

**A REVIEW OF THE APPLICATION OF THE PROPERTY TRANSFER TAX
TO BC MANUFACTURED HOMES**

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EXECUTIVE SUMMARY

This report is the result of the request of the Policy and Legislation Branch, Policy and Reporting Division, Ministry of Finance, Province of British Columbia, to review the application of the property transfer tax to properties with manufactured homes as compared to properties with a site-built home; currently site-built homes are subject to tax and manufactured homes are not. The report reviews the *Property Transfer Tax Act* provisions and seeks to determine whether the imposition of this tax on manufactured homes is feasible and desirable.

The purpose of this report is to develop information, propose policy options and recommend the most appropriate changes to legislation and procedures so that the application of the property transfer tax remains equitable for all BC home purchasers, efficient, and does not impede a strong and optimal housing consumption in the Province of British Columbia. In instances where an explanation of policies, practices and trends is required, the report seeks to provide objective data. The research is meant to review the evolution of manufactured homes from less than a freehold, from mobile to modular, the circumstances of their registration in the Manufactured Home Registry or of their de-registration from this Registry; upon the latter consideration, the report looks at the gaps between the statutory requirements for de-registration and the enforcement of such provisions at the administrative level, as well as the risks attached to the non-statutory compliance for property transfer tax purposes.

The report explores the following questions:

- What are manufactured homes and why is there a need for a review?
- How did the manufactured homes evolve from chattels to fixtures, from mobile to permanent affixed structures?
- How does the evolution of manufactured homes impact the equitable treatment of home purchasers relative to the application of property transfer tax?
- Is the current legislative framework and tax imposition on properties with manufactured homes efficient? If not, can changes be made that would increase the effectiveness and fairness of the property transfer tax imposition to manufactured homes?

The report includes several sections. Sections I and II provide background information on the way the property transfer tax is levied in the Province under the *Property Transfer Tax Act*; the rationale behind the enactment of the Act, the changes the Act underwent over the years and the rationale behind the administrative decision not to apply tax to structures that are easily movable from the property, such as manufactured homes. The review of the features of these structures, their level of acceptability in the Province as alternative forms of housing and the enactment of legislation to reflect their acceptance, is discussed as well. Section II also illustrates the provincial commitment to offer security of investment to manufactured homeowners through the development of a system that keeps track of the ownership and the movement of manufactured homes, the Manufactured Home Registry. The same section discusses the mandate of the Registry, the statutory framework that grants authority to the Registry administrators, and their roles. The analysis in this section reveals the evolution of manufactured homes from one end of the spectrum to another: from mobile to more intricate structures, similar or identical to site-built homes, usually called modular. These sections support the need for a review of current policies around the tax liabilities of manufactured homes.

Section III provides a comparative analysis of taxation practices in British Columbia and other Canadian jurisdictions related to manufactured homes, emphasizing that British Columbia has among the highest level of acceptability of manufactured homes, and has innovative legislative provisions and agencies tailored to deal with manufactured homes and their owners.

Section IV considers the economic impact of the imposition of property transfer tax and the effects it could have on optimal housing consumption. This section builds on the previously reviewed information in the report and concentrates on the benefits and drawbacks of differentiating between the new types of manufactured homes (mobile or modular) for property transfer tax liability. The relationship between such option and consumption behavior, mobility, supply and demand as well as costs of administration, efficiency and tax compliance are identified. Pros and cons and expert observations in the application of transfer taxes are recorded and inform the final recommendation.

Section V summarizes the findings of the review. It presents an inventory of issues on the gaps and discrepancies of the current administrative policies on the assessment, registration and taxation of manufactured homes. The section also presents a list of options that the Policy and Legislation Branch can choose to further explore and implement.

Although several options were considered, section VI recommends that the *Property Transfer Tax Act* be amended to impose tax on the fair market value of properties with affixed (permanently installed) manufactured homes, without excluding the value of the home. This would result in equity for homeowners, administrative efficiency in the form of cost savings for provincial agencies, an increase in revenue and better alignment of actual powers with original mandates for each government agency or ministry involved in the assessment, evaluation, and taxation of manufactured homes.

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I. INTRODUCTION

Since 1987 the Province of British Columbia has imposed property transfer tax on transfers of real property. The tax has been levied as prescribed by the *Property Transfer Tax Act* (PTTA). The tax is collected whenever land¹ is sold, granted, assigned or transferred from one person to another and this transfer is registered in the land title system. Land is interpreted for PTTA purposes as any parcel of land, either bare land or land and improvements including industrial, residential or commercial properties. To avoid confusion, for the purpose of this review, "land" will be used to denote "bare land" and "property" will be used to denote "land and improvements".

The property transfer tax is payable on the fair market value of the land or property conveyed when title is registered at the Land Title Office. The two main elements of the tax are: (1) the registration of title at the Land Title Office, which triggers tax liability and (2) the fair market value² of the land or property transferred, which determines the amount of tax payable.

The amount of tax due depends on the following criteria:

1. The tax rate applicable to the fair market value of the property. The tax base is two-tiered: the first \$200,000 of the fair market value is taxed at one percent (1%), while the rest of the fair market value above \$200,000 is taxed at two percent (2%).
2. The type of property. Some properties according to their use and characteristics, and if the relationship among the transferors and transferees is met as defined in the legislative provisions, could be tax exempt (e.g. principal residences transferred among related individuals, farms transferred among family members or to and from a family farm corporation, recreational residences transferred among related individuals...).

The aggregate amount of property transfer tax collected by the Province depends on the above criteria, and on the state of the real estate market; because of market factors, property transfer tax revenue is cyclical, with revenues affected by the number of properties sold and the properties' fair market value. The number of real estate transactions is often reflective of general economic conditions such as employment/unemployment, mortgage interest rates, and consumer confidence. A decline in interest rates will usually elicit an increase in the number of transactions, while an increase in unemployment will often result in stagnation or downturn in the real estate market transactions.

¹ Although not defined in the Act, the word land includes both bare land and land and improvements. The Act relies on the interpretation of land as prescribed in the *Interpretation Act*, section 29, Expression Defined: "**land**" includes any interest in land, including any right, title or estate in it of any tenure, with all buildings and houses, unless there are words to exclude buildings and houses, or to restrict the meaning (Interpretation Act, 29, 1996). Retrieved on April 6, 2009 from: http://www.bclaws.ca/Recon/document/freeside/--%20i%20--/interpretation%20act%20%20rsbc%201996%20%20c.%20238/00_96238_01.xml#section29.

² Section 1, Definitions and Interpretation, of the *Property Transfer Tax Act* (PTTA) defines **fair market value** as: the amount that would have been paid for the fee simple interest in the land had it been sold at the date of registration of the taxable transaction in the open market by a willing seller to a willing purchaser free of any trust and unencumbered by (i) a mortgage, debenture, trust deed, hypothecation agreement or any other financial instrument, other than a prescribed instrument, that secures the payment of money or the performance of an obligation, (ii) a right to purchase under an agreement for sale, (iii) a judgment for the payment of money, (iv) the rights of a lien holder under the *Builders Lien Act*, or (v) any other prescribed charge (...) (PTTA, 1(a-v), 1996). Retrieved on April 6, 2009 from: http://www.bclaws.ca/Recon/document/freeside/--%20p%20--/property%20transfer%20tax%20act%20%20rsbc%201996%20%20c.%20378/00_96378_01.xml#section1.

Therefore, residential real estate is characterized by strong cycles and according to real estate market activity and economic conditions, the property transfer tax does not provide a stable source of revenue; the revenue is strictly dictated by the position of the market in the cycle, increasing during times of economic expansion and contracting during a slowdown.³

Since its enactment, the *Property Transfer Tax Act* has undergone numerous amendments to better reflect and capture the continuous and dynamic changes of the real estate market as well as political and policy direction to deal with specific issues. Some transfers were recognized as having become taxable transactions, whereas others were denoted as being exempt from paying property transfer tax; the exemptions are captured in section 14 of the Act and are based on various factors: ownership (e.g. lease, government-owned property), use of property (e.g. charitable, educational purposes) or use relative to the relationship between the transferor and transferee (e.g. principal residences transferred among related individuals, farms transferred between family members, recreational residences transferred among related individuals).

Over the years, because of the amendments, a significant inventory of issues related to the administration of the tax has arisen. These issues have been identified in a Strategic Project, the Property Transfer Tax Act Review (the Review) that was undertaken by the Policy and Legislation Branch (PALB) in partnership with the Property Taxation Branch (PTB), Ministry of Finance,⁴ and the Appeals and Litigation Branch in September 2005.

The project was divided in two phases to be completed over two fiscal years:

Phase 1 – Identification and review of all issues to determine where the policy and administrative issues are sufficiently developed to proceed with an administrative, regulatory or budget amendments in fiscal 2007-08.

Phase 2 – Continue the review of the remaining issues to determining resolutions to administrative policies that can be resolved in fiscal 2008-09.⁵

The Review is currently in its second phase. One of the issues identified as requiring review, and addressed by this report, is the application of tax to manufactured homes in the Province of British Columbia to determine whether or not to tax the value of manufactured homes.

The report's main objective is to identify solutions that will streamline and increase the equitable administration of the tax applicable to manufactured homes, to meet the ministry's mandate: "Identify and collect amounts owed to the government through fair,

³ In a tax report on housing market and taxes, Will Dunning (2007) notes that by comparing 1997 and the first nine months of 2007 in terms of housing sales and the application of transfer taxes, BC experienced a 98% increase in housing prices with implications for the revenue amount resulting from the imposition of property transfer tax. Dunning (2007, p. 14) noted that: "The amount of LTT payable on an average priced home has increased by 179%, versus the 98% house price rise. At \$6,718 for an average priced home (1.54% of value) the British Columbia LTT has become a substantial burden for home buyers".

⁴ Please note that until the restructuring of the government late fall 2008, PALB and PTB were part of the Ministry of Small Business and Revenue. After fall 2008, they were incorporated in the Ministry of Finance. Therefore in this review, Ministry of Finance refers to both the Ministry of Small Business and Revenue and Ministry of Finance.

⁵ Ministry of Small Business and Revenue. Property Transfer Tax Review—Project Chart (April 2007, internal database, n.p.).

effective and efficient tax administration and revenue management processes” (MSBR Annual Service Plan Report, 2006/07, p.22).

To achieve its objective, the report is divided in five main sections that provide information on the following:

- The historical evolution of the property transfer tax and its imposition on manufactured homes.
- A review of the statutory definitions of manufactured homes and their features and the review of the manufacturing industry; The evolution of manufactured homes from mobile to modular and the implications for tax policies.
- A review of the current BC legislation, regulations and administrative policies regarding manufactured homes and the place they occupy in the market.
- The pitfalls and benefits of changing the current application of property transfer tax to manufactured homes.

The report evaluates whether or not manufactured homes should be liable for property transfer tax, underlining the benefits and risks associated with each of the two options. A recommendation guided by the principles of taxation is formulated.

The report begins with a background section that provides an organizational review of current and past administration of the property transfer tax and manufactured homes. The statutory definitions of manufactured homes and the new changing techniques of construction, which make manufactured homes "single-family houses built in the factory" (CMHC 2002, p.1), are analyzed. A possible explanation of the rationale of not taxing the value of manufactured homes is being formulated.

The background section looks further into this rationale and provides an overview of the statutory framework related to manufactured homes and the governmental agencies involved in assessing, evaluating, and keeping an inventory of data on these structures. The analysis shows how the manufacturing industry has evolved and, if initially manufactured homes were mobile, presently most of them are complex structures: many do not have wheels, and once moved on the property, they are likely to stay attached to land, becoming permanent structures. The section discusses the extent to which these changes are acknowledged by the required agencies and how this affects the policy on property transfer tax and manufactured homes.

A comparison with other Canadian jurisdictions is briefly discussed in section III. The drafting of the section revealed that the comparison is difficult because transfer taxes and the way they apply differ from one province to the other. Moreover, each Canadian jurisdiction has a different level of recognition of manufactured homes as housing which attracts different levels of tax liability, if any at all.

Section IV reviews academic papers on transfer taxes and is guided by several principles of policy analysis: fairness, efficiency, costs and political feasibility. The section discusses the benefits and drawbacks of the application of tax to manufactured homes and the way it affects consumption behaviors and social policy related to real estate market.

The Discussion section summarizes the findings and presents future solutions for the identified inventory of issues related to the assessment and taxation of manufactured homes.

Lastly, a recommendation is presented based on the analysis and the findings.

Methodology

The main goal of this report is to evaluate possible options and make recommendations that would assist PALB and PTB to more effectively address the application of property transfer tax to manufactured homes.

To achieve the goal and provide sound recommendations, the following activities have been undertaken: a literature review, a review of statutes and policies and a review of historical documents pertaining to the imposition of property transfer tax in the Province of British Columbia. Both published and unpublished ministerial documents and online resources support the data presented in the report.

The most frequently accessed online resources include the following provincial government websites: the Ministry of Small Business and Revenue (MSBR), Manufactured Home Registry (MHR), Ministry of Finance (MF), BC Assessment Authority (BCAA), Land Title Survey Authority (LTSA) and the Queens Printer official website. In addition to the public online resources, the provincial government internal websites (intranet) were consulted. The websites contained valuable information on the provincial property taxation practices and revenue collection. These resources helped determine the interdependency of some government organizations and the impact the change in policy administration might have on some ministries, governmental agencies and taxpayers. The BCAA's website provided information on the property assessment process and the valuation coding of manufactured homes in BC, which proved to be of paramount importance in informing the research.

A review of legislation and regulations on manufactured homes was undertaken as well, several policy and administrative documents being obtained from the PTB and MHR's working and historical files. The PTB's working files included information gathered by the Branch over a number of months as a result of extensive discussions among the auditors, PALB's policy analysts and Appeals Branch officers, Ministry of Finance. The files included draft working papers or notes, briefing notes, memoranda that focused on the stakeholders' perception on the application of the tax in general, the place of manufactured homes on the real estate market, the risks regarding the current policies, as well as suggestions for future changes.

Other Canadian jurisdictions' legislation and policies were reviewed to inform the comparative analysis.

