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Local Taxation of Mobile Homes and Trailer Camps in Pennsylvania - Meeting the Burden

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Comments

Local Taxation of Mobilehomes and Trailer Camps in Pennsylvania—Meeting the Burden

INTRODUCTION

The house trailer or mobilehome industry has grown to tremendous proportions within the past twenty-five years. The interest in this mode of living began in the late 1940's due to a shortage of available permanent homes. Although this type of abode is called a "trailer" or "*mobile*home," its nature is actually permanent. The average mobilehome is ten to twelve feet wide and often greater than fifty feet in length. Such trailers are not movable through the ordinary use of an automobile.[1] Special tractors are needed for this task and hauling permits are required for use of the state's highways and roads.[2] Since they are not easily moved, house trailers and mobilehomes have become fixed in nature. They take on many, if not all, of the characteristics of permanent dwellings. For this reason inhabitants of mobilehomes become an integral part of the municipality or community in which they live. Several writers have suggested that the owners and inhabitants of these dwellings should bear their proportion of the local burden of securing and promoting the health, cleanliness, comfort and safety of the citizens of their particular community. This includes the regulation and taxation of the house trailer and mobilehome.[3]

The scope of regulation includes vehicle, building, trailer park, and zoning regulations.[4] Specific discussion of this aspect of municipal control is considered to be beyond the scope of this comment. The author will deal specifically with the taxation of mobilehomes and trailer camps and will only be concerned with the regulatory aspect of

1. Eshelmal, *Municipal Regulation of House Trailers in Penna.*, 66 DICK. L. REV. 301 (1962).
2. PA. STAT. ANN. tit. 75, § 726 (Supp. 1971).
3. *See* Eshelmal, *supra* note 1; Note, *Toward an Equitable and Workable Program of Mobile Home Taxation*, 71 YALE L.J. 702 (1962).
4. *See* Eshelmal, *supra* note 1. This article deals extensively with regulatory action by a municipality toward mobilehomes. The focus is on physical restriction not taxation.

this form of local governmental control as it relates to revenue producing action.

The discussion of mobilehome and trailer camp taxation will begin with an enumeration of the various taxing alternatives available to local government. An evaluation of these alternatives will follow. Based upon this material, proposed model taxation ordinances will be submitted. Accompanying these statutory models will be an explanation as to the rationale behind each ordinance. This will allow the reader to evaluate each proposal and perhaps adapt it to specific tax needs.

General Background

Before any discussion of local taxation is begun it should be realized that authority for such taxation must be expressly conferred by the state. A municipality is one of many subdivisions of the state. It is not sovereign.[5]

There are three methods of taxation used to raise revenue from mobilehomes and trailer parks. They are: (1) assessing and taxing the trailer as realty, (2) a tax based upon the Local Tax Enabling Act, and (3) fees extracted from licensing the trailer camp under authority of the police power.[6] It will be shown that one form of taxation is more practical than the others.[7]

Forms of Revenue Raising

The Local Tax Enabling Act

Prior to January 1, 1966 a common method of taxing a house trailer or mobilehome was through the so-called "Tax Anything" Act.[8] It

5. Mastrangelo v. Buckley, 433 Pa. 352, 362, 250 A.2d 447, 452 (1969) considered an appeal from a decree of the Court of Common Pleas of Philadelphia County enjoining the city from enforcing certain revenue measures adopted by the city council. The court stated:

> The power of taxation, in all forms and of whatever nature lies solely in the General Assembly of the Commonwealth acting under the aegis of our Constitution. Absent a grant or delegation of the power to tax from the General Assembly, no municipality . . . has *any* power or authority to levy, assess or collect taxes. To determine whether a municipality possesses the power to tax and, if so, the extent of such power, recourse must be had to the acts of the General Assembly.

See also Gulf Oil Corporation v. Middletown Area School District, 50 Pa. D. & C.2d 247 (1969) where a school district imposed a tax upon the privilege of leasing tax exempt real estate.

6. Note, *Municipal Regulation and Taxation of Trailers and Trailer Camps under Pennsylvania Law*, 57 DICK. L. REV. 338 (1953).

7. *Cf.* The Local Tax Enabling Act PA. STAT. ANN. tit. 53, § 6901 (Supp. 1971).

