August 30, 1994

OPINION NO. 94-056

The Honorable R. Alan Corbin
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

Dear Prosecutor Corbin:

You have requested an opinion regarding the application of the annual manufactured home tax levied pursuant to R.C. 4503.06. Specifically, you wish to know whether an individual who purchases a manufactured home after January first in a calendar year may be billed for a prorated amount of the manufactured home tax. Your county auditor has indicated a particular concern with situations where a manufactured home is purchased from a seller or dealer in whose hands the manufactured home is taxable as personal property pursuant to R.C. 5709.01.

Statutory Framework of the Manufactured Home Tax

R.C. 4503.06 states:

> (A) *All manufactured homes in this state on the first day of January, except as otherwise provided*, are subject to an annual tax, payable by the owner, for the privilege of using or occupying a manufactured home in this state....
> (B) The year for which the tax is levied commences on the first day of January and ends on the following thirty-first day of December.
> (C) The *situs* of a manufactured home used or occupied in this state is the local taxing district in which the manufactured home is located on the first of January, *except that when a manufactured home that is not located in this state on the first day of January* is acquired or first enters this state, then the situs of such manufactured home is the local taxing district in which such manufactured home is located immediately upon the expiration of a thirty-day period commencing with the date of acquisition or entrance into this state. (Emphasis added.)

Proration of the assessable value of the manufactured home and of the tax itself is permitted by the following provisions of R.C. 4503.06:

> (E)(3) *When a manufactured home that is not located in this state on the first day of January* is acquired or first enters this state the assessable value for that year is determined by multiplying the assessable value as computed under this section by a fraction whose numerator is the number of full months remaining to the following thirty-first day of December, commencing with the date of acquisition or entrance into this state, and whose denominator is twelve. If the minimum tax of thirty-six dollars[1] is applicable to *a manufactured home not located in this state on the first day of January*, the tax is determined by multiplying three dollars by the number of months remaining to the following thirty-first day of December commencing with the date of acquisition or entrance into this state.
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> ....
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> (G) The tax is due and payable as follows:
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> ....
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> (2) *When a manufactured home acquires a situs in this state, as provided in this section, after the first day of January* and on or prior to the thirty-first day of July, the amount of the tax due and payable is determined by multiplying one-half the annual tax by a fraction whose numerator is the number of full months remaining until the thirty-first day of July and whose denominator is six. This tax is due and payable immediately upon the expiration of a thirty-day period commencing with the date the situs is acquired. The balance of the tax is due and payable on or before the thirty-first day of December. *When a manufactured home acquires a situs in this state after the thirty-first day of July* and on or prior to the thirty-first day of December, the amount of the tax due and payable is determined by multiplying one-half the annual tax by a fraction whose numerator is the number of full months remaining until the thirty-first day of December and whose denominator is six. This tax is due and payable immediately upon the expiration of a thirty-day period commencing on the day situs is acquired. (Emphasis and footnote added.)

Exemptions from the manufactured home tax are provided in R.C. 4503.06(F), which states in pertinent part:

> A manufactured home is not subject to this section [R.C. 4503.06] when:
>
> (1) It is taxable as personal property pursuant to section 5709.01 of the

[1] The first paragraph of R.C. 4503.06(E) imposes a minimum tax of thirty-six dollars on all manufactured homes not subject to the homestead exemption provisions of R.C. 4503.065.

> Revised Code. A manufactured home that is leased or rented and used as a residence shall be subject to this section and shall not be taxable as personal property pursuant to section 5709.01 of the Revised Code.

R.C. 5709.01(B)(1) imposes a tax on "personal property located and used in business in this state." Such personal property includes manufactured homes in the inventory of an individual in the business of selling manufactured homes. *See generally* R.C. Chapters 5709 and 5711.