Academic texts were referenced to delineate how basic tenets of tax analysis are applicable in the administration of the property transfer tax. During the literature review stage, information on other jurisdictions and their application of transfer taxes and impact on housing market was obtained.

The data used for this project is not confidential, can be found in the public domain and has all applicable copyright and legal requirements fulfilled.

II. BACKGROUND

II.1. Property Transfer Tax Act and the Property Transfer Tax

The property transfer tax was introduced in 1987 to diversify the British Columbian tax base and reduce reliance on other provincial taxes. The property transfer tax replaced an old *ad valorem fee*, a tax payable at the time of registration of title to property at the Land Title Survey Authority's Land Title Offices (LTO).

The Minister of Finance of that time, Honorable Mel Couvelier, called for suggestions for new sources of revenue to fund government's agenda. After long consideration and research, it was suggested that the model already implemented in other Canadian jurisdictions be adopted in British Columbia. The equivalent of the property transfer tax was collected in the provinces of Ontario, Manitoba and Nova Scotia, and indications were, that it was a relatively simple tax to administer and collect.⁶

Anecdotal evidence shows that at the time the recommendation was made (1986), British Columbia had a good Torrens system of maintaining land records and of levying annual real property taxes based on fair market value to support the implementation of such tax. The Minister agreed with the recommendation to adopt the tax and, upon consultation with internal and external stakeholders, the tax rate was set at one (1%) percent to be levied on the first \$200,000 of the fair market value and two percent (2%) for the remaining value above \$200,000. Consultants were hired to advise on the drafting of the legislation, with particular attention given to maintaining the universality and fairness of the taxing mechanisms. During the drafting process, consideration was given to circumstances when tax would not be payable. Many concepts were carefully defined to establish without doubt which transactions were exempt from paying the tax. The rationale behind these considerations was to eliminate the taxpayer's discretion in determining whether a transaction was subject to tax or the amount of tax payable.

During the March 1987 budget speech, the *Property Purchase Tax Act*, later renamed *Property Transfer Tax Act* was enacted to grant the Province the authority to levy the property transfer tax (Appendix B). The tax became one important component of a range of existing taxes on income, consumption and property, designed to raise revenue to fund essential governmental services (e.g. health care, education) in a way that is equitable and disrupts the economy as little as possible.

As mentioned, the property transfer tax is a registration tax applicable to registration of title to land or property at the BC LTOs. Since its initial implementation, the tax has been assessed relying on the simple premise that every transaction that grants the right to use or occupy the land, or transfers interest in a property, is a *taxable transaction* for which tax is payable on the *fair market value* at the date of registration.⁷

The two key factors that attract property transfer tax liability are:

- Registration of title at the LTO, and

⁶ The property transfer tax in the provinces of Ontario, Manitoba, Quebec and Nova Scotia is known by the name of land transfer tax. Land transfer tax is collected under the legislative direction of each province's *Land Transfer Tax Act*. See Appendix A.

⁷ There are programs, such as First Time Home Buyers, or transfers (e.g. transfers of principle residence among related individuals or upon separation of spouses, transfers of family farms etc.) that are registrable at the LTO but are exempt from paying property transfer tax if all the eligibility criteria as noted in the corresponding sections of the PTTA are met by either the transferor or the transferee or both.

- The fair market value of the property, a value that includes the value of land and improvements.⁸

The concept of *fair market value* is defined in the *Property Transfer Tax Act* as being the value determined by a willing seller and a willing purchaser when the interest in property is unencumbered (PTTA, 1(1), 1996). Simply, fair market value is the price that would be paid for a property in the open market, that is, a market where a property is offered for sale and where anyone interested in purchasing it may make an arms-length offer. When transactions do not occur in the open market, in most cases the best indicator of the value of the property is the BC Assessment Authority's value, a convenient indicator of the appraised value of any BC property on July 1st of each year. BCAA value may not be a good indicator where the property is one where there is a very limited market, or there is a very specialized use.

⁸ For the purposes of applying property transfer tax, an improvement adds value to the land. Accordingly houses and other permanent structures, including modular and some mobile manufactured homes are included in the fair market value. Improvements also include things such as: paving, timber, utilities. (PTT 001: General Bulletin, 2008, p.3). Retrieved on July 11, 2008 from:
http://www.sbr.gov.bc.ca/documents_library/bulletins/PTT_001.pdf.

II.1.1. Manufactured Homes and Property Transfer Tax Liability

The process of determining which property transactions are taxable and which are exempt from tax liability underwent a thorough and elaborate analysis when the *Property Transfer Tax Act* was drafted. The Hansard database lacks concrete evidence on the rationale behind the elimination of certain structures from the list of improvements, such as manufactured homes. A possible explanation can include the following.

Manufactured homes have historically not been defined as permanent structures (site-built homes) because they were not attached to the land they were located on in the conventional manner.⁹ These homes were located on land, the ownership of which has most commonly been “the lease” of a lot within a land lease community (i.e. manufactured home parks), where the homes are owned and the land is rented (CMHC, 2002, p.3). In addition, manufactured homes have typically been defined as *chattels*, less than a freehold or fee simple interest, because they had wheels and could easily be moved from one location to another. Because of their mobile nature, and the likelihood that they could be found in manufactured home parks, rather than on private land, their existence could not be easily captured or recorded in the Torrens system.

In order to protect British Columbians’ investments in manufactured homes, in April 1978, the Province established the Manufactured Home Registry (MHR) as a means to keep track of the ownership and movement of manufactured homes in British Columbia (BC MHR, 2008). Under the *Manufactured Home Act* (MHA), any transaction involving a manufactured home was registered in the Manufactured Home Registry. As of 2007, the BC Manufactured Home Registry contained details on approximately 93,400 manufactured homes. Manufactured homes considered movable totaled 69,125¹⁰, while the number of those exempt, because they were exported or became permanent dwellings through loss of mobility, totaled on average 24,300 (BC MHR, 2008). There is no data on how many of the ones exempt are placed on privately owned land registered in the name of the homeowner that would potentially be liable for property transfer tax. The lack of such data poses challenges for this report and will be discussed in section V.

As revealed by its own mandate, the Manufactured Home Registry was designed to capture the existence and movement on the market of *mobile* manufactured homes. Over the years, because the real estate market has evolved, and with it, the nature of manufactured homes, the Registry noted the registration of more complex structures.

The manufacturing industry has expanded into new realms of building *modular* homes that are indistinguishable from traditional site-built homes and are placed on private land, owned by the homeowner. Many manufactured homes, currently do not have wheels, and once moved onto a property, are more likely to stay attached to land, becoming structures similar to traditional, on site-built homes.

According to the Manufactured Housing Association of British Columbia (MHABC), manufactured homes, both *mobile* and *modular*, “are constructed indoors as three dimensional ‘modules’ before transportation to home sites” (MHABC, 2008, FAQ). The MHABC stresses that, while *mobile* homes are frequently placed in manufactured home communities (formerly mobile home parks), *modular* homes can go “anywhere any other

⁹ Initially these homes had wheels and were sitting on their wheels, without being placed in a permanent concrete foundation.

¹⁰ This number accounts for both mobile and modular style homes because the Registry does not officially distinguish between the two types of structures except for the ones that obtain a deregistration number and are not part of the Registry anymore.

home may be constructed". Furthermore, the MHABC's website differentiates between *mobile* and *modular* homes by referencing the Canadian Standard Association (CSA) Certification that each manufactured home receives. Mobile homes, after being constructed and inspected, receive a CAN/CSA-Z240 label to show that the home has met the construction standards specific for homes that *can be moved from one site to another*. Modular homes are constructed *to the building code in effect at the home site where they will be located* and receive a CAN/CSA-A277 label (MHABC, 2008, FAQ). This initial differentiation shows that *modular* homes are constructed with the intention to provide a *more permanent type of accommodation and have similar features to site-built structures* (Appendix C).

Along with the changes in manufacturing techniques, different combinations of ownership emerged. The one of interest for this report is the ownership of the land and home by the manufactured homeowner.

Despite the evidence that manufactured homes are increasingly similar to permanent homes, these structures continue to be registered in the Manufactured Home Registry as if they have not lost their mobility.

The legislation and applicable regulations have, to date, not been amended to capture the evolution of manufactured homes and have overlooked the transition from *mobile* to *modular*. The property transfer tax administrative practices have also remained unchanged: searching the Manufactured Home Registry to determine whether the home is registered or not. If upon search it is determined that the home is registered in the MHR, the home's value is excluded from the calculation of property transfer tax payable at the time of registration of title. The opposite applies as well; if the search reveals that the home is not in the database of the MHR, the home's value is included in the fair market value for which property transfer tax is payable.

There is no clear evidence about the rationale and how the current PTB policy has been developed. Nonetheless, by consulting different legislative provisions, online information on taxation of manufactured homes, and Hansard debates, the following assumption can be drawn.

At the time the Manufactured Home Registry was established almost by unanimity the manufactured home ownership was exclusive of land tenure. The homes were defined as tangible personal property and were mortgaged for their own value rather than the value of the home and land. Lenders¹¹ (e.g. credit unions, banks) were granting loans for the purchase of the home and not land and home, their security being registered solely against the structure; furthermore, almost no manufactured home was part of land title transactions, because manufactured homes were mostly movable and not permanently

¹¹ On October 1, 1990, the Personal Property Registry was created as a result of proclamation of the Personal Property Security Act, which essentially consolidated and streamlined the law on the registration of the security interests in personal property in British Columbia. The Personal Property Registry is a notice filing system, which registers all of the encumbrances (e.g. mortgages, liens, debentures) created against personal property in British Columbia, whether it belongs to a corporation or an individual. These security interests are to be distinguished from mortgages on real property (e.g. land) that are registered in a Land Title Office. The new registry took over encumbrance filing responsibilities for the Manufactured Home Registry and provides automated registration and search services covering interests in personal property for lenders, sellers, garage keepers, taxing authorities, government agencies, purchasers and the general public (Ministry of Finance. Personal Property Registry website). Retrieved on April 26, 2009 from: <http://www.fin.gov.bc.ca/registries/pprpg/default.htm>).

installed on the land they were sited on. Different individuals owned the land and home and this attracted different property tax liabilities: the land was assessed in the name of the registered landowner and the structure in the name of the homeowner.

All of the above factors might have determined the PTB auditors adopt the current policy of accessing the MHR database for transfers of property with manufactured homes, to ensure that the home is registered in the database and clarify the mobility status.

Nonetheless, in time, due to economic changes and commercial factors, the ownership and tenure of land and manufactured homes changed and some of the homeowners became owners of the land their home was sited on; homeowners neglected to signal the change and de-register the home from the MHR database. BC Assessment Authority became more proactive in researching properties' features and types of ownerships for manufactured homes. During auditing process, the PTB auditors started to note the discrepancies between information retrieved from the MHR database and the BCAA, and requested PALB to review the current policy. PTB stressed that the Branch's policy creates inequity among taxpayers because of the discretionary element of labeling the house as either *mobile* or *modular* for tax avoidance or tax benefit purposes; the taxpayer has the discretion at the time of registration or de-registration of the home from the MHR, which deepens the inequity level between those that are assessed tax and those that are not. Most of the modern manufactured homes, especially the modular ones, are no different than conventional homes and should be treated equally when property transfer tax is assessed.

To better illustrate how manufactured homes are similar to on site-built homes, the next section reviews the manufactured homes' evolution from *mobile* to *modular*, from *chattel* to *fixture*. The section describes distinctive features of these structures and their unique place in the market. The review of manufactured homes assessment, coding and valuation by the BC Assessment Authority is also recorded.

Next section provides information on:

- Statutory definition of manufactured homes in British Columbia; legislative requirements for the registration and de-registration of manufactured homes: Manufactured Home Registry *versus* Land Title Office. Implications for tax liability according to the registry where the existence of these homes is recorded.
- The most visible distinctions between *mobile* and *modular* and the differentiation between a *chattel* and a *fixture* as ruled by BC courts.

II.2. Manufactured Homes: Statutory Definitions

Neither the *Property Transfer Tax Act* nor the *Property Transfer Tax Regulation* (B.C. Reg. 74/88) includes provisions that define the term manufactured homes or relate to the taxation of manufactured homes. Nevertheless, several other BC provincial statutes define “manufactured home” as follows.

The *Manufactured Home Act* (MHA) defines “manufactured home” as “any structure, whether ordinarily equipped with wheels or not, that is designated, constructed or manufactured to provide residential accommodation and to be moved from one place to another by being towed or carried” (MHA, 1(1), 2003). This definition shows that manufactured homes are considered improvements built with the intention to provide temporary or permanent accommodation to their owners.

The *Manufactured Home Tax Act* (MHTA) adds to this definition. Section 1(1) of the MHTA (1996) stipulates that a manufactured home is a structure with or without wheels that is designed, constructed or manufactured *to be moved from one place to another* by being *carried or towed away* and that provides “a dwelling house or premises, a business office or premises, accommodation for any purpose [...]”. Section (2) of the same Act specifies that a manufactured home is an improvement for the purposes of the *Assessment Act* and any other Act—theoretically including the *Property Transfer Tax Act*—whether or not it is defined as such in the acts it makes reference to.

The way the legislation reads manufactured homes that are registered in the Manufactured Home Registry are *mobile structures, not affixed to land, and easily movable off the property*.

The *Manufactured Home Act* (MHA) prescribes the circumstances when a manufactured home should be registered or de-registered (exempt) from the Registry. The MHA prescribes that all manufactured homes, upon completion of their construction, should be registered with the MHR to be relocated from the factory to the site the owners intend to locate the home on. Section 21 of the MHA (2003) and section 5 of the *Manufactured Home Act Regulation* (B.C. Reg. 441/2003) stipulate, that once moved on the land, the owner can apply for an exemption and obtain a de-registration number from the Registry. Section 5 of the *Manufactured Home Act Regulation* exempts from registration a manufactured home that is located on privately owned land or will be “attached to land owned by the lessor-owner and or secured party with a security interest in the manufactured home” (MHA Reg.: 5, B.C. Reg. 441/2003).

