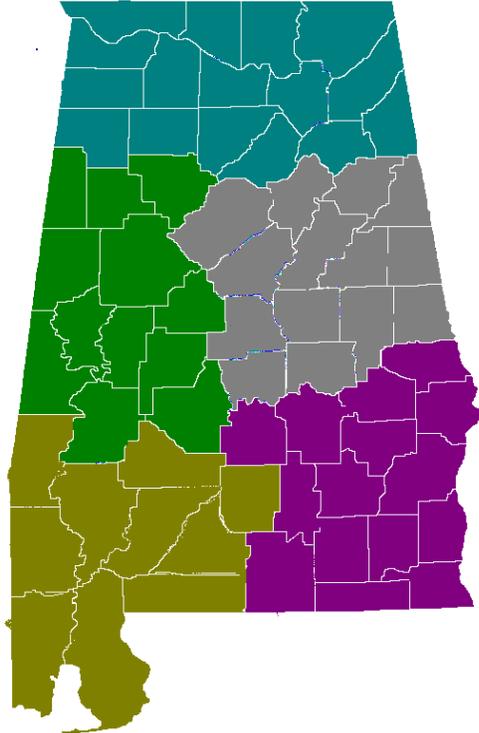


# MANUFACTURED HOME MANUAL



## PROPERTY TAX DIVISION

ALABAMA DEPARTMENT OF REVENUE

## MEMORANDUM

**TO:** All County License Inspectors

**From:** Monica Mason, Tax Valuation Analyst  
Property Tax Division

**Subject:** Manufactured Homes

The Property Tax Division is responsible for advising and assisting county tax officials on departmental policies, procedures, and the laws of the State of Alabama concerning the assessing and registering of manufactured homes. Manufactured Home law can be found in the **Code of Alabama**, Section 40-12-255. You may also refer to our Rules and Regulations 810-4-2 for more detailed standards and requirements.

The Property Tax Division provides a training program to license inspectors to assure that state and county personnel achieve equitable administration of the manufactured home laws of the State of Alabama. This program is designed to enhance knowledge, increase professionalism, and maintain high standards in the administration of manufactured home laws and regulations.

All manufactured homes located on land owned by the manufactured home owner where the manufactured homes are not rented or leased for business purpose shall be subject to assessment for ad valorem tax purposes and the manufactured home shall be considered as improvements to the land. **Code of Alabama**, Section 40-11-1(b(15))

Every person, firm, or corporation who owns, maintains, or keeps in this state a manufactured home which is located on land owned by someone other than the manufactured home owner, or manufactured homes located on land owned by the manufactured home owner and such manufactured homes are rented or leased for business purposes shall be subject to registration. Enclosed is a copy of Code of Alabama, 1975 Section 40-12-255 and Property Tax Rules and Regulation 810-4-2.

## **MANUFACTURED HOMES THAT REQUIRE A DECAL**

The manufactured home owner shall immediately attach the appropriate decal to and at all times thereafter display the decal at eye level on the outside finish of the manufactured home for which the decal was issued. The decal shall be located one foot from the right corner on the side facing the street so as to be clearly visible from the street.

### Registration Decals

The issuing official will place the appropriate classification letter on the designated area of the decal prior to issuing a registration decal. Any appendages that are added to a manufactured home which have a total square footage less than the square footage of the manufactured home shall be covered by the registration fee. When appendages exceed the square footage of a manufactured home, the manufactured home shall be registered as a double wide paying the applicable double wide registration fee.

### Ad Valorem Decals

Every person, firm, or corporation who owns a manufactured home shall receive a decal upon the assessment of the manufactured home, upon the payment of the ad valorem tax on the manufactured home, or upon complying with the ad valorem tax laws where no taxes are due. There shall be no issuance fee paid for decals issued for manufactured homes subject to ad valorem tax. Individuals assessing a manufactured home for the first time will be issued a current year decal at the time of assessment and must either return to the courthouse during October, November, or December for a new decal or be mailed a new decal during October, November, or December.

## **MANUFACTURED HOMES THAT DO NOT REQUIRE A DECAL**

A decal shall no longer be required when the county appraisal office determines the manufactured home to have “no value.”

A decal will no longer be required, when the identity of a manufactured home has changed and no longer can be valued using the Manufactured Home Rate Tables, but is more accurately valued using other sections of the Alabama Appraisal Manual.

All manufactured homes owned by the United States Government, the State of Alabama, and county or municipal corporations are exempt from the registration fees provided for in Code of Alabama, Section 40-12-255(m). Issuance of a decal is not required. However, for discovery purposes, a decal may be issued to governmental agencies at no charge.

Manufactured homes in the inventory of a dealer or a manufacturer shall not be required to display a decal . Code of Alabama, **Section** 40-12-255(a).

## CITATIONS

The county license inspector or deputy license inspector shall have authority to issue citations. The county official charged with the responsibility of administering this law shall have the authority to designate employees of his or her office or by mutual consent of the tax assessor or county revenue commissioner, employees of the tax assessor or county revenue commissioner, or appraisal office as deputy license inspectors.

Citation books will be printed and distributed by the Alabama Department of Revenue to the County Manufactured Home Registration Official. Keep records of who the books are issued to, which citation numbers are in each book, and retain all books when completed. Citations are sequentially numbered and will be subject to audit by the Alabama Department of Examiners of Public Accounts.

It is recommended that one county office be designated to collect all manufactured home citation fees. License inspectors are to turn in the yellow copy of the citation to the manufactured home official daily to ensure collection of the citation fee prior to registration/assessment.

All manufactured home owners who fail to properly display the registration or ad valorem decals on such manufactured homes shall be subject to a citation fee of \$15.

Any manufactured home owner, unless specifically exempted, who fails to pay the registration fee on manufactured homes shall be subject to a citation fee of \$15.

If the ad valorem tax or registration fee and citation fees are not paid within fifteen (15) calendar days of the date cited, a penalty of \$24 will be assessed against the owner of the manufactured home.

The license inspector or deputy license inspector shall institute or cause to be instituted criminal proceedings for all citations not paid within the 15 days allowed. Refer to the Code of Alabama 1975, Section 40-12-10 for the proper procedure to use concerning the collection of citation fees and penalties. Adequate records of the disposition of the citations should be kept in the county manufactured home official's office.

### **Distribution of Citation Fee - \$15**

County General Fund if cited by County License Inspector

Or

County Treasurer if cited by employee of county tax or registering official---To be used by the office issuing the citation for administration and enforcement of the Revenue Manufactured Home Laws.

## **FIELD REVIEW**

The county license inspector will perform an analysis of the locations of manufactured homes in the county using utility reports, information from land owners and any other sources available. A work plan should be developed and implemented in order for field review to be accomplished in a timely manner.

### Land Owners and Utility Reports

The owner or lessor of real estate on which any manufactured home is situated shall report the name and address of the owner of such manufactured homes to the county assessing official as provided for in Code of Alabama, Section 40-12-255(c).

Any public or private entity that provides or sells any gas or electric services and connects the services to any manufactured home shall, not less often than monthly, report to the county tax assessing official a list containing each such manufactured home connected to such service during the period preceding the report, together with the name of the occupant and the location of the connection provided for in Code of Alabama, Section 40-12-255(d). Use utility reports to check all new hook-ups.

1. Create a database to track issuance and payment of citations.
2. Choose locations in the county you intend to review.
3. Gather citation books, maps, and if available Property Record Cards (PRC).
4. Give the white copy of the citation to the person cited, keep the pink copy for your records, and turn in the yellow copy to the manufactured home official daily to ensure collection of the citation fee prior to registration or assessment.
5. After 15 days, any citation that has not been paid, the license inspector or deputy license inspector shall institute or cause to be instituted criminal proceedings.

## **UNISSUED DECALS**

At the end of each tax year, all unissued decals, both registration and ad valorem, must be inventoried by the county issuing official and the total number of unissued decals remaining in inventory must be reported to the Property Tax Division. Unissued decals must be retained by the county issuing official in a secure area of their office until a satisfactory audit, for each unaudited tax year, has been completed by the Examiners of Public Accounts. Upon completion of a satisfactory audit by the Examiners of Public Accounts, all unissued decals, for the tax years audited, must be immediately destroyed.



