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April 9, 1993

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*Executive Director*

Mr. N--- H. L---  
Law Office of B--- C---  
XXX ---, Suite XXX  
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Dear Mr. L---:

This is in response to your letter dated March 24, 1993 in which you state:

"I represent a company that is engaged in the assembly and launch of commercial satellites. My client has sent me a copy of a letter that you wrote in 1991, to the W--- S--- T--- & E--- C---, regarding sales tax liability on sales of satellites which are launched from California and sold to the ultimate owner after they reach orbit. Your letter, a copy of which is attached for your convenience, concluded that under the facts represented, the sale of the satellite to the user/owner would not be subject to California sales tax.

"I am concerned about a related point, i.e., use tax liability on the materials, etc. purchased in connection with the building and assembly of the satellite and launch vehicle. Assuming that assembly and launch are from a site in California, would the Board view be that the launch is a 'taxable use' in this state. It seems to me to be de minimis and incidental to the sale, and hence not taxable under Rev. & Tax. C. 6009.1. See also Stockton Kenworth, Inc. v. SBE, 157 CA 3d 334, 203 Cal. Rptr. 698 (1984). but I would appreciate hearing from you if you have given any thought to this issue."

Revenue and Taxation Code section 6051 imposes a sales tax on all retailers measured by their gross receipts from retail sales of tangible personal property. A "retail sale" or "sale at

retail" means a sale for any purpose other than resale in the regular course of business in the form of tangible personal property. Rev. & Tax. Code § 6007.

Revenue and Taxation Code section 6201 imposes an excise tax, commonly referred to as the use tax, on the storage, use, or other consumption in this state of tangible personal property purchased from any retailer for storage, use, or other consumption in this state. The use tax complements the sales tax and is most frequently imposed upon in-state leases, out-of-state purchases of property for use in California, and use of property purchased with a resale certificate. "Storage" and "use" do not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the state and thereafter used solely outside the state. Rev. & Tax. Code § 6009.1.

A purchaser who will hold property for resale in the regular course of business may purchase the property ex tax by issuing a resale certificate. If a purchaser who has given a resale certificate makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business, the storage or use shall be taxable to the purchaser as of the time the property is first used by him. The sales price of the property is the measure of tax. Rev. & Tax. Code §§ 6094 and 6244.

With respect to the satellite, we understand that the builder of the satellite will sell the satellite to another entity but that the sale will not occur until the satellite is in orbit. As noted in our previous letter, since the sale occurs outside of California, that sale is not subject to California sales tax.

The builder may purchase with a resale certificate parts and materials which become component parts of the satellite. See Regulation 1525, copy enclosed. The removal of the satellite from the state by the launch vehicle is not a taxable use of the satellite. Thus, assuming that the builder makes no use of the satellite other than retention and removal, no use tax is due under section 6094 or 6244 on the builder's ex tax purchase of the component parts.

The purchase of the component parts of the launch vehicle are subject to either use tax or sales tax because the launch of the vehicle is a taxable use of the vehicle for purposes of sections 6094 and 6244 and of section 6009.1. The purpose of the launch vehicle is to carry satellites and other property into orbit. Thus, the vehicle is functionally used in California from the time that it is placed on the launch pad or that the satellite is connected to it.

We do not agree that the use of the launch vehicle in California is de minimis. But even if it is, it is the type of use in California, not the amount of use, that determines whether a taxable use is made of the vehicle. In Stockton Kenworth, Inc. v. SBE, cited in your letter, the trucks

were removed from California without a payload, and thus the taxpayer made no functional use of the trucks in California. In Parfum-Corday, Inc. v. SBE, (1986) 187 Cal.App.3d 630 the purchaser made only minimal use of promotional displays in California but that use was a functional use subject to tax.

A bill has been introduced into the Legislature (AB 279, copy enclosed) that would exempt from sales and use tax sales and purchases of qualified property for use in space flight. If this bill passes, it appears that the purchase of the component parts of a launch vehicle will not be subject to tax.

If you have further questions regarding Sales and Use Tax Law, please do not hesitate to write again.

Sincerely,

Elizabeth Abreu  
Tax Counsel

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Enclosures