This exemption is granted upon the assumption that the manufactured home will be affixed to the land on which it is located, and that, at least one of the registered owners of the manufactured home is registered at the LTO as an owner of the fee simple interest in the land or as a tenant pursuant to a lease for a term of not less than three years. In such circumstances it is assumed that the manufactured home loses its status as *mobile* home as prescribed in the MHA. The exemption (the Act includes other scenarios) eliminates duplication and does not bring under the *Manufactured Home Act* what could be registered and handled by the Land Title Survey Authority under the legislative authority of the *Land Title Act* (LTA, 1996).

Although legislated, the de-registration of the home from the Registry relies on self-compliance, it is initiated by the taxpayer, and is not reinforced at the operational level by

the MHR administrators,¹² who in time noticed the new intricate features of the registered manufactured homes (Appendix D). Thus, the MHR administrators initiated an informal process of differentiation between mobile and modular homes according to their features.

In an inter-ministerial correspondence, the manager of the Manufactured Home Registry, Ministry of Finance, Province of British Columbia, confirmed in 2007 that manufactured homes are less *mobile* and increasingly *modular*. In the written correspondence with PALB, the manager outlined that the MHR contains data and continues to register both *mobile* and *modular* homes¹³, whereas informally distinguishes one from the other as follows.

Mobile homes are transportable units that are constructed as a single or double unit designed to be joined together. Most often these structures arrive at the site complete, except for minor assembly operations and are built to be used without a permanent foundation. Mobile homes are more frequently placed on a rented lot in manufactured home parks and retain the ability to be moved.

Modular homes, on the other hand, are less complete when they are moved to the site. A modular home is comprised of three-dimensional factory built 'modules', delivered on flatbed trucks to the site. They are crane lifted into place and assembled upon a permanent concrete foundation. Once assembled on site, these homes are virtually indistinguishable from site-built homes and need to be split in half to be moved off the property.

Although the distinction between these two structures can be difficult task, the most important points referenced by the MHR manager are: location (single-family dwelling neighborhood *versus* manufactured home parks) and degree of affixation to land. These considerations show that most manufactured homes, some *mobile* and all *modular*, fall under the definition of *fixture*.

¹² By consulting the legislation and the MHR database, among the scenarios that attract de-registration from the Registry, the location of the manufactured home on private land is listed as the most important factor that attracts de-registration. Neither the *Manufactured Home Act* nor the Manufactured Home Registry Policy Manual speaks to the details that surround the de-registration and its enforcement at the administrative level, since the general consensus has always been that manufactured homes are mainly mobile in nature and can be more frequently found in manufactured home parks rather than on private land. However, certain requirements are listed and should be met before a manufactured home can apply for de-registration: the manufactured home must qualify as a conventional home. The homeowner must own the land on which the manufactured home is placed; the owner must have clear title of the manufactured home or must provide a written consent from the security holder. The owner is financed by way of conventional mortgage and the bank requires the de-registration of the home from the MHR to secure the title on both the land and the improvements (MHA Reg.: 4(3)(a-c), B.C. Reg. 441/2003). Retrieved July 11, 2008 from: http://www.bclaws.ca/Recon/document/freeside/--%20m%20--manufactured%20home%20act%20%20sbc%202003%20%20c.%2075/05_regulations/10_441_2003.xml#section4.

¹³ When a manufactured home is moved from the factory to the site where it will be located, all the manufactured homes, either mobile or modular, have to be registered in the MHR in order to receive the permit for transportation. Nonetheless, the *Manufactured Home Act* stresses that those homes that have a permanent nature have to be subsequently de-registered from the MHR.

II.3. Manufactured Homes: Chattels or Fixtures

The concepts of chattel and fixture have been introduced earlier in the report. Although, to some extent they might be considered synonyms of the terms *mobile* and *modular*, these two concepts add to the definitions of *mobile* and *modular* and further demarcate the difference between the two types of manufactured homes.

The Black Law Dictionary defines the word *fixture* as “personal property that is attached to land or a building and that is regarded as an irremovable part of the real property” (Garner B.A ed., 1999). The same dictionary defines *chattel* as “movable or transferable property, especially personal property”; “chattel real” is defined as including a real property interest that is less than a freehold or fee simple, which typically describes old *mobile* manufactured homes.

When the terms *chattel* and *fixture* are mapped against the basic definition of manufactured homes, two preliminary conclusions can be drawn:

- If a manufactured home meets the criteria of *attached to land* and or *seems to be irremovable*, it can be classified as a *fixture*; its value could be included in the fair market value of the land it is sited on.
- If a manufactured home *does seem movable*, it can be classified as a *chattel* and its value could be excluded from the fair market value of the land it is placed on.

The test whether a manufactured home is attached to land is a potential indicator that the home lost some of its mobility and became a permanent structure. Nevertheless, this test is insufficient and should not be the sole indicator of a manufactured home being a *fixture* or a *chattel*. Several BC Court decisions have supported the view that a manufactured home can be categorized as a *fixture* not only by virtue of physical attachment to land and or other buildings. The opposite is valid as well.

Two of the most cited BC Court Cases, are: *Royal Bank of Canada v. Neilson* [1990] B.C.C.A.¹⁴, and *Toronto Dominion Bank v. Zaleschuk* [1996] B.C.S.C.¹⁵

The *Royal Bank of Canada v. Neilson* [1990] is an appeal to the BC Court of Appeal. The court had to decide, upon reviewing the facts presented before the judge, whether a *mobile* home located on the lands forming the subject matter of a mortgage was a *chattel* or a *fixture*.

While the criteria considered by the Judge, Mr. Justice Hutcheon, were unique to the circumstances presented in the court, they seem to resume looking at the basic tenet of the issue: the degree of mobility or permanency of the home. Three main displaying features were looked at:

- The extent of attachment of the home to land, other than through a foundation, but through more permanent connection to municipal services: water, electricity, sewage, and garbage disposal.
- The degree of annexation to land.

¹⁴ To read the entire set of facts in the [Royal Bank of Canada v. Neilson \(Trustee of\)](http://www.canlii.org/en/bc/bcca/doc/1990/1990canlii1932/1990canlii1932.html), 1990 CanLII 1932 (BC C.A.) — 1990-02-27 Court of Appeal — British Columbia access: <http://www.canlii.org/en/bc/bcca/doc/1990/1990canlii1932/1990canlii1932.html> (Retrieved on April 6, 2009).

¹⁵ To read the entire court decision for [The Toronto-Dominion Bank v. Zaleschuk](http://www.canlii.org/en/bc/bcsc/doc/1996/1996canlii880/1996canlii880.html), 1996 CanLII 880 (BC S.C.) — 1996-01-09 Supreme Court of British Columbia — British Columbia access: <http://www.canlii.org/en/bc/bcsc/doc/1996/1996canlii880/1996canlii880.html> (Retrieved on April 6, 2009).

- The intention of the homeowner regarding the location of the home: permanent *versus* temporary.

In the end, the court's decision supported the premise that, even when there is no physical attachment to land, the intent of the homeowner for the home should be considered before deciding whether the home is a fixture or mobile. It has been suggested that the question whether the home can be moved without damaging the building or its foundation should be answered to show the real intent of the homeowner.

The Court determined that a home can be part of the land it is located on, either by means of physical attachment to land, or attachment to municipal services, which could be indicative of the intent of the homeowner and can be as convincing as the more palpable evidence (i.e. the physical annexation to land).

In this BC court case, the intent of the homeowner was crucial in deciding that, once the intention of creating a permanent location for the home is supported by evidence, the question of physical attachment to land comes second.

For clarity and emphasis purposes the following paragraph has been excerpted verbatim from the original source and represents key evidence for this review.

"...I do not think it right to start with the presumption, as in R. v. Plett, that the dwelling is something that is "mobile" and therefore a chattel. When these two structures were brought together on the property to make one unit, placed on the concrete walls and attached to electric and municipal water and sewer services, there was considerable annexation to the land and a degree of permanence sufficient to make the structures part of the realty. The object of the annexation was clear for all to see, a "permanent" dwelling for the owners of the land.

I use the word "permanent" in the same sense that Mr. Justice McFarlane discussed in La Salle Recreations that is in a relative sense in contra-distinction to "occasional". The object of setting up the two units was to use the land for a permanent dwelling. There were no circumstances, patent for all to see, altering the prima facie character of the home as a fixture. On all the tests applicable to the relationship between the owner, Neilson, and the mortgagee, the Bank, on the one hand, and the Trustee in Bankruptcy of Neilson on the other, I conclude that the home became part of the realty and passed to the mortgagee." (R. v. Neilson, 1990, p. 6,7).

Intention, as the main evaluation principle, was at the core of the BC Supreme Court decision in the case of *Toronto Dominion Bank v. Zaleschuk* [1996]. The Court was asked to rule on whether a *mobile* home situated on mortgaged property is a *chattel*, to be dealt with as the respondents chose, or a *fixture*, whose removal constitutes a breach of the mortgage, entitling the lender to foreclose.

Similarly to the *Royal Bank of Canada v. Neilson*, several features of the manufactured home were thoroughly analyzed before a final decision was made. Two of the relevant criteria were:

- The original intention of the purchaser.
- The degree of annexation of the home to the land it was located on: physical attachment or annexation through long-term connections to municipal services.

Once again, of paramount importance in deciding whether the home lost its mobility and was part of the realty, was the intention of the homeowner for the home.

Although the two BC court decisions differ in outcome, they are based on the same principles of analysis of facts:

- The degree of affixation to land and permanency.
- The degree of attachment to municipal services and ability to be moved off the property without causing damage to the foundation and/or manufactured home.¹⁶
- The visible physical improvements—i.e. add ons such as stairs, porch, and deck.
- The purpose (e.g. is it inhabitable), the use (e.g. permanent or temporary), the physical features and the ability to compete on the real estate market (e.g. does it still have its wheels or have they been removed/sold; how it is perceived by an objective potential purchaser).

As noted, the BC courts have been asked to rule on the issue of manufactured homes and have reiterated the difficulty attached to the process of differentiating between fixtures and chattels, and different types of manufactured homes. Nonetheless, the court decisions offer general guidelines that can be applied as a lens in the re-evaluation of the taxation policies of manufactured homes in British Columbia.

Despite the difficulty of separating *mobile* from *modular*, several provincial institutions, BC Assessment Authority (BCAA) as one of them, distinguish between *modular* and *mobile* homes and code them differently for property taxes purposes. The market value of these structures is yearly reassessed and registered in the BC Assessment Authority's database. This point is relevant for the report because the Property Taxation Branch, besides using the MHR database, relies on the BCAA database when determining whether the value of a manufactured home audited is liable for property transfer tax.

¹⁶ Damage was interpreted also from a more liberal angle, allowing the assumption that damage includes structural modifications to the home, such as being split in half to allow the removal.

II.4. Assessment of Manufactured Homes: Mobile versus Modular

Before determining how BCAA assesses and classifies manufactured homes, and how this is relevant for the application of property transfer tax, the next few subsections briefly discuss the Authority's mandate and role.

II.4.1. BC Assessment Authority

The BCAA is a Crown Corporation governed by the *Assessment Act*. Since 1974, the mandate of the Authority was the development and maintenance of roll listing market values of all properties in British Columbia forming an equitable basis of assessment of annual property taxes (BCAA, 2008). The *Assessment Act* requires the BCAA to produce annual rolls with assessments at market value. The market value, determined by the BCAA assessors, includes the value of land and improvements as defined in section 1(1) of the *Assessment Act*.

The Authority's main responsibilities are:

- Record property details: assess the value of land and improvements, the nature of ownership, the classification of the property and other information.
- Release and mail yearly assessment notices.
- Respond to taxpayers' inquiries and defend assessments before the Property Assessment Review Panels and the Property Assessment Appeal Board when these assessments are appealed (BCAA, 2008).

Moreover, the Authority is responsible for keeping updated records of types of property, their valuation and assessment. If new trends appear on the real estate market, the auditors perform field investigations and determine the best way to assess, value and code the new types of improvements for property tax purposes.

Property Classification.

The BC Assessment Authority is responsible for all property classification in the Province. The Authority's main tool, the assessment roll, captures the property's market value, its classification and whether the property is exempt from property taxation liability.

Section 1 of the *Assessment Act* (AA) defines the term assessment as the classification and valuation of the property (AA, 1(1), 1996). The term classification refers to the class the property belongs to according to its use. Presently, there are eight classes of properties established under the *Prescribed Classes of Property Regulation* (B.C. Reg. 438/81).¹⁷

The Residential Class (Class 1) forms the largest portion of the assessment base in the Province. For the purpose of this report, the Residential Class will be referenced in the subsequent pages to better determine how manufactured homes, either *mobile* or *modular*, fit within this classification and whether they are to be considered permanent improvements or not.

¹⁷ These classes are: Residential (*Class 1*), Utilities (*Class 2*), (*Class 3*) repealed, Major Industry (*Class 4*), Light Industry (*Class 5*), Business/Other (*Class 6*), Managed Forest Land (*Class 7*), Recreational Property/Non-Profit Organization (*Class 8*), Farm Land (*Class 9*) (BCA Fact Sheet, 2008). Retrieved on April 2, 2009 from: www.bcassessment.ca

Property Valuation.

In addition to the classification category, BCAA relies heavily on the valuation provisions in the *Assessment Act*. The term valuation is defined in the Act as the real value of the property at the time the assessment roll is issued. Similar to the provisions of the *Property Transfer Tax Act*, section 19(1) of the *Assessment Act* denotes actual value as being the “market value of the fee simple interest in land and improvements” (AA: 19(1), 1996).

Several criteria are carefully considered when the actual value of a property is determined: the property’s location, present use, original cost; replacement cost; revenue or rental value; selling price of land and improvements and comparable land and improvements; economic and functional obsolescence; any other circumstances affecting the value of land and improvements (AA: 19(3)(a-h), 1996).

Property classification and valuation are arduous tasks and, although guidelines are set in legislation, it cannot be assumed that all facts resume only to the scenarios legislated. There is no absolute measure of the actual value. The main valuation tools used by BCAA are the market approach, the income approach and the cost approach (Appendix E).

The market approach is discussed below because it is essential for the research on the evolution of manufactured homes from mobile to modular. Market approach is the valuation tool that determines the property’s value based on the selling price in an open market as compared to the sale price of similar properties. The final value is the price a willing purchaser will pay to a willing seller. This valuation process reflects the concept of open market captured in the definition of fair market value in the *Property Transfer Tax Act*. When determining the value, the BCAA assessors look at property size, property physical features and other factors that might influence the value of the property (AA:19(1)-19(3), 1996) and help differentiate between apparent similar structures: *mobile v. modular*.

