



February 13, 2014

Sent Via Email ([Sherrie.Kinkle@boe.ca.gov](mailto:Sherrie.Kinkle@boe.ca.gov)) and UA Mail

Sherrie Kinkle  
Tax Administrator  
County-Assessed Properties Division  
State Board of Equalization  
PO Box 942879  
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CC: Joseph Vinatieri

RE: Property Tax Rule 133

Dear Sherrie,

This letter is a follow up to the recently held Interested Parties meeting on February 6, 2014. We appreciated the opportunity to participate in that meeting and would like to provide some additional concerns/comments regarding the revised draft of Rule 133.

I would first like to take the opportunity to thank you and your staff for spearheading this rule change. As you may know, United Launch Alliance, LLC is a joint venture between the Boeing Company and Lockheed Martin and our business is placing payloads such as NROL satellites into orbit through the use of the rockets we build under Category IV of Sec 121.1 of ITAR as "Launch vehicles." The payloads, which we do not take title, would qualify under Category XV, "Spacecraft Systems and Associated Equipment." We launch all of our polar orbits launch vehicles out of three space complexes located on the Vandenberg Air Force Base in Santa Barbara County. ULA was formed in 2006, and prior to that Boeing and Lockheed launched rockets from the same three space complexes. We are materially affected if Rule 133 and the pending Assembly Bill 777 do not pass, perhaps to the same degree as other California launch providers. We appreciate your efforts in clarifying Rule 133 and are relieved to know that this is not a special interest bill, but an industry bill and that our comments will be considered equally.

In practice, over the last 15 years, many of the California Counties performed regular personal property tax audits of the space manufacturing facilities of Boeing, Lockheed and ULA and have historically treated the launch vehicles, whether during the manufacturing process or when in ending inventory and on the pad for launch as "inventory." Please note that this occurred under the same type of government contract as is in question today where the "title" does not pass through an invoice, but through transfer of control/possession. It would appear that a precedent has already been firmly established and that a new interpretation after 15 years of practice is unfair as the taxpayer was not placed on notice of the change in "interpretation."



In regard to Rule 133, we are concerned as to how the law will be interpreted in future audits. Careful wording and clear definitions are required in this revision to avoid future interpretation issues. I am sure when they originally drafted Rule 133 they considered our launch vehicles and every piece of tangible personal property in the manufacturing process as “inventory,” but it wasn’t clearly worded.

Our concerns are: 1) use of the term “defense article,” 2) the lack of clear definition of the term “space vehicle,” and 3) under E(i) an explanation of why the term “not reusable under federal law” is required and what federal code is being referenced.

As we stated in our letter to you dated January 23, 2014, we are concerned that use of the term “defense vehicle” in the language, as opposed to simply relying on the language contained in ITAR section 121.1, will create audit issues in the future. I envision arguing with future auditors as to whether a commercial launch vehicle is a “defense article” rather than just letting it be defined as a defense article through the language in 121.1. Is there some fundamental premise I am missing as to why this needs to be in the language of the Rule? We can live with this language if there is a good reason for the redundancy.

We are adamant that there needs to be further clarification of the language used in Rule 133E(1). It appears that **E(i)** is attempting to further narrow what qualifies under this exemption. To that point, the term “launch vehicle” has been omitted and instead the term “space vehicle” was used, but not defined. From a technical perspective, Category IV of 121.1 defines “Launch Vehicle” and Category XV defines “Spacecraft,” however I do not see any reference to or definition of what constitutes a “space vehicle”. ULA’s technical, legal and contract personnel have pointed out that often a “space vehicle” references a satellite, cargo container or human capsule, not the launch vehicle itself. A causal verbal agreement or gentlemen’s understanding that a “space vehicle” includes a “launch vehicle” is not sufficient. If the exempted property is “**space flight** property” and the term “space flight” only covers the flight of a “space vehicle,” satellite, etc and does not include the flight of a “launch vehicle” then proposes Rule 133 will only exempt the payload and not the rocket from a technical perspective. We feel that the Rule either needs to define the term “space vehicle” to include the “launch vehicle” or add the term “launch vehicle” to (i) as follows:

- (i) “Space flight” means any flight designed for suborbital, orbital, or interplanetary travel by a space vehicle, launch vehicle, space facility, or space station of any kind”

Additionally can you shed some light on what is the intent and meaning of the phrase “not reusable under federal law”? Clearly we understand the exclusion for a “reusable” item, but why include “under federal law” in this rule? Is this to allow the exemption for spacecraft or launch vehicles that return to earth and are not allowed to fly until it is “recertified”? Is this language intended to include space flight property (whatever that is defined as) that returns to earth and is refurbished and recertified in this exemption? At what point in the refurbishment/recertification process would the property be considered exempt? It would help us all if we understand what “federal law” you are referring to, specifically what Federal code section and/ or regulations.

We appreciate the fact that you did include our recommended language for E (ii) of this rule.



We find these Rule changes to be even more important than the passage of the Assembly Bill as the Assembly Bill is not retroactive. This would allow the Counties to assess the inventory as business supplies for all open years, up until the year the bill. These assessments will be litigated and in the end, the property tax law will treat "change of control" and or "transfer of possession" as surrogate for title passage, as that is where California sales tax law ended up.

Furthermore, the counties themselves employ the "transfer of possession" in asserting real property taxes on Possessory Interests. With a Possessory Interest, there is no change of title involved, but only a transfer of control, possession or use, and yet the counties are able to tax the Possessory Interest in a manner similar to the taxation of real property where title passed and recorded. As Possessory Interests are granted by the government, why should the Counties be the only ones with an exception to the "title passage rules" for government contracts/agreements? Aren't these proposed Rule 133 changes just extending the same logic to the space industries' government contracts as was previously extended to the Counties, allowing them to tax government property when "control and use is transferred" to a private party via a Possessory Interest?

Please let me know if there is anything ULA can do to help you in your efforts to see this passed.

If you need to contact me, my email is: [debra.k.reynolds-clark@uallaunch.com](mailto:debra.k.reynolds-clark@uallaunch.com) or

:

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We appreciate your assistance with this matter.

Best Regards,

A handwritten signature in black ink that reads "Debra Reynolds-Clark". The signature is written in a cursive, flowing style.

Debra Reynolds-Clark  
SR. Tax Manager