8. Act of June 25, 1947, P.L. 1145 § 1 (repealed 1965).

permitted a "*use*" tax on the privilege of occupying a mobilehome. The Act through a 1951 amendment[9] specifically provided for the taxation of house trailers suitable for living by certain political subdivisions. The statute provided that the local authorities could in their discretion levy taxes on persons, transactions, occupations, *privileges*, subjects and personal property. When the Act was amended[10] to include second class townships, a specific section was added which provided for a "tax on the use of occupancy of house trailers suitable for living quarters."[11] This section permitted a tax on the *privilege* of occupying or using the house trailer. In addition to conferring authority to tax upon cities, boroughs, towns and townships, the act also gave taxing authority to school districts of the first through fourth class.

In 1961 the "Tax Anything" Act was amended again. This amendment denied authority "to levy, assess or collect any tax on a mobilehome or house trailer *subject to a real estate tax* unless the same tax is levied, assessed and collected on other real property in the political subdivision."[12] (Emphasis added). This was due to amendments in the General County Assessment Law[13] and the Fourth to Eighth Class County Assessment Law.[14] Both of these statutes in their original form allowed a house trailer to be subject to taxation as an item of realty if it were "permanently attached to the land."[15] In 1961 the county tax acts were amended to include all mobilehomes which "were connected to water, gas, electric or sewage facilities"[16] to be considered real estate and taxable as such. In order to prevent discriminatory double taxation of house trailers and mobilehomes the 1961 amendment to the "Tax Anything" Act was necessary.

In *Lewistown Borough v. Manning*,[17] the scope of the above mentioned amendment was defined. In this case the Borough of Lewistown attempted to levy a three dollar per month tax "upon the use of all house trailers located or situated within the Borough. . . ."[18] The defendant trailer owners contended that the levy of the tax was defective in that they were *subject* to a real estate tax under the county assess-

9. Act of January 31, 1956, P.L. 971 § 1 (repealed 1965).
10. *Id.*
11. *Id.*
12. Act of September 23, 1961, P.L. 1606 § 1 (repealed 1965).
13. PA. STAT. ANN. tit. 72, § 5020-201(a) (1968).
14. PA. STAT. ANN. tit. 72, § 5453.201(a) (1968).
15. *Id.*
16. PA. STAT. ANN. tit. 72, § 5020-201(a) (1968); PA. STAT. ANN. tit. 72, § 5453.201(a) (1968).
17. 38 Pa. D. & C.2d 33 (1965).
18. *Id.* at 34.

ment laws. The Plaintiff borough agreed with the defendants, but contended that because the county assessments were not actually made against the mobilehomes for the year in question, they could be subjected to a tax based on the "Tax Anything" Act. The basis of the Borough's argument was that the trailer owners should not escape any taxation on their homes for the year in question. In rendering their decision the court gave no validity to the Borough argument. They stated that the key to the problem was in the plain meaning of the words "*subject* to a real property tax." Even though the trailers could not be assessed as real property by the Borough, they were *subject* to the tax. This was enough to invoke the limitation of the "Tax Anything" Act. So it can be seen that before a municipality may tax under the authority of this act it must comply with a strict limitation.

The original "Tax Anything" Act of 1947 was repealed in 1965.[19] In its place a new Local Tax Enabling Act[20] was enacted. The subject matter which was covered in section 6851 of the old act is now covered by section 6901 of the Local Tax Enabling Act. This section of the new act provides:

> The duly constituted authorities of the following political subdivisions, cities of the second class, cities of the second class A, cities of the third class, boroughs, towns, townships of the first class, townships of the second class, [and school districts of the second through fourth class], may, in their discretion, by ordinance or resolution for general revenue purposes, levy, assess and collect . . . such taxes as they shall determine on persons, transactions, occupations, *privileges*, subjects and personal property within the limits of such political subdivisions. . . .[21] (Emphasis added).

In addition, there is a proviso to this section of the Act which states:

> Such local authorities shall not have authority by virtue of this Act:
>
> . . . .
>
> (8) To levy, assess or collect any tax on a mobilehome or house-trailer subject to a real property tax unless the same tax is levied on other real property in the political subdivision.[22]

It is this statute which governs local taxation of the privilege of occupying a house trailer today. The main provision of the Act[23] and the

19. Act of June 25, 1947, P.L. 1145 §§ 1-7 (repealed 1965).
20. PA. STAT. ANN. tit. 53 §§ 6901-6924 (Supp. 1971).
21. PA. STAT. ANN. tit. 53 § 6902 (Supp. 1971).
22. *Id.* § 6902 (8).
23. See notes 20 and 21 and the text accompanying them.

proviso to taxation of mobilehomes and house trailers is virtually identical to the main provision of the old "Tax Anything" Statute. Therefore, it seems that with regard to the taxation of the privilege to occupy a trailer, the law has not been changed by the introduction of the Local Tax Enabling Act. This is important to note since there seems to be no case law dealing with this subject under the new Act. It will be assumed that the law which developed under the old act is still in force today.