The provisions of R.C. 4503.06(A)-(C), (E), and (G) require that:

> when a manufactured home is used or occupied in Ohio, either on January 1 or on the thirtieth day after its subsequent acquisition or entry into the state, the home acquires a "situs" and is subject to the annual tax for the tax year. The amount of the tax is then computed and assessed once for that tax year, in accord with the formulas provided in R.C. 4503.06(E) and (G). *See* 1962 Op. Att'y Gen. No. 2999, p. 349 at 354 ("under the language used it is clear that such computation and assessment is done only once each year").

1991 Op. Att'y Gen. No. 91-058 at 2-288. It follows that if on the applicable date provided for assessment of the tax under R.C. 4503.06, the manufactured home qualifies for an exemption under R.C. 4503.06(F), the manufactured home is not subject to the tax. Thus, if a manufactured home is located in Ohio as part of the inventory of a seller or dealer on either January first or "immediately upon the expiration of a thirty-day period commencing with the date of acquisition or entrance into this state," R.C. 4503.06(C), that manufactured home is exempt from the manufactured home tax pursuant to R.C. 4503.06(F)(1). You question whether the annual tax subsequently may be levied on such a manufactured home and prorated, if the manufactured home is purchased later in that same calendar year and used in such a manner that it no longer qualifies for an exemption under R.C. 4503.06(F).

Proration Provisions Do Not Apply to Manufactured Homes Located in Ohio on the First Day of January

The proration provision of R.C. 4503.06(E)(3) applies only to "a manufactured home that is not located in this state on the first day of January." Proration under R.C. 4503.06(G) applies only "[w]hen a manufactured home acquires a situs in this state, as provided in this section, after the first day of January." The provisions of R.C. 4503.06(C) that allow acquisition of a situs thirty days after acquisition or entry into the state also apply only to manufactured homes not located in the state on the first day of January. Nothing in R.C. 4503.06(F) provides for a proration of the tax based on a change in the exempt status of a manufactured home that occurs after January first. Thus, there is no provision in R.C. 4503.06 that permits a prorated amount of the tax to be assessed against an individual who purchases a manufactured home after January first when that manufactured home was located in Ohio on January first. The plain language of the statute provides that proration is permitted only when a manufactured home *not located in Ohio on the first day of January* is

acquired or enters the state. *See generally* R.C. 1.42 (words in statutes to be construed accordingly to common usage); *Morgan v. Ohio Adult Parole Auth.*, 68 Ohio St. 3d 344, 347, 926 N.E.2d 939, 942 (1994) (plain and unambiguous language must be given effect and cannot be ignored under guise of statutory construction).

Accordingly, when a manufactured home is located in Ohio on the first day of January as part of the inventory of a seller of manufactured homes, that manufactured home is exempt, pursuant to R.C. 4503.06(F)(1), from the annual manufactured home tax levied by R.C. 4503.06(A), and an individual who purchases the manufactured home later in the calendar year is not liable for a prorated amount of the tax. Further, as was held in Op. No. 91-058, when a manufactured home that is located in Ohio on the first day of January is subject to the tax on that date, the entire annual tax is assessed to the owner on January first, and an individual who purchases the manufactured home later in the same calendar year is not liable for a prorated amount of the tax.

Application of Proration Provisions to a Manufactured Home Not Located in Ohio on the First Day of January Is Dependent on Whether the Manufactured Home Qualifies for an Exemption Under R.C. 4503.06(F) on the Date It Acquires a Situs