Section 40-12-255

**Manufactured homes.**

(a) Every person, firm, or corporation who owns, maintains or keeps in this state a manufactured home as defined according to subsection (n) of this section, except a manufactured home that constitutes a part of the inventory of a manufacturer or dealer, shall pay an annual registration fee of \$24 for an owner occupied single wide (one transportable module) manufactured home, \$48 for an owner occupied double wide or larger (two or more transportable modules) manufactured home, \$48 for a commercial single wide (one transportable module) manufactured home, or \$96 for a commercial double wide or larger (two or more transportable modules) manufactured home, provided, however, that any manufactured home 10 years of age or greater but less than 20 years of age shall pay 75 percent of the above stated fees, and any manufactured home 20 years of age or greater shall pay 50 percent of the above stated fees; and upon payment thereof such owner shall be furnished an identification decal, designed by the Department of Revenue and color coded to denote the size and year issued, which shall be immediately attached to and at all times thereafter displayed at eye level on the outside finish of the manufactured home for which the registration fee was paid, and one foot from the corner on the right side facing the street, so as to be clearly visible from the street. The registration fee hereby provided for shall be paid in the county in which such manufactured home is customarily kept to the same county official who normally collected ad valorem tax on manufactured homes prior to October 1, 1991; provided, however, that the responsibilities for administering the provisions of this law may be transferred to another county official with the mutual consent of the elected county officials involved. The fee shall be due and payable on October 1 of each year and delinquent if not paid before December 1 of each year. For the year beginning October 1, 1991, the registration fee shall be in lieu of the ad valorem taxes that would have been due and payable on October 1, 1991, and any taxpayer who pays the registration fee on his manufactured home between October 1, 1991, and November 30, 1991, shall not be subject to any delinquent ad valorem taxes or fees. The owner of the manufactured home shall furnish to the registration official the make, model, year, length, width, number of transportable modules, and serial number of the manufactured home and the registration official shall furnish a receipt to the manufactured home owner containing the above referenced information. The registration fee shall be disbursed by the collecting official by the twentieth of the month following the month of collection and shall be disbursed as follows, 25 percent to the State General Fund, 25 percent to the county general fund, 25 percent to the county school board except that if the manufactured home is located within a city school district then the 25 percent shall go to the city school board, and 25 percent to the city or municipality in which the manufactured home is located, except that if the manufactured home is not located within a municipal corporate limits then the county general fund will receive the 25 percent share that would have gone to the municipality. The official collecting such registration fees and issuing such identification decals in evidence of payment thereof shall also collect a \$5 issuance fee to be distributed as follows: \$4 to the county general fund if the issuing official is on salary and if the issuing official is on the fee system, then the \$4 issuance fee shall go to the issuing official, and the remaining \$1 shall accrue to an account in the office of the county treasurer for use by the issuing official or designated representative, and such accumulated moneys shall be used only for performance of his or her official duties.

(b) The owner of any manufactured home who fails to pay the registration fee hereby provided for shall be subject to a delinquent fee of \$10 if payment is made on or after December 1, or if the manufactured home owner fails to pay the registration fee or if the owner fails to display the identification decal on such manufactured home, as hereinabove required. Furthermore, the owner shall be subject to a citation fee of \$15 and if the registration fee and citation fee are not paid within 15 calendar days of date cited a penalty of \$24 will be assessed against the owner of the manufactured home. The county license inspector or deputy license inspector shall have authority to issue citations and assess penalties. The county official charged with the responsibility of administering this law shall have the authority to designate employees of his office or by mutual consent of the tax assessor, employees of the tax assessor's or appraisal office as deputy license inspectors. The delinquent fee and penalty shall be distributed in the same manner as the registration fee. The citation fee shall accrue to the county general fund if the citation is issued by the county license inspector's office. The citation fee shall accrue to an account in the office of the county treasurer for use by the assessor, collector, license commissioner, or revenue commissioner if an employee of that office issues the citation, and the citation fee shall be used only for performance of the issuing official's official duties. The official responsible for administering the provisions of this section must collect all fees and penalties due before a decal may be issued to the manufactured home owner. The penalties set out under Section 32-6-65(b) are not applicable to manufactured homes.

(c) The owner or lessor of the real estate on which any manufactured home is situated shall report the name and address of the owner of such manufactured home at such times as the Commissioner of Revenue may require on forms furnished by the Department of Revenue. The commissioner and the state Department of Revenue are hereby empowered to promulgate and enforce any rules or regulations reasonably necessary to administer the provisions of this chapter, including but not limited to, notice, hearings, and appeals processes.

(d) Any public or private entity that provides or sells any gas or electric services and connects such services to any manufactured home shall, not less often than monthly, report to the county tax assessing official a list containing each such manufactured home connected to such service during the period preceding the report, together with the name of the occupant and the location of the connection.

(e) The manufactured home owner shall furnish to the county official charged with the responsibility of administering this law a copy of the prior year's registration receipt, unless such manufactured home is new and a registration decal has never been issued, in which case the county official charged with the responsibility of administering this law shall be furnished a bona fide bill of sale from the dealer showing when the manufactured home was bought and a certificate of title issued by the Alabama Department of Revenue or application for a certificate of title for a 1990 or subsequent year model manufactured home or, in the case of a used manufactured home brought into the state from any other state the county official charged with the responsibility of administering this law shall be furnished a bona fide certificate of title, manufacturer's certificate of origin or bill of sale, properly assigned, showing when the manufactured home was sold to an individual, firm, corporation or association now living or operating in this state. If such bill of sale or certificate of title is not furnished, the manufactured home will be presumed to have been in the state for the two previous years and the registration

fee shall be immediately due and payable for the two previous years plus the current year, but in no case will the registration fee be due and payable for any period prior to October 1, 1991.

(f) Manufactured homes brought into the state during any tax year, new manufactured homes for which registration decals have never been issued, or manufactured homes sold from the stock of a dealer or otherwise acquired during any tax year, shall be subject to registration the same as if they had been held or owned in the state on October 1; except, that registration fees thereon shall be assessed on a quarterly basis as follows:

(1) Manufactured homes brought into the state or sold from stock after October 1, but before January 1 following, shall be subject to registration the same as if held or owned in the state on October 1.

(2) Manufactured homes brought into the state or sold from stock after the last day of December, but before April 1 following, shall be subject to registration for three quarters of the tax year.

(3) Manufactured homes brought into the state or sold from stock after the last day of March, but before the first day of July following, shall be subject to registration for one half of the tax year.

(4) Manufactured homes brought into the state or sold from stock after the last day of June, but before October 1, following, shall be subject to registration for one fourth of the tax year.

(g) Any person, firm, or corporation acquiring a new manufactured home or bringing a manufactured home into the state for the first time, except a manufactured home which constitutes a part of the inventory of a dealer or manufacturer, shall have 30 calendar days from the date of the bill-of-sale or from the date the manufactured home entered the state for the first time to register said manufactured home without a delinquent fee.

(h) Manufactured homes shall not be included in any assessment for ad valorem tax purposes made by any person, firm or corporation unless said manufactured home meets the requirements of subdivision (b)(15) of Section 40-11-1. Any manufactured home that is assessed for ad valorem tax purposes under subdivision (b)(15) of Section 40-11-1 shall not be subject to registration.

(i) Any owner occupied manufactured home owned by any person over the age of 65 or any owner who is totally disabled shall be exempt from paying the annual registration fee. The exemption must be claimed annually by the manufactured home owner between October 1 and November 30. Proof of age shall only be required once and a copy of proof may be kept on file. Proof of disability may be, but shall not be limited to, the written certification of such total disability by any two physicians licensed to practice in this state. The payment of the \$5 issuance fee will be required in order to receive the exemption and decal.

