

**S & S SALES, INC. V. BUREAU OF REVENUE, 1976-NMCA-009, 88 N.M. 649, 545
P.2d 1027 (Ct. App. 1976)**

**S & S SALES, INC., Appellant,
vs.
BUREAU OF REVENUE, Appellee.**

No. 2198

COURT OF APPEALS OF NEW MEXICO

1976-NMCA-009, 88 N.M. 649, 545 P.2d 1027

January 20, 1976

COUNSEL

Stephen Durkovich, John Jasper and Stephen Durkovich, Albuquerque, for appellant.

Toney Anaya, Atty. Gen., Vernon O. Henning, Bureau of Revenue Asst. Atty. Gen.,
Santa Fe, for appellee.

JUDGES

SUTIN, J., wrote the opinion. HERNANDEZ and LOPEZ, JJ., concur.

AUTHOR: SUTIN

OPINION

SUTIN, Judge.

{1} Taxpayer appeals a decision of the Commissioner which imposed a gross receipts tax on the sale of mobile homes.

{2} The facts were stipulated. Taxpayer is engaged in the business of selling mobile homes to people throughout the state. It maintains an inventory of mobile homes from which sales are made.

{3} Section 72-16A-12.10, N.M.S.A. 1953 (Repl. Vol. 10, pt. 2, 1973 Supp.) of the Gross Receipts and Compensating Tax Act reads:

Exempted from the gross receipts tax are the receipts from selling vehicles on which a tax is imposed by section 64-11-15 N.M.S.A. 1953.

{4} Section 64-11-15, N.M.S.A. 1953 (2d Repl. Vol. 9, pt. 2, 1975 Supp.) of the Motor Vehicle Code reads in pertinent part:

... [T]here is imposed an excise tax on the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered in this state, **except mobile homes**, in the case of sales or resales thereof.... [Emphasis added]

{5} Section 64-1-8 provides:

As used in the Motor Vehicle Code:

* * * * *

E. "mobile home" means a house trailer, **other than one [1] held as inventory for sale or resale**, that exceeds either a width of eight [8] feet or a length of forty [40] feet when equipped for the road; [Emphasis added]

{6} Taxpayer's syllogistic reasoning of statutory construction sounds meritorious. They contend that mobile homes are not subject to the excise tax, but since trailers held as inventory are not mobile homes, they must be subject to the excise tax. Therefore, since an excise tax is imposed, receipts from sales of mobile homes held in inventory are exempt from the gross receipts tax. We disagree.

{7} Mobile homes held as inventory are not required to be registered. Therefore, the excise tax is **not** imposed on mobile homes whether "held as inventory for sale or resale", or not. The purpose of the inventory exception in the definition of "mobile home" was to exclude this class from imposition of the property tax, which also utilizes this definitional section.

{8} We, therefore, conclude:

The tax on gross receipts exempts that class of mobile homes on which the excise tax is imposed. The excise {650} tax is not imposed on mobile homes. Therefore, the gross receipts from the sale of mobile homes held as inventory are not exempt from the gross receipts tax.

{9} Taxpayer's receipts from sale of mobile homes are subject to the gross receipts tax.

{10} Affirmed.

{11} It is so ordered.

HERNANDEZ and LOPEZ, JJ., concur.