A “WHEEL” HOME IS A REAL HOME: A CRITIQUE OF NORTH CAROLINA’S SALES TAX SCHEME FOR MANUFACTURED HOUSING

K. DAWN MILAM

INTRODUCTION

In 2013, the North Carolina General Assembly radically overhauled the state’s tax code. While creating a modified flat income tax that dramatically reduced income taxes on North Carolina’s wealthiest residents, lawmakers increased the sales tax on manufactured homes to a rate higher than comparable rates for either motor vehicles or site-built homes. Before 2013, manufactured homes were taxed at 2% of their retail sales price with a per unit cap—$300 for a singlewide and $600 for a doublewide. The new tax scheme subjects manufactured homes to the state’s general retail sales tax rate of 4.75%, unmitigated by any cap or limitation. This new tax regime contrasts significantly with that for other similar types of personal property: North Carolina imposes an uncapped 3% tax on most automobiles and a 3%, $1500-maximum tax on boats and aircraft. The manufactured home sales tax rate is also significantly higher than the 0.2% transfer tax for real property.

According to state lawmakers, this change is part of an attempt to bring fairness and simplification to the tax code. However, the legislature’s new tax scheme for manufactured homes—specifically in the context of the 2013 tax restructuring—implies a number of practical, political, and moral considerations that contradict this assertion. Indeed, when assessed within a traditional tax equity framework, the increased manufactured home tax seems strikingly unfair. Manufactured homes are a substantial source of low-income, unsubsidized housing for North Carolina citizens. A broader perspective on manufactured housing and its
residents confirms that equity concerns weigh in favor of reducing, not increasing, the tax burden on manufactured homes.

But the best solution is not to simply return to the pre-2013 scheme, which still classified manufactured homes as personal property. Determining an equitable tax scheme for manufactured homes requires a closer look at the assumptions and realities about manufactured housing. This paper argues that manufactured homes are suitably comparable to their site-built counterparts to benefit from a similar tax structure. Thus, the most equitable solution is to classify manufactured homes as real property for tax purposes, allowing buyers of these homes to enjoy the low 0.2% transfer tax currently imposed on other types of real property. Part I reviews the context of the manufactured home tax in North Carolina and the increase implemented by the General Assembly in 2013. Part II examines the role of manufactured housing in North Carolina as an affordable choice for lower-income residents. Part III explores the equity issues in a tax scheme for manufactured homes, critiquing both the current tax scheme and proposing other considerations that may factor into an equity analysis. Finally, Part IV considers the characteristics of modern manufactured homes and contends that most if not all of these structures should be taxed as real property at the time of sale.

I. THE 2013 TAX INCREASE FOR MANUFACTURED HOUSING

Before 1989, manufactured homes had been categorized with other motor vehicles for tax purposes.\(^1\) All motor vehicles were subject to a 2% sales tax with a $300 cap.\(^2\) In 1989, the North Carolina General Assembly created the Highway Trust Fund\(^3\) to annually allocate revenues to the Department of Transportation for permissible “[o]peration and development” expenses.\(^4\) The Highway Trust Fund collects revenue from “[m]otor fuel, alternative, fuel, and road tax revenue,”\(^5\) fees from the certificate of title,\(^6\) and a new Highway Use Tax (“HUT”) on
motor vehicles. The HUT functions much like the retail sales tax it replaced and is imposed for “the privilege of using the highways of this State.” The HUT rate is 3% of the vehicle’s sales price, with a $1000 maximum tax on commercial motor vehicles and a $1500 maximum tax on “recreational” vehicles not subject to the commercial vehicle cap. Aircraft and boats are similarly taxed at 3% of the sales price with a maximum tax of $1500.

The same Highway Trust Fund legislation distinguished manufactured homes from other types of motor vehicles, continuing to tax manufactured housing at the former 2% sales tax rate with a $300 cap “per section.” To qualify as a manufactured home, the structure must be “designed to be used as a dwelling and . . . manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development.” Continuing until January 1, 2014, manufactured homes remained subject to a retail sales tax of 2%, with a maximum limit of $300 for a singlewide and $600 for a doublewide.

In the summer of 2013, the General Assembly enacted comprehensive changes to North Carolina’s tax code. Lawmakers reduced the individual income tax rate for wealthy North Carolina residents, creating a modified flat tax that lowered the top tax rate from 7.5% to a flat rate of 5.8% in 2014 and 5.75% in 2015. The same legislation likewise lowered the corporate income tax rate from 6.9% to 6% in 2014 and 5% in 2015. Lawmakers compensated for the decrease in revenue by eliminating benefits like the Earned Income Tax Credit, jettisoning credits and exemptions, and expanding the tax base to cover additional goods and services. The 2013 tax changes have had an overall regressive effect: the Institute on Taxation and Economic Policy concluded that the lowest-earning 20% of North Carolina residents now pay 9.2% of their income in state and local taxes, while the highest-earning 1% pay 5.3%.
Notably for this paper, the General Assembly amended section 105-164.4(1) of the General Statutes to increase the sales tax on mobile homes to the state’s general retail rate of 4.75%. For a singlewide mobile home priced at $40,600, the 2014 sales tax increases from $300 to $1,928.50; for a doublewide priced at $74,200, the bill rises from $600 to $3,524.50. Under the new tax scheme, the sales tax on a manufactured home could be up to 8% of North Carolina’s median annual income—calculated at $46,334 for the years 2009–13 by the United States Census Bureau.