(j) No manufactured home may be moved on the roads or highways of Alabama unless one of the following provisions are met:

(1) Every person, firm, or corporation who owns, maintains, or keeps in this state a manufactured home, must obtain a permit to move said manufactured home on the highways of Alabama. The permit shall be obtained from the county official who administers the manufactured home registration laws. Proof of payment of the current registration fee, issuance fee, and any applicable penalties shall be required before the moving permit shall be issued. Manufactured home dealers shall not be required to obtain a moving permit when moving a manufactured home that is part of dealer's inventory or moving a manufactured home for the first time after a sale of such manufactured home from dealer's inventory as evidenced by a bill of sale or bill of lading.

(2) If the manufactured home is owned by a dealer, manufacturer, lien holder, or an out-of-state person, firm, or corporation and is being transported within or through the State of Alabama, or entering the State of Alabama for the first time, then proof of ownership of said manufactured home by said person, firm, or corporation as evidenced by a tag, decal, bill-of-sale, bill of lading, or title shall be sufficient and a permit will not be required; provided, however, that a lien holder will be required to notify, in writing, within 10 days of moving any manufactured home, the county official charged with the responsibility of administering this law, and such official shall send a notice of any delinquent taxes, if applicable within 10 days, and the lien holder shall pay delinquent tax within 30 days of being notified.

(3) The above referenced moving permit shall be in addition to any other moving permits required by law.

(4) The provisions of this section shall be enforced by any law enforcement officials in the State of Alabama. Any person, firm, or corporation moving a manufactured home on the roads or highways of Alabama without a moving permit shall be issued a traffic citation for failure to have in possession the required moving permit and shall be guilty of a Class C misdemeanor; and upon conviction thereof shall be subject to a fine of not less than \$50.

(5) The issuing official shall charge a \$10 fee for the above referenced moving permit. One-half of said fee shall accrue to the county general fund to cover the costs of obtaining and issuing said permits, and the remaining one-half shall accrue to the State Road and Bridge Fund.

(6) The Department of Revenue shall design the above referenced moving permit and shall promulgate rules and regulations for their use.

(k) Any person, firm, or corporation required to register a manufactured home under the provisions of this article must show proof of payment of sales/use tax before the decal may be issued.

(l) Any person violating any provision of this article shall be guilty of a Class C misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$50.

(m) All manufactured homes owned by the United States government, the State of Alabama, and county or municipal corporations are exempt from the registration fees provided for under this section.

(n) For purposes of administering the provisions of this section the definition of "manufactured home" shall be the following: A structure, transportable in one or more sections, and which is built on a permanent chassis, and not designed normally to be drawn or pulled on the highway except to change permanent locations but is designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems, if any, contained therein. It may be used as a place of residence, business, profession, trade, or for any other purpose, by the owner, lessee, or assigns and may consist of one or more units that can be attached or joined together.

(o) For the purposes of administering the provisions of this section, the definition of a manufactured home used for commercial purposes shall be any manufactured home except an owner-occupied manufactured home used as a single family residence.

**Attorney General Opinions:**

**1997-258 Collection of registration fees, delinquent fees, and citation fees**

**1998-084 Class III manufactured home**

**1998-154 Monies collected from funds generated from manufactured homes**

**1999-042 Registration fees**

**1999-073 Ad Valorem taxes- exemptions-age requirements**

**1999-173 Issuance fee**

**2002-179 Distribution of funds generated from manufactured homes**

**2005-090 Certificate of title**

**2005-180 Certificate of title**

**2013-018 Registration fee if rented or leased**

**2013-071 Monies collected from funds generated from manufactured homes**

# OFFICE OF THE ATTORNEY GENERAL



97-00258

**BILL PRYOR**  
ATTORNEY GENERAL  
STATE OF ALABAMA

**AUG 14 1997**

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Janice Y. Golden  
Tax Collector, Lee County  
215 South 9th Street  
P.O. Box 2413  
Opelika, Alabama 36803-2413

Manufactured Homes --  
Registration Fees --  
Delinquent Fees --  
Citation Fees -- Collection

1. ALA. CODE Section 40-5-14 (1975) authorizes a levy upon personal property only to collect delinquent taxes.
2. Tax collector cannot add uncollected registration fees and related citation fees to ad valorem tax assessment.
3. ALA. CODE Section 40-12-255(1) (1975) authorizes the signing of a warrant for anyone violating a provision of Article 5.
4. Manufactured home owner is the only party responsible for registration fees and citation fees.
5. ALA. CODE Section 40-12-255 (h) (1975)

excludes manufactured homes from assessment for ad valorem taxes except those qualifying under ALA. CODE § 40-11-1(b)(15) (1975).

Dear Ms. Golden:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

Can the fees imposed under ALA. CODE § 40-12-255 (1975) (1993 Repl. Vol.) be satisfied by levying upon property pursuant to ALA. CODE § 40-5-14 (1975) (1993 Repl. Vol.)?

FACTS AND ANALYSIS

An individual living in Columbus, Georgia, owns and rents several manufactured homes (hereinafter "homes") that are located on property he owns in Lee County, Alabama. Pursuant to ALA. CODE § 40-12-255 (1975) (1993 Repl. Vol.) (all cites are to the CODE), he was issued and served, via certified mail, nine citations on April 19, 1997, for failing to purchase decals for these homes. The purchase and display of these decals evidence the payment of registration fees which are in lieu of ad valorem taxes. The registration fees, delinquent fees, and citation fees for the period of October 1, 1995, through October 1, 1997, total \$ 3,703.00. These fees have not been paid as of July 28, 1997.

Section 40-12-255 imposes a registration fee on any home that does not meet the requirements of § 40-11-1(b)(15). Section 40-12-255(a) states:

Every person, firm, or corporation who owns, maintains or keeps in this state a manufactured home as defined according to subsection (n) of this section, except a manufactured home that constitutes a

part of the inventory of a manufacturer or dealer, shall pay an annual registration fee of \$24.00 for an owner occupied single-wide (one transportable module) manufactured home, \$48.00 for an owner occupied double-wide or larger (two or more transportable modules) manufactured home, \$48.00 for a commercial single-wide (one transportable module) manufactured home, or \$96.00 for a commercial double-wide or larger (two or more transportable modules) manufactured home. . . .

[A]nd upon payment thereof such owner shall be furnished an identification decal, designed by the Department of Revenue and color coded to denote the size and year issued, which shall be immediately attached to and at all times thereafter displayed at eye level on the outside finish of the manufactured home for which the registration fee was paid, and one foot from the corner of the right side facing the street, so as to be clearly visible from the street. The registration fee hereby provided for shall be paid in the county in which such manufactured home was customarily kept to the same county official who normally collected ad valorem tax on manufactured homes prior to October 1, 1991. . . .

The fee shall be due and payable on October 1 of each year and delinquent if not paid before December 1 of each year. For the year beginning October 1, 1991, the registration fee shall be in lieu of the ad valorem taxes that would have been due and payable on October 1, 1991, and any taxpayer who pays the registration fee on his manufactured home between October 1, 1991, and November 30, 1991, shall not be subject to any delinquent ad valorem taxes or fees.

While there are many cases which discuss the distinction between fees and taxes, since the Legislature has chosen to characterize the charge imposed under § 40-12-255

as a fee, we preterm discussion of that issue. See Gunby v. Yates, 102 S.E.2d 548 (Ga.); State v. Montevallo Coal Mining Co., 197 So. 82, 29 Ala.App. 318 (Ala.App. 1946), cert. den. State v. Montevallo Coal Mining Co., 197 So. 87 (1940).

"After January 1 of each year, the tax collector must proceed without delay, to levy upon the personal property of delinquent taxpayers for the payment of their taxes." Section 40-5-14 provides with respect to ad valorem property taxes: The registration fee imposed by the statute is in lieu of ad valorem taxes, but is not characterized as a tax. In our opinion § 40-5-14 cannot be used to collect delinquent fees since this section can only be used for collecting delinquent taxes.

The clear language of § 40-5-14 must be afforded its plain meaning. See Baker v. Williams Bros. Inc., 601 So.2d 110 (Ala. 1992). The rule of statutory construction set out in Kirkland v. State, 529 So.2d 1036 (Ala. Cr. App. 1988), cert. den. Ala. S. Ct. 87-1044 (literal meaning cannot defeat spiritual intention of a legislative act) fails to support an interpretation of § 40-5-14 which would allow its use in the collection of delinquent fees and citations under § 40-12-255.

