



STATE BOARD OF EQUALIZATION

September 10, 1969

C--- and G---
Attorneys at Law
XXXX --- Boulevard
--- ---, CA XXXXX

Attention: Mr. A--- M. C---

Gentlemen:

Your letter dated July 24, 1969, addressed to the Board of Equalization, has been referred to me for reply.

You state that your client is engaged in the business of buying houses and other structures for removal from their present locations and reselling them to customers. In some cases your client purchases a structure from the State of California, other governmental agency or private party, and then, prior to removing the structure from the seller's property, enters into an agreement with a customer for the resale of the structure to the customer. Pursuant to the agreement, the customer is to engage a moving contractor to move the structure from its location to the point designated by the customer. You ask our opinion with respect to the application of the Sales and Use Tax Law in this situation.

As pointed out in your letter, the Attorney General has advised that a sale of a structure affixed to land is a sale of real property where the structure is to be severed from the land by the buyer (67 Ops.Cal.Atty.Gen.218). In so advising, it was noted that at the time such sales occur, the structures are affixed to the land though subject to the later right of removal by the buyers. Where, prior to removing such a structure, a buyer resells the structure to a third party, and the agreement provides that the third party or someone hired by him is to remove the structure from the land, we would similarly regard the buyer's sale of the structure to the third party as a sale of real property, since at the time of the subsequent sale the structure continues to be affixed to the land.

Thus, as we will regard your client as a seller of real property in this situation, the provisions of the law will not be applicable to its sales of structures under the above-mentioned circumstances.

Very truly yours,

J. Kenneth McManigal
Tax Counsel

JKM/vs