

**STATE BOARD OF EQUALIZATION**

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August 21, 1990

Mr. D--- G---
--- & ---
XXXX --- --- Drive, Suite XXX
---, CA XXXXX-XXXX

Re: S---, Inc.
SR -- XX-XXXXXX

Dear Mr. G---:

This is in response to your letter dated July 30, 1990 regarding the application of sales or use tax to sales of relocatable classrooms by S---, Inc.

S--- manufactures relocatable classroom buildings and then sells or leases them to customers, primarily school districts in California. Leases are usually up to three years in length, and at the end of the lease term, the buildings may be sold to the original lessee, leased again to the same lessee, or sold or leased to a different party. S--- intends to sell to a partnership substantially all its buildings currently under lease. The partnership will receive title to the buildings and an assignment of the existing leases. S--- will own 50 percent interest in the acquiring partnership and 50 percent will be owned by an unrelated party. You ask whether sales or use tax applies to this sale.

Only sales of tangible personal property are subject to sales tax. (Rev. & Tax. Code § 6051.) After a relocatable classroom is installed, we consider it to be real property, whether it is installed on land owned by the owner of the classroom or on land owned by the lessee of the classroom. A sale of real property is not subject to sales tax, and the sale of a building affixed to land is only subject to sales tax if it is regarded as a sale of tangible personal property. This occurs only when the building is to be severed by the seller. (Reg. 1596(a).)

When S--- sells an installed relocatable classroom which is subject to an ongoing lease and which S--- is not required to sever, S--- is selling real property and no sales tax applies to that sale. You state that the classrooms being sold by S--- are currently under lease. I assume that the sale will occur while the classrooms remain subject to those continuing leases and that S--- is not required to sever those classrooms from the real property. This no sales tax would apply to those sales. The sale of any classrooms which are not installed on real property at the time of the sale or

which are to be severed by S--- from their existing location would be a sale of tangible personal property and would be subject to sales tax.

You note Revenue and Taxation Code section 6012.6, which provides a partial exemption for the sale of factory-built school buildings. You believe that this only applies to the original sale of factory-built school buildings by the manufacturer and does not apply to subsequent sales in place of factory-built school buildings. We agree that this partial exemption applies only to sales of factory-built school buildings in the form of tangible personal property. Since S---'s sales will apparently be of real property, we agree that section 6012.6 does not apply.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:wak