#### CONCLUSION

Section 40-5-14 authorizes a levy upon personal property to recover delinquent taxes.

#### QUESTION 2

Can delinquent fees under § 40-12-255 be added to one's ad valorem tax bill?

#### FACTS AND ANALYSIS

Section 40-12-255(h) states:

Manufactured homes shall not be included in any assessment for ad valorem tax purposes made by any person, firm or corporation unless said manufactured home

meets the requirements of subdivision (b)(15) of § 40-11-1. Any manufactured home that is assessed for ad valorem tax purposes under subdivision (b)(15) of § 40-11-1 shall not be subject to registration.

Accordingly, fees, which are not ad valorem taxes, cannot be made a part of an ad valorem tax assessment.

#### CONCLUSION

The uncollected registration fees of § 40-12-255, as well as related delinquent and citation fees, cannot be made a part of an ad valorem tax assessment.

#### QUESTION 3

Should the tax collector sign a warrant in the event of the nonpayment of registration fees under § 40-12-255?

#### FACTS AND ANALYSIS

Section 40-12-255(1) states:

Any person violating any provision of this article shall be guilty of a Class C misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$50.

This section authorizes the official in charge of administering § 40-12-255 to sign a warrant. Whether a warrant should be signed is within the discretionary authority of that official.

#### CONCLUSION

A warrant can be signed by the tax collector for nonpayment of registration fees under § 40-12-255(1).

QUESTION 4

Can a citation be issued to someone other than the owner of the home?

FACTS AND ANALYSIS

While the first sentence of § 40-12-255(a) begins, "Every person, firm, or corporation who owns, maintains or keeps in this state a manufactured home," the remainder of § 40-12-255 speaks only of the owner. Any argument that the language - - maintains or keeps -- authorizes issuing citations to someone other than the owner fails for at least one reason: Regulations adopted by the State of Alabama Department of Revenue make it clear that only the owner is responsible. 810-4-2-.07. Delinquent fees, set out below in its entirety, states:

- (1) Manufactured home owners will be subject to a \$10 delinquent fee if:
  - (a) The owner of any manufactured home fails to pay the registration fee before December 1.
  - (b) The manufactured home owner fails to register a newly acquired manufactured home or a manufactured home entering the state for the first time within thirty (30) days.
- (2) Delinquent fees cannot be waived (40-12-10f) (sic).
- (3) Only one delinquent fee will be charged.
- (4) Liability for delinquent registration fees does not follow the property. A new owner would not be liable for the past owner's delinquent registration fees, penalties, etc.
- (5) Only owners of manufactured homes subject to the registration fee may be

subject to the delinquent fee. The \$10 delinquent fee cannot be charged owners subject to ad valorem tax laws.

810-4-2.08. Citations, at paragraphs (1), (2), and (3) states:

(1) Any manufactured home owner, unless specifically exempted, who fails to pay the registration fee on manufactured homes shall be subject to a citation fee of \$15.

(2) All manufactured home owners who fail to properly display the registration or ad valorem decals on such manufactured homes shall be subject to a citation fee of \$15.

(3) If the ad valorem tax or registration fee and citation fees are not paid within fifteen (15) calendar days of the date cited, the penalty of \$24 will be assessed against the owner of the manufactured home.

The main function of a regulation is to interpret a statute. See State v. Sprinkle Net Shop, Inc., 351 So.2d 608 (Ala. Civ. App. 1977). It is apparent that the Department of Revenue's interpretation of § 40-12-255, as evidenced by its regulations, holds the owner exclusively liable for all fees. Therefore, citations may only be issued to the owner. In addition to the Department of Revenue's regulations, one must consider the language of § 40-12-255 which refers only to the owner in relation to delinquent fees and citations.

#### CONCLUSION

Under Department of Revenue regulations, only the owner should be issued a citation for delinquent fees under § 40-12-255.

QUESTION 5

Should these homes be reported to the appraisal office for appraisal on his real property and escaped for back taxes?

FACTS AND ANALYSIS

There is only one situation that allows assessment of these homes for ad valorem taxes which arises under § 40-11-1(b)(15):

(b) The subjects of ad valorem taxation, except as exempted by law, shall be as follows:

\* \* \*

(15) All manufactured homes located on land owned by the manufactured home owners, except those manufactured homes rented or leased for business purposes, other than those manufactured homes in the inventory of a manufactured home dealer or manufacturer.

Section 40-12-255(h) makes specific reference to the above-quoted section and the fact that under that section a home can be subject to ad valorem tax. Therefore, based on the above sections, if the ownership of the land and home are the same, and the home is not rented or leased, the home would be subject to ad valorem tax. As such, the home would also be subject to § 40-7-23 pertaining to escaped taxes.

CONCLUSION

A manufactured home may be subject to ad valorem tax and escaped ad valorem tax if it meets the requirements of § 40-11-1(b)(15) and § 40-7-23.

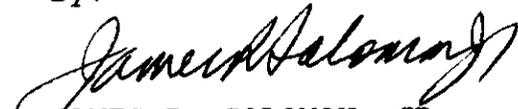
Honorable Janice Y. Golden  
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Claude E. Patton, Legal Division, Department of Revenue.

Sincerely,

BILL PRYOR  
Attorney General

By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

BP/CEP/jho  
G8.97/OP

# OFFICE OF THE ATTORNEY GENERAL



98-00084

**BILL PRYOR**  
ATTORNEY GENERAL  
STATE OF ALABAMA

**FEB - 3 1998**

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Doster L. McMullen  
Tax Assessor, Tuscaloosa County  
108 Courthouse - 714 Greensboro Avenue  
Tuscaloosa, AL 35401

Ad Valorem Taxes - Class  
III Residential Property -  
Second Home

Real property can be Class III under several circumstances. This question of occupancy on law day, October 1 of tax year, is one of fact to be determined by assessing officer. If occupied by a member of the owner's family, either parent or child, property may be Class III. Occupation by one not owner or part of owner's immediate family would preclude Class III treatment. A home occupied by a dependent child while attending school can qualify for Class III treatment.

Dear Mr. McMullen:

This opinion of the Attorney General is issued in response to your request.

## QUESTIONS

1. If, on October 1, owner is not "occupying" the property as a

single-family dwelling, can it qualify as Class III under section 40-8-1(a)?

2. Can a single-family dwelling, occupied by someone other than the owner, be Class III?

3. If a child owns a so-called mobile home located on his homestead property and allows an elderly parent to occupy it rent free, is it Class III property?

4. Can a home purchased by parents for use by a child away at school qualify as Class III?

#### FACTS, LAW, AND ANALYSIS

The fundamental issue underlying your questions is: What is Class III property? It is "[a]ll agricultural, forest, and residential property and historic buildings and sites." ALA. CODE § 40-8-1(a) (1993); ALA. CONST. amend. 373. "Residential property" is defined in section 40-8-1(b)(6) as: "[O]nly real property, used exclusively as the owner's single-family dwelling." ALA. CODE § 40-8-1(b) (1993).

In Howell v. Malone, 388 So. 2d 908 at 915 (Ala. 1980), the Supreme Court held that the constitutional amendment and statutes just cited vest "an interpretative discretion" in those officers charged with the duty of assessing taxes. Accordingly, the determination of whether a certain parcel of real estate is Class III is largely a factual matter to be determined by the assessing officer. Part of what the assessing officer should consider is the makeup of the specific family in question. It would not be improper to consider an elderly parent or a dependent child as part of the owner's family.

The owner must occupy the residence, but the question of what use comprises occupation is also largely a question of fact within the reasonable interpretative discretion of the assessing officer.

As to your fourth question, if a dependent child is living in a single-family dwelling while away at school, and is not sharing the dwelling with someone other than his/her family, then the dwelling can qualify as Class III

property. See Opinion to Honorable Ken Malone, Tax Assessor, Mobile County, under date of February 14, 1979, A.G. No. 79-00025.

