

OPINION NO. 77-099**Syllabus:**

1. A structure on wheels titled as a motor vehicle pursuant to R.C. Chapter 4504, which is drawn by a vehicle to a house trailer park site and is placed on a temporary foundation after being connected to a like structure by removing a temporary covering used during transit and bolting the exposed side to a like structure so as to make the combined structure weathertight meets the statutory definition of a "house trailer", set forth in R.C. 4501.01 (L). Such a structure, commonly known as a double-wide house trailer, is to be taxed as a house trailer pursuant to R.C. 4503.06. (1976 Op. Atty Gen. No. 76-025 is overruled.)
2. A double-wide house trailer does not lose its classification as a house trailer for the purposes of taxation merely because the house trailer

owner also owns in fee simple the site upon which the structure is to be placed.

To: James R. Kingsley, Pickaway County Pros. Atty., Circleville, Ohio
By: William J. Brown, Attorney General, December 20, 1977

I have before me your request for my opinion regarding the proper procedure for taxing double-wide house trailers in house trailer parks. Your letter sets forth the following specific questions.

1. Is a structure on wheels which is drawn by a vehicle to a house trailer park site, and placed on a temporary foundation after being connected to a like structure by removing a temporary covering used during transit, and bolting the exposed side to the like structure so as to make the combined structure weathertight, a house trailer (commonly known as a "double-wide") to be taxed as a house trailer?
2. Should a double-wide be taxed any differently if the owner of the trailer also owned the site upon which it was going to be placed in fee simple?

As noted in your letter, there has been, and continues to be, divided opinion regarding the taxation of double-wide house trailers. The central issue is whether the structure meets the statutory definition of a house trailer set forth in R.C. 4501.01 (L), which reads as follows:

(L) "House trailer" means any nonself-propelled vehicle so designed, constructed, reconstructed, or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation, when connected to indicated utilities, whether resting on wheels, jacks, or other temporary foundation and used or so constructed as to permit its being conveyed upon the public streets or highways.

It should be noted that R.C. 4301.01 (L) as set forth above incorporates an August, 1976 amendment to the definition. Prior to this amendment, the definition applied to self-propelled as well as nonself-propelled vehicles and the phrase . . . or so constructed as to permit its being conveyed upon the public streets or highways" read " . . . or so constructed as to permit its being used as a conveyance upon the public streets or highways". I draw your attention to this amendment initially since the opinions discussed below have all entailed a careful scrutiny of the specific language of the definition in effect at a particular time. It does not appear, however, that the 1976 amendment has any particular significance to the issue herein under consideration.

In 1952 Op. Atty Gen. No. 1470, p. 391 one of my predecessors was asked to consider whether a standard size house trailer lost its classification as such solely by reason of the removal of the chassis as an incident to the mounting of the body on a foundation. Concluding that a house trailer would not lose its classification as such for this reason alone, the opinion set forth in the second syllabus the following distinction regarding the effect of structural alterations of a house trailer:

A house trailer loses its statutory classification as such when it has been so reconstructed as to render it unfit for the use as a conveyance without further reconstruction; but mere disassembly of the several parts of the structure does not cause such loss of classification.

In 1970 Op. Att'y Gen. No. 70-013 my predecessor was asked to consider whether one of the two components of a double-wide house trailer could by itself meet the definitional requirements of a house trailer. The conclusion that it could not rested upon a factual analysis of the particular characteristics of the structure vis-a-vis the specific language of the statutory definition. It appears that the structure failed to meet the requirements set forth in the definition because, while in transit, the structure was not suitable for human habitation. The opinion at 2-27 drew attention to the fact that in order to render the structure fit for habitation "apparently something more than merely connecting it to utilities is required, namely, removing the temporary covering on the one side, bolting that side to the exposed side of another unit, and making both units weathertight."

Although the opinion was limited to a consideration of one of the two component structural units, the conclusion would not have differed had the issue been the status of a fully assembled double-wide structure, as evidenced by the following observation stated at 2-27:

At the outset, we doubt whether anyone seriously contends that the two units as bolted together constitute a house trailer within the terms of 4501.01 (I), Revised Code.

The opinion of my predecessor was, however, the basis for a declaratory judgment action brought in the Franklin County Court of Common Pleas in 1971. In Highland Mobilehomes v. Brown, Case No. 241,539, Common Pleas, Franklin County (1971), the plaintiff alleged that the Director of the Department of Health and the Registrar of the Bureau of Motor Vehicles refused to permit the placement of double-wide house trailers in house trailer parks on the basis of 1970 Op. Att'y Gen. No. 70-013. The plaintiff requested the court to construe the statutory definition of a house trailer set forth in R.C. 4501.01 to determine whether such structures were house trailers.

