

Cite as 4 WTD 171 (1987)

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Ruling of Tax Liability of)	
)	87-321
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. . .)	Unregistered
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WAC 458-61-540(2), RCW 82.08.020, RCW 82.12.033 AND RCW 82.45.032(2): REAL ESTATE EXCISE TAX -- SALES TAX -- USE TAX -- EXEMPTION -- USED MOBILE HOMES -- CONSTRUCTION OF STATUTE. Where statute defines used mobile home as one "which has substantially lost its identity as a mobile unit at the time of sale by virtue of its being fixed in location . . . " for purposes of sales/use tax exemption, exemption does not apply if sale is conditional on removal of the unit from its fixture to land.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

The taxpayer requests a re-evaluation of the Department's interpretation of chapter 211, Laws of 1986, regarding the application of sales/use tax and real estate excise tax upon sales of mobile homes.

FACTS:

Rosenbloom, A.L.J. -- RCW 82.08.020 provides a sales tax exemption for used mobile homes as defined in RCW 82.45.032. RCW 82.12.033 provides a corresponding use tax exemption. Sales of used mobile homes are subject instead to the real estate excise tax, chapter 82.45 RCW. The 1986 legislature amended the RCW 82.45.032 definition of "used mobile home" as follows:

(2) "Used mobile home" means a mobile home which has been previously sold at retail and (~~((the immediately preceding sale))~~) has (~~((already))~~) been subjected to tax under chapter 82.08 RCW, or which has been previously used and (~~((the immediately preceding use))~~) has (~~((already))~~) been subjected to tax under chapter 82.12 RCW, and which has substantially lost its identity as a mobile unit at the time of sale by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

Section 1, chapter 211, Laws of 1986.

This amendment was intended, in part, to cure a defect in the original law. To illustrate the problem, a retail buyer could resell a mobile home as a "used mobile home," but the new owner could not. When the new owner resold the mobile home it would not technically qualify as a used mobile home since the "immediately preceding sale" had not been subject to sales tax. Thus, the unintended result under the prior law was that a mobile home sold a number of times in succession was subject to sales tax upon every other sale. The same problem applied in the context of the use tax.

The legislature's remedy was simply to delete the language referring to the immediately preceding sale or use. Thus, sales or use tax need only be paid once, and all successive sales or uses are exempt, provided that the mobile home otherwise qualifies as a "used mobile home."

Aside from the requirement that the mobile home has been subjected to sales or use tax, a "used mobile home" must be one "which has substantially lost its identity as a mobile unit at the time of sale by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water and other utilities." RCW 82.45.032(2). The words "at the time of sale" were added to the definition by section 1, chapter 211, Laws of 1986. The correct interpretation of their meaning is the object of this ruling request.

The Department's real estate excise tax section has advised the taxpayer that the Department will continue to administer the law in accordance with WAC 458-61-540 which provides in part:

(2) The retail sales or use tax applies to any of the following mobile home sales:

. . .

(c) Sale conditional on removal of the unit from its fixture to land, or

. . .

The taxpayer then petitioned for a ruling of tax liability.

TAXPAYER'S POSITION:

The taxpayer asks the Department to reconsider its decision to follow WAC 458-61-540 in light of chapter 211, Laws of 1986. The taxpayer contends that once sales or use tax has been paid, any subsequent sale of a mobile home should be subject to real estate excise tax (rather than sales or use tax) as long as "at the time of sale," the mobile home was fixed in location upon land owned or leased by the owner and on a foundation hooked up to utilities. In other words, if the mobile home is fixed in location at the moment of sale, it qualifies as a "used mobile home," irrespective of whether the sale is conditional on removal of the unit from its fixture to land.

DISCUSSION:

The Department respectfully disagrees with the taxpayer's analysis of chapter 211, Laws of 1986. We hold that a sale of a mobile home conditional upon removal of the unit from its fixture to land continues to be subject to sales or use tax notwithstanding the 1986 amendment.

Obviously, the legislature intended the words "at the time of sale" to have some effect. In our view, the proper interpretation is that a mobile home will not be disqualified from the definition of "used mobile home," and therefore subject to sales or use tax, simply because the buyer removes the unit from its fixture to land soon after the sale. To the contrary, the determination whether the mobile home has lost its identity as a mobile unit must be made at the time of sale.

However, when the sale of a mobile home is conditional upon removal of the unit from its fixture to the land, the mobile unit cannot be said to have "substantially lost its identity as a mobile unit at the time of sale."

If the legislature had intended the result urged by the taxpayer it would have interposed the words "at the time of sale" between the words "by virtue of its being fixed in location" and the remainder of the sentence.

As the law is written, however, the words "at the time of sale" qualify "substantially lost its identity as a mobile unit." That is, the appropriate question is whether the mobile unit has

substantially lost its identity as a mobile unit at the time of sale, not whether it is fixed in location at the time of sale.

RULING:

Sales or use tax, and not real estate excise tax, applies to sales of mobile homes where the sale is conditional upon removal of the unit from its fixture to land.

DATED this 7th day of October 1987.