CONCLUSION

Because your questions each turn on questions of fact and determinations within the discretion of the assessing officer, we can only give a very general answer to them. Under section 40-8-1(a) real property can be Class III under several circumstances and the question of occupancy on the law day, October 1 of the tax year, is one of fact to be determined by the assessing officer. If occupied by a member of the owner's family, either parent or child, the property may be Class III under the statutes. Occupation by someone who is not the owner or part of the owner's immediate family would preclude Class III treatment. A home occupied by a dependent child while attending school can qualify for Class III treatment.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Philip C. Davis of my staff.

Sincerely,

BILL PRYOR  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division

BP/PCD/jho  
M1.98/OP

# OFFICE OF THE ATTORNEY GENERAL



98-00154

**BILL PRYOR**  
ATTORNEY GENERAL  
STATE OF ALABAMA

**MAY 21 1998**

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Wallace Wyatt, Jr.  
Probate Judge, St. Clair County  
P. O. Box 220  
Ashville, AL 35953

Probate Judges - Manufactured  
Housing - Fees - Employees,  
Employers, Employment

Funds accumulated in the office of  
the county treasurer from the iss-  
uance fee collected for the registra-  
tion of manufactured homes may be  
used by the issuing official for the  
employment of part-time or tempo-  
rary employees who only administer  
or enforce the manufactured home  
laws.

Dear Judge Wyatt:

This opinion of the Attorney General is issued in response to your  
request.

## QUESTION

Can moneys from the issuance fee fund be  
used by the issuing official for part-time or tem-  
porary employees for the purpose of administer-  
ing or enforcing the manufactured home laws?

### FACTS AND ANALYSIS

Registration fees for manufactured homes are required pursuant to section 40-12-255 of the Code of Alabama. ALA. CODE § 40-12-255 (1993). Subsection (a) provides in pertinent part:

**The registration fee hereby provided for shall be paid in the county in which such manufactured home is customarily kept to the same county official who normally collected ad valorem tax on manufactured homes prior to October 1, 1991; provided, however, that the responsibilities for administering the provisions of this law may be transferred to another county official with the mutual consent of the elected county officials involved. . . . The official collecting such registration fee and issuing such identification decals in evidence of payment thereof shall also collect a \$5 issuance fee to be distributed as follows: \$4 to the county general fund . . . and the remaining \$1 shall accrue to an account in the office of the county treasurer for use by the issuing official or designated representative, and such accumulated moneys shall be used only for administering or enforcing the manufactured home laws.**

ALA. CODE § 40-12-255(a) (1993) (emphasis added).

Your request states that by mutual consent, you, the probate judge, are the official responsible for administering the registration fee for manufactured homes in St. Clair County. The last sentence of subsection (a) of section 40-12-255 clearly provides that the issuing official may use the funds accumulated in the office of the county treasurer only for administering or enforcing the manufactured home laws. The employment of part-time or temporary employees who only administer or enforce the manufactured home laws is a proper use of these funds.

### CONCLUSION

Funds accumulated in the office of the county treasurer from the issuance fee collected for the registration of manufactured homes may be

Honorable Wallace Wyatt, Jr.  
Page 3

used by the issuing official for the employment of part-time or temporary employees who only administer or enforce the manufactured home laws.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

BILL PRYOR  
Attorney General

By:

A handwritten signature in black ink, appearing to read "James R. Solomon, Jr.", written in a cursive style.

JAMES R. SOLOMON, JR.  
Chief, Opinions Division

BP/BFS  
W/5.13.98/f

# OFFICE OF THE ATTORNEY GENERAL

99-00042



**BILL PRYOR**  
ATTORNEY GENERAL  
STATE OF ALABAMA  
NOV 17 1998

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Janice Y. Golden  
Tax Collector, Lee County  
P. O. Box 2413  
Opelika, AL 36803-2413

## Ad Valorem Taxes – Manufactured Housing – Registration - Fees

1. When the owner of a manufactured home registers his home, new or used, the instrument to be used for registration, the bill of sale or certificate of title, is that showing the date the manufactured home was brought into the state for owning, maintaining, or keeping. If the owner does not have this information, the home is presumed to have been in the state for two previous years in addition to the current year.
2. A manufactured homeowner who has owned a manufactured home subject to the annual registration requirement, but who has failed to register and pay said fee, is subject to the delinquent fee for each year the home was not registered and the fee was not paid.

Dear Ms. Golden:

This opinion of the Attorney General is issued in response to your request.

### QUESTION 1

Pursuant to section 40-12-255(e) of the Code of Alabama, what is the correct number of years the county official who is charged with the responsibility of administering the manufactured homes registration law must charge in the following situations:

- a. A manufactured homeowner has the correct information to register his new or used home. To determine the correct number of years to be charged, what date is to be used, the date shown on the bill of sale or the date shown on the certificate of title, so long as the date is not prior to October 9, 1991?
- b. A manufactured homeowner does not have the correct information to register his new or used home, i.e., bill of sale, certificate of title, or prior year's paid tax receipt. Would this home be presumed to have been in the county for the prior two years plus the current year?

### FACTS AND ANALYSIS

Section 40-12-255(e) of the Code of Alabama provides as follows:

The manufactured homeowner shall furnish to the county official charged with the responsibility of administering this law a copy of the prior year's registration receipt, unless such manufactured home is new and a registration decal has never been issued, in which case the

county official charged with the responsibility of administering this law shall be furnished a bona fide bill of sale from the dealer showing when the manufactured home was bought and a certificate of title issued by the Alabama Department of Revenue or application for a certificate of title for a 1990 or subsequent year model manufactured home or, in the case of a used manufactured home brought into the state from any other state the county official charged with the responsibility of administering this law shall be furnished a bona fide certificate of title, manufacturer's certificate of origin or bill of sale, properly assigned, showing when the manufactured home was sold to an individual, firm, corporation or association now living or operating in this state. If such bill of sale or certificate of title is not furnished, the manufactured home will be presumed to have been in the state for the two previous years and the registration fee shall be immediately due and payable for the two previous years plus the current year, but in no case will the registration fee be due and payable for any period prior to October 1, 1991.

ALA. CODE § 40-12-255(e) (1993).

The purpose of presenting the bill of sale or certificate of title is to show when the manufactured home, new or used, was purchased and/or brought into this state for owning, maintaining, or keeping, in order to calculate the registration fee, except when the manufactured home is part of the inventory of a manufacturer or dealer. *See* ALA. CODE § 40-12-255(a). This date is usually shown on the bill of sale, but, in some cases, may be shown on the certificate of title.

If the manufactured homeowner has no information to show how long the manufactured home has been in the state, the law presumes that the manufactured home has been in the state for the two previous years, and the official charged with administering this law must collect for the two previous years in addition to the current year's registration fee.

CONCLUSION

When the owner of a manufactured home registers his home, new or used, the instrument to be used for registration, the bill of sale or certificate of title, is that showing the date the manufactured home was brought into the state for owning, maintaining, or keeping.

If the owner does not have this information, the home is presumed to have been in the state for two previous years in addition to the current year.

QUESTION 2

Pursuant to section 40-12-255(b) of the Code of Alabama, is the delinquent fee \$10.00 for each year the owner failed to register the manufactured home, or is it a one-time fee charged in the current year of registration?

FACTS, LAW, AND ANALYSIS

Section 40-12-255(b) of the Code of Alabama provides as follows:

The owner of any manufactured home who fails to pay the registration fee hereby provided for shall be subject to a delinquent fee of \$10 if payment is made on or after December 1, or if the manufactured home owner fails to pay the registration fee or if the owner fails to display the identification decal on such manufactured home, as hereinabove required. . . .

ALA. CODE § 40-12-255(b) (1993).

Implicit in this statute is the requirement of the manufactured homeowner to register his manufactured home annually. Any manufactured homeowner who has owned a manufactured home subject to the annual registration requirement, but who has failed to register and pay said fee, is subject to the delinquent fee for each year the home was not registered and the fee was not paid.

A manufactured homeowner who is attempting to register a newly acquired manufactured home, either new or used, is not liable for the past owner's delinquent registration fees and/or penalties, but may be subject to his own delinquent fee if the manufactured home is not registered and the fee paid before December 1 of the current year.

