

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:B02:SDMurray

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to: Elizabeth Witzgall
Senior Bank Secrecy Act Analyst
BSA Policy & Operations
(SB/SE)

from: Ashton P. Trice
Branch Chief
(Procedure & Administration)

subject: Form 8300 Reporting of Mobile Home Sales

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether sales of mobile homes should be treated as sales of real property or personal property for purposes of the information-reporting requirements of I.R.C. § 6050I.¹

CONCLUSION

Mobile homes sold in a retail sale are personal (not real) property for purposes of the information-reporting requirements of I.R.C. § 6050I.

¹ We note that this precise issue was the subject of a Technical Advice Memorandum issued by Counsel in 1997. TAM 9710001 was issued in the case of "Z," a corporation manufacturing and selling mobile homes and addressed Z's section 6050I reporting obligations. We reach the same conclusion here as was reached in the TAM (which is not precedential), though we do not agree with the approach of deciding the issue by looking to state law—the TAM relied on the law relating to security interests in mobile homes in force in the state where Z conducted business. As explained below, we believe section 6050I and its implementing regulations should not be applied in a state-by-state fashion if the reporting is to be effective. We opt, instead, to apply established principles of statutory and regulatory interpretation to resolve the issue. We nevertheless recommend that you read the TAM as background material, as some of the points made in response to claims by Z are informative.

FACTS

You have requested advice on the extent to which information reporting on Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, applies in the situation where a person purchases a mobile home for more than \$10,000 from a seller engaged in a trade or business. The reporting requirements of section 6050I apply to transactions involving the exchange of more than \$10,000 in "cash"² under certain circumstances. Whether the requirements apply to a retail sale partly depends on the nature of the property sold, as either personal or real property, and you have explained there is some uncertainty at the policy level and in the field as to how mobile homes should be treated for purposes of the reporting requirements. The uncertainty arises because mobile homes are treated differently by the jurisdictions in which they are purchased and maintained and also because treatment varies by context.

LAW AND ANALYSIS

Mobile Homes Generally

The starting point of our analysis is a discussion of what mobile homes are, and are not. As the name suggests, mobile homes have a hybrid quality, combining certain characteristics of both personal and real property. On the one hand, they are manufactured like other goods, are moveable, and are marketed and sold by retailers. On the other hand, they are designed to function as residences, with connections to utility lines and municipal water and sewer services. They may have some or all of the appurtenances that ordinarily go with a home, like landscaping, awnings, patios, and carports or garages. *Allstate Ins. Co. v. Walker*, 140 S.E.2d 910, 912 (Ga. Ct. App. 1965) ("It is as much a dwelling as any home which is built on a foundation and therefore is not mobile."). They can also be affixed to the ground, sometimes permanently. Structures can even be built onto or around a mobile home. See, e.g., *In re Carter*, 116 B.R. 156 (Bankr. W.D. Mo. 1990) (describing a house trailer at issue in the bankruptcy proceeding as enclosed "in a wooden rectangle" and not capable of being moved "without destruction of at least one whole wall of the visible structure").

A further complication is that mobile homes come in different types and are referred to by different names, including "moveable homes," "trailers," "house trailers," "manufactured homes," and "modular homes."³ Sometimes mobile homes are referenced by their size, such as single-wides and double-wides. It is even unclear

² As discussed further on, "cash" has a particular definition.

³ Modular homes are somewhat different from trailers (the more traditional mobile home) in that modular homes do not have axles and wheels built on to them. In place of simply being hitched to a truck for transport, they are moved atop separate, wheeled frames that in turn are pulled by trucks. Modular homes are set on a foundation once at the destination site, though they can be uplifted and moved again. Our advice is focused on mobile homes that are trailers.

whether mobile homes can be defined with any precision.⁴ A firm distinction is that they are not recreational or other motor vehicles, as they do not have their own means of propulsion. *City of Astoria v. Nothwang*, 351 P.2d 688, 690 (Or. 1960) (treating mobile home trailers as “nonautomotive highway vehicle[s] designed to be hauled, as by a tractor, a motor truck, or a passenger automobile”); *Lewallen v. Elmore Mobile Homes, Inc.*, 551 P.2d 1370, 1371 (N.M. Ct. App. 1976) (“A mobile home, being without motive power, cannot be a motor vehicle within the meaning of [a state motor vehicle statute].”). Insofar as mobile homes move on roads and highways, they are hauled by trucks. Also, they are fundamentally distinguishable from conventional homes because they are not built on-site. Given these distinctions, if mobile homes can be considered real property, it is most likely at the point they are used as a home that is integrated in some way with the land on which the home sits.

