

OPINION NO. 91-058**Syllabus:**

1. When a manufactured home has a taxable situs in Ohio on January 1, the full amount of the annual tax imposed pursuant to R.C. 4503.06 must be paid, in the manner provided in R.C. 4503.06(G), regardless of whether the manufactured home has a situs in Ohio on or after July 31.
2. When ownership of a manufactured home is transferred prior to July 31, and the manufactured home had a taxable situs in Ohio on January 1, the title transfer provisions of R.C. 4503.061(C) require collection of the entire annual tax as a condition precedent to issuance of a new title.

To: R. Larry Schneider, Union County Prosecuting Attorney, Marysville, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

I have before me your request for an opinion regarding the provisions of the manufactured home tax found at R.C. 4503.06 and R.C. 4503.061. You specifically present the following question:

Under Section 4503.06 of the Revised Code, for a manufactured home with situs in Ohio on January 1, is the full amount of the annual tax due with one-half of the amount payable by January 31 and the second half payable by July 31; or, for a manufactured home with situs in Ohio on January 1, is only one-half of the amount of the annual tax due by January 31 with the second half of the amount of the annual tax due if, and only if, the manufactured home has situs in Ohio after July 31?

You have further indicated that the importance of this question lies in how the answer affects the implementation of R.C. 4503.061(C). Under R.C. 4503.061(C), a certificate of title for a manufactured home may not be issued without the endorsement of the county treasurer that all taxes due have been paid. Although you have not specifically asked for an interpretation of R.C. 4503.061(C), it appears from the discussion in your letter that this issue is the focus of your inquiry. It is also necessary, therefore, to examine the following second question: Given the answer to the first question, what is the meaning of "all the taxes that are due" in R.C. 4503.061(C)?

I. Loss of Situs Does Not Affect Liability for Tax

A. Statutory Language

Your first question essentially asks whether, when a manufactured home has a situs in Ohio on January 1, liability for the entire tax arises at that time, or whether the manufactured home must also have a situs in Ohio after July 31 in order for the second half taxes to come due.

R.C. 4503.06(A) states:

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. (Emphasis added.)

R.C. 4503.06(G) further provides that:

The tax is due and payable as follows:

(1) *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.*

(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 with the date the situs is acquired. (Emphasis added).*

R.C. 4503.06 refers to an "annual" tax, while R.C. 4503.06(G)(1) and (2) describe the payment amounts as "one-half the amount of the tax" or "the balance" of the tax. This language *suggests a single tax*, the amount of which is fixed once a year, independently of the dates established for payment of any portion of the tax.

Any doubt as to this interpretation is removed by the express language of division (G) itself. R.C. 4503.06(G) permits the annual tax to be paid in biannual payments in two specific instances: when a manufactured home has a situs in Ohio on January 1, R.C. 4503.06(G)(1), and when a manufactured home acquires a situs in Ohio between January 1 and July 31, R.C. 4503.06(G)(2). Thus, the due dates for the payments are set by reference to the applicable "situs" date and not by reference to the location of the manufactured home on the date specified for the payments. Although R.C. 4503.06(G) prorates the amount of the tax when situs is acquired after January 1, there is no provision for prorating the amount of tax due based on removal of the manufactured home from Ohio once situs has been established. Accordingly, pursuant to R.C. 4503.06(G), when a manufactured home has a situs in Ohio on January 1, the balance, *i.e.* the second half, of the annual tax is due and payable on or before July 31 regardless of whether the manufactured home maintains a situs in Ohio on or beyond July 31.

B. Tax Principles Applicable To Movable Property

It is true that property must have a "situs" in the state in order to be subject to taxation. *See generally Grant v. Jones*, 39 Ohio St. 506, 514 (1883) (citing *Railroad Co. v. Pennsylvania*, 15 U.S. (Wall.) 300 (1872) ("the power of the state to tax, is limited to persons, property and business within its jurisdiction")). This requirement does not mean, however, that property must remain in a state for the entire tax year before it may be taxed. It has long been recognized that a legislature may assign moving property a situs as of a particular day. *See Shotwell v. Moore*, 129 U.S. 590 (1889); *see also, e.g., Diamond Match Co. v. Ontonagon*, 188 U.S. 82 (1903). If the property is in the jurisdiction on that day, neither intent to subsequently remove the property nor actual subsequent removal will affect the imposition of the tax. *See Carrier v. Gordon*, 21 Ohio St. 605 (1871); *David J. Joseph Co. v. Evatt*, 32 Ohio Op. 55 (Bd. of Tax Appeals 1945).

Manufactured homes are movable property and the tax imposed by R.C. 4503.06 is in the nature of a personal property tax, which is imposed for the privilege of using or occupying the manufactured home. 1962 Op. Att'y Gen. No. 3028, p. 397 at 399-400; 1961 Op. Att'y Gen. No. 2693, p. 708 at 713. *See also Stary v. City of Brooklyn*, 162 Ohio St. 120, 130, 121 N.E.2d 11, 17 (1954) (interpreting the predecessor statute of R.C. 4503.06 as it appeared in the General Code), *cert. denied* 348 U.S. 923 (1955); *Swigart v. Richards*, 87 Ohio Law Abs. 37, 40, 178 N.E.2d 109, 111 (C.P. Licking County 1961). Thus, it is permissible for the General Assembly to assign manufactured homes a situs as of a particular day for tax purposes.

For purposes of the manufactured home tax, the term "situs" is defined at R.C. 4503.06(C), which states:

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, 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.