CONCLUSION

A manufactured homeowner who has owned a manufactured home subject to the annual registration requirement, but who has failed to register and pay said fee, is subject to the delinquent fee for each year the home was not registered and the fee was not paid.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Gwendolyn B. Garner, Legal Division, Department of Revenue.

Sincerely,

BILL PRYOR  
Attorney General

By:



CAROL JEAN SMITH  
Chief, Opinions Division

# OFFICE OF THE ATTORNEY GENERAL



99-00073

**BILL PRYOR**  
ATTORNEY GENERAL  
STATE OF ALABAMA

JAN 5 1999

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Wallace Wyatt, Jr.  
Judge of Probate, St. Clair County  
1815 Cogswell Avenue  
Pell City, AL 35125

Ad Valorem Taxes – Exemptions –  
Age Requirements – Probate Judges

Pursuant to section 40-11-1(15) of the Code of Alabama, ad valorem taxes are due on all manufactured homes located on land owned by the manufactured home owners, except those manufactured homes rented or leased for business purposes, or those manufactured homes in the inventory of a manufactured home dealer or manufacturer.

Section 40-9-21 of the Code of Alabama exempts from ad valorem taxation the principal residence and 160 acres adjacent thereto of any person who is totally disabled or who is 65 years of age or older having a net annual taxable income of \$7,500 or less, as shown on such person's and spouse's latest United States income tax return.

Dear Judge Wyatt:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Considering section 40-9-21 of the Code of Alabama, if a person 65 years of age or older has his principal residence in a manufactured home which is situated on his land (on which there is no house), is that person exempt from ad valorem taxes on the manufactured home?

FACTS AND ANALYSIS

Chapter 11 of title 40 of the Code of Alabama enumerates the subjects of ad valorem taxation. Section 40-11-1(b)(15) specifically provides as follows:

All manufactured homes located on land owned by the manufactured home owners, except those manufactured homes rented or leased for business purposes, other than those manufactured homes in the inventory of a manufactured home dealer or manufacturer.

ALA. CODE § 40-11-1(b)(15) (1998).

Chapter 9 of title 40 of the Code of Alabama identifies those persons and property exempt from ad valorem taxation in Alabama. Section 40-9-21 provides as follows:

In addition to the persons and property exempt from ad valorem taxation as prescribed in Section 40-9-1, the following shall also be exempt from ad valorem taxation: the principal residence and 160 acres adjacent thereto of any person who is totally disabled or who is 65 years of age or older having a net annual taxable income of \$7,500 or less, as shown on such person's and spouse's latest United States income tax return. In the event that such person or spouse are not required to file a United States income tax return, then an affidavit indicating that the net taxable income of such person and spouse for the preceding taxable year was \$7,500 or less shall be sufficient proof. Proof of age shall be furnished when the exemption provided

herein is claimed. Proof of disability may be, but shall not be limited to, the written certification of such total disability by any two physicians licensed to practice in this state. In order to qualify for exemption under this section, such principal residence must be a single-family residence owned and occupied by a person qualifying under this section.

ALA. CODE § 40-9-21 (1998).

### CONCLUSION

Therefore, in response to your question, the answer is in the affirmative. Manufactured homes located on land owned by the manufactured home owner and used as the owner's principal residence are subject to ad valorem taxation. As subjects of ad valorem taxation, section 40-9-21 of the Code of Alabama exempts the residence and 160 acres adjacent thereto of any person who is totally disabled or who is 65 years of age or older having a net annual taxable income of \$7,500 or less, as shown on such person's and spouse's latest United States income tax return, from ad valorem taxation.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Gwendolyn B. Garner, Legal Division, Department of Revenue.

Sincerely,

BILL PRYOR  
Attorney General

By:



CAROL JEAN SMITH  
Chief, Opinions Division

# OFFICE OF THE ATTORNEY GENERAL



99-00173

**BILL PRYOR**  
ATTORNEY GENERAL  
STATE OF ALABAMA

April 19, 1999

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, ALABAMA 36130  
AREA (334) 242-7300

Honorable Kathleen H. Craft  
Pickens County Revenue Commissioner  
Post Office Box 447  
Carrollton, Alabama 35447

Registration – Revenue Commissioners –  
Fees – Manufactured Housing

When a manufactured homeowner has the needed information for registering his manufactured home, the county official is to charge the registration fee from the date shown on the prior year's receipt, bill of sale, or certificate of title showing when the manufactured home was brought into the state for keeping or maintaining.

The issuance fee authorized in section 40-12-255(a) can only be charged when the registration fee is collected and a decal is issued for a manufactured home.

Dear Commissioner Craft:

This opinion of the Attorney General is issued in response to your request.

## QUESTION 1

Pursuant to section 40-12-255(e) of the Code of Alabama, if the manufactured homeowner does not

have the correct information to register his home, i.e., bill of sale, certificate of title, or prior year's paid tax receipt, the law presumes that the manufactured home has been in the state for the two previous years, and the official charged with administering this law must collect for the two previous years in addition to the current year's registration fee. What is the maximum number of years of registration fees the county official must charge when a manufactured homeowner has the correct information to register/renew the new or used home, so long as the date is not prior to October 1, 1991?

#### FACTS AND ANALYSIS

Section 40-12-255(e) of the Code of Alabama provides:

The manufactured homeowner shall furnish to the county official charged with the responsibility of administering this law, a copy of the prior year's registration receipt, unless such manufactured home is new and a registration decal has never been issued, in which case, the county official charged with the responsibility of administering this law shall be furnished a bona fide bill of sale from the dealer showing when the manufactured home was bought and a certificate of title issued by the Alabama Department of Revenue or application for a certificate of title for a 1990 or subsequent year model manufactured home or, in the case of a used manufactured home brought into the state from any other state, the county official charged with the responsibility of administering this law shall be furnished a bona fide certificate of title, manufacturer's certificate of origin or bill of sale, properly assigned, showing when the manufactured home was sold to an individual, firm, corporation or association now living or operating in this state. If such bill of sale or certificate of title is not furnished, the manufactured home will be presumed to have been in the state for the two previous years and the registration fee shall be immediately due and payable for the

two previous years, plus the current year, but in no case will the registration fee be due and payable for any period prior to October 1, 1991.

ALA. CODE § 40-12-255(e) (1998).

In accordance with section 40-12-255(e), when the manufactured homeowner has the needed information for registering the manufactured home in the state, the county official is to use the date on the prior year's registration receipt, bill of sale, or certificate of title showing the date the manufactured home was brought into the state for owning, maintaining, or keeping. *See* Opinion of the Attorney General to Honorable Janice Y. Golden, Tax Collector, Lee County, dated November 17, 1998, A.G. No. 99-00042.

### CONCLUSION

When a manufactured homeowner has the needed information for registering his manufactured home, the county official is to charge the registration fee from the date shown on the prior year's receipt, bill of sale or certificate of title showing when the manufactured home was brought into the state for keeping or maintaining.

### QUESTION 2

Pursuant to section 40-12-255(a) of the Code of Alabama, can county officials who are charged with the responsibility of administering and enforcing the manufactured home laws of the State of Alabama charge the \$5 issuance fee for each year a manufactured homeowner fails to register the home and pay the registration fee?

### FACTS AND ANALYSIS

Section 40-12-255(a) states, regarding the issuance fee to be charged by the official collecting the registration fee, "The official collecting such registration fees, and issuing such identification decals in evidence of payment thereof, shall also collect a \$5 issuance fee to be distributed as follows: . . ."  
ALA. CODE § 40-12-255(a) (1998).

According to section 40-12-255(a), each person, firm, or corporation that owns, maintains, or keeps a manufactured home in this state is to pay a registration fee as set out in that section, except when such manufactured home is part of a dealer's or manufacturer's inventory. An owner who fails to pay this fee is subject to a delinquent fee of \$10 for each year the home was not registered and the fee was not paid. ALA. CODE § 40-12-255(b) (1998); Opinion to Honorable Janice Y. Golden, A.G. No. 99-00042 at 5.