Legal Treatment Separate from Section 6050I

As part of our analysis, we looked into the various legal treatments applied to mobile homes for possible analogies to how they should be treated under section 6050I. We found that mobile homes are impacted by numerous different areas of the law: contracts and commercial law, consumer protection, zoning, restrictive covenants, taxation, landlord-tenant, and so on. Not surprisingly, the law being applied and the context of the case have a lot to do with whether courts treat mobile homes as real or personal property. See, e.g., *In re Gray*, 378 B.R. 728 (Bankr. D. Mass. 2007) (allowing state homestead exemption to be claimed for a mobile home); *United States v. One 1989 Stratford Fairmont 14' x 70' Mobile Home*, 783 F. Supp. 1154 (N.D. Ill. 1992) (holding that a mobile home was real property under a federal criminal forfeiture statute); *Lundgren v. Mohagen*, 426 N.W.2d 563 (N.D. 1988) (mobile home that was brought onto plot after a mortgage was executed and that was never permanently affixed to the ground was personal property for purposes of a foreclosure of the mortgage). Further, states and localities regulate mobile homes directly or indirectly in multiple ways, and, as indicated, the rules in place in one jurisdiction are not necessarily the same as those elsewhere.

⁴ One definition, which is very broad but not necessarily comprehensive, is provided in the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., which set national standards for “manufactured homes.” A “manufactured home” is defined therein as:

[A] structure, 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; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle.

For example, in Florida, mobile homes are registered and titled similar to motor vehicles even if they are classified and taxed as real property. Fla. Stat. § 319.20. Mobile homes are issued license plates or, if taxed as real property, "RP" stickers. Fla. Stat. § 320.0815. They are taxed as real property when the owner of the mobile home also owns the land on which the unit is permanently affixed; otherwise, they are subject to a "license tax." Fla. Stat. § 320.015(1). Notwithstanding classification and taxation as real property, if a mobile home was previously classified as personal property at the time a security interest in the home was granted to a seller or lender, the home remains classified as personal property "for all purposes relating to the loan and security interest." Fla. Stat. § 320.015(2). Like Florida, New York appears to provide for titling of mobile homes (including permanently situated ones) in the same manner as motor vehicles, but unlike Florida, New York taxes mobile homes as real property if they "are or can be used for residential, business, commercial or office purposes." N.Y. Veh. and Traffic Law §§ 122-c, 2102(a)(19), 2125(a)(1); N.Y. Real Prop. Tax Law § 102.12(g). In California, all mobile homes are titled and registered with the state Department of Housing and Community Development, and if they are installed on foundations, they are taxed locally; otherwise, they are subject to annual registration fees payable to the department. Cal. Health & Safety Code §§ 18075(a), 18075.5(a)-(b).

In short, state law and court opinions dealing with mobile homes are not very helpful, and certainly not dispositive, in determining whether mobile homes should be deemed personal or real property for purposes of Form 8300 reporting. Moreover, to the extent the laws of some states tend to treat mobile homes more like real property, while the laws of other states tend to treat mobile homes more like personal property, Form 8300 reporting cannot depend on the state in which the sale takes place. Consistent and effective tax administration demands that the applicability of the reporting requirements be the same regardless of the place of sale. The informational and enforcement purposes served by Form 8300 reporting cannot be meaningfully accomplished unless the standards are applied nationwide, as money laundering and tax evasion can take place in any state. Ultimately, the only sound way to analyze and reach a conclusion on the issue you have presented is to apply the usual principles of statutory and regulatory construction to the reporting requirements in light of their underlying purposes and common sense.