This definition has two components: (1) use or occupation,¹ and (2) location in the state on the applicable date. When both exist, a manufactured home has "situs" and

¹ *See* 1961 Op. Att'y Gen. No. 2693, p. 708, 713 ("the house trailers must be used or occupied in order to have a situs"). I note that 1961 Op. No. 2693 had no occasion to consider the effect of the dates set in R.C. 4503.06 for determining the existence of situs. The opinion cannot be construed, therefore, as requiring that situs be maintained throughout the year in order for the tax to be imposed.

the annual tax becomes payable and is assessed at either the full or prorated amount. Thus, 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 ("[u]nder the language used, it is clear that such computation and assessment is done only once in each year"). The state does not lose jurisdiction to collect the tax imposed if the manufactured home moves before the payments must be made. *See generally Carrier; David J. Joseph Co.* Nor does the statute itself provide for any adjustment of the tax in that circumstance. I conclude, therefore, in answer to your first question, that when a manufactured home has a taxable situs in Ohio on January 1, the full amount of the annual tax imposed pursuant to R.C. 4503.06 must be paid, in the manner provided in R.C. 4503.06(G), regardless of whether the manufactured home has a situs in Ohio on or after July 31.

II. Upon Transfer Of Ownership, Collection Of The Entire Annual Tax Is Necessary Before Issuance Of A New Title

I turn now to the second issue raised by your request. Given the response to your first question, this issue may be framed as follows: When a manufactured home has situs in Ohio on January 1 but ownership is transferred prior to July 31, do the title issuance provisions of R.C. 4503.061(C) require payment of the entire annual tax or only one-half of the annual tax?

R.C. 4503.061(C) states, in pertinent part:

Upon the application to transfer ownership of a manufactured home the clerk of the court of common pleas shall not issue any certificate of title which does not contain thereon or have attached thereto an endorsement of the county treasurer stating that the manufactured home has been registered for each year of ownership *and that all taxes due after December 31, 1979, imposed pursuant to section 4503.06 of the Revised Code, have been paid....*The county treasurer shall then *collect all the taxes that are due after December 31, 1979, for the year of the transfer and all previous years not exceeding a total of five years.* (Emphasis added).

As noted, when a manufactured home has a taxable situs on January 1, the entire annual tax is imposed at that time. R.C. 4503.06(A) describes this amount as "payable," *i.e.* "capable of being paid." *See Black's Law Dictionary* 1128 (6th ed. 1990); *see also Webster's New World Dictionary* 1044 (2d college ed. 1984). Pursuant to R.C. 4503.06(G)(1), when a manufactured home has situs in Ohio on January 1, one-half of the annual tax is "due and payable on or before January 31," while the remainder is "due and payable on or before" July 31. (Emphasis added). Thus, the entire tax is "due and payable" after January 1 and the owner may choose to pay the whole tax or choose to pay it in segments. One-half of the tax, however, becomes delinquent after January 31, the last day on which it is "due and payable," and the remainder becomes delinquent after July 31.

R.C. 4503.06 and R.C. 4503.061 provide three mechanisms for collection of the manufactured home tax. R.C. 4503.061(A) provides first for a billing and voluntary payment system. R.C. 4503.061(A) ("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"). Delinquent taxes, *i.e.*, amounts not paid by the final dates on which they are "due and payable" under R.C. 4503.06(G), may be collected through a civil action pursuant to R.C. 4503.06(I). R.C. 4503.061(C) provides the third mechanism for the collection of the manufactured home tax. Unlike R.C. 4503.06(I), this provision is not limited to only such taxes as have not been paid within the time limits set by R.C. 4503.06(G)(1) and (2). Instead, it conditions issuance of title on collection of "all the taxes that are due...for the year of transfer." (Emphasis added.) As explained above, when a manufactured home with situs on January 1 is transferred before July 31, the remainder of the tax for that year is "due and payable" even though the final date for payment has not yet

arrived under R.C. 4503.06(G)(1). The effect of R.C. 4503.061(C), thus, is to accelerate the collection of the annual tax to the time when ownership of a manufactured home is transferred.² I conclude, accordingly, that when ownership of a manufactured home with situs in Ohio on January 1 is transferred prior to July 31, the title issuance provisions of R.C. 4503.061(C) require collection of the entire annual tax as a condition precedent to issuance of a new title.

While R.C. 4503.061(C) does not specify whether the annual tax is to be collected from the original owner or the transferee, it does, however, state that "[t]he transferee need not pay the annual tax for the year of acquisition when the original owner has already paid..." thereby preventing the annual tax from being paid twice on the same manufactured home. The practical effect of R.C. 4503.061(C), therefore, is that if the original owner has not already paid the annual tax and does not agree to do so at the time of transfer, the transferee must pay any tax due in order to obtain title. Accordingly, if there is to be any allocation of the tax between the original owner and the transferee, it is a private matter to be dealt with in the terms of the transfer itself, which will not affect the collection of the tax under R.C. 4503.061(C).

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

1. When a manufactured home has a taxable situs in Ohio on January 1, the full amount of the annual tax imposed pursuant to R.C. 4503.06 must be paid, in the manner provided in R.C. 4503.06(G), regardless of whether the manufactured home has a situs in Ohio on or after July 31.
2. When ownership of a manufactured home is transferred prior to July 31, and the manufactured home had a taxable situs in Ohio on January 1, the title transfer provisions of R.C. 4503.061(C) require collection of the entire annual tax as a condition precedent to issuance of a new title.

² The practical effect of R.C. 4503.061(C) is similar to that of a lien, in that it insures that the property will not escape taxation by transfer of ownership. I note, however, that R.C. Chapter 4503 does not provide anywhere for a tax lien on the manufactured home itself. Although liability for the full amount of the tax attaches on the situs date, this does not imply that a lien also attaches. Rather than provide for a lien which would continue to exist on the manufactured home in the hands of a new owner, the General Assembly has chosen to require full payment of the annual tax at the time of transfer. R.C. 4503.061(C).