



4. The Heguys lived on Parcel H of the property, which slightly exceeded 17 acres. They initially lived in a single-wide 1973 Century 14' x 64' trailer that was on the property when they acquired it from the Madrugas. ODR, FOF 4.
5. The 1973 trailer was eventually moved to Parcel C in June 2001 to make way for a larger modular home for their use. The single-wide trailer remained on Parcel C for some time, approximately six months, before it was moved to a location in Conner, Montana. ODR, FOF 4.
6. A 2001 Mobile Home Property Tax Statement for Ravalli County dated April 25, 2001, identified the 1973 Century 14' x 64' trailer at 119 Roberts Road, Darby, Montana, as owned by "Madruga, Joseph & Adeline," with "Heguy, Hector & Diane," as "Add Only." (Note: "Add only" on a tax statement means "address only." The first name shown designates the owner of record of the property. The name on the "address only" line identifies the person to whom the tax statement is sent for payment. A number of situations may occur in which the "address only" party has agreed to pay the taxes, e.g., a contract for deed, a renter having agreed to pay the taxes, etc.) ODR, FOF 5.
7. As indicated above, the Heguys replaced their single-wide trailer with a triple-wide 2000, possibly 2001, Fleetwood Lake Pointe 40' x 60' modular home, serial number #48ABC, title number #MP#P01763. ODR, FOF 6.
8. The triple wide trailer was titled in the name of Hector Heguy on June 28, 2001, and placed at the same site as the prior single-wide trailer. ODR, FOF 6.
9. Neither the trailer nor the modular home were placed on a permanent foundation, but had to be placed in the same location due to the septic hook-up and the fact that the site was at the outer limit of the flood plain. ODR, FOF 6.
10. The Heguys sold Parcel C, comprising 5.003 acres, to Arthur T. and Cindy A. Hinckley on November 12, 2002. The sale price was \$50,000. Both Hector and Diane signed the warranty deed and sellers' statement in that capacity. ODR, FOF 12.
11. The Heguys sold the remaining portion of their property consisting of Parcels H, B1, A, and G, totaling 47.623 acres, to Arthur T. and Cindy A. Hinckley on February 19, 2003. The sale price was \$476,000. The sellers were again shown as Hector and Diane M. Heguy, with both of them signing the warranty deed and sellers' statement in such capacity. ODR, FOF 13.

12. Neither Hector nor Diane Heguy reported the sale of Parcel C, nor any gain on the sale of Parcel C, on their federal or Montana tax returns filed for tax year 2002.

Correspondingly, neither Hector nor Diane reported the sale of Parcels A, H, G. or B1, nor any gain from the sales of those parcels, on their federal or Montana tax returns filed for tax year 2003. ODR, FOF 14.

13. In the Settlement Statement dated November 12, 2002, involving the sale of "Parcel C, Certificate of Survey No. 5774," Section G of the Statement described the "Property Location" as "Bare Land." Similarly, the Seller's Statement dated the same date described the "Property Location" as "Bare Land," referring again to "Parcel C, Certificate of Survey No. 5774." ODR, FOF 16.

14. The Heguys' marriage legally ended in 2003, with a Final Decree of Dissolution dated September 10, 2003. Finding of Fact No. 8 of the Decree established that Hector and Diane M. Heguy had lived separate and apart for 24 months prior to the date of the Decree. Finding No. 11 noted that during the Heguys' marriage they had acquired approximately 51 acres of real property situated outside of Darby, Montana, and held in joint title. The Decree further declared that Diane Heguy had contributed \$70,000 of her funds to the purchase of the property, in addition to paying for the construction of a \$30,000 barn. Hector had made no financial contribution, although the decree stated that when the property had been sold on February 19, 2003, the net proceeds of \$39,324.27 had been distributed to him. Among other provisions, the Decree distributed the remaining property and debts between the parties, and restored Diane Heguy to her former name of Diane M. Reiter. ODR, FOF 19.

#### Conclusions of Law and Discussion

The State Tax Appeal Board has jurisdiction over this matter. Section 15-2-302, MCA. Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56 (c), M.R.Civ.P.