No fee can be demanded or received except when expressly authorized by law. Cooke v. Wilbanks, 224 Ala. 479, 140 So. 745 (1932). The issuance fee is charged when the registration fee is collected and an identification decal is issued to the owner of a mobile home. ALA. CODE § 40-12-255(a) (1998). It is not connected to the delinquent fee authorized in section 40-12-255(b) to be collected for each year the manufactured home was not registered. There is, further, no authorization for the issuance fee to be collected with each delinquent fee collected for years when the manufactured home was not registered.

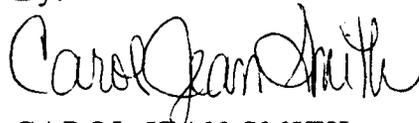
### CONCLUSION

The issuance fee authorized in section 40-12-255(a) can only be charged when the registration fee is collected and a decal is issued for a manufactured home.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR  
Attorney General  
By:



CAROL JEAN SMITH  
Chief, Opinions Division



2002 - 179

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

BILL PRYOR  
ATTORNEY GENERAL

March 19, 2002

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable Mickey Haddock  
Lauderdale County License Commissioner  
200 South Court Street  
Florence, Alabama 35630

License Commissioners – Manufactured  
Housing – License Fees – Lauderdale  
County

All of the accumulated funds that have been generated from the \$1 portion of the mobile home registration fee that is retained by the licensing officials in Alabama can be expended pursuant to the authority set out in Act No. 2001-1098, regardless of whether it was collected under the provisions of Act No. 2001-1098 or the more limited provisions of its predecessor statute.

Dear Commissioner Haddock:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May the accumulated monies presently in the account established by section 40-12-255 of the Code be used by the issuing official for performance of all of his or her duties, including enforcement of the manufactured home laws?

FACTS AND ANALYSIS

In your letter of request, you provide the following facts:

Act 2001-1098 ["the Act"] amended section 40-12-255 of the Code of Alabama, which pertains to the registration fees on manufactured homes. Prior to the amendment, the statute set aside \$1.00 of the \$5.00 issuance fee for use by the issuing official or his designated representative, and further provided that "such accumulated monies shall be used only for administering or enforcing the manufactured home laws." The amendment to the statute contained in Act No. 2001-1098 changed that language to read "such accumulated monies shall be used only for the performance of his or her official duties." Act No. 2001-1098 was requested by our Association for the purpose of allowing the accumulated monies set aside pursuant to section 40-12-255 to be used for performing duties in addition to the manufactured home laws.

State law requires you, as the county license official, to collect a \$5 issuance fee and to issue identification decals that evidence the payment of the required mobile home registration fee each year. 2001 Ala. Acts No. 2001-1098. Of that fee, \$4 is paid into the county general fund. *Id.* The remaining \$1 is placed into an account for the use of the licensing official. *Id.*

In 2001, the Legislature amended the law governing the expenditure of these funds and broadened the appropriate purposes for which they could be expended. Prior to its passage, these funds could only be expended "for administering or enforcing the manufactured home laws." The Act provides that these funds can be used for the performance of the issuing official's duties.

Your question concerns the proper expenditure of the funds collected and deposited into this account prior to this change in the law. Specifically, you ask whether the funds collected prior to this amendment may now be expended in accordance with the act. Your question is answered by the plain language of the act. Its use of the term "accumulated funds" indicates a legislative intent that all monies previously paid into this account and all monies that will, in the future, be paid into this account, are to be expended in accordance with the provisions of the Act.

CONCLUSION

All of the accumulated funds that have been generated from the \$1 portion of the mobile home registration fee that is retained by the licensing officials in Alabama can be expended pursuant to the authority set out in Act No. 2001-1098, regardless of whether it was collected under the provisions of Act No. 2001-1098 or the more limited provisions of its predecessor statute.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Troy King of my staff.

Sincerely,

BILL PRYOR  
Attorney General  
By:



CAROL JEAN SMITH  
Chief, Opinions Division

BP/CJS/TRK  
64105v1/38725



2005 - 090

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

March 14, 2005

TROY KING  
ATTORNEY GENERAL

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable Don Davis  
Mobile County Probate Judge  
109 Government Street  
Post Office Box Seven  
Mobile, Alabama 36601

Probate Courts – Title Certificates –  
Revenue Department – Manufactured  
Housing – Real Property

The probate judge is not required to file an Alabama Department of Revenue Form MVT 5-36 when a person seeks an exemption from the certificate-of-title requirement for a new manufactured home under section 32-8-31(10) of the Code of Alabama. The judge must execute the form when a deed describing the home as affixed to the real property is also presented for recording, i.e., an original deed, in the case of a conveyance from the seller of the home to the purchaser, when the home and property are purchased at the same time, or an amended deed, when a home is placed on property already owned by the purchaser.

Dear Judge Davis:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

1. Is a judge of probate required to execute an Alabama Department of Revenue Form

MVT 5-36, absent the receipt of legal evidence upon which to make a finding of fact as to whether a new manufactured home has become permanently affixed to real property?

2. Can the requirements of the Alabama Uniform Certificate of Title and Antitheft Act be met by the completed form being filed in a probate court's real property records?

### FACTS AND ANALYSIS

The Alabama Uniform Certificate of Title and Antitheft Act is codified at section 32-8-1, *et seq.*, of the Code of Alabama. Section 32-8-30(b) provides that 1990 and later mobile homes must have a certificate of title. ALA. CODE § 32-8-30(b) (1999). Section 32-8-30(c) provides the following procedure to cancel the certificate if the home becomes real property:

(c) If a mobile home is affixed to a parcel of real property and the ownership of mobile home and real property is identical, the owner or owners may obtain from the Alabama Department of Revenue a cancellation of title to the mobile home by delivering to the department, the following:

(1) The certificate of title to the mobile home, or each separate certificate of title if the mobile home consists of more than one unit;

(2) A certified copy of the deed or other instruments of conveyance to the realty to which the mobile home has become affixed;

(3) An affidavit executed by all who have an ownership interest in the mobile home and the realty to which the mobile home has become affixed to the effect that the mobile home is affixed to the realty described in the deed;

(4) Lien release from lienholder as recorded on the face of the certificate of title.

ALA. CODE § 32-8-30(c) (1999).

A change warranting cancellation must be permanent. As the United States Bankruptcy Court for the Middle District of Alabama has observed:

Under Alabama law, a mobile home which is not permanently affixed to the land is personal property. *First Alabama Bank v. Renfro*, 452 So.2d 464, 467 (Ala. 1984). . . . If steps are taken to permanently affix the mobile home to the land, such as removing the wheels and axles, enclosing it with concrete blocks and building on a porch, the mobile home may become real property. *In re Carroll*, 67 B.R. 1020, 1022 (Bankr. N.D. Ala. 1986); *In re Morphis*, 30 B.R. 589, 591 (Bankr. N.D. Ala. 1983).

*In re Johnson*, 269 B.R. 246, 248-49 (Bankr. M.D. Ala. 2001).

Section 32-8-31 provides for exemptions to the title requirement. The 2003 amendment to this section added the following new exemption as subsection (10): "A new manufactured home placed on the owner's land when classified real property through the surrender of the manufacturer's certificate of origin and a real property deed is issued." ALA. CODE § 32-8-31(10) (Supp. 2004). A "new manufactured home" is defined as a "manufactured home that has never been the subject of a first sale for use . . ." ALA. CODE § 32-8-2(11) (Supp. 2004).

Section 32-8-31(10) does not specifically provide for the process for a new manufactured home to be classified as real property. In lieu of a procedure, a process similar to that provided for the cancellation of the title of a mobile home in section 32-8-30(c) should be followed. To that end, therefore, the Alabama Department of Revenue ("Revenue") has promulgated Form MVT 5-36. As you correctly state, the act authorizes Revenue to "provide suitable forms of application" [ALA. CODE § 32-8-3(a) (Supp. 2004)] and to "[a]dopt and enforce reasonable rules and regulations to carry out the provisions of this chapter" [ALA. CODE § 32-8-3(b)(2) (Supp. 2004)].

