

**OPINION
71-405**

December 13, 1971 (OPINION)

Mr. Bert L. Wilson, Jr.
State's Attorney
Burke County

RE: Taxation - Mobile Homes - No Proration or Refund

This is in response to your letter in which you state the following facts:

A certain party bought a mobile home to be occupied as a residence and taxed under 57-55, paying the first installment in January, 1971, receiving a temporary decal. In July of the year he traded his mobile home for another with a licensed mobile home dealer and attached the new home to a permanent foundation on land owned by him which will now be assessed as real property. The director of tax equalization has billed him for the second quarter installment and he refuses to pay it on the grounds he did not own it the second half of the year and should be exempt."

You then ask for our opinion on the question whether or not the total tax as imposed is due and owing or if the fact that the mobile home was traded before the second installment became due, it no longer is due and owing.

The tax on a mobile home is imposed by Section 57-55-01.1. It provides as follows:

TAXATION OF MOBILE HOMES. The owner of each mobile home shall file an application for a mobile home tax decal with the director of tax equalization in the county in which the mobile home is located on or before January tenth of each year or within ten days after such mobile home is purchased or first moved into this state. Upon payment of the tax to the county treasurer, a mobile home tax decal shall be issued to the owner of the mobile home. The tax decal shall be valid in any county of this state for such mobile home during the period for which it was issued."

Section 57-55-03 provides as follows:

WHEN TAXES BECOME DUE AND DELINQUENT - PENALTY. The tax imposed in this chapter shall become due and payable on January tenth of each year or ten days after such mobile home is purchased or first moved into this state. If the tax due for the entire year is paid in full on or before February fifteenth, the county treasurer shall allow a five percent discount. A five percent discount shall also be allowed by the county treasurer if a mobile home is purchased or moved into this state after January tenth of each year if the tax imposed thereon by this chapter is paid in full within ten days after it is purchased or moved into this state. The tax imposed by

this chapter may be payable in two equal installments if the amount of the tax due is forty dollars or more. The first installment shall become due on January tenth and shall become delinquent on the first day of March following and, if not paid on or before said date, shall be subject to a penalty of two percent, and on April first following, an additional penalty at the rate of two percent, and on May first following, an additional penalty of two percent on June first following. The second installment shall become due on or before June first and shall become delinquent on the first day of July following and, if the second installment is not paid on or before that date, it shall be subject to a penalty of two percent, and on August first following, an additional penalty of two percent, and on September first following, an additional two percent, and on October first following, an additional two percent."

It is noted that this section provides for the payment of the tax in installments and also provides for the imposition of a penalty if the taxes are not paid by certain dates.

Section 57-55-05 provides that the tax imposed shall be in lieu of all property taxes for the calendar year.

By way of comparison, real estate is assessed before June 1. Taxes are then levied on the assessment made. The taxes levied become due pursuant to Section 57-20-01 on the first day of January following the year in which the property was assessed and taxes levied thereon. This same section also permits the payment of the taxes by installments and imposes penalties for failure to pay the taxes by certain dates.

Section 57-30-09 allows a 5 percent discount if the taxes are paid in full on or before February 15.

By further comparison, motor vehicles are required to be registered and licensed under Section 39-04-02 and 39-04-11. The time when such license must be paid and the date for renewal is set forth in Section 39-04-14. Likewise, Section 39-04-38 provides that such taxes or fees be in lieu of other property taxes.

All of the taxes referred to above are for the calendar year or the remainder of a calendar year. It appears quite obvious that the Legislature wish to provide a similar tax procedure and program on mobile homes as is provided for on property, including the discount if payment is made by a certain date.

Neither under the property taxes, motor vehicle registration, or under the mobile home tax act do we find any language which implies that the tax is imposed upon the owner by virtue of possession or that the tax is due and payable by the owner only during the period that he owns the property. The tax imposed is upon the property or motor vehicle or the mobile home as the case may be. It is not a tax imposed upon the owner; it is on the property per se.

Where a mobile home, motor vehicle, or other property is transferred where a tax has been paid or remains due is a matter which is taken into consideration between the purchaser and seller. This becomes

part of the negotiated purchase price.

We also note that Section 57-55-12 as pertaining to refunds on taxes imposed on mobile homes provides under what conditions a refund is authorized and permitted. The conditions upon which refund may be permitted are that the mobile home be permanently removed from the state to a state in which he is required to pay a tax or fee which is substantially the same as the tax that was imposed by the state of North Dakota. This must be submitted in writing proving that such tax or fee was paid. The other type of refund is where a tax was paid by mistake. A refund is also permitted where the mobile home has been demolished or destroyed beyond repair by fire, windstorm, or flood. From the facts submitted, it does not appear that the subject matter comes within the aforementioned provisions for refund.

The tax imposed is on the mobile home itself even though the owner is required to pay it. Once the tax has been paid and a decal has been furnished and attached to the mobile home, that mobile home will not be subject to another tax for the entire calendar year because the tax imposed is on a calendar year basis or on a fraction of a calendar year if the mobile home was acquired after the tenth of January.

The statutory provision authorizing the payment of the tax on installments is a privilege afforded to the taxpayer but does not imply that only a portion of the taxes are due. The taxes due on the mobile home for the calendar year have been fixed. Only the due date has been varied if the taxpayer elects to pay the tax on installments. The total amount due has not been altered as a result of such election.

It is, therefore, our opinion that the tax imposed upon the mobile home became due as provided for by Section 57-55-03 and that the subsequent transfer of title before the end of the calendar year does not reduce or eliminate on a pro rata basis the taxes due but unpaid. It is our further opinion that the taxes paid on a mobile home which is subsequently traded in the same calendar year does not entitle the person who paid the tax for a refund.

HELGI JOHANNESON

Attorney General