There is one notable difference between the prior "Tax Anything" Act and the presently effective Local Tax Enabling Act. Under the original act there was a rate limitation which would not allow a tax greater than two dollars per month. In addition the tax could not be levied for the first thirty days in the trailer camp or parking lot.[24] Under the Local Tax Enabling Act the comparable section concerned with rate limitations does not mention the trailer tax as having a specific limitation.[25] However, there is another section of the Act which imposes a general limitation on the rate of any house trailer or mobilehome tax.[26] Basically, this section provides that the aggregate amount of *all* taxes imposed under the Act cannot exceed twelve mills times the assessed valuation of real estate in the particular political subdivision.[27] Of course this is only an indirect limitation. It will effect a trailer tax only to the extent of general budgeting at the beginning of each fiscal year.[28] If the aggregate amount of all of the taxes imposed under the Act exceed the proscribed limitation the various tax rates must be reduced to conform with section 6917.[29]

Collection of the house trailer tax is also provided for under section

24. Act of June 25, 1947, P.L. 1145 § 1E(g) (repealed 1965). This section provided:
E. No taxes levied under the provisions of this act shall be levied by any political subdivision on the following subjects exceeding the rates specified in this subsection.
. . . .
(g) On use or occupancy of house trailers suitable for living quarters, $2 per month. No such tax shall be levied for the first 30 days in the trailer camp or parking lot. The payment of said tax shall not for rent control purposes be considered as part of the rent.

25. PA STAT. ANN. tit. 53, § 6908 (Supp. 1971).

26. PA. STAT. ANN. tit. 53, § 6917 (Supp. 1971).

27. *Cf.* Busse Co. v. City of Pittsburgh, 118 P.L.J. 41 (1969). In this case the question of whether the Pittsburgh Business Privileges Tax was one of the specific taxes mentioned in section 6917 was decided.

28. See PA. STAT. ANN. tit. 53, § 6902 (Supp. 1971) for an enumeration of the various taxes permitted under the Local Tax Enabling Act.

29. PA. STAT. ANN. tit. 53, § 6917 (Supp. 1971). This section also provides that "[A]ny one or more persons liable for the payment of taxes levied and collected under the authority of this act shall have the right to complain to the court of common pleas of the county in an action of mandamous to compel compliance with the preceding provision of this subsection."

6910 of the Local Tax Enabling Act.[30] Great discretion has been given to the local municipalities under this section. They may set up such bureaus and hire such personnel as they feel are necessary for collection of the tax. In addition, section 6910 also allows joint agreements for collection of the tax. It provides:

> Any political subdivision imposing taxes under authority of this act are authorized to make joint agreements for the collection of such taxes or any of them. The same person or agency may be employed by two or more political subdivisions to collect any taxes imposed by them under authority of this Act.[31]

Such a provision is quite valuable since many small municipalities, such as boroughs and townships, are operating under limited budgets. Through this section the local tax authorities are not required to use an elected tax collector or any other official of the community. The most practical person to collect the tax may be used.[32]

In the case of a use or occupancy tax levied upon a house trailer the trailer court owner is often the most convenient tax collector. The question of whether such a person may be held responsible for collection of the trailer tax was decided in *Lewiston Borough v. Manning*[33] and *In re Bensalem Township Trailer Ordinance*.[34] In these two cases it was held that a municipality may by ordinance impose the responsibility for collection of taxes upon the use and occupancy of house trailers on the owner of the trailer camp.

If a borough wishes the official tax collector to collect a tax levied under the Local Tax Enabling Act, the tax ordinance must specifically provide for this. This is due to a provision in the Pennsylvania Borough Code[35] which is concerned with the powers and duties of the official tax collector. It is clearly stated in the Borough Code that the ordinance must clearly provide for taxation by the tax collector.

