

**OPINION NO. 85-088****Syllabus:**

Registration of a manufactured home pursuant to R.C. 4503.061 is accomplished when the owner of a manufactured home notifies the county auditor, by the time the tax levied upon the manufactured home by R.C. 4503.06 is due and payable, that the home is situated within the county and presents to the county auditor the required documents. An owner of a manufactured home may not be cited under R.C. 4503.061(E) for failure to register his manufactured home if he does not pay the tax levied by R.C. 4503.06 after he has notified the county auditor that the home is situated within the county.

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**To: Betty D. Montgomery, Wood County Prosecuting Attorney, Bowling Green, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, December 26, 1985**

I have before me your request for my opinion regarding the proper interpretation of R.C. 4503.061, which sets forth the procedure for the registration of manufactured homes in each of the individual counties. According to your request you wish to know whether the owner of a manufactured home may be cited for a failure to register the manufactured home under R.C. 4503.061(E) if he fails to pay the tax levied upon the manufactured home by R.C. 4503.06, or whether a manufactured home may be registered without payment of the tax.

R.C. 4503.06 provides for the levying of an annual tax upon manufactured homes situated within the state of Ohio. R.C. 4503.06(A) thus provides as follows:

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. The tax as levied in this section is for the purpose of supplementing the general revenue funds of the local subdivision in which the manufactured home has its situs pursuant to this section.<sup>1</sup> (Footnote added.)

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. R.C. 4503.06(B). 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 day of January. R.C. 4503.06(C). When a manufactured home is not located in the state on the first day of January, then the situs of such manufactured home is the taxing district in which the home is located immediately upon the expiration of a thirty-day period commencing with the date of the home's acquisition or entrance into the state. *Id.* The amount of the tax is to be computed and assessed by the county auditor of the county containing the taxing district in which the manufactured home has its situs, R.C. 4503.06(E), but the tax is to be collected by and paid to the treasurer of the county, R.C. 4503.06(D).

R.C. 4503.06(G) states when the tax is due and payable. With respect to a manufactured home situated in the state on the first day of January, R.C. 4503.06(G)(1) provides as follows:

When a manufactured home has a situs in this state, as provided in this section, on the first day of January, one-half of the amount of the tax is due and payable on or before the thirty-first day of January and the balance is due and payable on or before the thirty-first day of July.

In the case of a manufactured home acquiring a situs in the state after the first day of January or the thirty-first day of July, R.C. 4503.06(G)(2) provides as follows:

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

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<sup>1</sup> R.C. 4501.01(O) defines "manufactured home," for purposes of, *inter alia*, R.C. Chapter 4503, in pertinent part as follows:

"Manufactured home" means any nonself-propelled vehicle transportable in one or more sections, which in the traveling mode, is eight body feet or more in width or forty body feet or more in length or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

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 with the date the situs is acquired.

R.C. 4503.06(H) provides for the imposition of a penalty in the event that payments of the tax are not made according to R.C. 4503.06(G)(1) or (2). R.C. 4503.06(I) authorizes the county treasurer to institute a civil action to collect from the owner of a manufactured home any taxes that have not been paid.

R.C. 4503.061 describes the procedures according to which manufactured homes are to be registered in each of the counties. R.C. 4503.061(A) sets forth the procedures to be followed by those counties that have adopted a permanent registration system, and provides as follows with respect to the initial location or relocation of a manufactured home in any county within the state:

When a manufactured home first acquires a situs in any county in this state or is relocated to another county and is subject to the tax as provided in section 4503.06 of the Revised Code, the owner shall register the manufactured home with the county auditor of the county containing the taxing district in which the manufactured home has its situs on or prior to the date the tax is due and payable. For the first registration in each county of situs, the owner or vendee in possession shall present to the county auditor an Ohio certificate of title, certified copy of the certificate of title, or memorandum certificate of title as such are required by law, and proof, as required by the county auditor, that the manufactured home, if it is being relocated in that county, has been previously registered, and any taxes due after December 31, 1979, during the preceding five years have been paid.

Upon the first registration of a manufactured home, the county auditor shall issue an advance payment certificate, stating the amount of annual tax due, to be presented to the county treasurer with the payment of the tax that is due.

