STATE BOARD OF EQUALIZATION

November 4, 1964

Mr. M--- S---
P. O. Box XXXXX
--- --- XX, California

Dear Mr. S---:

This is in reply to your letter of October 14, 1964, addressed to Mr. C. W. Twitchell, Assistant District Tax Administrator in our --- --- subdistrict office. This letter was referred to the undersigned by John T. Quick, District Principal Auditor, --- --- district.

The board's position as you outlined it in the first paragraph of your letter was sustained by the District Court of Appeal in <u>Overly Manufacturing Co.</u> v. <u>State Board of Equalization</u>, 191 Cal. App. 2d 20. This case held that since the supplier of the frames was not the installer, he was the retailer of the frames even though he did install other items in connection with the fulfillment of his contract.

You inquire whether the seller of the entire window could "price the window installed and pay the builder separately for installation." You then state that "This would mean that the builder would be acting as a subcontractor and the seller would be the consumer." We hesitate to approve this arrangement as a valid means of minimizing the tax since it appears that the actual operations and responsibility may be the same.

We believe that for the supplier to be entitled to the tax benefits of being a subcontractor, he must actually be obligated by his contract to perform the installation and to be responsible for its proper performance. Ordinarily, this would require him to make the installation himself, or by someone engaged by him as a subcontractor other than the prime building contractor and customer.

We believe that we should have further information as to the actual provisions of the contract between the supplier and the builder, as well as information as to whose tools and equipment are used in performing the actual work and any other pertinent information, upon receipt of which we shall be glad to give you our further views.

Very truly yours,

E. H. Stetson
Tax Counsel

EHS:fb
cc: --- --- District – District Principal Auditor (JTQ)