The BCAA assesses on a yearly basis every manufactured home in the Province and defines them as improvements whether these homes are equipped with wheels or not. The *Assessment Act* defines manufactured homes as having the same meaning as in the *Manufactured Home Tax Act* and enlists the same criteria when determining their status as improvement. Section 1(1) of the *Assessment Act* defines improvements as “any building, fixture, structure or similar thing constructed *or placed on or in land*, or water over land, or on or in another improvement”, excluding production machinery, structures intended to be moved as a complete unit in their daily use or items such as furniture or equipment not affixed for any purpose other than its own stability and that is easily moved by hand (AA: 1(1), 1996).

Because the database is yearly updated, the Authority has the best probability to capture the newest trends and changes occurring in the real estate market. The manufactured homes are no exception from the rule. The criteria listed below are used by BCAA assessors and inform the classification of manufactured homes as either *mobile* or *modular*.¹⁸

¹⁸ British Columbia. British Columbia Assessment: Assessment of Manufactured Homes Fact Sheet (2008). Retrieved on October 2, 2008 from: http://www.bcassessment.bc.ca/pdf/publications/fact_sheets/FS08_Manufactured_Home_Assmnt.pdf.

1. The existence of a Manufactured Home Registry number for the manufactured home.

The first consideration for valuing a structure as a manufactured home is the existence of a MHR number obtained after registration. This number offers preliminary details about the structure. However, the research does not stop here and the assessors look for further details to determine if the structure is going to permanently remain in its location and whether the owner of the home has filed an application for de-registration with the MHR. This second consideration is important, but does not preclude that the structure is still valued and coded as manufactured home.

2. The degree of permanence (degree of affixation to land) of the structure.

This consideration relates to whether the wheels have been removed and the structure is placed with a greater degree of permanence on a foundation, similar to conventional single-family dwellings. For this to trigger a change in the method of valuing and coding the structure, the structure has to substantially lose its identity as manufactured home.

3. The way the home is identified or perceived by purchasers in an open market: manufactured home (*mobile* or *modular*) versus conventional home (single-family dwelling).

This is a decisive factor. After looking at all the other criteria, the paramount consideration is how closely the structure retains its manufactured home identity as perceived by purchasers. Even after a manufactured home has been de-registered and placed on a concrete foundation, it may still be valued and coded as a manufactured home if the purchasers identify it as such. However, if the structure is sited on land (placed on a foundation) in a way that it loses its identity as manufactured home to a sufficient degree that evidently changes the purchasers' perception, it is valued (and coded) as single-family dwelling. The purchasers themselves play an important role because they are more likely to compete on the market for a home they perceive as a more traditional structure (i.e. single-family dwelling) rather than a manufactured structure.

Although important for the assessment practice of manufactured homes, the purchaser's perception is a hard thing to define. In doing so, the BC assessors use their knowledge related to global market conditions, the MLS posted description of the house, the market activity in the neighbourhood the property is located in, and comparative selling prices.

In addition to the factors above, the *style and quality* of a manufactured home play an important role in the valuation and coding process. Each manufactured home has also a numeric reference; this reference offers details on the style of the structure that ranges from a single-wide (denoted by number 1) to quad (denoted by number 4), while quality ranges from one to six (1 to 6), with six as the highest quality. Width and length, although of secondary importance, are part of the determination of the actual value of the unit assessed.

Lower values for manufactured homes can be dictated by the structure's poor condition or age and by the home's economical and physical obsolescence; some manufactured homes are too old to relocate although still very livable.

The BC Assessment Authority could not provide a concrete number of manufactured homes that are assessed in the name of the same taxpayer as owner of land and manufactured home. Nonetheless a quick search of the system revealed that there are

approximately 36,400 properties that have manufactured homes owned by the landowner; this number is not a count of manufactured homes but properties with manufactured homes, because there can be multiple manufactured homes on a property which may or may not be all owned by the landowner, making this measure difficult.

The BCAA valuation and coding practice is a reliable resource because it involves careful consideration in addition to physical inspection of the home. As previously demonstrated, the main valuing criterion is the way the structure is perceived by both the seller and the purchaser in a competitive open market set by purchasers. Once the home is valued and coded as *modular*, there is little to no doubt that it is a permanent structure.

In conclusion, the BCAA annual assessment roll is to be considered a valuable tool in assessing a manufactured home as either *mobile* or *modular*. Section V of the report will discuss the significance of the assessment roll and how PTB auditors can use it to determine whether manufactured homes should be liable for property transfer tax.

III. INTERJURISDICTIONAL COMPARISON

III.1. Manufactured Homes: Assessment and Tax Liability in Other Canadian Jurisdictions

Except Alberta, Saskatchewan or rural Nova Scotia, all Canadian jurisdictions levy property transfer taxes (also known as land transfer taxes) upon the transfer of real property interests whether registered or unregistered. Similarly to the BC *Property Transfer Tax Act*, most Canadian land transfer tax statutes remain silent on the issue of manufactured homes.

There is no concrete data on the number of manufactured homes, especially modular in each of the taxing Canadian jurisdictions. Each province is different in their acknowledgement of these structures as acceptable forms of housing; each province experiences a different penetration on the market of these structures, and thus, applies transfer taxes differently, if at all. These discrepancies and the uniqueness of the BC legislative framework and taxing system make the inter-jurisdictional comparison difficult. Nonetheless, the most striking contrasts and similarities have been recorded below.

The provinces of Ontario and New Brunswick tried to capture the changes in the housing market and drafted administrative policies on the subject. Of great interest is the administrative practice in the province of Ontario, because Ontario has a similar legislative framework to British Columbia; Ontario's *Land Transfer Tax Act* (LTTA) provided the original background and operational model for the drafting of the BC *Property Transfer Tax Act* in 1987.

For many years, *mobile* homes were not assessed property tax in Ontario because of a 1980s moratorium policy. The moratorium intended to be a temporary measure and was never enshrined in legislation or regulation. Over the years, Ontario courts have confirmed that *mobile* homes, exhibiting characteristics of permanency, are liable for assessment and taxation, regardless of the use: seasonal or year-round. As a result, the obligation to assess all permanent mobile homes has been legislated. The moratorium policy has been reconsidered, and under the current laws of Ontario, *mobile* homes pay property taxes if they could be classified as "real property", as prescribed by section 1 of the Ontario *Assessment Act*.

Once the liability for property taxes is established, other tax liabilities are attracted including the application of the land transfer tax. Ontario assesses only manufactured homes that are classified as permanent dwellings with permanent water, electrical and waste disposal connections to the site. In a public letter posted on the Internet,¹⁹ the Minister Responsible for Senior Citizens, John Gerretsen, enlists the features manufactured homes must have in order to be considered assessable and implicitly charged land transfer tax when transfers of titles occur. The same letter stresses that, for a manufactured home to be classified as permanent dwelling, it has to be a unit with a minimum width of 8 feet 6 inches and meet at least three of the following five criteria:

- The unit has permanent water, electrical and waste disposal connections to the site.
- The unit requires an oversize permit for road travel.

¹⁹ Gerretsen, J. Minister (2008). Mobile homes and property tax. Letter posted to CARP: http://www.carp.ca/article_display.cfm?documentID=1220&CabinetID=309&LibraryID=70&cityID=0 (Retrieved on July 11, 2008).

- The unit is equipped with attached add-ons such as a deck, carport, garage or sunroom.
- The tow tongue has been removed.
- The unit is placed on a concrete block, a concrete pad, or other foundation.

To enforce the view that manufactured homes can be permanent residences with features similar to conventional structures, in December 2007, the Province of Ontario expanded the exemption for first time homebuyers to the purchase of a “resale home”. The definition of “eligible home” includes *mobile homes* (i.e. receive the CAN/CSA-Z240) and *manufactured homes* (i.e. receive the CAN/CSA-A277). When purchased, these homes can benefit from an exemption under the *Land Transfer Tax Act*, which supports the argument that these structures are permanent dwellings built to offer long-term accommodation to their owners.²⁰ However, there is no concrete data on the administrative policy and audit approach for the transfer of title of properties with *mobile homes*.

There is little or no information on how transfer taxes apply to manufactured homes in Canada, even in those jurisdictions where these structures are defined as real property and assessed property taxes. The comparative analysis showed however that the market tends to place them on an equal position with conventional housing. This suggests that manufactured homes could potentially be liable for property transfer tax and benefit from tax breaks under the *Property Transfer Tax Act* provisions, just as every other site-built home does (e.g. exemptions for intergenerational transfers of principal residence, intergenerational transfers of recreational residences etc).

²⁰ Government of Ontario (2007, December). Ministry of Revenue Information Notice. Posted on <http://www.charitylinkrealty.ca/files/LandTransferTaxProgramDetails.pdf>. (Retrieved on July 11, 2008). More details can be found in the information notice that discusses the suggested amendments, the eligibility criteria, the way the refund is claimed until the amendments become law and what is the proposed definition of the term “eligible home”.

IV. LITERATURE REVIEW

The statutory frameworks, the court interpretation of the taxation methodology, and the current administrative practices have been reviewed to inform the potential policy options and mechanisms related to taxation of manufactured homes in British Columbia.

The next section focuses on a review of articles that discuss the merits and pitfalls of the application of tax to transfers of properties with manufactured homes and the way it affects consumption behaviors and real estate social policy. The analysis has been guided throughout the section by several principles of tax: equity, efficiency, revenue collection and administrative costs, political feasibility.

Equity.

In all areas of public policy, fairness is an important norm through which the contract between the individuals who “cede power to government for the purpose of providing for the collective needs” (Ontario Fair Tax Commission, 1993, p.44) is acknowledged. Because taxation is an important revenue control instrument, tax revenue collection should be exercised in a just and non-arbitrary manner, and reassure citizens that “they pay and all their fellow citizens pay taxes in a fair manner” (Ontario Fair Tax Commission, 1993, p.44).

Two approaches to fairness have been identified by economic theorists (Broadway & Kitchen, 1999; Ontario Fair Tax Commission, 1993; Rosen et al., 2003; Walker & Crompton, 2005) as being of paramount importance when determining what are the best taxation mechanisms in certain economic circumstances:

- Horizontal equity, known as “ability-to-pay”, and
- Vertical equity, known as relation of “benefits allocation to tax liability”.

Horizontal Equity.

Taxes involve the removal of purchasing power from individuals (Broadway & Kitchen, 1999), and that is why the tax structure should ensure that the reduction in the purchasing power through taxation is shared fairly among individuals with similar circumstances. The best available indicators of a taxpayer’s well being is the spending power (i.e. “ability-to-pay”), an approach that describes a system in which “the net burden of taxation is distributed to the ability-to-pay of the individuals” (Ontario Fair Tax Commission, 1993, p. 46); this system relies on “distributive/economic justice” (Arthur and Shaw, 1978, p.5 in Ontario Fair Tax Commission, 1993, p.46), and seeks to create equal sacrifice and reduce inequalities in society.

Some academics oppose the discourse that relies on the premise that equals should be treated equally (Broadway & Kitchen, 1999) through quantification of income, expenditure and accumulation of wealth. Rosen et al. (2003) state that these measures are outcomes of people’s decisions and are not suitable measures of equal positions. Nonetheless, the same authors add that the notion of fairness among equals, regardless of its amorphousness and vagueness, will remain at the core of the implementation of tax policy (Rosen et al. 2003, p. 351) when the focus of policy makers is on defining the problems and the parties involved:

- Who are the taxpayers?
- What is their well being? and
- What are the appropriate different treatments, if any?

(Green, in Ontario Fair Tax Commission, 1993, p. 48).

Green's (1993) point is relevant for the application of land transfer taxes. When determining if all homeowners should pay property transfer tax, the answers to who is a homeowner, what is their well being and what are the appropriate different treatments are important. An example of such determination is the differentiation between a taxpayer who is a site-built homeowner and a taxpayer who purchases a manufactured home. By abstract measure, the two individuals, although economically stable, have different levels of investment in the property and their tax liability is different because of the adjustment enabled by the ability-to-pay approach. Thus, the property transfer tax becomes a tax on the ability-to-pay and the amount of tax payable is different for each of the two individuals mentioned above. Tax is calculated according to the value of the purchased property: a site-built home adds different value to the fair market value of the property, than a modular manufactured home adds to the land it is placed on. The later consideration ties into the behavioral theory known as "lifetime consumption" (Rosen et al., 2003), the basic argument being that individuals' consumption decisions and definitions of well being are related to preferences and long-term considerations (e.g. utility, returns etc). Purchasing a principal residence is an example of a commitment with long-run income prospects, ties in with people's perception of their own and of other's well being and implicitly their ability to be tax liable proportionately with the value attached to the investment (Aaron & Munnell, 1992, p.120).

The owners of a site-built home and those of a modular manufactured home have financial ability to enter on the real estate market, but because of different consumption behavior, their investment in the same type of asset, the house, differs. From a horizontal equity perspective both taxpayers are liable for property transfer tax, but because of the tax structure, they are taxed according to the ratio of income to consumption. Thus, the application of property transfer tax to all homeowners (including the manufactured homeowners) satisfies the criterion of horizontal equity.

Several academics (Kaldor, 1955 in Broadway & Kitchen, 1999, p.96) advance the idea that taxpayers should be taxed according to what they take from the "social pot" (consumption) rather than what they "put in" (income), the degree of progressivity being achieved through the choice of the rate structure applicable to consumption. The purchase of a manufactured home as opposed to a site-built home forms such an example.

Vertical Equity.

The concept of vertical equity is relevant for the review when narrowly defined as the consideration of how the tax applied to all home purchasers (including manufactured homes) differentiates between levels of well being (Broadway & Kitchen, 1999, p.56).

