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July 19, 2000

Honorable Kenneth Bunch
Lassen County Assessor
Lassen County Courthouse
220 South Lassen Street, Suite 4
Susanville, CA 96130

Dear Mr. Bunch:

This is in response to your letter to Assistant Chief Counsel Larry Augusta, requesting our opinion with respect to the proper property tax treatment of the manufactured home inventory of a licensed manufactured home dealer in Lassen County. You report that the dealer has installed his inventory on proper engineered foundations "pursuant to Health and Safety Code section 18551(a)." However, he has not had his certificates of occupancy issued or the related documents (form 433A) recorded. You ask if you are correct in concluding that the homes remain personal property eligible for the business inventory exemption until the necessary documents are recorded and/or the homes are sold or rented? For the reasons set forth below, we conclude that you are correct.

The determination as to whether the manufactured homes are or are not "business inventory" exempt from property taxation, of course, depends upon the proper classification of the manufactured homes as personal property or real property. As you know, Revenue and Taxation Code section 129 defines "business inventories" as "*goods* intended for sale or lease in the ordinary course of business . . ." "Goods" clearly means *personal* property, not real property. See Revenue and Taxation Code section 1017 ("goods in transit" means *personal property* which, on the lien date . . .). Property Tax Rule 133(a) defines "business inventories" as "*all tangible personal property . . . which will become a part of or are themselves items of personalty* held for sale or lease in the ordinary course of business." Therefore, if the manufactured homes which are the subject of your request are personal property, they may be the exempt business inventory of the licensed manufactured home dealer. Conversely, if they are properly classified as real property, they are not business inventory.

Since 1981, it has been statutorily provided that mobilehomes affixed to land on a permanent foundation system pursuant to the Health and Safety Code are real property. Conversely, mobilehomes which continued to be licensed by the State as vehicles are personal property excluded from local property taxation. Prior to 1991, it was staff's view that, although mobilehomes that were not licensed and not affixed to a permanent foundation, as specified, were to be *taxed* as real property in accordance with the Mobilehome Property Tax Law (Rev. & Tax. Code §§ 5800 *et seq.*), in order to properly classify mobilehomes in this category, assessors

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should apply traditional real estate law to determine whether the mobilehomes had become so attached to the land as to become fixtures. See Letters to Assessors No. 87/32 & No. 81/118, enclosed. As you indicated, a visual inspection and application of the threefold fixture test would be applied. If the mobilehome were found to be a fixture, as would almost certainly be the case in the situation you describe, it was properly classified as real property, and treated accordingly.

In 1990, however, the Legislature amended The Mobilehome Property Tax Law, renaming it The Manufactured Home Property Tax Law. Substantively, among other things, it added paragraph (2) to subdivision (b) of Revenue and Taxation Code section 5801, which now reads:

(b)(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 taxation purposes that would be excluded from taxation pursuant to this part.

As was explained in LTA No. 92/57, a copy of which is enclosed, "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." In that LTA, staff noted that to be considered "affixed to land on a permanent foundation pursuant to Section 18551 . . ." a manufactured home "must have been installed in compliance with several procedural requirements under Section 18551", including that "on the same day that the certificate of occupancy for the manufactured home is issued by the enforcement agency, that agency must have recorded with the county recorder a document naming the owner of the real property, describing the real property with certainty, and stating that a manufactured home has been affixed to that real property by installation of a foundation system pursuant to Section 18551." Thereafter, staff went on to state, "If the installation of any manufactured home fails to comply with the terms of Section 18551, subdivision (b) of Section 5801 requires that the manufactured home be classified as personal property, *regardless of outward appearances.*" (Emphasis added.)

Thus, obtaining the certificate of occupancy and having the appropriate document recorded are integral and necessary parts to affixing a manufactured home "to land on a permanent foundation pursuant to Section 18551 of the Health and Safety Code." If these integral and necessary things are not done, the manufactured home has not been so affixed. Under that circumstance, the manufactured home has not been made real property by being so attached and, therefore, would not be excluded from the provisions of Section 5801(b)(2). It would thus, by the terms of Section 5801(b)(2), be personal property.

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Applied to your circumstances, the licensed manufactured home dealer has not completed the process of having the manufactured homes in question converted to the status of real property, because he has not had the certificates of occupancy issued or the form 433A's recorded. Therefore, those manufactured homes have not been "affixed to land on a permanent foundation pursuant to Section 18551 . . ." As such, pursuant to Section 5801(b)(2), those manufactured homes must be classified as personal property. Consequentially, assuming that the manufactured homes are being held "for sale or lease in the ordinary course of business . . .", they would appear to be eligible for the business inventory exemption.

You enclose with your letter, a letter dated December 9, 1999 from David J. Gau, Chief of our Policy, Planning and Standards Division, to Sierra County Assessor William Copren, seemingly coming to a conclusion contrary to the above analysis. In that letter, it was concluded that although the manufactured home dealer installed the dealer's manufactured homes on permanent foundations as "chattel" under section 18551(b) of the Health and Safety Code, "for property tax purposes, a manufactured home on a permanent foundation must be considered a fixture and a real property improvement pursuant to Health and Safety Code section 18551(a)." I am informed, however, that that letter was written with the understanding that the manufactured homes in question had been installed on approved foundations and, in fact, had met all of the requirements of Health and Safety Code Section 18551(a). Under those circumstances, that advice would be correct, and the manufactured homes would be properly classified as real property and not eligible for the business inventory exemption. As discussed above, that, of course, is not the situation you describe, in which the manufactured home dealer has not completed the statutorily prescribed process of making the manufactured homes real property. That difference compels a different conclusion.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,

/s/ Daniel G. Nauman

Daniel G. Nauman
Senior Tax Counsel

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prop/prec/genexemp/00/14dgn

Enclosures (LTA Nos. 92/57, 87/32, 81/11)

cc: Mr. Dick Johnson, MIC:63
Mr. David Gau, MIC:64
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70