As noted previously, R.C. 4503.06(G) does provide for proration of the manufactured home tax "[w]hen a manufactured home acquires a situs in this state, as provided in this section, after the first day of January." R.C. 4503.06(G)(2). Pursuant to R.C. 4503.06(C), a manufactured home not located in Ohio on January first acquires a situs "immediately upon the expiration of a thirty-day period commencing with the date of acquisition or entrance into the state." However, if on that date the manufactured home qualifies for an exemption under R.C. 4503.06(F), the home is not subject to the tax levied in R.C. 4503.06, and thus there is nothing to prorate. Accordingly, if a manufactured home is located in Ohio as part of the inventory of a manufactured home dealer on the thirtieth day after it was acquired or first entered Ohio, the manufactured home is exempt pursuant to R.C. 4503.06(F)(1) from the tax levied by R.C. 4503.06(A). No provision in R.C. 4503.06 provides for the tax to be assessed again during the calendar year based on a change in the ownership or exempt status of the manufactured home. Accordingly, an individual who purchases such a manufactured home later in the same calendar year is not liable for a prorated amount of the tax. If, however, an individual purchases a manufactured home from a dealer or seller prior to the expiration of the thirtieth day after the manufactured home was acquired or first entered the state, and no other provision of R.C. 4503.06(F)(1) is applicable to the manufactured home in the hands of that purchaser, the purchaser is liable for a prorated amount of the tax levied by R.C. 4503.06(A).

Conclusion

It is my opinion, therefore, and you are hereby advised that:

1. When a manufactured home is located in Ohio on the first day of January but on that date is exempt from the annual manufactured home tax levied by R.C. 4503.06, an individual who purchases the manufactured home later in the calendar year is not liable for a prorated amount of tax.

2. When a manufactured home is located in Ohio on the first day of January and is subject on that date to the annual manufactured home tax levied by R.C. 4503.06, the person who, on the first day of January, owns the manufactured home is liable for the entire tax, and an individual who purchases the manufactured home later in the same calendar year is not liable for a prorated amount of the tax. (1991 Op. Att'y Gen. No. 91-058 approved and followed.)

3. When a manufactured home that is not located in Ohio on the first day of January subsequently acquires a situs in Ohio pursuant to R.C. 4503.06(C) and on that date is exempt, pursuant to R.C. 4503.06(F)(1), from the annual manufactured home tax levied by R.C. 4503.06, an individual who purchases the manufactured home later in the same calendar year is not liable for a prorated amount of the tax.

4. When a manufactured home that is not located in Ohio on the first day of January is purchased before it acquires a situs in Ohio pursuant to R.C. 4503.06(C), the purchaser is liable for a prorated amount of the annual manufactured home tax levied by R.C. 4503.06 unless, on the date the manufactured home acquires a situs, the use of the manufactured home in the hands of the purchaser qualifies under R.C. 4503.06(F) for an exemption from that tax.

Respectfully,

LEE FISHER
Attorney General

August 30, 1994

The Honorable R. Alan Corbin
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

SYLLABUS: 94-056

1. When a manufactured home is located in Ohio on the first day of January but on that date is exempt from the annual manufactured home tax levied by R.C. 4503.06, an individual who purchases the manufactured home later in the calendar year is not liable for a prorated amount of tax.

2. When a manufactured home is located in Ohio on the first day of January and is subject on that date to the annual manufactured home tax levied by R.C. 4503.06, the person who, on the first day of January, owns the manufactured home is liable for the entire tax, and an individual who purchases the manufactured home later in the same calendar year is not liable for a prorated amount of the tax. (1991 Op. Att'y Gen. No. 91-058 approved and followed.)

3. When a manufactured home that is not located in Ohio on the first day of January subsequently acquires a situs in Ohio pursuant to R.C. 4503.06(C) and on that date is exempt, pursuant to R.C. 4503.06(F)(1), from the annual manufactured home tax levied by R.C. 4503.06, an individual who purchases the manufactured home later in the same calendar year is not liable for a prorated amount of the tax.

4. When a manufactured home that is not located in Ohio on the first day of January is purchased before it acquires a situs in Ohio pursuant to R.C. 4503.06(C), the purchaser is liable for a prorated amount of the annual manufactured home tax levied by R.C. 4503.06 unless, on the date the manufactured home acquires a situs, the use of the manufactured home in the hands of the purchaser qualifies under R.C. 4503.06(F) for an exemption from that tax.