The Requirements of Section 6050I

Section 6050I(a) provides that any person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or two or more related transactions, shall file a return, as described in section 6050I(b), reporting the transaction(s). The return is due at the time prescribed by the Secretary in regulations. Section 6050I(b) requires the information return to be made on whatever form the Secretary designates and must include the name, address, and TIN of the person or persons from whom the cash was received; the amount of cash received; the date and nature of the transaction(s); and any other information as directed. The Service (as the Secretary's delegate) has prescribed the Form 8300 to report section

6050I transactions, and the return must be filed by the 15th day after the cash is received. Treas. Reg. § 1.6050I-1(e)(1), (2). Multiple payments for one transaction (or two or more related transactions) are aggregated for purposes of the reporting requirements. Treas. Reg. § 1.6050I-1(b).

A “transaction” required to be reported is “the underlying event precipitating the payer’s transfer of cash to the recipient” and includes a sale of goods or services and a sale of real property. Treas. Reg. § 1.6050I-1(c)(7)(i). Therefore, whether a mobile-home sale is treated as a sale of realty or of personal property, the sale must be reported on Form 8300 if more than \$10,000 in cash is exchanged. “Cash” is defined as the coin and currency of the United States or a foreign country. I.R.C. § 6050I(d)(1); Treas. Reg. § 1.6050I-1(c)(1)(ii)(A). “Cash” also means a cashier’s check, bank draft, traveler’s check, or money order in an amount of \$10,000 or less that is received in a “designated reporting transaction” or in any transaction in which the recipient knows that the instrument is being used in an attempt to avoid reporting under section 6050I.⁵ I.R.C. § 6050I(d)(2); Treas. Reg. § 1.6050I-1(c)(1)(ii)(B).

A “designated reporting transaction” is a “retail sale” of “a consumer durable,” collectible, or travel or entertainment activity. Treas. Reg. § 1.6050I-1(c)(1)(iii). Cashier’s checks, money orders, and other “cash” instruments that are payments under a down-payment plan, payments of loan proceeds (*i.e.*, purchase-money financing), or payments on a promissory note or installment sales contract are generally not required to be reported even if received in a designated reporting transaction. Treas. Reg. § 1.6050I-1(c)(1)(iv)-(vi). A “retail sale” is any sale made in the course of a trade or business that primarily makes sales to ultimate consumers, and a “consumer durable” is “an item of personal property . . . suitable under ordinary usage for personal consumption or use, that can reasonably be expected to be useful for at least 1 year under ordinary usage, and that has a sale price of more than \$10,000.” Treas. Reg. § 1.6050I-1(c)(2)(5).

Linking each of these respective regulatory terms together, they yield different results depending on the scenario. In the most basic situation, a mobile-home purchaser buys a mobile home from a retail dealer for more than \$10,000 and pays for the home without any “cash” at all, or pays in part with currency of \$10,000 or less and the remainder in a form other than “cash.” For example, the purchase is wholly or partly made with a loan from the dealer or a third-party lender. As an alternative, the purchaser might pay with a cashier’s check or money order exceeding \$10,000. Either way, there is nothing to be reported. Conversely, if the purchaser pays for the home with over \$10,000 of domestic or foreign currency, then, of course, the transaction is reportable without any need to determine if the sale was a “designated reporting transaction” (and reducing it further, whether a mobile home is a “consumer durable”). The more difficult situation is where the purchaser uses one or more small cashier’s checks or money orders and either no currency or currency not exceeding \$10,000 —say, \$10,000 in currency and seven \$10,000 money orders to buy an \$80,000 mobile home. For that transaction to be

⁵ A personal check drawn on the account of the person writing the check is excluded. I.R.C. § 6050I(d).

reportable, it must be a retail sale of a consumer durable. And a mobile home can only be a consumer durable if it is personal property (and not real property).

We conclude that a mobile home—at least at the point of retail sale, which is the relevant point⁶—is personal property for determining any required Form 8300 reporting, regardless of how the purchaser intends to use or ultimately uses the mobile home. Not only is a mobile home personal property, it is also a “consumer durable” under section 1.6050I-1(c)(2) of the Income Tax Regulations. We reach these conclusions by considering first the language of the particular provision in question and, second, by the purposes for requiring that certain cash transactions be reported.

The regulatory language refers to a “consumer durable” as “tangible personal property . . . suitable . . . for personal use or consumption.” In construing this provision, as with any statute or regulation, the words are to be given their ordinary, plain meaning.

