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June 7, 1994

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Executive Director

Mr. D--- L---
Tax Counsel
T---, Executive Offices
XXXX --- Road
---, OH XXXXX

**Re: Sales Tax Exemption For Space Launches
at Vandenberg Air Force Base**

Dear Mr. L---:

This is in response to your letter dated February 9, 1994, and our subsequent telephone conversations. I apologize for our delay.

In your letter, you request our opinion on the applicability of the sales and use tax exemption provided in Revenue and Taxation Code section 6380 to the following circumstances:

1. T--- will sell and deliver a spacecraft bus and payload adapter (the spacecraft) to the Republic of China; title to pass upon delivery in Taiwan. The spacecraft will be integrated with its payload in Taiwan, and the resulting satellite will be returned to T--- in California.
2. After the return of the satellite to T--- in California, it will be stored for a short period of time, during which period the shipping container will be opened and the satellite will be inspected for damage. Then, batteries will be installed and the satellite will be shipped to Vandenberg Air Force Base (VAFB).
3. At VAFB, the satellite will be mated to a Pegasus XL launch vehicle that will be assembled at VAFB. The launch vehicle then will be attached to an airplane, in "launch ready condition."

4. The airplane will then be flown to Florida for "refueling and final checking out."
5. Then, the airplane will be flown to a point over the Atlantic Ocean for launch.

You also state the following:

For purposes of this ruling it is assumed the return of the [satellite] from Taiwan to California for launch is potentially a taxable "use" of tangible personal property in the state, and that tax also might be due on the launch vehicle and other property involved, unless the exemption provided in section 6380 applies. The specific question is whether the fact the [airplane] will leave AVFB in launch ready condition qualifies for the exemption, or whether the mere fact that the [airplane] might land in Florida for refueling and a brief final check out disqualifies the use of the VAFB tax exemption.

As you indicate, section 6380 of the Revenue and Taxation Code provides an exemption from the sales and use tax for the sale, storage, use, or other consumption in California of qualified property used in space flight. "Qualified property" means either: (1) "Tangible personal property that has space flight capability, including ... [a] satellite ..."; or (2) "Tangible personal property to be placed or used aboard any ... satellite" "Space flight" means "any flight designed for suborbital, orbital, or interplanetary travel by a space vehicle, ... and originating at Vandenberg Air Force Base."

We initially note that, despite your stated assumption, it is not evident from your recitation of the facts that the satellite would be subject to a use tax in this state. In this regard, I would bring section 6009.1 of the Revenue and Taxation Code to your attention.¹

With regard to the primary issue, however, we disagree with your conclusion that, for purposes of § 6380, the intended spaceflight will originate at VAFB. Based upon the facts set forth in your letter, we conclude that the only flight that will originate from VAFB is not a spaceflight, but, instead, a conventional flight from California to Florida. Thus, we disagree with your opinion that the exemption would apply to the stated facts.

¹§6009.1 provides as follows: "'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."

Mr. Dan Lisonbee

-3-

June 7, 1994
325.1768

Please call if you have any further questions.

Very truly yours,

Robert W. Lambert
Senior Staff Counsel

RWL:plh