The Local Tax Enabling Act also provides for penalties due to

30. PA. STAT. ANN. tit. 53, § 6910 (Supp. 1971).
31. *Id.*
32. Sullivan v. Peters, 91 Montg. 182, 61 Mun. 59 (1969) *affm'd* 438 Pa. 460, 265 A.2d 799 (1970).
33. 38 Pa. D. & C.2d 33 (1965).
34. 84 Pa. D. & C. 502 (1952).
35. PA. STAT. ANN. tit. 53, § 46041 (Supp. 1971) provides:
The tax collector shall be the collector of all state, county, borough, school, institution district and other taxes, levied within the borough by the authorities empowered to levy taxes, but he shall not collect any tax levied and imposed under the [Local Tax Enabling Act] unless the ordinance imposing such tax shall provide that he shall be the collector of said tax. . . .

evasion of the tax or violation of the tax ordinance. Section 6922 of the Act provides:

> Except as otherwise provided in the case of any tax levied and assessed upon earned income, any such political subdivision shall have power to prescribe and enforce reasonable penalties for the nonpayment, within the time fixed for their payment, of taxes imposed under authority of this Act and for the violators of the provisions of ordinances and resolutions passed under authority of this Act.[36]

Under the original act it was held that actions for fines or penalties prescribed by an ordinance may not be brought before *any* justice of the peace or alderman in the particular county in which the municipality is located. The action is restricted to and must be brought before a justice of the peace in the municipality imposing the tax or adopting such an ordinance.[37] An alderman of another city within the same county has no jurisdiction to enforce a penalty for violation of the trailer tax ordinance. Since the penalty provision in the new act is basically the same as that found in the old act, it is assumed that the court procedure as stated above has not changed.

With regard to evasion of paying a trailer tax, the Pennsylvania Penal Code provides certain criminal sanctions.[38] Section 4699.14 of the Penal Code provides a fine of fifty dollars or imprisonment for a maximum of twenty-five days for any mobilehome owner who removes the trailer from the municipality for the purpose of evading the tax.[39]

Section 4699.14 also concerns the failure of a trailer court operator to make tax reports. If the court operator fails to submit a report after given written notice to do so, the operator is subject to a fifty dollar fine or imprisonment for a maximum of twenty days.[40]

Taxing the Trailer as Realty

Taxation of a house trailer or mobilehome as real estate is another possible means of revenue raising. Local assessment and taxation of real

36. PA. STAT. ANN. tit. 53, § 6924 (Supp. 1971). This section of the Act is virtually the same as the corresponding penalty provision under the old "Tax Anything Act." The only difference is that the old Act did not provide for an earned income tax. Therefore, no mention of such a tax was made in the penalty provision of that Act. *See* Act of May 9, 1949, P.L. 898 § 1 (repealed 1965).

37. Borough of Throop v. Matyassi, 82 Pa. D. & C. 449, 53 Lack. Jur. 133, 44 Mun. 14 (1952).

38. PA. STAT. ANN. tit. 18, § 4699.14 (Supp. 1971).

39. *Id.* Official tax notice must be given to the titled owner of the mobilehome before the sanctions of this section will apply.

40. *Id.*

estate is permitted under Pennsylvania Law.[41] Specific taxation of house trailers as realty is also permitted.[42] The only problem which arises under this mode of taxation is whether the house trailer can be considered realty.[43]

Under the County Assessment Law[44] taxation of house trailers as real estate is permitted when the dwelling is "permanently attached to land or connected with water, gas, electric or sewage facilities."[45] In order to determine whether the trailer is realty it is necessary to determine whether it is permanently attached to the land. In *Coyle Assessment*[46] certain trailer inhabitants objected to taxation of their mobilehomes. Their testimony stated no intention to continue the trailers on their premises either permanently or indefinitely. In deciding the question of permanency, the court held that the applicable test was not the inability to sever the trailer from the land. The test was the *intention* of the parties. Instead of clarifying the term "permanently attached to the land", this test seems to make the determination quite difficult. The court went on to say in *Coyle* that such intention is a question of fact which must be determined from all of the facts and circumstances. Self-serving statements by the trailer owners will not suffice. What this means is there can be no definite rule as to when a trailer is realty. As will be shown, there are many variables which must be taken into consideration.

The *intention* of the individual is often difficult to ascertain. In *Fryer Appeal*[47] the Court of Common Pleas of Montgomery County held that certain house trailers could not be validly assessed as real estate. The trailers in question were attached to the trailer court by electrical wiring, water piping, and sewage disposal facilities. Yet even with this evidence of permanent attachment the court denied recognition of the trailers as realty. The crucial factor here was that practically all of the trailers were licensed as vehicles and could be moved and legally towed over the highways on an hour's notice. It is submitted that the court in *Fryer* accepted one characteristic as controlling while rejecting another which may have been just as important. This point

41. PA. STAT. ANN. tit. 72, § 5020-201 (1968).
42. *Id.*
43. Coyle Assessment, 17 Pa. D. & C.2d 149 (1958).
44. PA. STAT. ANN. tit. 72, § 5020-201 (1968).
45. *Id.*
46. 17 Pa. D. & C.2d 149 (1958).
47. 67 Montg. 271, 81 Pa. D. & C. 139 (1953).