Bayview Hunters Point Cmty. Advocates v. Metropolitan Transp. Comm'n, 366 F.3d 692, 698 (9th Cir. 2004); *Lane v. Principi*, 339 F.3d 1331 1340 (Fed. Cir. 2003). The ordinary, plain meaning of “tangible” is that the item of property is a physical object (as opposed to an intangible property right or ownership interest, such as an assignable right to receive payments under a contract). A mobile home is unquestionably tangible. *Black's Law Dictionary* (8th ed. 2004) (defining “tangible” as, “Having or possessing physical form”). The ordinary, plain meaning of “personal consumption or use” is a non-business or consumer use of the property item. Cf. U.C.C. § 1-201(b)(11) (2001) (“Consumer’ means an individual who enters into a transaction primarily for personal, family, or household purposes.”). Under this definition, a mobile home’s suitability for use as a home certainly means they are suitable for personal use or consumption. Finally, the ordinary and plain meaning of “personal property” is any property that is not real property. *Black's Law Dictionary* (8th ed. 2004) (defining “personal property” as any “thing that is subject to ownership and not classified as real property.”); *The Guide to American Law*, Vol. 8, at 180 (West 1984) (“Everything that is the subject of ownership that does not come under the denomination of real property” is personal property.); 73 C.J.S. *Property* § 32 (2005).

Real property has consistently been defined and understood at law as land and structures built on to land. Ray Andrews Brown, *The Law of Personal Property* § 1.7 (3d ed. 1975) (“The most natural of . . . classifications [of property] is that between immovables (land and those things permanently attached to it) and movables (commonly designated as the law of chattels.”); Restatement (First) of Prop. § 8 (1936) (“real property” means “interests in land,” whether absolute, limited, or conditional). By that definition, a mobile home, in and of itself, is not real property. A mobile home therefore qualifies as personal property and a consumer durable under the regulatory use of those terms.

⁶ A mobile home may be converted from personal to real property (such as if the trailer becomes permanently affixed to the ground), but the reporting requirements are based on sales and other similar transactions, and not on post-transaction events, including the use made of the sold property.

In addition, regulations, like statutes, are not interpreted or applied in a vacuum or in a purposefully constrained way that is contrary to what was clearly intended; rather, they are interpreted broadly to carry out their purposes. *Baldridge v. Hadley*, 491 F.2d 859, 864 n.2 (10th Cir. 1974) (holding that regulations should be interpreted “broadly and liberally”); *Rucker v. Wabash R.R. Co.*, 418 F.2d 146, 149 (7th Cir. 1969) (stating that administrative regulations are construed to effectuate the reason(s) they were promulgated); *United States v. Miller*, 303 F.2d 703, 707 (9th Cir. 1962) (“It is axiomatic that any regulation should be construed to effectuate the intent of [its provisions, which] . . . may be ascertained by considering the language used and the overall purpose of the regulation, and by reflecting on the practical effect of the possible interpretations.”).

Treating mobile homes as consumer durables when sold furthers the purpose of section 6050I information reporting. See *Trustees of Indiana Univ. United States*, 618 F.2d 736, 739 (Ct. Cl. 1980) (“a regulation must be interpreted so as to harmonize with and further . . . the objective of the statute it implements”). Indeed, to exempt mobile homes from reporting on the ground that in some contexts they are treated as real property would mean that potentially a whole category of cash transactions would go unreported—an approach that does nothing to further, and might inhibit, the detection and enforcement purposes of the statute. See *Insurance Co. of North America v. Gee*, 702 F.2d 411, 414 (2d Cir. 1983) (interpreting a regulation to avoid “thwart[ing] a statutory mandate”). Mobile homes, like high-end luxury automobiles and boats, are relatively large-dollar items, conceivably making them prime targets for money launderers. In the situation illustrated above of a purchaser using a number of lower denomination (at or below \$10,000) cashier’s checks or money orders to buy a mobile home, it would be nonsensical to conclude that such a suspicious transaction is not reportable simply because the consumer good is a mobile home instead of an automobile or a boat. We will not adopt an interpretation that runs counter to common sense. *Bartlik v. United States Dep’t of Labor*, 62 F.3d 163, 165-66 (6th Cir. 1995) (holding that regulations must be read in a commonsense manner).

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