The increase uniquely distinguishes the tax structure on manufactured housing from that imposed on similar personal and real property. While raising the sales tax rate on manufactured homes, the legislature left intact the existing 3%, $1500-maximum sales tax on boats and aircraft as well as the 3% Highway Use Tax on vehicle sales. Although North Carolina has not traditionally taxed manufactured housing as real property at the time of sale, North Carolina has an entirely separate tax scheme for real property sales. For all conveyances of real estate, section 105-228.30(a) of the General Statutes provides that an “excise tax is levied” in the amount of “one dollar ($1.00) on each five hundred dollars ($500.00) or fractional part thereof of the consideration or value of the interest conveyed.” This 0.2% real property transfer tax remains the same for 2014 and 2015. Thus, the tax on a 1985 Bertram Yacht for sale in Wilmington, North Carolina, will still be capped at $1,500 even if it sells at its $575,000 asking price. The transfer tax on a site-built home selling for $300,000 will be even less—just $600.

For lawmakers restructuring the tax code, the tax hike on manufactured homes is purportedly about “fairness and simplification.” State Representative David Lewis, a Republican from Harnett County, asserted that “[i]t’s fair that the tax for the same thing—a home’s a home—be roughly the same.” Representative Lewis argued that manufactured-home
Buyers should bear a tax burden similar to that imposed on buyers of site-built homes.\textsuperscript{29} Buyers of site-built homes, claimed Lewis, pay the relevant sales tax on building materials in constructing the home.\textsuperscript{30} Thus, according to Lewis, manufactured-home buyers should be forced to pay an equivalent sales tax.\textsuperscript{31}

But Representative Lewis’s argument does not appear to recognize that manufactured homes must also be constructed with materials subject to a sales tax. Nor does it account for the fact that in sales of both site-built and manufactured homes, building costs—including sales tax on materials—are generally incorporated into the home’s sales price.\textsuperscript{32} Furthermore, if Representative Lewis is correct that manufactured homes are more appropriately categorized with site-built homes than with automobiles (discussed \textit{infra} Part IV), it is not clear why lawmakers did not simply apply North Carolina’s 0.2\% real property transfer tax to manufactured homes.\textsuperscript{33} On the other hand, if manufactured homes are instead classified in their traditional category of mobile personal property like vehicles, boats, and aircraft, their new tax burden is anything but similar.

\textbf{II. Manufactured Housing: Low-Cost Homes for Lower-Income Residents}

Not surprisingly, the increase primarily affects lower-income North Carolinians who purchase manufactured homes as their principal place of residence. Manufactured homes are a significant source of housing for North Carolina residents, comprising 13.7\% of North Carolina’s total housing units in 2013.\textsuperscript{34} Nationally, manufactured housing provides a substantial source of low-cost, unsubsidized housing for both owners and renters.

Particularly for individuals in rural southern households, manufactured homes provide an affordable opportunity for home ownership. Between 1993 and 1999, manufactured home
purchases accounted for 23% of nationwide home-ownership growth among lower-income households.\textsuperscript{35} In the rural South, however, the growth percentage rose to 63%.\textsuperscript{36}

While some affluent individuals purchase manufactured homes as vacation or investment property,\textsuperscript{37} most individuals and families who purchase manufactured homes as their principal place of residence tend to be less financially secure. One Raleigh retailer who sells between twenty-four and thirty-six manufactured homes a year says his customers’ annual incomes range from $24,000 to $72,000.\textsuperscript{38} North Carolina’s median income is $46,334.\textsuperscript{39} The same general trend applies across the country: the median income of the manufactured home buyer is less than the national median income.\textsuperscript{40} Manufactured homeowners also tend to have little wealth, perhaps due to age, as most buyers are either elderly or very young.\textsuperscript{41}

Manufactured homes appeal to low-income buyers as well as renters because these homes are significantly more affordable than traditional site-built housing. According to the Census Department's \textit{American Housing Survey}, the national median monthly housing cost for a homeowner is $929.\textsuperscript{42} For a renter, the national median monthly cost is $850.\textsuperscript{43} For a buyer or renter of a manufactured home, the cost drops to $501.\textsuperscript{44} In 2013, the average sales price of a manufactured home was $64,000, while the average sales price of a site-built home was $324,500.\textsuperscript{45}

The cost-efficiency in manufactured housing can be attributed to several different factors, ranging from the construction process of the home itself (see \textit{infra} Subpart IV.A) to the various options available for siting the home. The cost per square foot of a manufactured home is about half that of a site-built home.\textsuperscript{46} And unlike site-built homes, manufactured houses are also frequently purchased independent of the land to which they are to be affixed. The home’s buyer or buyer’s relative may already own the land, or the buyer may have a site-rental agreement with
a community owner. The reduced initial land costs relative to those in a site-built home purchase contribute to the manufactured housing’s overall affordability. Finally, manufactured homes tend to be located in rural communities, where average housing costs for all home types are lower than in metropolitan areas.

While many owners also own the land upon which their manufactured home is located, there are other types of housing communities available to individuals owning or renting a manufactured home. In a rental-home community, a landlord owns both the home and the land. This type of rental park housing is one of few affordable options available to poor families who live in rural areas. In other types of communities, residents own their manufactured home but lease the lot from the park owner. One developing variation for manufactured home communities is the cooperative, which looks much like a subdivision community. In a cooperative, residents own their home and may own the land as well, or they at least have a stake in ownership through shares in the cooperative.

III. TAX EQUITY AND MANUFACTURED HOUSING

There is no settled normatively “fair” tax scheme: questions about tax policy generate extensive debate because their answers ultimately rest on moral and practical considerations shaped by the contours of political ideology. However, the corollary theories of vertical and horizontal equity provide a helpful (if imperfect) framework to assess distributive justice. Measured on these equity axes, the North Carolina General Assembly’s recent sales tax increase for manufactured housing is especially problematic. In contrast to claims by state lawmakers, the new tax does not appear particularly simple or fair. Instead, revised section 105-164.4(1) taxes manufactured homes at a higher rate than those imposed on other similar personal property—such as boats, aircraft, or automobiles—or on real property. But this dissimilarity is
not the only troubling aspect of the new tax. Other factors may weigh in an equity analysis and militate against the “fairness” of the new tax. These factors include the necessary nature of housing and the social and financial vulnerability of the population most likely to be impacted by the tax.