When a manufactured home is registered for the first time in a county and when the total tax due has been paid as required by division (G) of section 4503.06 of the Revised Code, the county treasurer shall note by writing or by a stamp on the certificate of title, certified copy of certificate of title, or memorandum certificate of title that the manufactured home has been registered and that the taxes due have been paid for the current

half-year period. The treasurer shall then issue a certificate evidencing registration and a decal to be displayed on the street side of the manufactured home. Such certificate is valid in any county in this state during the year for which it is issued. (Emphasis added.)

For each year after the initial registration, R.C. 4503.061(A) reads as follows:

For each year thereafter, the county auditor shall issue an advance payment certificate to be presented to the county treasurer with the payment of the tax that is due. When the total tax due has been paid as required by division (G) of section 4503.06 of the Revised Code, the county treasurer shall issue a certificate evidencing registration that shall be valid in any county in this state during the year for which the certificate is issued. (Emphasis added.)

R.C. 4503.061(B) describes the procedure to be followed by those counties that have not adopted a permanent registration system. The procedure set forth in R.C. 4503.061(B) is, for purposes of this opinion, similar to that described in R.C. 4503.061(A).

R.C. 4503.061(E) provides that when any manufactured home required to be registered by R.C. 4503.061 is not registered, the owner of such manufactured home shall be fined not less than twenty-five nor more than fifty dollars. R.C. 4503.99(B) also provides in pertinent part that whoever violates R.C. 4503.061 is guilty of a minor misdemeanor.<sup>2</sup>

Based upon the plain language of R.C. 4503.061(A), I believe that the registration of a manufactured home does occur separate and apart from the payment of the tax levied on the home by R.C. 4503.06. The first paragraph of R.C. 4503.061(A) requires the owner of a manufactured home to register the home "on or prior to the date the tax is due and payable." The third paragraph of R.C. 4503.061(A) provides that, "[u]pon the first registration of a manufactured home, the county auditor shall issue an advance payment certificate," and conveys the sense that registration of a manufactured home is complete prior to the time that the tax is paid. The same sense is communicated by the initial language of the fourth paragraph of R.C. 4503.061(A), providing that the county treasurer shall stamp the certificate of title "[w]hen a manufactured home is registered and when the total tax due has been paid as required by division (G) of section 4503.06 of the Revised Code." (Emphasis added.) Under such an interpretation of the foregoing language of R.C. 4503.061(A), therefore, the owner of a manufactured home registers the home with the county auditor by notifying the auditor that the home is situated within the county and by presenting to the auditor the required documents. The owner may nevertheless register the home and

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<sup>2</sup> This office cannot pass on the criminal guilt or innocence of particular individuals charged with a violation of R.C. 4503.061. See 1983 Op. Att'y Gen. No. 83-024, n.2; 1983 Op. Att'y Gen. No. 83-001. In this opinion, I am merely providing my interpretation of what constitutes the registration of a manufactured home under R.C. 4503.061.

yet forego payment of the tax under R.C. 4503.06. In such case the owner would not receive a certificate from the county treasurer as evidence of the registration, see R.C. 4503.061(A), and would be subject to civil suit for the collection of the tax, R.C. 4503.06(I), and to the imposition of penalties, R.C. 4503.06(I). The owner, however, could not be cited for failure to register his home under R.C. 4503.061(E) if he has notified the auditor that the home is situated within the county, and has presented to the auditor the required documents. Thus, the registration of a manufactured home pursuant to R.C. 4503.061(A) is complete prior to payment of the tax levied by R.C. 4503.06. The owner of a manufactured home may be cited under R.C. 4503.061(E) for a failure to register his manufactured home if he does not notify the county auditor that the home is situated within the county. The owner may not, however, be cited for failure to register his manufactured home if he does not pay the tax levied by R.C. 4503.06 after he has notified the auditor that the home is situated within the county.