The purchasing price of a home (site-built home v. manufactured homes) is indicative of the degree of inequality among purchasers and makes the application of property transfer tax more justifiable at the operational level. The difference between properties' values is acknowledged when tax is levied. Although similar to site-built homes, the manufactured homes' values are considered in isolation from the values of site-built homes and are determined by means of comparison with other comparable manufactured homes when tax is assessed. The difference in value is key in determining the amount of tax payable for such a home and by applying the concept of proportionality, the correct differentiation is achieved even within the same group of homes: manufactured homes with higher values are assessed a higher amount of property transfer tax, and the opposite. Moreover, everyone pays the same tax rate which suggests that all taxpayers with similar

circumstances are treated the same. Discretionary statutory incidence on behalf of the manufactured homeowners to label their home as affixed to receive tax benefits and, as mobile, to escape property transfer tax liability is thus completely eliminated.

The relationship between those paying and benefits allocation, shows how the tax payable by the purchaser is justifiable. Walker and Crompton (2005, p.103) showed that the effect of “freeloading”—the purchaser of the home has enjoyed the services distributed by the government to which s/he had limited or no direct capital contribution—can be perceived as covered or eliminated when the buyer contributes through the payment of property transfer tax.

Nonetheless, it can be argued that the property transfer tax is the equivalent of a penalty applicable to home purchasers or to a household for moving into another household, a cost that increases with the number of moves. The National Association of Realtors (2003) adds that along with being a penalty, it is a biased and discriminatory tax (i.e. it is assessed against one type of asset, real estate), it is volatile and reduces the ability of new and current homebuyers to purchase a home (NAR Research, 2003, p.1). The Association notes that the tax is also regressive relative to taxes on other assets (e.g. bonds, stock holdings) because “housing equity is larger than stock holdings at lower income levels, but smaller for higher income levels” (NAR Research, 2003, p.4, 5).

Although desirable, social equity cannot be the sole criterion on which the property transfer tax system should rely. Other elements are important and are discussed below.

Land Transfer Taxes and Implications for Consumption Behavior

Housing Supply and Demand.

Economic neutrality is an important tenet of taxation and is defined as the process through which tax provisions interfere as little as possible with individuals’ consumption decisions,²¹ leaving almost unchanged the equilibrium point between supply and demand in a tax environment as compared to a non-tax environment (Ontario Fair Tax Commission, 1993). This argument lends itself to the discussion about the cost imposed by a tax on the taxpayer, and the shift in consumption behavior as a result of the relationship between consumption and economic decisions on part of the consumer (Rosen et al. 2003, p.317).

Both academics and politicians have different points of view on the effects of tax on consumption behaviors; while some argue that taxes have very little impact, others suggest that taxes impact consumer’s choice for the amount of wealth to be accumulated and the type of assets in which the wealth is held (Rosen et al., 2003, p. 403, 422). Almost by unanimous consensus, housing is the most important single element in the portfolios of wealth of most Canadians. That is why the imposition of property transfer tax

²¹ Funds provided by taxation have been used by governments to carry out many functions:

- To redistribute resources among individuals or classes in the population
- To provide and fund essential services (e.g. healthcare, education, infrastructure, foreign and military aid)
- To influence the macroeconomic performance of the economy
- To modify patterns of employment within an economy or even
- To modify patterns of consumption in some circumstances (e.g. tax tobacco or alcohol to reduce use and potential harm, carbon tax to encourage efficient use of energy and protect environment etc.).

to manufactured homes might disrupt the balance of the already existing system, with implications for the supply and demand model.

There is little academic evidence and research done in the field of imposition of property/land transfer taxes and there is no clear answer whether this tax has distortionary effects, if any at all, for the house supply and demand model. Applying property transfer tax to manufactured homes might elicit in the short-run undesired behavioral response because these homes become more expensive. However, the market's competitiveness, and the acknowledgment of these homes as the equivalent of site-built structures by taxpayers might absorb the impact on the purchase behavior; taxpayers go through the process of "civic discovery" and in the end accept the tax.

Some researchers looked at the "price effect" (Benjamin, Coulson, Yang, 1993; Nowlan, 2007) created by the imposition of transfer taxes to a previously non-taxable environment. Two main distorting effects were identified:

1. Because the tax is levied only in certain jurisdictions, for those purchasers with fewer ties to the province, relocation to a jurisdiction with no such tax might be a feasible option (McFadyen, 1976). This option is less achievable by all home purchasers because of other factors in addition to the tax.
2. To the extent to which properties are in elastic supply, the land transfer taxes might discourage property acquisition. This observation relies on the elasticity of substitution between various inputs to housing. While taxation directly influences investments decision involving assets, the impact of property transfer tax to such decision is less visible and might be directly proportional with the returns the property offers to the purchaser (Guilfoyle, 2000). In such case the house demand might vary with the ability-to-pay and choice of expenditure, depending on whether the house's value and features are matching the desired level of housing consumption of each purchaser.

There is clear evidence that there is a trade off relationship between the tax liability, house supply and quality, and actual sales price. King (1977 in Guilfoyle, 2000) argued that the house price is a dependent variable, and that "the tax payment at a given tax rate is larger on higher priced houses" (p.121). Therefore, the choice of purchasing a manufactured home rather than a site-built home, can be the result of careful consideration on the correlation between price and "time horizon returns on an economic and individual preferential levels" (King, 1977 in Guilfoyle, 2000, p.121, 122). Even so, there are researchers (Netzer, 1977 in Ihlanfeldt, 1979, p.536) who dismiss the assumption that all housing choices are made in relation to the cost-benefit analysis or long-term prospects. Although this consideration might be important for some house purchasers, other factors could influence the decision (e.g. racial, mobility, elasticity).

In '*Potential Impacts of Sales Taxation of Services on the Real Estate Sector*', the National Association of the Real Estate (2003) demonstrated that simply being on the market is important for some purchasers, who choose to purchase a less expensive home rather than not purchasing a home at all. However, this does not change the impact of the imposition of the tax, because the decision relies on the assumption that a lower priced home is available on the market for which purchasers compete with others who may then be pushed out of the market (NAR Research, 2003, p.4).

By applying the theoretical models discussed above to the issue of manufactured homes, the following can be concluded. The initial effect of the imposition of property transfer tax

to manufactured homes would be a decrease in supply; the tax is added onto the selling price and shifts the effective supply curve to the left. The tax will raise prices, putting a wedge between the price the buyer pays and the amount the seller receives. The real incidence (“who pays the tax”) depends on the price elasticities of both supply and demand, the less elastic side bearing more of the burden.

After looking at the effects of elasticities and responsiveness of the Toronto market, after the imposition of transfer tax, Dachis, Duranton and Turner (2008) concluded that the impact was in fact small: “buyers and sellers shared the incidence of the tax, both sides of the market absorbed the reduced volume, so the reduction [was] less than it would be if only the buying or the selling side were bearing the burden” (p.6).²²

As discussed throughout this section, there is little evidence that transfer taxes change dramatically, if at all, the consumption behavior of home purchasers; they can however impact the choice of entering or exiting the market, therefore the purchasers’ mobility.

Mobility.

Literature pointed that household market and homeowners’ mobility are affected by transaction costs (e.g. capital gain taxes, ad valorem taxes) that create lock-in effects (O’Sullivan, Sedon, and Sheffin, 1995; Oswald, 1997, 1999, Van Ommeren, Rietveld, and Nijkamp, 2000 in Van Ommeren and Van Leuvensteijn, 2005).

Information on average residential mobility rates of owners and ad valorem buyer transaction costs of European countries showed “an 8 percent decrease in residential mobility given a 1 percent-point increase in transaction costs” (Van Ommeren and Van Leuvensteijn, 2005, p.682). The Toronto land transfer tax recorded a 16 percent decrease in the number of single-family home sales, the volume of transactions being larger for houses below average value (36% decrease as compared to 7% decrease for homes above \$400,000), because “while the tax reduces the wealth and mobility of all property owners, it has a relatively larger effect on the mobility of the less affluent and a relatively larger effect on the wealth of more affluent” (Dachis, Duranton & Turner, 2008, p.1).

Other effects of the application of transfer taxes are the increase in the likelihood of homeownership among the infrequent movers at the expense of the frequent movers (O’Sullivan, Sexton & Sheffrin, 1995, p.107). Marginal benefit for homeowners to remain longer in their current dwelling increases, affecting the mobility rate. O’Sullivan, Sexton and Sheffrin (1995) stated that the imposition of the land transfer tax tills the “ownership utility function upwards introducing a bias toward homeownership” (p.120) for most infrequent movers who remain longer in their homes. The same authors point that, although each household’s mobility is influenced by a bundle of factors and not solely by the imposition of transfer taxes, these taxes have a larger negative effect on mobility of frequent movers, who certainly pay more tax.

²² The adjustments in price to equilibrate the market are not changes that result from any form of buyer-seller negotiation because the market operates more impersonally. With the imposition of the LTT, Dachis, Duranton and Turner (2008) found that, when sellers find that demand is weakening, they are less aggressive in the asking prices; therefore there is a small fall in the selling price. Concurrently, the buyers acknowledge the refusal on part of the sellers to absorb all of the tax; therefore they slightly increase their offering prices. Equilibrium is eventually reached when the reduction in properties for sale just equals the reduction in properties demanded, the two sides sharing the burden of tax, even though the buyer continues to have to pay the full amount as part of the closing costs since this is the legislative requirement.

The imposition of transfer taxes might negatively affect the mobility of marginal purchasers or purchasers of lower valued properties; nonetheless manufactured homes, as shown by the market and the competitive price they sell for, detach themselves from the category of low priced structures.

The negative effects resulting from the application of property transfer tax to the registration of this type of homes are thus relative. Because of scarce evidence, the assumption that the taxation of manufactured homes would lead to housing market stagnation is circumstantial. In fact, Walker and Crompton (2005) stress that there is little to almost no strong evidence to support the position that ad valorem taxes decrease housing affordability and result in real estate market stagnation. The authors cite the strongest opponent of the tax, as being the National Association of Realtors confirming, “there is no research on closing costs that would allow (...) a precise measurement of the effect of new taxes on the real estate transactions (...)” (Walker and Crompton, 2005, p.113).

The same authors cite further other sources that confirm their conclusions:

“There is not a real-estate transaction anywhere—residential or commercial, low price or high price—that’s not happened because of the documentary stamp. I can say that univocally. It is never part of the decision to buy or sell. The only issue is how the buyer and seller are going to split it” (The Policy Link, n.d. in Walker and Crompton 2005, p.113).

Therefore, the imposition of the tax leads those least able to pay a higher amount of tax on the transfer of real estate to seek and purchase property at the low price end of the market (Walker and Crompton, 2005, p.114).

Efficiency and Administrative Costs

A coherent and cohesive taxation system weighs the costs of administration and implementation of tax provisions; these costs are important and according to their interpretation they can affect decision makers (government) differently.

Tax Compliance.

Literature distinguishes between “tax evasion” and “tax avoidance” finding that tax avoidance is less of a problem in tax administration because it is solely a conscious change in taxpayer behaviors to reduce a legal tax liability (Rosen et al., 2003).²³

In contrast however, lies the concept of tax evasion which is “a conscious failing to pay legally due taxes” (Rosen et al., 2003, p.353). When applied to the issue of manufactured homes, tax evasion is too strong of a qualifier, but equates the problem of legislative non-compliance within the defined statutory incidence. The owners of such homes and their legal representatives take advantage of the gaps among the existing tax policies, although sociable responsible to comply with legislated requirements even when these are not

²³ Courts have reiterated that the negativity attached to the concept of tax avoidance is simply a matter of perception and showed that “...there is nothing sinister in so arranging one’s affairs so as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands...the demand in the name of morals is mere cant” (Judge Learned Hand, Commissioner v. Newman, 1947 in Rosen et al., 2003, p.352).

operationally enforced. When failing to apply for a MHR de-registration number prior to the registration of title to property visible economic impacts are created:

- An induced loss of revenue that might result in economic inefficiencies because of the way transactions occur; the buyer of a manufactured home might be worse off if we assume that the selling price is increased by the amount of the tax not payable at the time of registration.
- Second, trust and dissatisfaction with the taxing authority arise on part of the taxed community when all taxpayers acknowledge the violation of the horizontal equity principle (Ontario Fair Tax Commission, 1993).

Administrative Simplicity.

Broadway and Kitchen (1999) stressed that one final criterion for an efficient and good tax is simplicity, which, if achievable, considerably reduces the administrative costs, since “the more tax-paying units there are, the greater will be the cost of administration” (p.84). The imposition of property transfer tax to manufactured homes creates collection and compliance costs that are accruing to the government; but, because the application of property transfer tax to manufactured homes takes advantage of an already created system, administrative economies are achievable.

An initial challenge for the application of property transfer tax is perhaps the short-term effectiveness of enforcement. However, as proven by the Ontario Fair Tax Commission (1993), a good understanding of tax liability and responsibility through open and transparent communication creates coherency in behavioral responses. The creation of transparent communication tools on the application of tax, the rationale for the policy, the increase in the amount of time spent on auditing, would induce costs in the short-term, but these costs will significantly be reduced over time through increased compliance.

Fostering open and full disclosure to help the public understand the policy choice will create an environment where there will be fewer incentives for taxpayers to avoid the tax and incur “socially wasteful tax-planning costs” that translate in high costs for the government.

V. DISCUSSION

V.1. Summary of Findings

As discussed throughout the Background section, the Canadian factory built housing industry has experienced a growth in the sector of manufactured homes. Thanks to a number of design options and the improvement of building materials, *modular* homes have become increasingly indistinguishable from site-built homes, are widely accepted, and are competitive on the real estate market.

The introduction of modern style manufactured homes combined with the ever-increasing costs of the more traditional, site-built home constructions, forced a market reassessment of the value of manufactured homes, especially *modular* homes. Currently, most of these structures are perceived by purchasers as permanent single-family dwellings, and can apply and be easily financed.

The BCAA's coding and valuing practices enforce the statement that *modular* homes are indistinguishable from traditional residences. As previously noted, BCAA makes a clear distinction between *mobile* and *modular* homes on the assessment rolls, using fair criteria in determining the valuation and coding method applicable to each structure. The determination for the valuation method is not decided upon, until a property inspection and careful consideration of all component elements have occurred. The strongest and less challengeable valuing criterion is the way the structure is perceived by both sellers and purchasers within a competitive market set by purchasers.