has been exposed merely to show the problem of determining *intention.*

Various arguments have been espoused by trailer camp owners against assessment of trailers as real estate. One of these arguments is that the owner of the trailer camp does not own the trailers. He merely rents space to the owners for indefinite periods of time. This contention was expressed in *Streyle v. Board of Property Assessment.*[48] The camp owner testified that the average stay of the trailer inhabitants was only about six months. In addition, all of the trailers were equipped with wheels. None of them rested on foundations of any kind. The Superior Court of Pennsylvania flatly rejected the argument. "It . . . is no objection to the validity of the assessment that title to the trailers involved was not in the plaintiff, owner of the land."[49] Even with this rejection of the camp owner's contention, the court in *Streyle* denied the assessment of the trailers. The question of intention arose once again. It was concluded that the requisite intention was lacking. The court examined several facts one of which was that the trailer owner *rented* the space. While this was rejected as not being conclusive evidence the trailers were not realty, it may be used as indicia of intention. The fact that the trailers were equipped with wheels and registered as motor vehicles was also considered evidence of a transient intent by the trailer owners.

Another interesting argument was raised by the Board of Property Assessment in *Streyle.* It attempted to invoke the "assembled industrial plant doctrine."[50] This provides that equipment necessary to the operation of an industrial plant is real estate and taxable as such. The Board contended that the trailer camp was an industrial plant. The court would not accept the argument and stated the doctrine was "specifically restricted to such establishments as are industrial plants and cannot be invoked even where the business involved is within a classification 'sometimes generally called industries'. "[51] The court was taking a plain meaning approach to the term industrial plant and was unwilling to expand the definition.

The question of *intention* to have the trailer become real estate has been supported in other areas of real estate law. In determining whether a fixture has become realty, the Supreme Court of Pennsyl-

48. 173 Pa. Super. 324, 98 A.2d 410 (1953).
49. *Id.* at 325, 98 A.2d at 411. *See also* Pennsylvania Co. for Insurance on Lives and Granting Annuities v. Bergson, 307 Pa. 44, 159 A. 32 (1932).
50. *See* PA. STAT. ANN. tit. 72, § 5020-201 (1968).
51. Streyle v. Board of Property Assessment, 173 Pa. Super. 324, 326, 98 A.2d 410, 411 (1953).

vania set forth three criteria several years ago.[52] First, there must be actual annexation to the realty or something appurtenant to it. Secondly, application to the use or purpose to which that part of the realty with which it is connected is appropriated must be present. Finally, there must be an *intention* of the party making annexation to make a permanent accession to the freehold. The approach to determine intention is through an objective test.[53] Neither the mode of annexation nor the use of chattel is conclusive as to intention.[54]

The Supreme Court of Pennsylvania has concisely stated the problem of trailer taxation as real estate in *Lantz Appeal.*[55]

> The test [is] whether [the trailer] was 'permanently attached to the land.' Whether a chattel, which a house trailer is for some purposes, is 'attached to land' is governed by both the physical facts and the intention of the owner. Whether it is 'permanently' attached is primarily a matter of intent.[56]

The only definite guideline presented by the courts, is that "no single fact, to the exclusion of all other relevant circumstances can be used to determine the issue."[57]

License Fees Under the Police Power

The prior sections dealt with the feasibility and administration of certain taxes. This section is now concerned with a *license fee.* The distinction between these two classifications must be made clear. The power to tax, as has been stated before, must be expressly conferred by the state. The power is granted by the state legislature under the ultimate authority of the Constitution.[58] The purpose of a tax is to produce revenue. A license fee is extracted for regulatory purposes. The object of the fee must be deemed to be in need of public control. Ordinarily the fee is entirely for the purpose of defraying governmental costs in administering the necessary control or regulation.[59] It is ad-

52. Justice v. Nesquehoning Valley R. Co., 87 Pa. 28 (1885).
53. Kennedy v. Crumlish, 85 F.2d 665 (3d Cir. 1937).
54. *In re* Ginsburg, 255 F.2d 363 (3d Cir. 1958) (applying Pennsylvania law); United States v. 15.3 Acres of Land in the City of Scranton, 154 F. Supp. 770 (M.D. Pa. 1957).
55. 199 Pa. Super. 310, 184 A.2d 127 (1962).
56. *Id.* at 315, 184 A.2d at 129.
57. *Id.* at 316, 184 A.2d at 129.
58. Mastrangelo v. Buckley, 433 Pa. 352, 250 A.2d 447 (1969).
59. Armour and Co. v. Pittsburgh, 363 Pa. 109, 69 A.2d 405 (1949). For an interesting interpretation of the term "license fee" see Philadelphia Tax Review Board v. Smith, Kline and French Laboratories, 437 Pa. 197, 262 A.2d 135 (1970) where the late Justice Cohen of the Pennsylvania Supreme Court held that there was no legislative intent in

ministered under the police power and if excessive it is invalid as a revenue producing measure.[60]

