently attached to the ground, they are considered improvements to realty. The installing contractors are considered to consume the materials which go into their construction. They purchase and use tangible personal property in the construction of the improvements which then become realty prior to being sold to F--- S---. The installers, then, pay the sales tax reimbursement on their purchases and are reimbursed for that cost when they sell the completed improvements to F--- S---. Since the improvements are realty in F--- S---' hands, there can be no resale of tangible personal property.

I hope the above discussion has answered your question. I understand from our telephone conversation that you already have a copy of Board of Equalization Pamphlet No. 47, "Tax Tips for Mobilehomes and Factory-Built Housing." If you need anything further, please do not hesitate to write again.

Very truly yours,

John L. Waid
Tax Counsel

JLW:sr