STATE BOARD OF EQUALIZATION

(916) 445-2641

March 1, 1990

Mr. P--- S---
Department of G--- S---
O--- L--- A---
XXX --- ---, Suite XXX
---, CA XXXXX

Dear Mr. S---:

Your February 7, 1990 letter to Principal Tax Auditor Glenn Bystrom was submitted to me for reply. You attached two form letters drafted by the O--- L--- A--- (OLA) which you intend to disseminate to manufacturers of relocatable buildings. You asked that we review the two letters prior to dissemination to alleviate any miscommunication.

The first change that must be made in both letters is as to the operative date of new Section 6012.6 (Stats. 1989, Ch. 816, AB 1051), which established the taxable measure of 40% of the sales price for factory-built school buildings. Section 6012.6 was operative on and after September 26, 1989. Throughout the two letters there are various references to September 24, 1989 and September 25, 1989, which are incorrect. The letters also use the date of June 17, 1989 as if the application of tax changed operative on that date. This is also incorrect. June 17, 1989 was the effective (approval) date of the change to Sales and Use Tax Regulation 1521 which defined all contracts to furnish and install relocatable classrooms as construction contracts. This change in Regulation 1521 was retroactive and was operative until Section 6012.6 became operative on and after September 26, 1989. No reference should be made to the period June 17, 1989 to September 25, 1989 as the period during which the furnishing and installing of relocatable classrooms was a construction contract. Furnishing and installing relocatable classrooms was a construction contract for all periods prior to September 26, 1989.

The second change to the same letter is as to the second and last paragraph on page one. Mr. Brian Rogers of our staff informs me of a telephone conversation he had with your office, after our January 25, 1990 meeting, in which he was told that, contrary to our understanding at the meeting, latchkey/preschool program buildings are not designed or intended for sue as a school building. Therefore, latchkey/preschool program buildings are not subject to the provisions of Section 6012.6; rather, the furnishing and installing of such buildings constitutes construction contracts on which the manufacturer will owe tax on materials and fixtures, but no sales or use tax will apply to the manufacturer's selling price.

The third change we recommend is also in the second paragraph on page one of the same letter and is as to the language in the second sentence, ". . . or sent to inventory." As we recall our January 25, 1990 meeting, the "inventory" referred to is that of the manufacturer of the building. Since it is the manufacturer's inventory, a title clause will be necessary in which the parties agree that title will pass on delivery to the manufacturer's inventory. Otherwise, the usual rule of Uniform Commercial Code 2401 will apply and title will not pass until delivery to the district site, if the manufacturer's trucks are used for delivery, or delivery to the carrier, if a carrier is used.

In this same paragraph, a fourth change should be to clarify that the manufacture must refund to [OLA] only those amounts refunded to the manufacturer by the Board of Equalization, which will be minus the amount of tax on the manufacturer's materials and fixtures. The Board of Equalization will take no action until it has a claim for refund from the manufacturer. If any amounts collected by the manufacturer from [OLA] as sales tax reimbursement have not been paid to the Board of Equalization, we would issue a Notice of Determination against the manufacturer.

As to the second letter which is titled: REIMBURSEMENT OF STATE SALES TAX ON EMERGENCY PORTABLE BUILDINGS, the first change we recommend is again as to the operative date of Section 6012.6, i.e., on and after September 26, 1989. The same clarification as to dates should be made throughout this letter as we recommended above for the first letter.

In the first full sentence on page two of the letter, we note that delivery charges would only be excluded from the taxable measure if the conditions stated in Regulation 1628 (copy enclosed) are satisfied. This means that if delivery is by the manufacturer's own trucks, such delivery charges are taxable unless there is a title clause specifying that title passes before the delivery.

On the same page, one of the items you state should be submitted with a claim for refund is sales or purchase invoices. I am informed by Mr. Rogers that for this particular purpose, unlike the claims described on page one of the letter, only sales invoices will be required.

If you have further questions, feel free to write this office.

Sincerely,

Donald J. Hennessy
Senior Tax Counsel

DJH:jb
Enclosure

cc: Mr. Gary J. Jugum
Mr. Glenn Bystrom
Mr. Brian Rogers