

Mar 18, 1993

Ms. Robin E. Merry
Office of the Property Appraiser
Alachua County
Post Office Box 23817
Gainesville, Florida 32602-3817

Re: Property Appraiser; Assessments; Mobile Homes; Real
Property Designation Under Agreement for Title;
Sections 193.075(1), 320.015(1), 319.21(1), 672.106(1) and
672.401(2) F.S.
Rule 12D-6.002, F.A.C.

Dear Ms. Merry:

Your letter of February 22, 1993, to Mr. Keller has been
forwarded to this office for a response with regard to the
designation of a mobile home for ad valorem tax purposes.

QUESTION

You question whether title would be considered to be in the
purchaser's name under a conditional sales agreement, thereby
allowing the homestead exemption to apply to the mobile home and
the land if the purchaser of the mobile home is the owner of the
land t o which it is permanently affixed.

AUTHORITY

Section 193.075(1), F.S., states:

(1) A mobile home shall be taxed as real property if the
owner of the mobile home is also the owner of the land on
which the mobile home is permanently affixed. A mobile
home shall be considered permanently affixed if it is tied
down and connected to the normal and usual utilities. A

mobile home that is taxed as real property shall be issued an "RP" series sticker as provided in s. 320.0815.

(2) A mobile home that is not taxed as real property shall have a current license plate properly affixed as provided in Section 320.08 (11). Any such mobile home without a current license plate properly affixed shall be presumed to be tangible personal property.

Section 320.015, F.S., states:

(1) A mobile home, as defined in s. 320.01(2), regardless of its actual use, shall be subject only to a license tax unless classified and taxed as real property. A mobile is to be considered real property only when the owner of the mobile home is also the owner of the land on which the mobile home is situated and said mobile home is permanently affixed thereto. Any prefabricated or modular housing unit or portion thereof not manufactured upon an integral chassis or undercarriage for travel over the highways shall be taxed as real property even though transported over the highways to a site for erection or use.

(2) Notwithstanding the provisions of subsection (1), any mobile home classified by a seller or a lender as personal property at the time a security interest was granted therein to secure an obligation, shall continue to be so classified for all purposes relating to the loan and security interest, at least as long as any part of such obligation or any extension or renewal thereof, remains outstanding. Classification of a mobile home as personal property of a seller or a lender shall not prohibit the owner from having the mobile home classified and taxed as real property under subsection (1). (Emphasis Supplied)

Section 319.28, F.S. pertaining to the transfer of ownership by operation of law of a motor vehicle or mobile home states:

(2)(a) Except as provided in paragraph (b) [not applicable] only an affidavit by the person, or agent of the person, to whom possession of such motor or mobile home has so passed, setting forth facts entitling him to such possession and ownership, together with a copy of the journal entry, court

order, or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession.

DISCUSSION

Based upon the above statutory authority, it is my opinion that a mobile home being purchased under an agreement for title is not owned by the purchaser until title passes and would qualify to be designated as real property even if the owner/purchaser also owns the land to which the mobile home is tied down and connected to the normal and usual utilities. See also Rule 12D-6.002, F.A.C. However, the determination as to whether the mobile home can be designated as real property in the situation you pose is apparently moot since item 8 in the agreement for title states:

Buyer acknowledges that the home is located on leased land. Buyer shall be responsible for all payments due the landlord including but not limited to the homesite rent, assessment and levies, utility payments, or contributions required by the lease. Buyer further acknowledges responsibility for all expense and repair for its use and maintenance of said home. Any failure to pay these expenses when due shall constitute a default under this Agreement.

More determinative regarding the classification of a mobile home, in the instant situation, is the accompanying RESIDENTIAL MOBILE HOME LEASE/OPTION AGREEMENT.

If your office determines that the mobile home is on leased land not owned by the taxpayer, then the mobile home could not be assessed as real property under section 193-075, F.S., and Rule 12D-6.002, F.A.C. since these provisions require the taxpayer to own the land. If you find that the taxpayer owns the land despite the written agreement for title to the mobile home which recites that the land is leased, then the mobile home would be required to be assessed as real property if the taxpayer also owns the mobile home and the mobile home is tied down and connected to the normal and usual utilities.

There are grave doubts raised about whether a mobile home can be considered owned by a taxpayer in the situation in which the purchaser of a mobile has an agreement with a seller or lender permitting the seller or lender to remove and repossess the mobile home in the event the purchaser defaults in the loan or purchase agreement. Section 319.21(1), F.S., provides that prior to the issuance of a certificate of title for any new mobile home, the holder of any security interest therein may demand and receive from the owner thereof the manufacturer's statement of origin and may retain it as long as he holds the security interest.

In situations involving a manufacturer's statement of origin and a specific agreement for the seller to retain such in the contract, this statute apparently precludes title from passing as referenced in sections 672.106(1) and 672.401(2), F.S. until the purchase price is paid.

CONCLUSION

As you know, the designation for assessment purposes is a mixed question of law and fact involving a determination which must be initially made by the property appraiser. Sections 193.075(2) and 320.015(1), F.S., would enable you to designate and assess the mobile home as tangible personal property if, in fact, the mobile home did not bear the proper "MH" decal.

Should you have any questions, please feel free to write this office or call me at (904) 488-9483.

Sincerely,

Jane Courson
Tax Audit Specialist III

JC#93KO025

cc: Mr. Stephen J. Keller