2013-018

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE
ATTORNEY GENERAL

December 21, 2012

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Oline Price
Lee County Revenue Commissioner
215 South Ninth Street
Post Office Box 999
Opelika, Alabama 36803-0999

Manufactured Homes – Registration – Ad Valorem Taxes

A manufactured home that is owned by a person who owns both the manufactured home and the land to which the home is affixed is subject to a registration fee if the manufactured home is being rented or leased.

An applicant for a registration decal for a commercial manufactured home, the certificate of title to which has been previously cancelled, must proceed to register that manufactured home despite the fact that the certificate of title has not been issued or reinstated.

Dear Mrs. Price:

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

QUESTION 1

Must a manufactured home, which is not owned and occupied by the owner of the land on which it is situated, be registered pursuant to section 40-12-255 of the Code of Alabama?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that certain purchasers of manufactured homes in Lee County have applied to register the homes and be issued a registration decal as provided in section 40-12-255 of the Code. The homes had been purchased at foreclosure sales or from mortgage lenders after foreclosure, and the Alabama Certificate of Title for these manufactured homes have been cancelled, apparently because this facilitated the foreclosure process. These homes were purchased as a land-home package. As a result, the applicants for the registration decals are owners of the homes and the land the homes are situated on, but are not occupying the homes as their residence. These homes are permanently affixed to the land on which they are situated.

Your initial question seeks clarification as to whether a manufactured home must be registered pursuant to section 40-12-255 of the Code when that home is occupied by persons other than the owner of the home and the land. Generally, section 40-12-255(a) requires every person, firm, or corporation that owns, maintains, or keeps a manufactured home in this state to pay an annual registration fee.

In particular, section 40-12-255(a) assesses the amount of $48 for a commercial single-wide manufactured home or $96 for a commercial double-wide manufactured home. A commercial manufactured home is any nonowner occupied manufactured home that is used as a single-family dwelling. ALA. CODE § 40-12-255(o) (2003).

Section 40-12-255 of the Code also exempts certain manufactured homes from the registration requirement. Specifically, section 40-12-255(h) provides that homes that are assessed for ad valorem tax purposes are not subject to registration. This section states as follows:

> (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.

ALA. CODE § 40-12-255(h) (2003).

In the facts that you provided this Office, you state that the manufactured home is situated on the property. The term "situated" does not expressly make known whether the manufactured home is attached to the property. Reading your question in the light of your factual situation, one may assume that the manufactured home that is situated on the property is attached thereto.

Whether a manufactured home that is attached to the real estate and not owner-occupied is required to be registered depends on whether that manufactured home is being assessed for ad valorem taxes pursuant to section 40-11-1(b)(15) of the Code of Alabama. Any manufactured home that meets the requirements of section 40-11-1(b)(15) of the Code is not required to be registered. All other manufactured homes are required to become registered pursuant to section 40-12-255(a) or section 40-12-255(b) of the Code, if such registration is delinquent.

Section 40-11-1(b)(15) of the Code subjects "[a]ll 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" to ad valorem taxation. ALA. CODE § 40-11-1(b)(15) (2003). Further, section 40-11-1(c)(2) provides that property described in section 40-11-1(b)(15) is to be assessed or taxed as realty.

Because the manufactured homes in question are rented or leased for business purposes, such manufactured homes are not subject to ad valorem taxation, but are required to be registered pursuant to section 40-12-255. Moreover, any commercial manufactured home, regardless of whether such home is affixed, is required to be registered because section 40-11-1(b)(15) exempts commercial manufactured homes from ad valorem taxation.

CONCLUSION

Section 40-12-255 assesses a registration fee for any nonowner-occupied manufactured home that is used as a single-family dwelling. This Code section, however, does not specifically require the owner of the manufactured home to own the property on which the manufactured home is affixed or lease the home.

Section 40-11-1(b)(15) subjects all manufactured homes, which are owned by the person owning the land, to ad valorem taxes unless that home is being leased or rented or used in some other commercial manner. Hence, a manufactured home that is being rented or leased, i.e., not owner occupied, and is owned by a person who owns both the manufactured home and the land to

which the home is affixed, must be registered. A person that owns a manufactured home is responsible for either paying a registration fee or ad valorem taxes.

QUESTION 2

> Must an applicant for a registration decal for a manufactured home, the certificate of title to which has been previously cancelled, get the title reinstated before the home can be registered?

FACTS AND ANALYSIS

A certificate of title is issued to the owner of a manufactured home. ALA. CODE § 32-20-23(a) & 32-20-28(1) (2010). This document is similar to the title people receive when a car is purchased. More particularly, the certificate of title of a manufactured home sets forth the security interests of the owner and any lien holders. *See, generally*, ALA. CODE § 32-20-26 (2010). Cancellation of a certificate of title for a manufactured home results in that structure no longer being considered personal property, but instead, the manufactured home is then considered real property. *See, generally, Green Tree-AL L.L.C. v. Dominion Res., L.L.C.*, 2011 WL 3963010 (Ala. Civ. App. Sept. 9, 2011). Cancellation of title typically occurs once the manufactured home is paid in full by the owner of the manufactured home. *See, generally*, ALA. CODE § 32-20-20(b) (2010).

According to this particular factual situation, the certificate of title was cancelled in an effort to facilitate the foreclosure process. As such, the title was not voluntary cancelled by the owner. Section 32-20-20(b) of the Code, discusses instances in which an original owner may seek to have the certificate of title cancelled. ALA. CODE § 32-20-20(b) (2010).

Although section 32-20-30 of the Code discusses the transfer of interest in a manufactured home by an owner, section 32-20-32 of the Code discusses the transfer of interest in a manufactured home when such transfer is done on an involuntary basis. The foreclosure or repossession of a home should be considered an involuntary transfer. As such, any new owner of a foreclosed home must apply for a new certificate of title. ALA. CODE § 32-20-32 (2010).

As discussed earlier, a commercial manufactured home is not subject to ad valorem taxation, but is subject to registration. Nothing in section 40-12-255 of the Code states that only manufactured homes with valid certificates of title may

be registered. Therefore, it is the opinion of this Office that manufactured homes that are being rented or leased for business purposes that do not currently have a certificate of title must still be properly registered. Moreover, unless otherwise provided by law, these manufactured homes should continue to pay a registration fee until such time that manufactured home becomes subject to ad valorem tax pursuant to section 40-11-1(b)(15) of the Code of Alabama.

CONCLUSION

An applicant for a registration decal for a commercial manufactured home, the certificate of title to which has been previously cancelled, must proceed to register that manufactured home despite the fact that the certificate of title has not been issued or reinstated. A certificate of title is not required to apply for a registration decal.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

LS/MMG
1446363/163188