A. Overview of Tax Equity

Tax policy helps to shape our system of ownership and property rights. It implicates distributive justice principles as well as complex ethical issues. A tax regime necessarily raises philosophical questions about the rights and responsibilities that exist both in the relationships between the government and its citizens as well as between the individual and the collective. How much individuals should pay and for what purpose, which persons or what property should be exempt, and what specific post-tax inequalities are appropriate are all “morally loaded and hotly disputed questions about our obligations to one another through the fiscal operations of our common government.” To assess fiscal fairness is to ultimately address questions of economic and social justice.

Theories of distributive justice have generally incorporated ideas colloquially known as vertical and horizontal equity to assess whether a tax is “fair.” This historical conception of fair tax policy, though not without criticism, is a “standard for evaluating differences in the tax treatment of different people: the principle that like-situated persons must be burdened equally and relevantly unlike persons unequally.” The basic “norms” of horizontal and vertical equity are thus corollaries of each other. Horizontal equity addresses fair taxation for similarly situated persons; vertical equity addresses fair taxation for dissimilarly situated persons. Measured on these traditional axes, a fair tax system ideally recognizes that “similarly situated
taxpayers must be treated alike and that differently situated taxpayers must be treated in ways that reflect their differences.”

While simple in theory, both vertical and horizontal equity are complex in practice. Horizontal equity tends to be a less controversial “norm” than vertical equity, but it can be difficult to apply. If fairness requires that taxpayers be taxed equally, one must identify the factors that determine like or unlike status. Vertical equity, which seeks to adjust the tax burden by ability-to-pay, requires wealthier citizens to contribute more than low-income citizens. Fiscal policy may seek to achieve vertical equity in either proportional or progressive structures. A proportional structure applies a common percentage on income (a “flat tax”) or consumption (such as North Carolina’s 3% HUT on automobiles). Progressive structures increase the percentage tax as income or consumption rises.

These basic principles are subject to scrutiny, however, as they may exclude other political values essential to a thorough analysis of economic justice. But the discourse of horizontal and vertical equity is still an “excellent way to bring out the nature and complexity of issues” that arise in tax policy decisions.

B. “Fairness and Simplification”

According to North Carolina State Representative Lewis, the increased tax rate on manufactured housing was part of the legislature’s attempt to ensure “fairness and simplification” in the North Carolina tax code. Certainly, there is a form of simplification in applying a uniform consumption tax to all sales of personal property, assuming manufactured housing is correctly categorized as personal property rather than real property. However, North Carolina has historically exempted manufactured housing—along with other related types of large-ticket, mobile property such as automobiles, aircraft, and boats—from the general retail
sales tax rate. And even in its comprehensive restructuring for 2014, the General Assembly did not adjust the special tax rates for these other motor vehicles.

Representative Lewis’s remarks suggest that manufactured housing may be more appropriately subject to the tax burden shared by other homebuyers, a perspective discussed more thoroughly infra Part IV. But site-built homes are taxed at a substantially reduced rate compared to the 2014 manufactured home sales tax—North Carolina assesses only a 0.2% transfer tax on home purchases. Nor is it likely, as Representative Lewis indicates, that buyers of site-built real property pay a specific sales tax on the building materials used in the construction of the home. It is more generally the case that the total home purchase price, even for new construction, already encompasses the total cost of materials, including the taxes on those materials. The same is presumably true of a manufactured home purchased new from a retailer. Of course, once a home—whether site-built or manufactured—is resold, the tax on building materials is probably not a factor in determining the home’s value. Thus, over time, the discrepancy in the tax rates between manufactured and site-built housing becomes even sharper. If simplification were indeed one of the legislature’s primary goals, it was hardly seriously pursued.

The idea that the new tax is somehow more fair is equally mystifying. Indeed, from a horizontal equity perspective, the increased manufactured home sales tax seems clearly unfair. It taxes manufactured housing at a proportionally higher rate than that assessed on either site-built homes or motor vehicles, the two categories most logically similar to manufactured homes. The vertical equity question is more interesting, and it reveals some of the uncertainties inherent in the traditional analysis. As a proportional consumption tax, the new manufactured home tax may be technically equitable: both the wealthy and the poor will pay the same rate on their
manufactured homes, while the indigent will continue to enjoy a tax break on yacht or jet purchases. A progressive analysis envisions the converse because it considers the relative status of the purchasers.\textsuperscript{76} A progressive structure of vertical equity would acknowledge the elephantine reality that buyers of manufactured homes are primarily lower-income, while boat and aircraft purchasers are likely to be wealthier.\textsuperscript{77}

\textit{C. Other Tax Equity Considerations in Manufactured Housing}

Achieving an equitable tax on housing generally and manufactured housing specifically is a complex task. Even if it can be agreed that North Carolina’s current tax regime for manufactured housing is unfair, the more interesting question is simply: what \textit{is} fair? This subsection posits other considerations that may factor into an equity analysis, such as the desirability of taxing necessities like housing or imposing a higher tax burden on a socially and financially vulnerable population.

