

M e m o r a n d u m**580.0274**

To: Mr. Gary J. Jugum

Date: May 31, 1991

From: Ronald L. Dick

Subject: Revenue and Taxation Code Section 6012.8 and 6012.9

You asked that I provide you with an analysis of the essential difference between Revenue and Taxation Code sections 6012.8 and 6012.9 as the sections pertain to subdivision (b)(3)(B)1. of Sales and Use Tax Regulation 1610.2, Mobilehomes and Commercial Coaches.

Section 6012.8

Section 6012.8 provides generally that the retailer of a new mobilehome is a retailer/consumer of the mobilehome if the mobilehome is sold to the purchaser for installation on a foundation system pursuant to Health and Safety Code section 18551 for occupancy as a residence and is thereafter subject to property taxation. The measure of tax is 75 percent of the sales price of the mobilehome to the retailer.

Health and Safety Code section 18551 provides that the Department of Housing and Community Development shall establish regulation for mobilehome foundation systems which shall be applicable throughout the state. The applicable regulation is Title 25, California Code of Regulations, section 1333, which provides that such a foundation system shall be designed to withstand the vertical and lateral forces due dead load, roof and floor live loads, wind and seismic loads in accordance with the provisions of Chapter 29, Uniform Building Code, 1982 edition, and local soil conditions. The mobilehome electrical, gas, water, and drain connections shall be made permanent in a manner applicable to buildings. (Tit. 25. Cal. Code Regs., § 1333.5.) Once so installed on a foundation system, a mobilehome is deemed a fixture and a real property improvement to the real property to which it is affixed. (Health and Saf. Code § 18551, subd. (3).)

For sales tax purposes, a person installing mobilehome accessories such as window awnings, skirting, and air conditioning units on such a mobilehome is a construction contractor. The application of tax to the charges is provided by Sales and Use Tax Regulation 1521, Construction Contractors (Sales and Use Tax Reg. 1610.2, subd. (d).)

Section 6012.9

Section 6012.9 provides generally that the retailer of a new mobilehome is a retailer/consumer of the mobilehome if the mobilehome is sold to the purchaser for installation for occupancy as a residence pursuant to Health and Safety Code section 18613 and is thereafter subject to property taxation.

Health and Safety Code section 18613 provides, inter alia, that a contractor engaged to install a mobilehome on any site for the purpose of human habitation or occupancy as a dwelling shall obtain a permit and complete the installation in accordance with the Department of Housing and Community Development's regulations.

Mobilehomes installed pursuant to Health and Safety Code section 18613 are upon load bearing supports and support structures designed and constructed in accordance with the design requirements of Title 24, California Code of Regulations, Part 2, Basic Building Construction Regulations (Tit. 25, Cal. Code Regs., §§ 1334, 1336, 1366.) A mobilehome so installed retains its identity as tangible personal property and is the more common installation in mobilehome parks.

For sales tax purposes, a person installing mobilehome accessories, such as window awnings, skirting, and air conditioning units to such a mobilehome is the retailer of the tangible personal property unless the person directly affixes such property to realty. (Sales and Use Tax Reg. 1610.2, subd. (b)(3)(B)1., 3rd ¶.)

Please let me know if you need anything further on this.

RLD:sr