The form accompanies your request. It is entitled "Application to Cancel a Certificate of Origin For a New Manufactured Home Classified as Real Property." After providing for the identification information for the home, the form provides for owner and address information, along with the following certification: "I (We) hereby certify that the above referenced new manufactured home has been affixed and classified as real property and that the attached manufacturer's certificate of origin is being surrendered pursuant to Section 32-8-31([10]), Code of Alabama 1975, for cancellation." Alabama Department of Revenue Form MVT 5-36 (9/04). After providing for the owner's signature, the form concludes with the following attestation of the probate judge: "I hereby attest that the above referenced new manufactured home has been recorded as being permanently affixed and recorded as real property in the county of \_\_\_\_." *Id.*

The form is not required to be filed in the probate court. The first part of section 32-8-31(10), requiring "the surrender of the manufacturer's certificate of origin," is accomplished when the executed form and certificate are submitted to Revenue. Although the old language of section 32-8-30(c)(2) only requires the submission to Revenue of a certified copy of the deed to the realty to which the manufactured home has become affixed, the second part of section 32-8-31(10) requires that "a real property deed is *issued*," indicating the Legislature's intent that a new deed reflecting the change in the character of the property is necessary. Accordingly, the probate judge must execute the form when a deed describing the manufactured home as affixed to the real property is also presented for recording, i.e., an original deed, in the case of a conveyance from the seller of the home to the purchaser, when the home and property are purchased at the same time, or an amended deed, when a home is placed on property already owned by the purchaser.

In executing the form, the probate judge is merely attesting that the applicant has represented, not making a finding of fact, that the manufactured home is permanently affixed. Generally, the probate judge is required to accept for recording any "deeds . . . or other documents *purporting* to convey any right, title, easement, or interest in any real estate or personal property." ALA. CODE § 35-4-51 (1991) (emphasis added). This Office has stated that "judges of probate should receive any conveyance for record unless such conveyance is on its face defective, such as containing no granting clause, or no description whatsoever," and "should not be held responsible for deciding whether any document handed to them for recordation is in actuality a valid conveyance." Opinion to Honorable L. W. Noonan, Judge of Probate, Mobile County, dated November 5, 1984, A.G. No. 85-00062 at 3 (emphasis in original). Consequently,

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the probate judge is not required to verify whether a new manufactured home is actually affixed to real property.

CONCLUSION

The probate judge is not required to file an Alabama Department of Revenue Form MVT 5-36 when a person seeks an exemption from the certificate-of-title requirement for a new manufactured home under section 32-8-31(10) of the Code of Alabama. The judge must execute the form when a deed describing the home as affixed to the real property is also presented for recording, i.e., an original deed, in the case of a conveyance from the seller of the home to the purchaser, when the home and property are purchased at the same time, or an amended deed, when a home is placed on property already owned by the purchaser.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB

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2005 - 180

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
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August 17, 2005

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Probate Courts – Filing Fees – Deeds –  
Real Property – Manufacturing Housing

A person may seek an exemption from the certificate-of-title requirement for a new manufactured home, under section 32-8-31(10) of the Code of Alabama, for a home placed on property he or she already owns by recording an amended deed conveying the property to himself or herself and updating the description to include a “manufactured home” as part of the real property.

The deed is subject to deed tax. The tax due is based on the value of both the manufactured home and the property on which it is located.

Dear Judge Davis:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Should the deed tax on a deed where the landowner is the grantor and the grantee, recorded to obtain the exemption from the certificate-of-title requirement for a new manufactured home under section 32-8-31(10) of the Code of Alabama, be based on the value

of both the real property and manufactured home or on the value of the home alone?

### FACTS AND ANALYSIS

The Alabama Uniform Certificate of Title and Antitheft Act is codified at section 32-8-1, *et seq.*, of the Code of Alabama. Section 32-8-30(b) provides that 1990 and later mobile homes must have a certificate of title. ALA. CODE § 32-8-30(b) (1999). Section 32-8-31(10) provides for an exemption to the title requirement for “[a] new manufactured home placed on the owner’s land when classified real property through the surrender of the manufacturer’s certificate of origin and a real property deed is issued.” ALA. CODE § 32-8-31(10) (Supp. 2004).

This Office recently addressed the procedure to obtain the exemption. Opinion to Honorable Don Davis, Mobile County Probate Judge, dated March 14, 2005, A.G. No. 2005-090. The *Davis* opinion explained that an applicant must submit an Alabama Department of Revenue (“Revenue”) Form MVT 5-36 executed by the probate judge and the certificate of origin on the manufactured home to Revenue. That opinion stated the probate judge’s role in the process as follows:

*Accordingly, the probate judge must execute the form when a deed describing the manufactured home as affixed to the real property is also presented for recording, i.e., an original deed, in the case of a conveyance from the seller of the home to the purchaser, when the home and property are purchased at the same time, or an amended deed, when a home is placed on property already owned by the purchaser.*

*Id.* at 4 (emphasis added).

Your question concerns the latter scenario emphasized above. In that case, the property owner may comply with section 32-8-31(10) by amending the deed to update the description. The owner can deed the property to him or herself, including a “manufactured home” in the description as part of the real property.

You correctly assume that such a deed is subject to deed tax. A deed tax is imposed upon the recording of a deed pursuant to section 40-22-1 of the Code of Alabama, which states as follows:

No deed, bill of sale, or other instrument of like character which conveys any real or personal property within this state or which conveys any interest in any such property, *except the transfer of mortgages on real or personal property within this state upon which the mortgage tax has been paid, deeds or instruments executed for a nominal consideration for the purpose of perfecting the title to real estate, the re-recording of corrected mortgages, deeds, or instruments executed for the purpose of perfecting the title to real or personal property, specifically, but not limited to, corrections of maturity dates thereof, and deeds and other instruments or conveyances, executed prior to October 1, 1923*, shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record.

ALA. CODE § 40-22-1 (2003) (emphasis added).

A deed tax, based on the fair market value of the property conveyed, must be paid to record an instrument that conveys real or personal property unless it meets one of the four exceptions in section 40-22-1. Opinion to Honorable Luke Cooley, Houston County Probate Judge, dated April 12, 2000, A.G. No. 2000-125. This Office has stated that a deed tax is due when grantors convey real property to themselves by deed for the purpose of defining their titles to the property or their survivorship interest. *Id.* (deed transferring separate parcels of property in separate deeds owned by an individual to that same individual in a single deed); Opinion to Honorable Frank H. Riddick, Probate Judge, Madison County, dated August 1, 1991, A.G. No. 91-00346 (deed amended to change from tenancy in common to joint tenants with right of survivorship). *See also*, Opinion to Honorable Dwight Faulk, Judge of Probate, Crenshaw County, dated August 1, 2001, A.G. No. 2001-239.

The only possible exception for the instant deed is that it is executed for a nominal consideration for the purpose of perfecting the title to the real estate. The owner, however, already has perfect title to the real property and the manufactured home. The purpose of the deed is to obtain the exemption from the certificate-of-title requirement for a new manufactured home under section 32-8-31(10) of the Code. Consequently, the exception under section 40-22-1 of the Code is inapplicable.

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In this circumstance, an amended deed, recorded to obtain the exemption, conveys the property on which the manufactured home is located and the manufactured home. Therefore, the deed tax due is based on the fair market value of both the property and the home. ALA. CODE § 40-22-1 (2003); *Cooley* at 2-3 (citing *Hawkins v. Pure Oil Co.*, 232 Ala. 660, 169 So. 307, 309 (1936) (if the purpose of the recordation is not for the perfection of the title, but to perfect a record of the transaction, deed tax is due upon the recordation of that transaction)).

### CONCLUSION

A person may seek an exemption from the certificate-of-title requirement for a new manufactured home, under section 32-8-31(10) of the Code of Alabama, for a home placed on property he or she already owns by recording an amended deed conveying the property to himself or herself and updating the description to include a "manufactured home" as part of the real property.

The deed is subject to deed tax. The tax due is based on the value of both the manufactured home and the property on which it is located.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

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Attorney General  
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