1. Implications of a Higher Tax on Low-Income Housing

Lawmakers often pursue vertical equity by reducing tax liability on necessities, such as food or housing, where lower-income individuals spend a higher percentage of income compared to their wealthier counterparts.\textsuperscript{78} For example, a $600 monthly housing payment is over 30\% of the monthly income for a family living at the poverty line,\textsuperscript{79} but only 12\% of the monthly income for a household earning $60,000 annually. While legislators and their constituents may disagree over what exactly constitutes a necessity or how those items should be taxed, most individuals can appreciate that North Carolina residents must afford adequate food, clothing, and shelter. Vertical equity principles weigh in favor of decreasing the tax burden on these items. Unlike a yacht, manufactured homes provide a significant number of North Carolina residents with a basic necessity of life: a roof over the heads of their families.
One solution, then, would be for North Carolina to exempt manufactured housing from sales tax entirely. As noted previously, manufactured homes are a significant source of shelter for low-income residents. Equity principles militate in favor of decreasing the tax burden on necessities, particularly for the indigent. While sales taxes are an important source of revenue for North Carolina, the low rate previously assessed on manufactured homes allows for a total exemption without significantly impacting revenues. However, a total exemption may be overly broad, considering that investors and businesses purchase manufactured housing for a variety of non-residential purposes. The legislation for an effective exemption must be constructed so as to reduce the tax burden on residential buyers and renters without providing an undue benefit to commercial entities.

Another option would be to follow the example of California, Connecticut, and Ohio, which impose the tax on the home’s retailer rather than on the purchaser. The retailer would then be able and likely to pass the tax on to the consumer by increasing the sales price of the manufactured home. The primary benefit of this model is that it allows the consumer to finance the tax as part of the purchase price rather than make an independent cash transaction. But by incorporating the sales tax into the purchase price, the consumer not only continues to pay the tax, she is also required to pay interest on the additional amount over the life of the loan.

The tax structure on a manufactured home does not just implicate the home’s purchaser, however. Many manufactured homes are purchased by investors who own rental park communities and may be better-positioned to afford a higher tax at the time of purchase. But the increased tax burden is still likely to shift to the renter-occupant. Investors recoup the cost of their units by adjusting the rental rate accordingly, although the additional expense may be spread out over time. To the degree that an investor’s sales tax burden shifts to the renter-
occupant, equity concerns become even more pronounced because those who rent rather than purchase manufactured housing are among the most vulnerable of North Carolina households.

2. The Problem with Taxing an Economically and Socially Vulnerable Population

A number of broader forces and trends—including land-use regulations and financing practices—have converged to make manufactured-home rental communities among the least desirable housing options and thus one of the few choices available to indigent residents.\(^8^4\) Indeed, as one commentator has noted, rental manufactured home communities “perpetuate the negative stereotype of trailer parks as transient places housing a substantial share of ‘hard living,’ poor, less well-educated people subject to job and housing instability.”\(^8^5\) Renters of manufactured homes are frequently “quasi-homeless” and at particular risk to exploitative practices by landlords.\(^8^6\) For example, many rental park owners lure residents into signing rent-to-own lease agreements, which are not typically subject to predatory lending regulations.\(^8^7\) Since most of these households are too financially insecure to ultimately achieve ownership, renters often incur the costs of repairs and upkeep while never realizing the benefits of homeownership.\(^8^8\)

Rental tenants in manufactured homes are not likely to have many options for alternative housing. The rental housing market in rural areas—where most rental parks are located—is extraordinarily tight.\(^8^9\) As one social worker in a rural community explains:

These families know they don't have enough to pay the rent and the utilities and afford anything else. They sign a contract for a place where the rent is 100% of their income. Then they can't pay the rent and the utilities not to mention food. But these are families who are in a constant state of crisis.\(^9^0\)
Particularly in rural areas and small towns, landlords are reticent to lease to individuals who have established a reputation as problematic tenants. Accordingly, households that rent manufactured homes as their primary residence are among the most likely to live on the verge of homelessness.

Even though tenants in manufactured-home rental communities may not directly pay the increased sales tax, the investor who does will likely eventually shift the tax burden to the tenants through higher rents. The inevitable effect of the General Assembly’s new tax scheme is not only to enlarge the tax burden on a necessity like housing, but also to uniquely target North Carolina’s poor and weak to bear this burden. This disproportionate burdening of the state’s most socially and financially fragile residents is conspicuously regressive and, some might say, immoral. At the very least, it defies the theoretical goals of tax equity.

IV. HOW SHOULD WE TAX MANUFACTURED HOMES?

From a tax equity perspective, the General Assembly’s recent tax increase on manufactured homes is problematic. It not only exacerbates the tax discrepancy between manufactured and site-built housing, it also disproportionately affects the poor and vulnerable. This regressive burdening of the poor runs contrary to the philosophical underpinnings of the horizontal and vertical equity axes. But determining what constitutes a “fair” tax on manufactured homes is more complex than simply arguing that North Carolina should return to its previous tax scheme. Instead, this paper contends that an equitable solution is to classify manufactured homes as real property at the time of sale, allowing buyers of these homes to enjoy the low 0.2% transfer tax currently imposed on other types of real property.

A. Characteristics of Manufactured Housing
There is a reason that so many people use the term “mobile home” to describe manufactured housing: this type of home originated nearly one hundred years ago as a true travel trailer. Today, “manufactured housing” refers to factory-constructed homes built according to federal specifications in place since 1976. Similar structures manufactured before that time are appropriately identified as “mobile” homes. But nearly four decades later, persistent misconceptions about the nature and characteristics of modern manufactured homes contribute to its legal classification as “moveable” personal property. However, manufactured homes are in many ways equivalent to site-built property, and, especially if sited on leased or owned land, can easily be classified and assessed as real property for tax purposes.

Travel trailers, which in their earliest days had “two wheels, [were] hitched to the back of a car, and often [were] homemade”—became popular as homes during the Great Depression. Travelers were easy and inexpensive to produce, particularly compared to site-built homes, and housing shortages following World War II also forced many individuals to adapt recreational trailers as a permanent residence. But these homes remained mobile, and their owners could move easily to find jobs or new communities.