The court held that "to the extent that such refusals are governed by the language of Attorney General's Opinion No. 70-013, they are improper." The Court also declared that such structures are house trailers as defined in R.C. 4501.01:

Further, it is the opinion of this Court that a structure on wheels which is drawn by a vehicle to a site where it is to be connected to a like structure by removing from one side a covering temporarily used in transit, bolting that side to the exposed side of a like structure and making both units weathertight can be construed to be a "house trailer" where it is so designed, constructed, etc., as to permit use and occupancy for human habitation when connected to indicated utilities (Section 4501.01 (I), Ohio Revised Code) at any eventual destination, and that such vehicle need not be inhabited while used as a conveyance over the public highways, in order to be construed as a "house trailer" as per Section 4501.01, Ohio Revised Code.

In 1976 Op. Att'y Gen. No. 76-025 I was asked to consider whether a double-wide house trailer is a house trailer as the same is defined in R.C. 4501.01 and whether such structures should be taxed as real estate or as house trailers. The syllabus of my opinion reads as follows:

A structure on wheels which is drawn by a vehicle to a site and placed on a foundation after being connected to a like structure by removing a temporary covering used during transit and bolting the exposed side to the like

structure so as to make the combined structure weathertight is:

1. Not a "house trailer" as defined by R.C. 4501.01 (H) when so assembled and placed; and
2. Is "real property" as defined by R.C. 5701.02 for purposes of taxation.

With respect to my conclusion that a double-wide house trailer does not come within the purview of R.C. 4501.01, I emphasized the fact that the units once attached simply cannot be conveyed upon the public streets or highways. My conclusion regarding the classification of such structures for the purposes of taxation resulted from the following reason set forth at 2-80:

However, as I stated previously, R.C. 5701.02 controls the issue of the classification of such property for purposes of taxation. Whether or not the subject structures are "house trailers", they are taxable as real property because they are "buildings" or "structures" of whatever kind upon the land, [and] are not "otherwise specified" by any other provision of R.C. Title 57.

Your request has precipitated a reevaluation of the analysis in my former opinion with the result that I now question the supposition that the structures are taxable as real property, whether or not they are house trailers, because of the provisions of R.C. 5701.02.

R.C. 5701.02 defines real property for the purposes of taxation as follows:

As used in Title 57 of the Revised Code, "real property" and "land" include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and unless otherwise specified, all buildings, structures, improvements and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto. (Emphasis added)

It is clear that the structures herein under consideration meet the definition of real property, since they are structures on the land and are not specifically excluded from the definition of real property. Shutter Bug Inc. v. Kosydar, 40 Ohio St.2d 99 (1974). Since these structures are real property, as defined in R.C. 5701.02, it is necessary to determine whether they have been expressly exempted from taxation as real property.

In R.C. 4503.06 (A), set forth below, the General Assembly has expressly provided for the taxation of house trailers:

All house trailers 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 house trailer 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 house trailer has its sites pursuant to this section.

Moreover, R.C. 4503.06 (J) expressly states that the taxes levied under this section shall be in lieu of any general property tax. Thus, a structure which meets the

statutory definition of a house trailer is to be taxed pursuant to R.C. 4503.06 and is, therefore, expressly excluded by the General Assembly from the provisions of Title 57 governing the taxation of real property.

As suggested above, the determination of whether the particular structure described in your letter meets the statutory definition of a house trailer requires an analysis of the characteristics of the structure and the specific terms of the statutory definition. The statutory definition of a house trailer in essence sets forth three tests to be used to determine if a particular structure constitutes a house trailer. 1952 Op. Att'y Gen. No. 1479.

1. The structure must be a nonself-propelled vehicle.
2. The structure must be so designed, constructed, reconstructed or added to by means of accessories as to permit use and occupancy for human habitation.
3. The structure must be used or so constructed as to permit its being conveyed on the public streets or highways.

The term vehicle is defined in R.C. 4501.01 (A), for the purposes of R.C. Chapters 4501, 4503 and 4505, as follows:

"Vehicles" means everything on wheels or runners, except vehicles operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles belonging to any police department, municipal fire department volunteer fire department, or salvage company organized under the laws of this state or used by such department or company in the discharge of its functions.

That a double-wide house trailer is a vehicle has not been challenged. Moreover, as you state in your letter, the two sections of a double-wide house trailer are each titled under the Ohio Motor Vehicle Title Law, set forth in R.C. Chapter 4504.