The determination of whether manufactured home are fixtures or chattels, while still controversial, has been considered by the provincial courts who shed some light on the general guidelines that can inform the decision of whether manufactured homes are similar or not to site-built homes. These guidelines are important and can be used to determine if the value of a manufactured home is to be included in the fair market value of the land it is sited on, and therefore become liable for property transfer tax.

By analyzing different statutory provisions that define and describe the features of manufactured homes, a preliminary conclusion can be drawn: while *mobile* homes are less likely to lose their identity as a *chattel*, *modular* homes, by design, are meant to be *fixtures* once moved on the site. This statement is confirmed by the Manufactured Home Registry's informal distinction between the two types of structures. Nevertheless, this distinction is not reflected in the registration practice, which weakens even more the de-registration statutory requirements not enforced at the operational level.

The evolution from *mobile* to *modular* has major implications for the application of different provincial statutes that contemplate the assessment and tax liability of manufactured homes. The legislation has, to date, not been updated and the application of the statutes (e.g. *Manufactured Home Act*, *Property Transfer Tax Act*) to manufactured homes is no longer consistent with the market reality.

The British Columbia governmental agencies should work closely to determine how new trends on the real estate market affect the province's tax practices and identify optimal solutions. The BCAA, MHR and PALB should work together to develop a cohesive and coherent system of filtering the information to accurately reflect the status of a manufactured home. The BC Assessment Authority has already taken steps towards an accurate valuation and coding of manufactured homes and their database can be utilized in deciding the next steps for tax policies re-evaluation.

V. 2. Administrative Practices: Implications for Tax Policies

Whether property transfer tax payable includes the value of a manufactured home located on the land that is transferred, is dictated by the way the home is registered. Under the *Property Transfer Tax Act*, tax is payable on the fair market value of the property, including all improvements on that land at the time of registration. Accordingly, houses and other structures attached to the land are included in the fair market value. The value of manufactured homes registered in the MHR is not considered for the purpose of calculating property transfer tax.

Although the rationale of this old policy was to avoid double taxation, over the years it has led to situations where taxpayers could avoid paying property transfer tax altogether: that is to say that a person could buy land on which a *modular* home is sited and never de-register the home; or de-register it from the MHR immediately after the date of registration of title at the LTO. Any resale of the property could allow subsequent taxpayers to avoid paying property transfer tax as long as the home continues to be registered in the MHR, yet its value is included in the sale price.

The current PTB administrative policy—searching whether the manufactured home is registered or not with the MHR, to determine if property transfer tax should be assessed or not—is inappropriate and creates inequity among taxpayers. The current tax policy seems to ignore the assessment roll issued by the BCAA, the most indicative and utilized tool for every other auditing decision related to the assessment of residential, commercial or industrial site-built structures.

By analyzing the way BCAA assesses structures and the criteria that inform the determination, it seems that the assessment roll provides an important description of the unique characteristics and features of the land and the structures located on that land. BCAA is a reliable source of information because it is the hub that connects the missing links in the information received from separate governmental entities. The starting point in the initial valuation of a manufactured structure by BCAA is the information provided by the MHR. The Manufactured Home Registry provides updated information to the Authority on a weekly basis about the location of the manufactured home; this helps the Authority gather further information on:

- the ownership—privately owned property or manufactured home park
- the size of the property
- the quality of the improvement and of the neighborhood, and
- the extent to which the home is easily removable from the property.

This information is further utilized to value and code the home as either *mobile* or *modular*.²⁴

²⁴ The following reiterates what has been already noted in the background section. If the home is located on a dealer's sales lot or a manufactured home park, the assessment roll captures this trait and more likely codes the home as *mobile* based mainly on the assumption that the home has not lost its mobility. If the home is located on a privately owned land, BCA initially determines who has legal ownership of the land and the manufactured home. When the same person has legal ownership of both the land and the home, BCA, before categorizing the home as either *mobile* or *modular*, starts the analysis from the premises that the intent of the owner is to make the manufactured home a permanent residence in a permanent location. Other criteria are looked into before it is determined if the home is *modular*, among the most important being: the degree of annexation to the land and/or the municipal services, the increase or decrease in the property's value from one assessment year to the other, the zoning regulations in effect in the municipality where the home is located and last but not least, the extent to which the structure retains its identity as a manufactured home as perceived by the purchaser. When the home is competitive on the open market and the purchaser attributes to

The lack of streamlining among the policies implemented by the MHR, BCAA and PTB, combined with the lack of enforcement at the operational level of de-registration provisions that enable the distinction between *mobile* and *affixed* homes, leads to unfair application of property transfer tax to manufactured structures. A root cause of the inequitable application of tax is the discretionary power of the manufactured homeowner to define the home as either *mobile* or *modular* according to the benefits attached to its descriptive label. While some of the taxpayers declare the value of the manufactured home in the value of the property and correctly self assess the fair market value for property transfer tax liability, others take advantage of the gap between policies and escape the tax. The result of such market behavior has social and financial implications with immediate visible effects:

- Revenue leakage and negative impact on the economic growth because of lack of compliance with legislative requirements.
- Inequitable, inconsistent and inefficient treatment of BC taxpayers with similar circumstances; this might lead to mistrust in the government.
- Inconsistency with the intent and rationale of the administrative policy and legislative provisions when they were enacted.

Several options are available that can mitigate the risks and solve the issue of application of property transfer tax to BC manufactured homes. These options are divided in two categories: short-term options (interim) and long-term options (more complex).

V.3. Options

Short-term options.

- Align the policy with the most recent BC court decisions that offer a basic guideline in the determination of whether a home is a fixture or a chattel. Adopt an administrative policy that relies on the BCAA assessment rolls to determine the category a manufactured home falls under. If the home is assessed as *modular* home and there is concrete evidence that it lost its mobility, include the value of the home in the overall property value on which PTT is payable.

This option is the least costly and challenging to implement of all options. The benefits of this option would account for some or all of the following; the cases of tax evasion would decrease and in the long-run they might be completely eliminated; the PTB auditors will have a clear written auditing guideline to use in their discussions with taxpayers; consistent auditing criteria would streamline the PTB policies with those of other governmental agencies that already took proactive steps in the coding and re-evaluation of BC manufactured homes so that all BC homeowners are taxed in an equal and fair manner.

Even so, there are challenges attached to this option. To ensure compliance a communication strategy should be developed by PTB, fully disclosing the change in auditing practices. In the short-term the Branch might incur an increase in the number of inquiries related to the new policy that can increase the pressure on the existent resources within the Branch. Not having legislative authority poses risks for the Property Taxation Branch to facing an increased number of assessments appealed or being challenged in court. Any policy that has no clear embedded legislative authority is more likely open to being challenged in court by those taxpayers who want the courts decide whether the policy is

the home a value similar to that of a single-family dwelling, the home is coded and valued by BCA as being *modular*.

feasible and fully enforceable within the existent legislative framework. The court can strike the policy in the eventuality it finds the policy as not having enough legislative support. If the Courts strike the policy, the status quo, although not desired, could be readopted until the policy is legislated or better implementation mechanisms are found.

Long-term options.

- Amend the provisions of the *Property Transfer Tax Act* to define manufactured homes as taxable improvements and prescribe the criteria they should meet in order to be tax exempt.
- Initiate consultation with the Manufactured Home Registry and BC Assessment Authority to develop an inventory of all the manufactured homes, *mobile* and *modular* in the Province. Develop a data records system that can signal when de-registration from MHR is required and should be enforced by the MHR administrators.
- Initiate consultation and negotiation process with the Ministry of Community Services and request an amendment of section 2 of *Manufactured Home Tax Act*. The amendment should include the *Property Transfer Tax Act* on the list of taxation statutes that can apply to manufactured homes (*mobile* and *modular* that are classified by BCAA as permanent dwellings), despite their registration with the Manufactured Home Registry.

The last two options are the least feasible of all because they are beyond the powers of PALB and PTB. These options require extensive consultation with a number of stakeholders and might be less achievable because each ministry has its own mandate, its own administrative challenges, its own legislative priorities and charter of amendments. Nonetheless, these two options are possible solutions that might be considered in the future and are acknowledged as such.

VI. RECOMMENDATION

This report discussed several issues related to historical evolution, rationale and current administrative policy regarding the application of property transfer tax to manufactured homes. Before the final recommendation, detailed below, has been formulated, consideration has been given to a number of options including the status quo. However, these options have different challenges attached to them.

Because manufactured homes are structures that offer permanent housing to their owners, it has been determined that these dwellings are improvements and add significant value to the land they are located on. The difference between mobile manufactured homes and modular manufactured homes has been acknowledged. All modular manufactured homes are market competitive permanent fixtures and, if it were not for the discretionary element on part of the taxpayers to categorize them as manufactured or single-family dwellings, all would treat them as single-family dwellings. Several gaps and discrepancies among provincial statutes and their implementation at the operational level have been signaled and added some difficulty in the process of finding empirical data for some of the identified problems with manufactured homes. Therefore, the following recommendation captures, as best as possible, the course of action to be considered resulting from the research and conclusions in the report.

Amend the *Property Transfer Tax Act* provisions to include the definition of manufactured homes on the list of taxable improvements, outlining the features they should display and criteria they should meet to be exempt from property transfer tax liability.

Legislative amendments are long and strenuous processes. As an interim solution PALB and PTB can adopt an administrative policy that relies on the BCAA assessment rolls. If there is evidence that the home lost its mobility, the home should be liable for property transfer tax (Appendix F).

This report's recommendation would completely eliminate the taxpayers' discretionary power and ensure that homeowners with similar or identical circumstances are treated fairly. Recognizing manufactured homes as permanent improvements will enforce and change land tenure for the manufactured homeowners and protect consumers, who would gain more credibility and assurance on the market.

Horizontal equity will be addressed and the gap between the benefits received by manufactured homeowners and their tax liability will be closed; this will create an inherently just system that in the long-run will diminish the inconsistencies in the application of tax and re-establish confidence in the choice of policy as fair, even on the part of those who currently oppose it. Mobile manufactured homeowners will continue to be tax exempt since their homes have not lost their mobility and they are less likely to have land tenure; these homeowners will be protected against the abuse of the system on part of those manufactured homeowners who distinctly live in higher valued properties and benefit from a different set of housing services.

The current administrative hassle and burden will be solved and different provincial agencies will benefit from this recommendation. The distribution of powers among different provincial agencies will be realigned with their intent and mandate. The programs under the Manufactured Home Registry will continue to be geared towards the targeted group—the owners of mobile homes—on an on-going basis. The homeowners of modular or affixed manufactured homes will be acknowledged as owners of property with higher

values and will benefit from taxation treatments tailored for such properties. Under the *Property Transfer Tax Act* these properties will be liable for taxation, but will also be candidates for exemptions provided that certain criteria are met.

Benefits

This recommendation would result in better administrative efficiency as tax evasion could be eliminated. Furthermore, this recommendation would provide a cost savings for the Property Taxation Branch and the time of auditing and adjudicating claims will be reduced.

Provided that the Manufactured Home Registry will revise their registration and de-registration practices and update their database in collaboration with the BC Assessment Authority, the PTB auditors' reliance of on the Manufactured Home Registry database will increase and accurately reflect the type of house to be audited and work duplication for provincial auditors will be minimized. Provincial policies will become consistent (BC Assessment, Manufacture Home Registry and Property Taxation Branch) and taxpayer would more likely comply with the legislative requirements.

The recommendation would remove the issue of manufactured homes and the Ministry of Finance's responsibility for addressing the horizontal inequity and reduce compliance costs for both taxpayers and ministry staff. In addition, the ministry will see an increase in revenue.

Drawbacks

There might be some difficulty in building a communication bridge between PTB, MHR and BCAA in the effort to understand the necessity of upgrading the existing databases. The streamlining between the three governmental agencies might require some strenuous consultation and potentially some additional research to delineate a way of sharing information and avoid duplication of work.

Despite the above-mentioned challenges, the PTB auditors can continue to rely on the existing BCAA assessment roll that is the most accurate coding and valuing tool of BC manufactured homes. Therefore, PTB auditors can continue to use it to determine tax liability for the transfer of properties with manufactured homes, also when the *Property Transfer Tax Act* is amended.

The amendment of the Act might attract negative public reaction. The imposition of tax can be perceived as a one-time loss to all current manufactured homeowners, because they would own something that is worth slightly less because of the new tax.

Depending on the specifics of the application of tax, the manufactured home communities might go through a transition period when homeowners readjust to the new system, which could pose challenges to the Manufactured Home Registry and increase in the short-term, their administrative costs. The number of property transfer tax assessments appealed might increase, even if the number of taxpayers impacted by the legislative amendment might be relatively small when compared to the number of assessments for transfers of properties with site-built structures. These challenges should be managed effectively and be further explored.

Communication Strategy

If the choice were made to amend the Act, the first strategy must be public communication that explicitly states the policy rationale and the details on tax application. A policy statement on the application of tax would be posted on the Ministry of Finance website, disclosing the auditing process and implementation procedures.

Since the recommendation removes a perceived “benefit” for the manufactured homeowners it would likely have some political attention. However, as research demonstrated, if it is proven that the application of tax is simply realigning tax liabilities within an already existing taxing environment, support from the ministry executive might be obtained.

Next Steps

The Policy and Legislation Branch and the Property Taxation Branch, Ministry of Finance will evaluate this review and the information presented. If all or part of the recommendation is accepted, the Property Taxation Branch will initiate a consultation process with the Manufactured Home Registry and BC Assessment and a Work Force Committee will be established. Concurrently, work would be initiated to get necessary approvals for legislative amendments to be brought forward to Legislature as soon as possible.

The changes and options resulting from the consultation process would be tailored for each of the provincial agencies involved to better facilitate and streamline the application processes, resources and data sharing among program areas. The consultation would inform the way the new legislative provisions of the *Property Transfer Tax Act* should be drafted and the type of information they should cover. This review does not relate to that project specifically but it can be utilized as information about the status quo, its weaknesses and possible future direction.

VII. CONCLUSION

The Policy and Legislation Branch and the Property Taxation Branch, Ministry of Finance, Province of British Columbia requested this review. The report intends to be a tool to be utilized by the two Branches in their determination about the future legislative and policy direction on tax liability of manufactured homes in BC. The sections of the report rely on research of current provincial policies and statutes related to manufactured homes. The analysis and discussion parts are informed by an extensive review of the literature on land transfer taxes, their implementation and their impact on the housing market. The review of tax practices in other Canadian jurisdictions and certain BC court decision have been discussed. In addition, specific issues were identified concerning manufactured homes in British Columbia for which a list of future options has been developed.