By 1950, however, almost all trailers were used as stationary, permanent homes. This repurposing increased the demand for larger “mobile homes” that would be comfortable for year-round indoor living. Despite the continued characterization as “mobile” structures, the improved size and features significantly decreased the realistic possibilities for moving them. The chief attraction of the newer, larger homes was not their mobility but, rather, their affordability.

In 1969, the North Carolina General Assembly enacted regulations to impose higher standards on the construction of manufactured housing. The federal government passed the
National Manufactured Housing Construction and Safety Standards Act in 1974, and in accordance with this law, the United States Department of Housing and Urban Development (“HUD”) promulgated a national manufactured-housing code (the “HUD code”), preempting North Carolina’s law. The HUD code and the resulting superior construction has led to both an increase in manufactured housing designed for permanent shelter and a correlating decrease in these homes’ mobility.

Even the nomenclature has changed to reflect the structural improvements. In 1975, the national trade association for manufactured housing, the Mobile Home Manufacturers Association, became the Manufactured Housing Institute. Congress likewise acknowledged the evolving character of manufactured housing just a few years later when it began replacing “mobile home” with “manufactured home” in federal housing laws.

Today, manufactured homes have wheels on them at the time of purchase so that the home can be transported to its home site, but then the wheels are removed. Almost all manufactured homes, once sited, are immobile. And although a variety of manufactured housing still exists, the critical distinction between site-built and manufactured housing is “not mobility but whether the home is built in a factory or on site.”

In fact, the low cost of manufactured homes can be attributed not to substantially-inferior construction, but to the efficiency of assembly-line production and other benefits of factory production. Also, while site-built homes are subject to various local building codes, the national HUD code continues to regulate manufactured home construction and supersedes state and local construction standards. These and other efficiencies contribute to make manufactured housing only half as expensive as comparable site-built homes.
And yet, manufactured homes are indeed comparable to site-built homes—in appearance, in safety, and even in impact on neighboring property values. Manufactured homes often have upscale elements found in site-built homes, including two-story floorplans, fireplaces, and attached garages. Rental park communities may also include features similar to a traditional subdivision, such as a “pool, clubhouse, and open green spaces,” in addition to numerous other amenities.

Like site-built homes, manufactured homes are subject to rigorous building codes. They are rarely moved and may be visually and structurally indistinguishable from a site-built home. The fact that manufactured housing is more affordable and therefore more attractive to lower-income residents does not mitigate its functional equivalence to site-built housing. Manufactured housing is in almost every respect comparable to its site-built counterpart and should share its tax classification as real property.

B. The Feasibility of Classifying Manufactured Homes as Real Property

It is true that once purchased, a manufactured home must be relocated from the retailer’s lot to the housing site. In this sense, it is technically “moveable” and therefore personal property in the strictest application of the term. Once a manufactured home has been purchased from a retailer and transported to a home site, however, it no longer resembles personal property. Instead, a manufactured home has the essential characteristics of site-built homes. The fact that these homes continue to be classified as personal property in most states is less a reflection of modern manufactured housing’s properties and more of the law’s failure to keep pace with these structures’ evolution.

North Carolina is one of just a few states to have recognized the comparability of manufactured and site-built homes. In 2001, the legislature amended section 105-273(13) of the
General Statutes to allow owners of manufactured homes to cancel their certificate of title, thus converting the manufactured home to real property for annual ad valorem property tax purposes, provided certain conditions have been met. In order to be assessed at real estate market value, a manufactured home (1) must be a residential unit; (2) have the moving hitch, wheels, and axles removed; (3) be placed on a permanent foundation; and (4) must be located on land owned by the owner of the unit. In crafting a statute that allows some manufactured housing to be reclassified as real property, North Carolina has already recognized that a technical distinction in initial mobility does not control the nature of the property itself.

North Carolina’s reclassification statute demonstrates the feasibility of treating manufactured homes as real property. It can be done because North Carolina has been doing so for fourteen years. No matter the destination or final classification of the manufactured home, however, manufactured homes on a retailer’s lot cannot be considered real property under the North Carolina statutes. A manufactured home that will be classified as real property upon delivery will still be subject to the general retail sales tax rate when purchased. But the vast majority of manufactured homes will not qualify for reclassification under the arguably overly-restrictive requirements in section 105-273(13), nor does the statute contain a provision to differentiate between homes that will be converted to real property and those that will not.

The distinction, though, need not matter. The switch to a real property transfer tax does not necessarily require the same kind of restrictions and provisions designed to regulate real estate market values in each county’s ad valorem property tax. It is not only realistic to treat all manufactured housing as real property at the time of sale, it is quite possibly the most logical and equitable solution to the tax discrepancy.
But even if North Carolina lawmakers do not wish to broadly classify all manufactured homes as real property at the time of sale, they can easily provide a mechanism for most manufactured housing to qualify. Section 105-273(13) currently envisions an administrative process that can only be fulfilled after the home has been purchased and sited. Instead, lawmakers could adopt the emerging practice of allowing homebuyers to document their intent to install the home on leased or owned land after purchase. By creating an upfront process for real property classification at the time of sale with adequately simplified requirements, lawmakers can substantially improve the tax parity between manufactured and site-built homes.

C. The Politics of Taxing Manufactured Homes as Real Property

In theory, if “a home is a home”—as Representative Lewis and this paper have argued—there are at least two obvious options for equalizing the tax burden: real property transfer taxes can be raised, or manufactured home taxes can be lowered. Of the two, the latter appears far more realistic. North Carolina’s current real property transfer tax rate derives from both political inertia and powerful lobbying efforts. Along with thirty-seven other states, North Carolina began imposing the real estate transfer tax in 1967 after the U.S. Congress repealed the federal Excise Tax on realty conveyances as part of the Excise Tax Reduction Act of 1965. Though there is a wide range in rates by state, North Carolina—like many other southern states—has kept the transfer tax rate substantially similar to the repealed federal rate.