The question of upon whom such a license fee may be required was decided in *Crawford v. Wesleyville.*[61] There were three issues in this case: Can a license fee be imposed upon one who owns his own land and lives in his own trailer? Can a license fee be imposed upon one who rents his land to trailers for profit where in addition to trailers he also owns cabins on his land which he rents to the public? Can a license fee be imposed upon one who merely rents his land to trailers for profit?

As to the first question the court held that such a license fee was invalid. The court stated that the effect of the ordinance was "that the borough is licensing [a man's] right to establish his own home on his own land."[62] Before a home may be licensed, it must be in an extraordinary situation. The example used by the court was a commercial enterprise such as a rooming house. Since a license fee is extracted under the police power it must be reasonable under the circumstances upon which it operates.[63]

The second question raised in *Crawford* is a problem of alleged discrimination. Land rented to trailers requires the payment of a license fee, but land upon which tourist cabins are rented does not. The court held this does not constitute discrimination. Where a license fee is a proper police measure "the fact that other somewhat but not exactly similar places are not required to be licensed is not fatal."[64]

The final question concerned the right to impose a license fee upon a trailer court for profit. Such a regulation seems to be completely valid as a police measure. The land upon which the trailer camp was situated increased the hazards to the health, safety and morals of the municipality. By the trailer camp owner's own action he demanded increased municipal services. It is necessary for the Borough of Wesleyville to increase sewage facilities and other utilities. The license fee merely defrayed the cost of these services.[65]

Even though a license fee may be imposed upon a trailer camp, it

the Sterling Act which said that "license fee" referred to a regulatory activity. It could be construed in a revenue sense and such a construction appeared to have been the legislative intent.

60. Olan Mills, Inc. v. City of Sharon, 371 Pa. 609, 92 A.2d 222 (1952).

61. 68 Pa. D. & C. 215 (1949).

62. *Id.* at 219.

63. Flynn v. Horst, 356 Pa. 20, 51 A.2d 54 (1947); Mastrangelo v. Buckley, 433 Pa. 352, 250 A.2d 447 (1969).

64. Crawford v. Wesleyville, 68 Pa. D. & C. 215, 218 (1949); *cf.* Adams v. New Kensington, 357 Pa. 557, 55 A.2d 393 (1947).

65. *See* Palumbo Appeal, 166 Pa. Super. 557, 72 A.2d 789 (1950).

must be for *regulatory purposes*. This aspect of the fee greatly limits its amount. Once the fee becomes excessive it is merely revenue raising. This is invalid as a police measure.[66]

It is important to realize that in making a determination as to what is a tax, the courts will look to the realities of the situation. The lable "tax" or "license" is not important. What is important is the incidence and actual effect of the ordinance.[67] It can be seen that the fee must be truly regulatory. The courts will look through the language of a license fee ordinance to make this determination.

Model Ordinances

With the prior discussion of revenue raising completed, two model ordinances have been proposed. The first concerns taxation of a mobile-home pursuant to the Local Tax Enabling Act. The second exacts a license fee for the trailer camp owners. No ordinance concerning a real estate tax has been proposed. A real estate tax which is only imposed upon mobilehomes would conflict with the Local Tax Enabling Act.[68] A general tax affecting *all* realty within the political subdivision will effect mobilehomes subject to the limitations discussed earlier. Explanations and comments concerning the proposed ordinances have been placed in footnotes.

Use or Occupancy Tax

AN ORDINANCE FOR THE PURPOSE OF TAXATION OF THE USE OR OCCUPANCY OF A MOBILEHOME OR HOUSE TRAILER PURSUANT TO THE AUTHORITY GRANTED BY THE LOCAL TAX ENABLING ACT, ACT OF DECEMBER 31, 1965, P. L. 1257.

SECTION 1. TITLE

This ordinance shall be known as (name of political subdivision) Trailer Tax Ordinance.