I believe such an interpretation of the registration procedures described in R.C. 4503.061(A) and (B) comports with the purpose to be served by the registration of manufactured homes. R.C. 4503.061(A) and (B) both provide that the duty to register attaches only when the manufactured home has a situs within the state and is "subject to the tax as provided in section 4503.06." By thus registering his manufactured home with the county auditor, the owner puts the auditor on notice as to the existence of the home, thereby allowing the auditor the opportunity to compute and assess the tax levied on the home by R.C. 4503.06. R.C. 4503.06 and R.C. 4503.061 are first and foremost taxing statutes,<sup>3</sup> the purpose of which is to generate supplemental revenues for the general funds of the local subdivisions in which manufactured homes are located. R.C. 4503.06(A). Registration of a manufactured home pursuant to R.C. 4503.061 advances that purpose by permitting the auditor the opportunity to compute and assess the tax levied on the home by R.C. 4503.06.

When the county auditor is made aware that a manufactured home is situated within the county, and thereby subject to the tax levied upon the home by R.C. 4503.06, he may then proceed to compute and assess the proper amount of the tax pursuant to R.C. 4503.06(E). Thereafter the county treasurer may initiate a civil action against the owner of the manufactured home for recovery of the tax if the owner fails to pay the tax within the time prescribed by R.C. 4503.06(G)(1) or (2). R.C. 4503.06(I). Construing the registration of a manufactured home under R.C. 4503.061 as accomplished when the owner has informed the county auditor that the home is situated within the county, therefore, does not impede the county auditor or the county treasurer in the performance of their statutory duties relative

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<sup>3</sup> R.C. 4503.063 provides in pertinent part as follows:

The tax commissioner shall prescribe forms which shall contain all relevant information necessary in the collection and payment of the tax and the registration of manufactured homes, as provided in sections 4503.06 and 4503.061 of the Revised Code, and shall provide such other assistance as necessary to enable the county auditor to administer this tax. (Emphasis added.)

to the computation, assessment, and collection of the tax levied upon the home by R.C. 4503.06.

I believe such an interpretation of the registration procedures set forth in R.C. 4503.061(A) and (B) is also required by the rule of strict construction applicable to criminal statutes generally. R.C. 4503.061(E) provides that, "[w]hen any manufactured home required to be registered by this section is not registered, the owner of such manufactured home shall be fined not less than twenty-five nor more than fifty dollars." R.C. 4503.99(B) also provides in part that whoever violates R.C. 4503.061 is guilty of a minor misdemeanor. A criminal or penal statute is one that imposes a penalty for transgressions of its provisions. McNary v. State, 128 Ohio St. 497, 191 N.E. 733 (1934). A criminal statute shall be strictly construed against the state and liberally construed in favor of a person charged thereunder. R.C. 2901.04(A); City of Washington Court House v. McStowe, 45 Ohio St. 2d 228, 343 N.E.2d 109 (1976); Brotherhoods v. Public Utilities Commission, 177 Ohio St. 101, 202 N.E.2d 699 (1964); 1983 Op. Att'y Gen. No. 83-001. The rule of strict construction applies to statutes defining misdemeanors as well as felonies. State v. Saionz, 23 Ohio App. 2d 79, 261 N.E.2d 135 (Lucas County 1969). Being a penal statute, R.C. 4503.061 must be strictly construed against the state and liberally construed in favor of the owner of a manufactured home who is charged with a violation of that section. See 1961 Op. Att'y Gen. No. 2693, p. 708 (syllabus, paragraph seven) (the last paragraph of R.C. 4503.061, providing a fine for failure to register a house trailer, is a criminal penalty, which should be enforced by the filing of a criminal proceeding in a court of proper jurisdiction). Applying the rule of strict construction to R.C. 4503.061 means that any doubt about what steps that section requires the owner of a manufactured home to take in order to register his home is to be resolved in favor of the owner. Accordingly, I believe that R.C. 4503.061, strictly construed, requires that the owner of a manufactured home register the home by notifying the county auditor that the home is situated within the county and presenting to the auditor the required documents by the time the tax levied upon the manufactured home by R.C. 4503.06 is due and payable.

Accordingly, it is my opinion, and you are hereby advised, that registration of a manufactured home pursuant to R.C. 4503.061 is accomplished when the owner of a manufactured home notifies the county auditor, by the time the tax levied upon the manufactured home by R.C. 4503.06 is due and payable, that the home is situated within the county and presents to the county auditor the required documents. An owner of a manufactured home may not be cited under R.C. 4503.061(E) for failure to register his manufactured home if he does not pay the tax levied by R.C. 4503.06 after he has notified the county auditor that the home is situated within the county.