Attempts to raise the real property transfer tax, despite many public policy arguments in favor of doing so, have so far proven a futile exercise. In 2007, the North Carolina General Assembly enacted legislation allowing counties to raise revenues for infrastructure by levying an additional property transfer tax of 0.4%. The North Carolina Association of Realtors launched a successful lobby against the tax increase, and the legislation was repealed in 2011.
Interestingly, opponents of the tax increase argued that raising taxes on sales of homes was a tax “on the American Dream” of home ownership. The realtors’ lobby and the political rhetoric emphasized the punitive nature of taxing home purchases and contended that an increased transfer tax would overly burden low-income individuals. When voters rejected the proposed increase in all sixteen counties that included the issue on the November 2007 ballot, then-Senate Republican leader Phil Berger announced that the vote confirmed that the people understand better than Democrat politicians in Raleigh that government taxes at all levels are high enough . . . . The defeat of the “home tax” is a clear victory for the people and confirms the wisdom of giving voters a voice in public policy decisions, especially those decisions which impact tax rates and spending.

For the lobbies, politicians, and other North Carolina citizens who resist increases to the property transfer tax, supposed concern for the poor and the affordability of home ownership take precedence over the need for additional revenue to fund essential services. But these arguments are equally persuasive, if not more so, when applied to the manufactured home market. It is only reasonable to extend the equity arguments against increasing home ownership costs for low-income individuals to those who purchase manufactured homes. Given the real property transfer tax’s political grip in North Carolina and the characteristics of manufactured housing and its residents, state lawmakers can and should allow manufactured homes purchasers to pay the same low rate applied to real estate transfers.

CONCLUSION

The General Assembly’s 2013 tax increase to manufactured housing is not only markedly dissimilar to the tax rates imposed on other similar types of property, the higher tax also disproportionately burdens North Carolina’s most vulnerable residents. Manufactured homes provide a significant source of housing for low-income populations, particularly in rural areas.
where other housing alternatives may be scarce. But under the current tax scheme, the cost of owning or renting a manufactured home is gratuitously higher than it should be. Furthermore, classifying manufactured homes as personal property for tax purposes is neither necessary nor desirable. Today’s manufactured homes are comparable in quality and nature to site-built homes. For these reasons, policy arguments that favor a low real estate transfer tax are equally applicable to manufactured home purchasers. It is time for North Carolina lawmakers to restructure the sales tax scheme on manufactured housing so that most, if not all manufactured homes can be taxed as real property at the time of sale.

1 CINDY AVRETT ET AL., INTERIM JOINT HOUSE AND SENATE FINANCE COMMITTEE, OVERVIEW OF NORTH CAROLINA SALES TAX (NOV. 3, 2009), HTTP://WWW.NCLEG.NET/DOCUMENTSITES/COMMITTEES/JHSFCTR/M EETING%20DOCUMENTS/11-3-2009%20MEETING/OVERVIEW%20OF%20NC%20SALES%20TAX.PDF.
2 Id.
3 Id.
4 N.C. GEN. STAT. § 136-176(b).
5 Id. § 136-176(a)(1).
6 Id. § 136-176(a)(3).
7 Id. § 136-176(a)(2).
8 N.C. GEN. STAT. § 105-187.2.
9 Id. §§ 105-187.3(a1) ET SEQ. COMMERCIAL AND RECREATIONAL VEHICLES ARE DEFINED IN N.C. GEN. STAT. § 20-4.01. Id.; § 105-186.1(4).
10 Id. § 105-187.3(a1).
11 Id. § 105-164.4(1b).
12 See supra note 9.
13 N.C. GEN. STAT. § 105-164.3(20).
that “[b]oth proponents and opponents of the plan acknowledge that the biggest breaks will go to the highest income earners”).


20 N.C. DEP’T OF REVENUE, supra note 19; ITEP, supra note 19.

21 ITEP, supra note 19. The ITEP calculated total tax rates by income group, including state and excise taxes, property taxes, and income and corporate taxes. It then subtracted the federal deduction offset to arrive at an overall total. Id. The ITEP ranked North Carolina as the “31st most unfair state and local tax system” on the ITEP Tax Inequality Index, noting specifically several changes enacted in 2013 and 2014. Id. These changes include the conversion of the graduated income tax to a flat tax, the elimination of all credits other than the child tax credit (which was increased by $25 for those earning less than $40,000 annually), the elimination of personal exemptions, the increase in the standard deduction, the elimination of all itemized deductions except for mortgage interest and property taxes (capped at $20,000) and charitable contributions (uncapped), the elimination of the $50,000 small business exemption from personal income tax, the reduction in the corporate tax rate, and the expansion of the sales tax base—which also now subjects electricity to full local and state sales tax rates. Id.


23 Murawski, supra note 14.


25 N.C. GEN. STAT. 105-164.4(a)(1b) (2013); see also SALES AND USE TAXES, supra note 14 (noting that there is a 3% highway use tax on vehicles).

26 N.C. GEN. STAT. § 105-228.30(a) (2014). The North Carolina legislature enacted the real estate transfer tax in 1967, but the federal government had been imposing this method of taxation on realty conveyances for over one hundred years. See Frank S. Alexander, Financing Affordable Housing in Georgia: The Possibility of a Dedicated Revenue Source, 13 GA. ST. U.L. REV. 363, 378 (1997). Originating during the American Revolution in the form of document and stamp acts, the Excise Tax on real estate was levied to raise revenue for war efforts—including the Civil War and World Wars I and II—as well as Depression-era legislation. Id. The federal government finally repealed the Excise Tax effective December 31, 1967 as part of the Excise Tax Reduction Act of 1965. Id. North Carolina, alone with thirty-seven other states, subsequently began imposing real estate transfer taxes at roughly the same rate as the repealed federal tax. Id.