It has been found that there are gaps in the provincial policies related to manufactured homes and it has been recommended that a consultation process be initiated among the Manufactured Home Registry, BC Assessment Authority and the Policy and Legislation Branch representatives to better understand the mechanism of assessment and create a coherent and accurate system of information.

This paper has recommended that the *Property Transfer Tax Act* be amended to define manufactured homes as taxable improvements that, if they meet prescribed criteria, could be exempt from property transfer tax liability.

The benefits and drawbacks of such recommendation have been briefly analyzed. The entire discourse has been guided by the principles of equity, efficiency, administrative cost and political feasibility, the recommendation being formulated following the academics advice of striving for balance: "...[while] some taxes are more equitable than others, some more efficient, others are easier to administer and enforce; ultimately of great importance [is] the balance achievable through the trade off criterion" (Broadway and Kitchen, 1999, p.52).

As a result, this report provides the foundation for a better understanding of the issue and sub-issues of manufactured homes property transfer tax liability and represents a discussion tool that can inform future analysis, policy discussions and decisions on the topic.

APPENDIX A

Canadian Land Transfer Tax: Enabling Legislation and Tax Rates

PROVINCE	LEGISLATION	TAX RATE
British Columbia	Property Transfer Tax Act ²⁵	On the first \$200,000 —1% of fair market value Anything above \$200,000—2% of the value
Manitoba	The Revenue Act ²⁶	On the first \$30,000— no tax Between \$30,000 and \$90,000—0.5 % of fair market value Between \$90,000 and \$150,000— 1% Between \$150,000 to \$200,000—1.5 % Anything above \$200,000—2%
Ontario	Land Transfer Tax Act ²⁷	On the first \$55,000— 0.5% of the selling price Between \$55,000 and \$250,000—1% Between \$250,000 and \$400,000—1.5% Above \$400,000—2%
Quebec	Land Transfer Duties ²⁸	On the first \$50,000—0.50% of selling price Between \$50,000 and \$250,000—1 % Above \$250,000—1.5%
New Brunswick	Real Property Transfer Tax Act ²⁹	One-quarter of one percent (1/4 of 1%) of the greater of (a) The consideration paid for the transfer; or (b) The assessed value of the property
Nova Scotia	Miscellaneous ³⁰ : (The tax is called <i>deed transfer tax</i>)	0% to 1.5% on total property value in Halifax Metro Different rates set by local municipalities outside Halifax County. ³¹
Prince Edward Island	Real Property Transfer Tax Act ³²	1% of the greater of (a) The consideration paid for the transfer; or (b) The assessed value of the real property.

²⁵ http://www.sbr.gov.bc.ca/individuals/Property_Taxes/Property_Transfer_Tax/ptt.htm

²⁶ <http://www.canlii.org/mb/laws/sta/r-150/20030602/whole.html> (PART III; Land Transfer Tax sets the legislative framework for the application of tax and or exemptions).

²⁷ http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90l06_e.htm

²⁸ <http://www.canlii.org/qc/laws/sta/d-17/2007091z0/whole.html>

²⁹ <http://www.gnb.ca/0062/acts/acts/r-02-1.htm>. The definition of the real property in the Act includes also mobile homes. If a transfer of real property accounts for such a structure, its value is liable for transfer tax.

³⁰ <http://www.gov.ns.ca/snsmr/property/default.asp?mn=282.46.1078>

³¹ For different set rates for municipal deed transfers search:

<http://www.gov.ns.ca/snsmr/property/default.asp?mn=282.46.1064.1100>

³² <http://www.gov.pe.ca/law/statutes/pdf/r-05-01.pdf>. The definition of the “real property” exclude mobile homes.

APPENDIX B

Hansard Debate. Introduction of Bill 17 (Property Purchase Tax Act, 1987)

Official Report of
DEBATES OF THE LEGISLATIVE ASSEMBLY

Hansard Finals.

(Retrieved October 2, 2008 from: <http://www.leg.bc.ca/HANSARD/34th1st/index.htm>)

HON. MR. Mel COUVELIER: [...] Bill 17, the Property Purchase Tax Act, imposes a new tax on conveyances of real property to replace ad valorem land registration fees.

MAY 21, 1987. Morning Sitting. Property Purchase Tax Act (Bill 17). Second reading (p. 1268-1269).

HON. MR. COUVELIER: The purpose of this bill is to impose a property purchase tax. This new tax will apply to most purchases or transfers of real property, which are registered at a land title office in the province. The property purchase tax replaces ad valorem land fees, which formerly applied when charges against property or property transfers were registered. In replacing ad valorem land fees with a property purchase tax, the government has recognized that transfers of real property are a suitable base for generating additional revenue necessary to fund government programs and that the introduction of an explicit tax imposed by way of a fully developed taxation statute is preferable to imposing a hidden tax by way of a massive fee increase. The Property Purchase Tax Act is a comprehensive piece of legislation, which makes clear both the taxpayers' responsibilities and rights with respect to the property purchase tax.

The Property Purchase Tax Act identifies transfers of property, which are subject to tax and how tax is to be calculated for each type of taxable transaction. An important section of the bill pertains to exemptions from tax, which may be claimed. A number of exemptions provided for in the bill are essentially technical in nature and have the effect of ensuring that tax is not imposed on transfers which do not result in a change of beneficial ownership of property. Other exemptions reflect general policy objectives of the government and relate to the status of the organization or individual to whom property is being transferred.

The administrative sections of the bill set out filing requirements and indicate the appeal procedures, which taxpayers are to follow if they object to any tax assessment that has been imposed under the Property Purchase Tax Act. In order to achieve the policy and revenue objectives of the government in a fair and efficient way, the Property Purchase Tax Act contains measures not found in statutes, which impose a similar tax in other jurisdictions.

An important aspect of the legislation is the transitional provision it contains. The transitional provision will allow transfers of property, which were negotiated prior to budget day to be registered at a rate of tax which is equivalent to the rate at which ad valorem fees would have been imposed.

I believe the intent and effect of this legislation is to impose a fair tax. I hope that all members will debate this bill carefully and thoughtfully, and that it can be moved expeditiously through the process and enacted into law as soon as possible.

APPENDIX C

Certification of Manufactured Homes: Canadian Standard Association Labels

Canadian Standards Association (CSA) is an independent non-profit organization that sets construction standards. These standards are recognized and implemented in all Canadian jurisdictions.

MOBILE HOMES

All Canadian mobile homes, if inspection is complete and satisfactory, receive a CAN/CSA-Z240 label. This label is displayed on the electrical panel of the home to show that the home met the construction requirements:

- Structure
- Plumbing
- Electrical and heating services
- Vehicular requirements to running gear.

CAN/CSA-Z240 MH Series standards began in 1972 and are periodically updated, most recently in 1992. In 1973 the British Columbia Building Code incorporated in their list, the Canadian CAN/CSA-Z240 MH Series standards, designed to be used by installers, inspectors and homeowners.

CAN/CSA-Z240 MH SERIES-92 (R2005)

1. Scope

Z240.0.1-1.1 This Standard provides the definitions for mobile home terminology as used in the CAN/CSA-Z240 MH Series, Mobile Homes. It also gives requirements of a general nature, which apply, to the other Standards in the Series.

Z240.1.1-1.1 General

This Standard provides vehicular requirements for mobile homes including minimum requirements for the coupling and tongue or a frame as well as for the running gear of a mobile home.

1.2 Types of Gear

This Standard applies to mobile homes equipped with limited-use running gear or returnable running gear. Note: Where provincial transport regulations exist for running gear, these will prevail over the requirements of this Standard.

1.3 Exceptions

The requirements of this Standard do not apply to a mobile home transported on a dolly or flat-deck.

Z240.2.1-1.1 Requirements

This Standard provides the minimum requirements for materials, products, equipment, and quality of work needed to ensure that mobile homes would provide adequate

- (a) structural strength and rigidity;
- (b) protection against corrosion, decay, insects, and other similar destructive forces;
- (c) protection against the hazards of fire;
- (d) resistance to the elements; and
- (e) durability and economy of maintenance.

1.2 Unacceptable Units

Units that comply with these requirements will not be acceptable if, when examined and tested, they are found to have additional features that reduce the degree of protection contemplated by this Standard.

1.3 Equivalence

Materials, systems, and equipment not specifically described herein or varying from the specific requirements in this Standard, or for which no recognized test procedure has been established, may be used if it can be shown that the material, system, or equipment is suitable on the basis of past performance or good engineering practice, or on the basis of tests designed to simulate or exceed anticipated service conditions, or designed to compare with similar materials, systems, or equipment known to be acceptable.

Z240.3.1-1.1

This Standard sets the minimum installation requirements and material standards for a plumbing system in a mobile home.

Z240.4.1-1.1

This Standard applies to the factory installation of gas-burning appliances and equipment in mobile homes. Note: CGA Standards CAN/CGA-B149.1 and CAN/CGA-B149.2 were used as a basis for the preparation of this Standard. For installations not covered by this Standard, CGA Standards CAN/CGA-B149.1 and CAN/CGA-B149.2 should be consulted.

Z240.5.1-1.1

This Standard applies to the factory installation of oil-fired appliances, accessories, and equipment on or within mobile homes.

1.2. Specially designed or modified units such as industrial or commercial trailers must comply with the intent of this Standard.

Z240.9.1-1.1

This Standard outlines the design of heating and cooling systems for mobile homes and outlines acceptable methods of calculation of

- (a) heat loss/heat gain of the home;
- (b) supply duct systems; and
- (c) return air systems.

1.2 Quality of Work. This Standard also outlines the minimum standards of quality of work required for the installation of supply and return duct systems and necessary insulation.³³

MODULAR HOMES

Similarly to the mobile homes, upon completion, modular homes receive a factory certification, **CAN/CSA-A277-01** label. This label shows that the home has met the requirements of factory built standards for manufactured modular structures. This label tells inspectors that the home has been built according to the appropriate code and standard. The standard is recognized in the Province of BC but it has not been incorporated in the list of BC Building Codes.

33 Canadian Standard Association. Mobile Homes Info. CAN/CSA-Z240 MH SERIES-92 (R2005). Retrieved October 2, 2008: <http://www.csa-intl.org/onlinestore/GetCatalogItemDetails.asp?mat=2003419&scopescroll=false&parent=0>.

CAN/CSA-A277

Preface

This is the fifth edition of CSA A277, Procedure for factory certification of buildings. It supersedes previous editions published in 2001, 1990, 1981, and 1972, under the title Procedure for Certification of Factory-Built Houses.

1. Scope

1.1. This Standard specifies the procedure for factory certification of manufactured, modular, and panelized buildings intended for residential, commercial, or semi-commercial use.

It specifies requirements for

- (a) certification of the factory quality program;
- (b) certification of the built product;
- (c) auditing of the factory quality program; and
- (d) in-factory inspection of the built product.

1.2. This Standard does not cover portions of buildings or services that are not completed in the factory. It also does not address the transport of buildings or their erection at the building site.³⁴

Section 2, *Standards*, of the *BC Manufactured Home Act Regulation* [B.C. Reg. 10/2005] stipulates that the newly constructed manufactured homes should comply with the Canadian Standard Association standards, namely:

(b) CAN/CSA A277-01, Procedure for Certification of Factory Built Houses or the following portions of CAN/CSA Z240, MH Series-92, Mobile Homes:

- (i) CAN/CSA Z240.0.1-92, Definitions and General Requirements for Mobile Homes;
- (ii) CAN/CSA Z240.1.1 -92, Vehicular Requirements for Mobile Homes;
- (iii) CAN/CSA Z240.2.1-92, Structural Requirements for Mobile Homes;
- (iv) CAN/CSA Z240.3.1-92, Plumbing Requirements for Mobile Homes;
- (v) CAN/CSA Z240.4.1-92, Installation Requirements for Gas Burning Appliances in Mobile Homes;
- (vi) CAN/CSA Z240.5.1-92, Oil Installation Requirements for Mobile Homes;
- (vii) CAN/CSA Z240.9.1-92, Requirements for Load Calculations and Duct Design for Heating and Cooling of Mobile Homes.³⁵

34 Canadian Standard Association (n.d.). Procedures for Factory Certification of Buildings . A277-08. Retrieved October 2, 2008: <http://www.csa-intl.org/onlinestore/GetCatalogItemDetails.asp?mat=2020026>

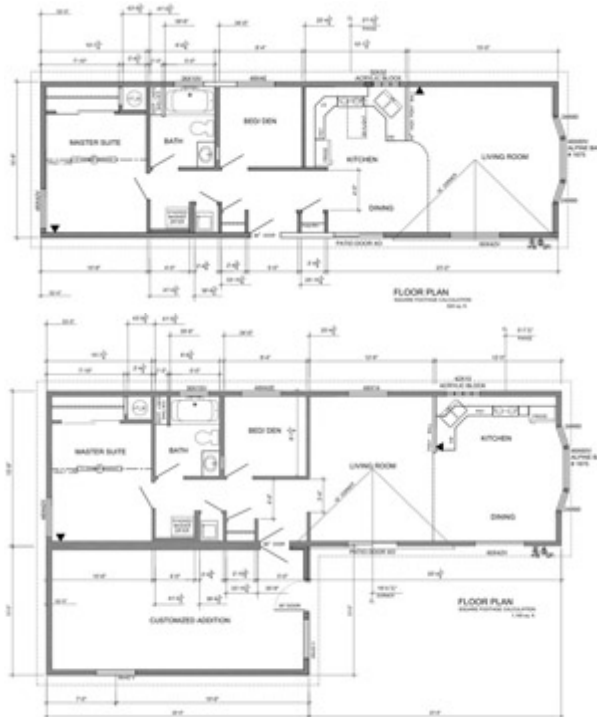
35 Manufactured Home Act. B.C. Reg. 10(2005). Section 2: Standards. Retrieved October 2, 2008: http://www.qp.gov.bc.ca/statreg/reg/M/ManufacturedHome/441_2003.htm#section2.