SECTION 2. DEFINITIONS

Unless otherwise expressly provided, the following shall, for the purposes of this ordinance, have the following meanings:

66. *See* Milk Co. v. City of Pittsburgh, 360 Pa. 360, 62 A.2d 49 (1948).
67. Phila. Tax. Rev. Bd. v. Smith, Kline and French Lab., 437 Pa. 197, 262 A.2d 135 (1970); Flynn v. Horst, 356 Pa. 20, 51 A.2d 54 (1947).
68. See note 21.

(a) House Trailer—The term "house trailer" is defined as any unit used for living, sleeping or business purposes, equipped with wheels or similar devices used for the purpose of transporting such unit from place to place, whether it is self-propelled or otherwise.

(b) Mobilehome—the term "mobilehome" has the same definition as provided in subsection (a) of this section of the ordinance.

(c) Trailer Camp—The term "trailer camp" shall mean any park, trailer court, court, site, lot, parcel or tract of land designed, maintained or intended for the purpose of supplying a location or accommodations for any house trailers or mobilehomes are parked. It shall include all buildings used or intended for use as part of the equipment thereof.

SECTION 3. LEVY OF THE TAX

(a) Pursuant to the authority granted under The Local Tax Enabling Act,[69] Act of December 31, 1965, P. L. 1257, (name of political subdivision) hereby imposes a tax on the use or occupancy of a house trailer or mobilehome situated in a trailer camp at the rate of ($) per year payable to the (agency or officer) of the (political subdivision) by the titled owner of the trailer at the rate of ($) per month.

(b) The aforementioned tax shall be payable and due on the fifteenth (15) of every month.

SECTION 4. COLLECTION OF THE TAX

The tax provided for under section 3(a) of this ordinance shall be collected by the owner of the trailer camp in which the trailers to be taxed are situated on the dates indicated in section 3(b) of this ordinance.[70] The owner of the trailer camp shall within five days of each date indicated in section 3(b) submit the tax to the (agency or officer) of the (political subdivision). Submitted with each collected tax shall be a report by the owner of the trailer camp indicating the number of trailers situated in the trailer camp and which trailers have paid the tax for that taxable period. A copy of each report shall be kept by the trailer camp owner for a period of six (6) years subsequent to the collection of the tax.

69. PA. STAT. ANN. tit. 53, § 6905 (Supp. 1971) states:
Each ordinance and resolution shall state that it is enacted under the authority of this act known as "The Local Tax Enabling Act".

70. Great discretion is left to the local authorities in collection of the tax. They may create bureaus and appoint officers as they deem necessary. *See* PA. STAT. ANN. tit. 53, § 6910 (Supp. 1971).

SECTION 5. LIMITATION OF ASSESSMENT

No assessment may be made of the tax imposed under this ordinance more than five (5) years after the date on which such tax should have been paid except where a fraudulent return or no return has been filed.[71]

SECTION 6. TAX LIMITATION

(a) Over-all Limit of Tax—The rate of the tax imposed under this ordinance shall be limited with respect to the fact that an aggregate amount of all taxes imposed by any political subdivision under the Local Tax Enabling Act shall not exceed an amount equal to the product obtained by multiplying the latest total market valuation of real estate in such political subdivision, by twelve (12) mills.[72]

(b) Reduction of Rates Where Taxes Exceed Limitations—If, during any fiscal year, it shall appear that the aggregate revenues from the taxes levied under the Local Tax Enabling Act will materially exceed the limitation expressed in section 6(a) of this ordinance, the (political subdivision) shall reduce the taxes of tax imposed under the Local Tax Enabling Act to stay within such limitations as nearly as may be.[73]

SECTION 7. REMOVAL OF MOBILEHOME OR HOUSE TRAILER TO EVADE TAX

Whoever being the titled owner of a mobilehome or house trailer who removes such trailer from the (political subdivision) to evade payment of the tax provided under this ordinance shall be subject to the sanctions provided under the Pennsylvania Penal Code, Act of June 24, 1939, P.L. 872, § 699.14, *as amended*, Act of Sept. 1, 1965, P.L. 445, § 1.[74]

SECTION 8. FAILURE OF TRAILER CAMP OWNER TO MAKE REPORTS

A trailer camp owner who fails to comply with section 4 of this ordinance shall be subject to the sanction provided under the Pennsylvania Penal Code, Act of June 24, 1939, P.L. 872, § 699.14, *as amended*, Act of Sept. 1, 1965. P.L. 445, § 1.[75]

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71. *See* PA. STAT. ANN. tit. 53, § 6916 (Supp. 1971).
72. *Id.* § 6917.
73. *Id.*
74. See notes 39 and 40 and accompanying text.
75. *Id.*

SECTION 9. SAVINGS CLAUSE

If any section, clause or sentence or part of this ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, or invalidity shall not effect or impair any of the remaining provisions, sentences, clauses, or sections or parts of this ordinance. It is hereby declared as the intent of (political subdivision) that this ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section, or part thereof not been included herein.[76]

License Fee for Trailer Camp

AN ORDINANCE FOR THE PURPOSE OF IMPOSING A LICENSE FEE UPON THE OWNERS OF TRAILER CAMPS TO SECURE AND PROMOTE THE HEALTH, CLEANLINESS, COMFORT AND SAFETY OF THE CITIZENS of (political subdivision).