28 Id.

29 Id.

30 Id.

31 Id.

See N.C. Gen. Stat. § 105-228.30(a) (“The [excise tax rate on the conveyance of real property] is one dollar ($1.00) on each five hundred dollars ($500) or fractional part thereof of the consideration or value of the interest conveyed.”). North Carolina’s real property transfer tax has been the source of vigorous tax policy debate in recent years. Rob Schofield, A Middle Ground on Real Estate Transfer Taxes, NC Pol’y Watch (Apr. 2, 2007), http://www.ncpolicywatch.com/2007/04/02/a-middle-ground-on-real-estate-transfer-taxes/. Originally enacted in 1967 to replace the repealed federal Excise Tax on realty conveyances, the transfer tax in North Carolina closely resembles a similar transfer tax scheme imposed in thirty-seven states. See Alexander, supra note 26. Some North Carolina legislators have proposed either raising or allowing individual counties to raise the transfer tax in order to fund infrastructure or low-income housing. See Schofield, supra note 33; Chris Fitzsimon, Billion Dollar Industry Balks at Paying for Growth, NC Pol’y Watch (March 28, 2007), http://www.ncpolicywatch.com/2007/03/28/billion-dollar-industry-balks-at-paying-for-growth/. But influential homebuilder and realtor association lobbies as well as Republican politicians have strongly opposed attempts to raise the transfer tax rate. Schofield, supra note 33. In 2007, the North Carolina Association of Realtors launched a campaign against legislation designed to allow counties to impose a local transfer tax, “calling it a ‘home tax’ that’s punitive and makes it harder for low-income people to afford their first home.” Fitzsimon, supra note 33; see also infra Subpart IV.C.


35 William Apgar et al., An Examination of Manufactured Housing as a Community- and Asset-Building Strategy, 3 (2002).

36 Id.


38 Murawski, supra note 14.

39 See supra note 24 and accompanying text.


41 CFPB, supra note 40, at 13–17.


43 Id.

44 Id.


46 CFPB, supra note 40, at 5–6; Genz, supra note 40, at 396. Genz cites a Harvard study refuting the notion that construction standards for manufactured homes are inferior to those for site-built homes. Id. Genz notes that “code standards have little to do with manufactured housing’s price advantage.” Id. For more discussion on the factors contributing to cost savings, see infra Subpart IV.A.


48 Id.

49 About three-fifths of manufactured home owners also own the land on which their home sits. CFPB, supra note 40, at 6.

50 See Katherine MacTavish et al., Housing Vulnerability Among Rural Trailer-Park Households, 13 Geo. J. on Poverty L. & Pol’y 95, 97 (2006).

51 Id. at 97–98.

52 Id.

53 See supra notes 27–31 and accompanying text.
people on mobile and modular homes primarily affects lower circumstances, the homeowner may be purchasing materials and supplies and thus directly paying the sales tax on may exist, for instance, where an individual builds a home or employs a contractor to build a home. In these Factory and Site have through a price supra have 7.75%. See supra note 57, at 607. See supra note 54, at 13. For example, Murphy and Nagel explain that “justice” in taxes must encompass not just revenues, but expenditures and benefits as well. Id. at 14–15. As noted previously, there is the additional issue of whether horizontal and vertical equity principles possess any independent normative content. See McDaniel and Repetti, supra note 57, at 607. See supra note 54, at 13. See supra text accompanying note 27. See supra notes 1–14 and accompanying text. Id. See supra notes 27–31 and accompanying text. See supra notes 26 and 33. Notably, powerful construction and realtor lobbies as well as Republican politicians have opposed raising the North Carolina transfer tax rate on the grounds that it penalizes lower-income buyers. See supra note 33. However, any regressive effect created in raising the transfer tax rate could be easily mitigated through a price-point exemption—for instance, lawmakers could structure the transfer tax to exempt the first $50,000 or $100,000 in a residential sale. Swenson et al., supra note 32; NAHB Research Center, Inc., U.S. Dep’t of Hous. and Urban Dev., Factory and Site-Built Homes: A Comparison for the 21st Century: Construction Costs 6.3.1 (1998). An exception may exist, for instance, where an individual builds a home or employs a contractor to build a home. In these circumstances, the homeowner may be purchasing materials and supplies and thus directly paying the sales tax on those items. Although manufactured housing originated as highly mobile travel trailers, these structures have become increasingly immobile in recent decades and now share little in common with most motor vehicles. See more discussion infra Part IV. See supra text accompanying note 66. See, e.g., Igor Volsky, North Carolina Lawmakers Ram Through Plan That Would Increase Taxes On Poor People, ThinkProgress (July 16, 2013), http://thinkprogress.org/economy/2013/07/16/2308621/north-carolina-lawmakers-ram-through-plan-to-tax-poor-people-more-after-just-25-minutes-of-debate/ (noting that the sales tax on mobile and modular homes primarily affects lower-income citizens); supra text accompanying notes 63–67. See Walter Hellerstein & John A. Swain, State Taxation, § 13.09[1] (3rd ed. vol. 2 2010). The federal government defined the 2013 poverty threshold for a family of four at $23,550. 2013 Poverty Guidelines, Dep’t of Health & Human Servs., http://aspe.hhs.gov/poverty/13poverty.cfm (last visited March 10, 2015).
In North Carolina, manufactured homes are valued for tax purposes in one of two ways. They are classified as either personal or real property, depending on whether their owners intend to use them as a primary residence. Real property is subject to taxation on its true value, while personal property is taxed based on its use value. The distinction between personal and real property is significant because it can affect the amount of tax owed. For example, if a manufactured home is classified as real property, it will be assessed at its true value, which may be higher than its use value. Conversely, if the home is classified as personal property, it will be assessed at its use value, which may be lower.