As the parties have agreed to the facts at issue, there are no material issues of fact in this matter. There is only one legal issue at question in this cross motion for judgment

as a matter of law, whether the gain realized from the sale of certain parcels of property may be properly excluded from the gross income of the appellant.

While the burden of proving that a taxpayer is subject to tax is on the taxing authority, and statutes imposing tax are strictly construed against taxation, the burden of establishing entitlement to a deduction or exemption is on the taxpayer. *Container Corporation of America v. Franchise Tax Bd.* (1983), 463 U.S. 159, 175; *Hale v. Comm’r of Internal Revenue*, T.C. Memo, 1982-527; *Whitlock v. State Bd. of Equalization* (1935), 100 Mont. 72, 45 P.2d 684, 687.

In this instance, the appellant argues that the gains from the sale of two parcels of land do not constitute taxable income because the land was part of the appellant’s principal residence and therefore should be exempt from taxation.

Pursuant to Internal Revenue Code § 121 (26 U.S.C.S. §121), a taxpayer may exclude from gross income a gain from the sale of a principal residence. Treas. Reg. §1.121-1(b)(1) (26 CFR 1.121.-1) establishes a “facts and circumstances” test to determine what may be considered a principal residence. The rules are specific and limited. One of the limitations is that a mobile home, not attached to the land as a permanent fixture, cannot be considered a residence for purposes of § 121. Specifically, §1.121-1.(b)(1) states that “property used by the taxpayer as the taxpayer's residence does not include personal property that is not a fixture under local law.” Thus, the old trailer and the new mobile home in this case cannot have been appellant’s principal residence for purposes of IRC § 121. See ODR, FOF 6-9; 13.

The appellant does not dispute this fact. (Txpr. MSJ, 6). Instead, the appellant attempts to avoid this fatal issue by referring to the definition of the term “dwelling unit” in IRC § 280A(f) and applying that definition in this case to justify excluding from the appellant’s income the gain from the sale of the two parcels of land. IRC § 280A, however, deals with the disallowance of certain expenses in connection with business use of a home and is not related to IRC §121. “Dwelling unit” is defined in IRC § 280A(f) specifically “[f]or purposes of this section”, i.e., Section 280A; and is not defined in IRC §121. Consequently, the Board sees no application for that definition in the case that is before us.

IRC §121, and accompanying rules, does not allow for the appellant to exempt the sale of this property from her income. The appellant argues that such an interpretation unfairly burdens low-income taxpayers by requiring a “stick built” home or mobile home permanently attached to the land before exempting certain property sales from taxable income. In Montana, however, an owner of a mobile home (or trailer) may choose between two methods of mobile home taxation. A mobile home may be classified as improvements to real property pursuant to § 15-1-101(i), MCA. The improvements are then taxed as class four property pursuant to §15-6-134, MCA. Conversely, a mobile home which is not classified as an improvement may be classified and taxed as personal property. Sections 15-1-101(m); 70-1-105, 70-1-108, MCA. See also, 42 Op. Atty Gen. Mont. No. 95. It is the owner’s choice as to the method of taxation when the owner also owns the underlying property. See, e.g. §15-24-202, MCA (providing for tax payments for a mobile home not taxed as an improvement).

On a final note, the appellant argues that the Department is providing a property tax rebate to taxpayers who own mobile homes not permanently affixed to the land. No additional information was presented to this Board to analyze this claim, and therefore we cannot address the issue of inconsistency.

Order

The Department's Motion for Judgment as a Matter of Law is granted. The realized gain from the sale of certain properties is properly included in the gross income of the appellant.

Dated this 16<sup>th</sup> day of October, 2007.



KAREN E. POWELL, Chairwoman



SUE BARTLETT, Member



DOUGLAS A. KAERCHER, Member

CERTIFICATE OF SERVICE

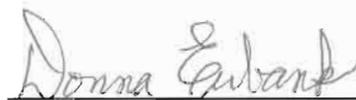
The undersigned hereby certifies that on this 16th day of October, 2007, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. mails, postage prepaid, addressed to the parties as follows:

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