STATE OF CALIFORNIA

545.0020

STATE BOARD OF EQUALIZATION

(to District re taxpayer)   June 22, 1950

We agree with your conclusion set forth in your memo of May 29 that a contractor who has purchased fixtures tax paid during the period of the 2½% tax but who installs them after the rate has gone up to 3% owes an additional amount of tax at ½ of 1%.

This conclusion seems inescapable since the actual taxable transaction, i.e., the sale, occurred when the 3% rate was in effect. The purchasing of the fixtures on a tax-paid basis merely amounts to a prepayment of tax to be applied against the tax due when the sale is made. If the prepayment is insufficient, as in the case at hand, an additional payment must be made.

The provisions of section 6012 and ruling 71, authorizing tax-paid deductions in proper cases, do not, in our opinion, require a contrary conclusion. The purpose of these provisions is merely to provide a means of allowing credit against tax liability of a prior overpayment. If the prior overpayment is less than the tax liability against which it is credited, there is still tax liability based on the difference. Nothing in section 6012, or in ruling 71, states that a retailer has met his entire tax obligation with respect to property purchased tax paid and resold prior to use. It merely permits the deduction of the tax-paid cost of the property from gross sales reported. The rule works both ways. Thus, in 1943 when the rate was lowered to 2½%, it is the distinct recollection of the undersigned that refunds were made to persons who had purchased merchandise tax paid in the 3% period and had resold it after the 2½% period went into effect.

The statement quoted by you from the interpretation of ruling 11, dated June 15, 1939, that a contractor purchasing fixtures tax paid would have no further liability for tax with respect to such fixtures, was not written in contemplation of a change in tax rate and must be regarded as subordinate to the result of the subsequent changes in the law such as a change in the rate of tax.