This dual classification system is not uncommon in areas where manufactured homes are prevalent. In Oregon, researchers found older trailers in shabby rental parks that were “sold” over and over until finally too dilapidated to function as a shelter.

The tax at the time of sale is the principal reason the purchaser of a manufactured home pays less in taxes than does the purchaser of personal property. In addition to the varied tax rates imposed at the time of sale, North Carolina also levies an ad valorem tax on both real and personal property. N.C. GEN. STAT. § 105-284 et seq. The ad valorem taxes, also known as property taxes, are assessed annually based on an assessment of the property’s value. Property tax rates vary dramatically by county and city in North Carolina; however, each county has only one rate for both personal and real property. See 2014-2015 Property Tax Rates and Revaluation Schedules for North Carolina Counties, N.C. DEP’T OF REVENUE, http://www.dornc.com/publications/2014-15_countytaxrates.pdf (last visited April 27, 2015) (providing the property tax rate for each county in North Carolina); see, e.g., How to Calculate a Tax Bill, N.C. DEP’T OF REVENUE, http://dornc.com/taxes/property/calculate.html (last visited April 27, 2015) (illustrating the same rate applied to both personal and real property). Additionally, every county must assess both personal and real property at 100% of market value. N.C. GEN. STAT. § 105-284 (2014) (“[A]ll property, real and personal, shall be assessed for taxation at its true value or use value . . . .”). Consequently, the sales or transfer tax imposed at the time of sale is the chief tax disparity between manufactured and site-built housing. North Carolina’s ad valorem tax rates for personal and real property do not distinguish between the two types of homes, so there is no tax benefit in a home’s classification as personal property that might counterbalance the increased sales tax. Rather, the distinction in personal and real property for annual ad valorem taxes matters for comparison purposes in calculating the structure’s value: appraisers assess manufactured homes classified as real property at housing market values, and they assess all other manufactured homes at personal property values.

Lawmakers could structure this exemption in variety of ways, but one possibility would be to adopt the model of the Homestead Exclusions in N.C. GEN. STAT. §§ 105-277 et seq. These exemptions allow property tax relief on principal residences for certain classes of citizens, including low-income individuals, the elderly, and the disabled.
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moving a manufactured home and concluded that a manufactured home is an “inherently permanent structure” for
Real Estate Investment Trust (“REIT”) asset, the IRS emphasized the cost and inconvenience associated with
treated comparably to site
property at the time of sale, prov
manufactured homes as real property at the time of sale, prov

§1201.2055 (2014) (allowing the purchaser or owner of a manufactured home to classify the home as real property
by filing a certified copy of ownership and location in the appraisal district). Most states that continue to classify
manufactured homes as personal property have statutorily ameliorated the imposed sales tax. See Burkhart, supra
note 82, at 918–920 (providing a list of states and their corresponding statutory limitations on manufactured home
sales taxes).

N.C. GEN. STAT. § 105-273(13) (2014). In contrast to Colorado, Idaho, and Texas, North Carolina only allows
manufactured home owners to exchange their title for a deed through an administrative process after purchase. See id.; supra note 118. There is no provision in section 105-273(13) for a manufactured home to be classified as real
property at the time of sale.

Id.

See supra note 119 and accompanying text. A few other states have also adopted the practice of treating
manufactured homes as real property at the time of sale, provided certain conditions have been met. See supra note
118.

Compare N.C. GEN. STAT. § 105-273(13) with COLO. REV. STAT. § 38-29-114(2), IDAHO CODE ANN. § 63-304,
and TEX. ACC. CODE ANN. §1201.2055; see supra notes118–19.

A number of federal provisions and programs have increasingly recognized that manufactured homes should be
treated comparably to site-built homes. For example, in determining that manufactured housing could qualify as a
Real Estate Investment Trust (“REIT”) asset, the IRS emphasized the cost and inconvenience associated with
moving a manufactured home and concluded that a manufactured home is an “inherently permanent structure” for
First-Time Homebuyer Credit program allowed manufactured homes to qualify for the credit as long as they were
affixed to land, although it was not necessary for the homebuyer to own the land. 26 U.S.C. § 36 (2015); First-Time
Homebuyer Credit Questions and Answers: Basic Information, INTERNAL REVENUE SERV.,

See supra notes 118 (state practice) and 123 (federal practice).

See supra note 33.


128 The federal Excise Tax on real estate was last raised during World War II to a rate of $1.10 per $1000, or 0.1%. I.R.C. § 4361 (1954); see also Alexander, supra note 26, at 378.

129 See, e.g., Schofield, supra note 33 (noting that increased transfer tax revenue is a promising source for the state’s Housing Trust Fund, a state-wide resource for financing affordable housing); Fitzsimon, supra note 33 (noting that Florida increased its real estate transfer tax in 1992 to fund affordable housing and still doubled its real estate transactions in the following decade).


131 See Fiona Morgan, Land Transfer Tax Stalls, IndyWeek (July 18, 2007), http://www.indyweek.com/indyweek/land-transfer-tax-stalls/Content?oid=1202879 (noting that the North Carolina Association of Realtors had “put more than $500,000 behind a statewide advertising campaign and [were] threatening to use their political clout in future elections against lawmakers who vote[d] for the tax”); Schofield, supra note 33; Fitzsimon, supra note 33.


134 Fitzsimon, supra note 33.

135 Berger, supra note 132.