



STATE BOARD OF EQUALIZATION

April 1, 1968

Gentlemen:

In your letter of March 21 you request our opinion as to whether the sales tax is due upon the exercise of the option to purchase a modular classroom.

It is our understanding that the relocatable classrooms are manufactured at your client's plant, and the modulares are assembled and installed upon the school district's site by your client.

These classrooms are leased to the school districts. The leases are often accompanied by an option to purchase the classroom after the expiration of the stated term of the lease. Rentals received during the term of the lease have consistently been held subject to the use tax measured by the rentals by virtue of the definition of "tangible personal property" contained in Section 6016.3 of the Sales and Use Tax Law. A question has now been raised as to whether by virtue of the provisions of Section 6016.3 sales tax is applicable to the exercise by a school district of an option to purchase a relocatable classroom after the expiration of the term of the lease for such classroom.

You contend that since the term of the lease will have expired when the option is exercised, the property is not tangible personal property under Section 6016.3 but is real property.

We might well agree with your contention that Section 6016.3 is not controlling if in fact the property in question is not subject to a "lease" at the time the option to purchase is exercised. However, merely because the fixed lease term has expired prior to the exercise of the option does not necessarily mean that the property, which is in the hands of the lessee, is not subject to an existing lease. We are of the opinion that the "holding over" is in and of itself a lease as defined in Section 6006.3.

In view of these circumstances, it is our opinion that at the time the purchase option is exercised, the property is subject to a lease notwithstanding the fact that the fixed term of the lease has expired. Accordingly, we have no alternative but to conclude that Section 6016.3 is controlling and the property is tangible personal property at the time of purchase and is subject to sales tax.

Very truly yours,

Glenn L. Rigby
Tax Counsel

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