The status of a double-wide house trailer in terms of the latter two tests is not as clear. Because of the design and construction of a double-wide house trailer, it is impossible for this type of structure to simultaneously meet both requirements. If disassembled, the two structures are capable of being conveyed on the highways, but are not suitable for habitation. If assembled the two structures are suitable for habitation but cannot be conveyed on the highways.

Thus, the critical point is whether the language of the statute requires that both conditions be simultaneously fulfilled. The opinions discussed above have differed on this point. In 1970 Op. Att'y Gen. No. 70-013 the conclusion that while in transit the structure was not suitable for habitation apparently rests on an interpretation that both conditions must be met simultaneously. My conclusion in 1976 Op. Att'y Gen. No. 76-025 that the units once attached cannot be conveyed upon the public highways also adopts this interpretation. The Franklin County Court of Common Pleas in Highland Mobilehomes, *supra*, however, adopted the opposite interpretation to conclude that the units once attached could still meet the statutory definition whether or not they were fit for occupancy during transit.

Upon reconsideration, it is my opinion that the better reasoning is that set forth by the Franklin County Court of Common Pleas in Highland Mobilehomes, *supra*. The statute merely requires that the structure be so designed and constructed as to permit its use for human habitation and to permit its conveyance on the public highways. The language of the statute clearly envisions that there will be some type of adaption process, in addition to merely connecting the structure to utilities, required to render the structure fit for the habitation once it is conveyed to the site. Thus, it is sufficient that the structure has at all times the potential of meeting both conditions. It is my understanding that the process of

assembling the double-wide structure, which consists of bolting the single units together, making them weathertight and placing them on a temporary foundation, is fully reversible. Although the process of assembling and disassembling the structure is more involved than that required for the preparation of a single unit, it is not, however, of such a magnitude that the structure loses those inherent design features which give it the potential for both habitability and mobility.

Thus it is my opinion that a structure on wheels, titled as a motor vehicle pursuant to R.C. Chapter 4504, which is drawn by a vehicle to a house trailer park site, and placed on a temporary foundation after being connected to a like structure by removing a temporary covering used during transit and bolting the exposed side to a like structure as to make the combined structure weathertight meets the statutory definition of a house trailer as set forth in R.C. 4501.01 (L). Such a structure, commonly known as a double-wide house trailer, may be taxed as a house trailer, pursuant to R.C. 4503.06. 1976 Op. Att'y Gen. No. 76-025 is therefore, overruled.

It should be clearly noted, however, that this conclusion is exclusively limited to the facts set forth herein. Each factual characteristic is essential to the conclusion that such structures are house trailers. Moreover, whether a particular structure within this general class meets the statutory definition must also be determined by a factual analysis of the specific characteristics of the particular structure and its relation to the site upon which it is placed.

Your second question asks whether a double-wide house trailer should be taxed in a different manner if the owner of the house trailer also owns in fee simple the site upon which the structure is to be placed. I find nothing in the various provisions of R.C. 4503.06 that would impute any special significance to this particular fact for the purpose of determining the manner in which the structure is to be taxed. As long as the structure rests on a temporary foundation and retains the potential for mobility it is to be taxed as a house trailer. If, however, a house trailer is permanently attached to the site and no longer has the potential for mobility, the structure loses its classification as a house trailer and is thereafter to be taxed as real property, pursuant to R.C. 5701.02.

As noted above, whether a structure initially classified as a house trailer is no longer properly classified as such due to an alteration or reconstruction inconsistent with one or more of the essential definitional elements of a house trailer is a question of fact. The county auditor is responsible for the collection of the tax levied on house trailers pursuant to R.C. 4503.06 and is responsible for preparing the real estate tax duplicate, pursuant to R.C. 5713.01. Thus, questions of fact pertinent to the classification of such structures are to be determined by the county auditor. 1952 Op. Att'y Gen. No. 1470.

Therefore, it is my opinion and you are so advised that:

1. A structure on wheels, titled as a motor vehicle pursuant to R.C. Chapter 4504, which is drawn by a vehicle to a house trailer park site after being connected to a like structure by removing a temporary covering used during transit and bolting the exposed side to a like structure so as to make the combined structure weathertight, meets the statutory definition of a "house trailer", set forth in R.C. 4501.01 (L). Such a structure, commonly known as a double-wide house trailer, is to be taxed as a house trailer pursuant to R.C. 4504.06. (1976 Op. Att'y Gen. No. 76-025 is overruled.)
2. A double-wide house trailer does not lose its classification as a house trailer for the purposes of taxation merely because the house trailer owner also owns in fee simple the site upon which the structure is to be placed.