APPENDIX D

Mobile and Modular Manufactured Homes: Pictures

This appendix contains different pictures that illustrate the difference in types of manufactured homes.

MODULAR HOMES





MODULAR HOME located in Nanaimo on Dr. Valewood, in a large subdivision called Deerwood Park.

MOBILE HOMES



MOBILE HOME located in Shuswap, BC for recreational use—valued by the owner as a mobile home; asking \$39,900 as the selling price on the open market.

For more information about the construction techniques of manufactured homes, about the industry definition of manufactured homes, floor plans, municipal regulations, manufactured homes pictures and other access: <http://www.halstonhomes.com/index.html>

APPENDIX E

BC Assessment Authority: Valuation Approaches

I. MARKET VALUE APPROACH

Market value assessment is the most frequently used approach for estimating the real value of a property. The market value assessment estimates the value the market places on individual properties. Section 19(1) of the *Assessment Act* deems the market value to be the “actual value” of a property, that is land and improvements. Subsection 19(3) of the Act enumerates the factors the assessors should consider when determining a property’s “actual value”: present use; location; original cost; replacement cost; revenue or rental value; selling price of the land and improvements and comparable land and improvements; economic and functional obsolescence; any other circumstances affecting the value of the land and improvements.

Academics noted that this valuation tool is used when the market is active and relies heavily on the comparable sales method approach, an approach that looks at sales of properties that are similar to the property being assessed.

II. COST APPROACH

The replacement cost (i.e. depreciated cost) approach is another reliable method used by assessors to determine the value of a property. This method calculates the value of a property “by estimating the land value as if it were vacant and adding the cost of replacing the buildings and other improvements to that value” (Bird and Slack, 2002, p.17). As determined in the *Assessment Act* this approach is normally used to assess industrial properties. The BCAA assessors use the cost approach when the market approach is inconclusive, the property is relatively new and there are no comparable sales, or the improvements are unique.

III. INCOME APPROACH

This approach is used mainly in the case of those properties that are rented and bring rental income to the beneficial owners. When relying on the income approach, the BCAA assessor estimates the “potential gross rental income the property could produce and deducts operating expenditures. The resulting annual net operating income is converted to a capital value using a capitalization rate” (Bird and Slack, 2002, p.17).³⁶

36 Bird, R.M and Slack, E (March 2002). Land and Property Taxation: A Review. Workshop on Land Issues in Latin American and the Caribbean 2002 .- Inweb18.worldbank.org. Retrieved October 2, 2008: http://www.cooperativeindividualism.org/bird-richard_land-and-property-taxation.pdf.

APPENDIX F

Administrative Policy Statement

<i>Property Transfer Tax Act</i> (PTTA)	ADMINISTRATIVE POLICY STATEMENT
Manufactured homes: mobile vs. modular	Section n/a
Applying property transfer tax to manufactured homes.	
2009	

INTERPRETATION

For the purposes of this policy statement the following concepts are defined as:

Mobile—any structure, whether ordinarily equipped with wheels or not, that is designated, constructed or manufactured to provide residential accommodation and to be moved from one place to another by being towed or carried.

Modular—any structure that is designed, manufactured or constructed to provide residential accommodation. Usually, these homes are placed on concrete walls or have a foundation. In order to be moved from the land they are placed on, they have to be split in half and transported on a flat bed of an oversized truck. Compared with a mobile manufactured home, modular homes are more intricate and more difficult to pull apart.

Chattel—The Black Law Dictionary defines the word as “movable or transferable property; esp., personal property”. “Chattel real” is defined as including a real property interest that is less than a freehold or fee simple. Therefore, chattels, in the case of manufactured homes, are those homes that are not affixed to land or otherwise they are truly mobile.

Fixture—The Black Law Dictionary defines the word as “personal property that is attached to land or a building and that is regarded as an irremovable part of the real property”.

STATUTORY FRAMEWORK

Neither the *Property Transfer Tax Act* nor the *Property Transfer Tax Regulation* (B.C. Reg. 74/88) includes provisions that relate to the taxation of manufactured/mobile/modular homes. Presently, property transfer tax is not payable on the fair market value of manufactured homes, unless this value is already included by the taxpayer upon registration of the transfer at the LTO or if the manufactured home is a fixture and found on review not to be registered in the *Manufactured Home Registry*.

CURRENT ADMINISTRATIVE POLICY

Whether PTT is payable that includes the value of the manufactured home for the transfer of land on which it is located is dictated by the way the home is registered. Under the *Property Transfer Tax Act*, tax is payable on the fair market value of the land, including all improvements on that land at the time of registration. Accordingly, houses and other structures attached to land are included in the fair market value. The value of manufactured homes registered in the Manufactured Home Registry (MHR) is not considered for the purpose of calculating PTT. Although the rationale of this policy was to avoid double taxation, over the years it has led to situations where taxpayers could avoid paying PTT all together: that is to say that a person could buy a piece of land on which a

modular home is placed and never de-registered the home; or de-registered it immediately after the date of registration of the property at the LTO. Any resale of the property could allow subsequent taxpayers avoid paying PTT as long as the home continues to be registered in the Manufactured Home Registry, yet is included in the sale.

The current Property Taxation Branch administrative policy (searching whether the manufactured home is registered or not in the MHR, to determine if PTT should be charged or not) is inappropriate. It creates inequity among taxpayers and raises questions on tax fairness.

ISSUES

1. Distinguish between mobile manufactured home and a modular manufactured home as well as between manufactured homes as chattels vs. fixtures.
2. Should the registration of a manufactured home from the Manufactured Home Registry determine whether the value of the manufactured home should be ex- or included in the determination of FMV for property transfer tax purposes?

Historically, manufactured homes have been considered to be structures equipped with wheels, constructed to provide residential accommodation and to be moved from one place to another by being towed away or carried (therefore mobile and considered chattels).

Because manufactured homes have been designed to be “mobile” by nature, most of them have been registered in the Manufactured Home Registry and can be found in manufactured home parks. Nevertheless, the nature and style of manufactured homes has changed over time. The homes are no longer mere improvements that offer accommodation to those people who can least afford to buy a property (both land and improvement). The old mobile manufactured homes have become over the years sophisticated structures, called “modular homes”.

The Manufactured Home Registry registers both mobile and modular homes³⁷ and informally distinguishes one from the other as follows.

Mobile home—more complete when it is moved to its site: i.e. carpets, cupboards. It is easier to move from the site without causing damage to the home itself or the land (i.e. the home has wheels or can be towed/carried away).

Modular home—incomplete when moved to the site. It requires more work once moved to the site (e.g. plumbing). A modular home is rarely found in a manufactured home park. A modular home is more intricate than a mobile home and once on the site it is more difficult to pull apart or move off the property. The general view is that modular homes are likely to be permanent residences in a permanent location.

³⁷ At the time the home is moved from the factory to the site where it will be located, all the manufactured homes, either mobile or modular, have to be registered in the Manufactured Home Registry to receive the permit for transportation (mandatory requirement). Nevertheless, the Manufactured Home Act stipulates that those homes that have a more permanent nature have to be deregistered from the MHR.

The BC Assessment Authority makes a clear distinction between mobile and modular manufactured homes too. When determining whether a home is mobile or modular the assessors apply some or all of the following criteria.³⁸

1. The existence of a Manufactured Home Registry number for the home
 - The first consideration for valuing a structure as a manufactured home is the existence of a MHR number obtained after registration with the Registry. Details of the structure can be obtained from a pre-existing MHR number or serial number.
 - If the structure is to permanently remain in its current location, BCAA investigates whether the owner applied to de-register the manufactured home from the Registry. This does not preclude that the structure will not still be valued and coded as manufactured home. Nevertheless, if de-registered it no longer has a MHR number.
2. The degree of permanence (degree of affixation to the land) of the structure
 - This consideration relates to whether the wheels have been removed and the structure is placed on a foundation (similar to a single family dwelling). For this to trigger a change in the method of valuing (and coding) the structure, the structure has to substantially lose its identity as manufactured home.
3. The way the home is identified by purchasers: manufactured home or conventional home (single family dwelling)
 - This is the most decisive factor. After looking at all the other criteria, the most important consideration is how closely the structure retains its identity as manufactured home as perceived by purchasers. Even after a manufactured home has been de-registered and placed on a concrete foundation, it may still be valued as manufactured home if it is perceived as such by purchasers. However, if after the structure is sited on land in a way that it substantially loses its identity as a manufactured home to a sufficient degree that a change in perception is evident, it will be valued (and coded) as a single-family dwelling. This is how typically modular homes (which have no axles or wheels, are transported to site on a flatbed trailer and placed on a foundation by crane) are valued and coded.

By briefly analyzing the Manufactured Home Registry and BC Assessment Authority's informal distinction between mobile and modular homes, it can be argued that while mobile homes are less likely to lose their identity as a chattel, modular homes by design are fixtures once moved on the land.

ADMINISTRATIVE POLICY

The application of the Act to manufactured homes (mobile and/or modular) is no longer consistent with current reality. While the determination whether a manufactured home is a

³⁸ BCA policy described by Greg Wood from BC Assessment, Branch Assessment and Valuation Services, Business and Customer Services Division (March 17, 2008).

fixture or a chattel, remains a controversial issue, there are some general guidelines that can help the PTB auditors decide whether the home should or should not be assessed for PTT.

When trying to determine if manufactured home values are to be included in the fair market value of the property for which PTT is payable, the Property Taxation Branch auditors can consider the way manufactured homes are assessed by both Manufactured Home Registry and BC Assessment Authority. **The BCAA assessment roll is the most indicative tool whether the home is mobile or modular and whether it should be liable for property transfer tax.**

Modular Homes: BC Assessment Authority values these homes after a property inspection is done and careful consideration occurs. The main valuing criterion is the way the structure is perceived by both the seller and purchaser and how the home competes in a competitive market set by the purchaser. Once the home is coded on the assessment roll as modular, there is little to no doubt that the home is a permanent structure. Therefore, for the purposes of applying PTT to a transfer of property with a manufactured modular home, PTT should be calculated for the fair market value of the property, including also the value of the home at the date of registration.

Mobile Homes: If on the BCAA assessment roll the home is coded as mobile further investigation should be undergone to determine if the home is a chattel, therefore exempt, or a fixture and PTT liable. While trying to determine whether PTT is payable or not for that particular home, the PTB auditors can ask manufactured homeowners to provide evidence that demonstrates whether the home is mobile and a chattel, or mobile and a fixture.

SCENARIOS AND IMPLEMENTATION POLICY

Scenario	PTB administrative procedure
<p>Basic: the home is registered in the <i>Manufactured Home Registry</i>. On the BCAA assessment roll it is assessed as MOBILE.</p> <p>The home has wheels and there is evidence that it is a regular mobile home that could be easily moved off the property. There is a plugged in attachment to municipal services: sewer, electricity, water.</p>	<p>Exclude the value of the MH in the calculation of PTT.</p>
<p>Basic: the home is registered in the <i>Manufactured Home Registry</i>. On the BCAA assessment roll it is assessed as MOBILE. Nevertheless, the home seems to have lost its mobility and it is more a fixture than a chattel.</p> <p>The home has wheels but there is evidence</p>	<p>The value of the home should be considered when calculating PTT.</p> <p>Due to the recent changes in style, the criteria to categorize a home as 'mobile' have changed. Being registered at the MHR should not be the sole criteria in determining whether the value of the home should or should not be included in the FMV on which PTT is calculated.</p>

<p>that it is a home with permanent location.</p>	<p>The PTB auditors can require the taxpayer to provide evidence that might help determine whether the home has a permanent or temporary location and whether the home is a fixture or not. Some of the criteria below can be applied in the process of determination.</p> <p>The evidence shows that:</p> <ul style="list-style-type: none"> • There is a “hardwired” type of attachment to the municipal services and/or • There are additions to the home: i.e. a porch, stairs • The home sits on concrete walls and cannot be easily moved off the property without causing damage to the foundation or the home.
<p>Basic: the home is MOBILE. It is de-registered from the <i>Manufactured Home Registry</i>. The purchased property’s value (land + home) is declared at the LTO. A return is filed with PTB.</p>	<p>a) Unless exempt under the PTTA, PTT is payable on the FMV of the entire property (land and home) if the home is considered to be a fixture (e.g. there is a mortgage on the home).</p> <p>b) If the BCAA assessment roll classifies the home as mobile and chattel, PTT is not payable on the value of the home.</p>
<p>The home is registered at the <i>Manufactured Home Registry</i>. The transfer is registered at LTO; a return is filed but the value of the home has not been included on the return.</p>	<p>If there is evidence that the manufactured home is a fixture, and it is on land at the date of registration, PTT is payable on the FMV of the property including the value of the home.</p> <p>Although the transferee might bring evidence that the home is to be moved off the property immediately after the transfer of interest, the value of the home should be included in the FMV on which PTT is calculated. This application of tax is consistent with other PTB administrative policies that tax improvements that where on the property at time of registration although they are to be demolished or moved off the property shortly after the transfer takes place.</p>
<p>The manufactured home is registered at the <i>Manufactured Home Registry</i>. On the BCAA assessment roll it is assessed as MODULAR. There is a transfer in title, but the transferee declares only the</p>	<p>The FMV of the property should be recalculated and PTT assessed on the fair market value of both land and improvement at the time of registration.</p>

<p>value of the land and not that of the home, when filing a tax return.</p> <p>The BCAA assessment roll determines whether the home is MOBILE or MODULAR. By nature modular homes are affixed and when moved off the property there are substantial changes to the home structure as well as the foundation.</p> <p>BC Assessment Authority has certain criteria in place to determine whether a home is mobile or modular. One of the strongest assessment criteria they use is the taxpayer's perception, as in the way the purchaser sees the home: permanent residence, competitive on the market with other more conventional structures.</p> <p>Therefore, modular homes if not otherwise determined—affixed or not in the traditional sense—are fixtures.</p>	<p>Although still registered at the <i>Manufactured Home Registry</i>, the main characteristics of such a home show that (even if not fully attached to the land) it is a permanent accommodation, hard to remove from property and therefore a fixture.</p>
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APPROVED – PTB

DATE

APPROVED – PALB

DATE

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