SECTION 1. TITLE

This ordinance shall be known as the (political subdivision) License Fee Ordinance.

SECTION 2. DEFINITIONS

The definitions for this ordinance are the same as those used in Section 2 of the Use or Occupancy Tax ordinance.

SECTION 3. LICENSE FEE AND REGISTRATION

(a) Pursuant to the authority granted under The Second Class Township Code, Act of May 1, 1933, P.L. 103, (political subdivision) hereby requires all trailer camps, operated for profit, to be licensed and registered with the (agency or officer).[77]

(b) A license to operate a trailer camp for profit will be granted only upon compliance with such rules and regulations as the (agency or officer) determines are necessary to secure and promote the health, cleanliness, comfort and safety of the citizens of the (political subdivision).

76. This is one of the principles stated in Crawford v. Wesleyville, 68 Pa. D. & C. 215 (1948).

77. The Second Class Township Code is merely used as an example here. The authority referred to is the right to make such regulations, by ordinance, as may be necessary for the promotion of the health, cleanliness, comfort and safety of the citizens of the municipality. Such a provision can be found in all of the municipal codes.

(c) The license fee shall be an amount equal to the product obtained by multiplying ($) by the number of house trailers or mobilehomes situated in the trailer camp.

(d) A license will be granted for a licensing period of six months. A new license must be acquired for each licensing period.

(e) All applications for licenses and registration will be made with the (agency or officer) of (political subdivision).

SECTION 4. INSPECTION OF LICENSED PREMISES

(a) The (agency or officer) shall inspect the licensed trailer camp once every month for the purpose of determining whether the premises comply with the rules and regulations provided for in Section 3(b) of this ordinance.[78]

(b) Should the (agency or officer) determine at the time of such inspection that the premises do not comply with the rules and regulations provided for in Section 3(b) of this ordinance, the license shall be revoked. At such time to owner of the trailer camp shall have seven (7) days or such time as the (agency or officer) feels is reasonable to conform to the rules and regulation. If the owner of the trailer camp does not conform within the proscribed time, he shall be in violation of this ordinance and subject to the penalty provided in Section 5.

SECTION 5. PENALTY

Should an owner of a trailer camp for profit fail to apply for a license provided for under this ordinance, or operate such trailer camp without a license, or fail to register with the (agency or officer), he will be deemed in violation of this ordinance and fined not more than ($) or imprisoned not more than _____.

CONCLUSION

Mobilehomes and house trailers raise unique problems for municipalities. These problems often place a heavy burden upon the permanent inhabitants of the community. This does not mean that mobilehomes should be eliminated from our towns and cities. They should merely meet their burden of the responsibility.

Three methods of meeting this burden have been explored in this comment. A use or occupancy tax, real property tax, and a license fee

78. See note 66 and accompanying text.

have been proposed. The use or occupancy tax is the most practical. The problem is that it can only be used under certain circumstances. If the mobilehome is *subject* to a real property tax, a use or occupancy tax cannot be applied. In many cases a real property tax will not be applicable to a mobilehome. As was stated earlier, the criteria for such a tax is quite uncertain.[79] If the mobilehome cannot be taxed as realty, the provisions of the Local Tax Enabling Act should be employed. By following this procedure mobilehomes can be made to meet its burden to the community.[80]

The imposition of a license fee has drawbacks. To have a true license fee it must be for a regulatory purpose. This calls for a close watch on the amount of the fee. It cannot become strictly revenue producing. There must be a direct relation to the public health, safety and welfare of the community. It is doubtful that a great deal of funds could be acquired in this manner.

In review it is clear that through the use of a real estate tax, or if such a tax would fail, the employment of the Local Tax Enabling Act, the mobilehome can be made to meet its burden to the community. With such a clear means available, the burden should be met.

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79. See note 43 and accompanying text.
80. See Annot., A.L.R.2d 277 (1962) for a discussion of mobilehome taxing procedures in jurisdictions other than Pennsylvania.