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County of Santa Clara

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Lawrence E. Stone, Assessor

February 3, 2014

Sherrie Kinkle
California State Board of Equalization
Property and Special Taxes Department
450 N. Street, MIC:72
Sacramento, CA 94279-0064

Re: Proposed Revision to Property Tax Rule 133

Dear Ms. Kinkle:

I write to oppose staff's suggested revision to Property Tax Rule 133, which exempts space flight equipment as business inventory. In addition, I want to strongly echo the comments submitted by the Los Angeles County Assessor's Office in their letter to the State Board of Equalization (BOE) dated January 27, 2014. Finally, I write to express a number of other concerns with this proposal.

**INITIATION OF RULE-MAKING PROCESS SETS BAD PRECEDENT**

I strongly object to the BOE staff initiating a rule-making process, which would impact the entire state, based on what appears to be a single anonymous inquiry sent to the BOE legal staff. Historically, staff has limited their authority to initiate changes in rules to non-controversial issues. Changing this practice and allowing a single company to effectively initiate the rule-making sets a very bad precedent for the BOE.

My Assistant Assessor initiated a formal California Public Records Act (CPRA) request on January 9, for a copy of the letter that initiated the proposed ruling. The BOE's legal staff did not provide the requested information on the basis that the letter contained confidential information pursuant to a loose interpretation of Government Code Section 15619. The CPRA is strongly worded in favor of the production of records for the purpose of open government and transparency. If a single letter from an anonymous company can trigger a rule-making process, then I believe it is the BOE's responsibility to release the requested documents in their entirety. This action is especially troubling as assessors and the BOE routinely share confidential information.

**RULE IS INCONSISTENT WITH REVENUE & TAXATION CODE SECTION 129**

The proposed rule is inconsistent with Revenue & Taxation Code Section 129 which defines "business inventories" as all tangible personal property, whether raw materials, work in process or finished goods, that will become a part of or are themselves items of personalty held for sale

or lease in the ordinary course of business. The space flight equipment that is the subject of the proposed ruling is machinery and equipment, and is not offered for sale or lease in the ordinary course of business. The code section thereby explicitly disqualifies space flight equipment from being classified as business inventory.

The Assessor's Handbook reiterates the law's intent when it directs assessors to consider the key phrases "ordinary course of business and goods intended for sale or lease." It goes on to state that these phrases "must apply for the property to qualify for the business inventory exemption." The Handbook provides an example: "If a copier leasing company holding machines for lease uses one of the machines prior to the lien date or intends to use the copier after the lien date, that copier is no longer part of the goods intended for sale or lease and would not qualify for the business inventory exemption even if it is held for lease on the lien date."

**SPACE JUNK OR REUSABLE SPACESHIP**

In the "anonymous" company's letter to the BOE Legal Department, the author claims that after the delivery of the equipment's payload, it is generally burned up in space or becomes space junk. Yet SpaceX, the leading proponent of this tax break, notes on its company website that their spacecraft (called "Dragon") delivered cargo to and from space multiple times, and was able to return safely to earth. The website also states that the company has been providing regular cargo resupply missions to NASA. There is serious contradiction between what SpaceX is advertising on its website and the information provided by the company in the letter to the BOE. Either companies like SpaceX are creating an inventory of space junk or, more likely, are manufacturing a fleet of space vehicles that they intend to use much as UPS and FedEx use aircraft to deliver packages.

**PROPOSAL EXCEEDS BOE AUTHORITY**

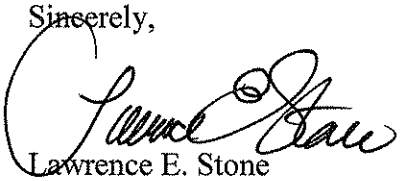
The State Assembly has passed to the State Senate AB 777 which was introduced with the clear, singular purpose to exempt the same space equipment that the proposed rule seeks to exempt. The legislature has initiated that change in policy as they would like to provide this tax break to SpaceX and similar companies. While I oppose AB 777, the Constitution grants the State Legislature the authority to provide such exemptions. The proposed change exceeds the BOE's authority, and since the matter is currently before the State Senate, there is no need to test the boundaries of the BOE's constitutional authority. Doing so would certainly invite the California Assessors' Association to file a 538 action challenging the BOE authority.

**NO URGENCY FOR INTERVENTION IN AN APPEAL**

As the BOE is aware, the issue in dispute concerns a single company that has appropriately sought redress through the assessment appeals process. Intervening on behalf of a single taxpayer before the matter is adjudicated at the local assessment appeals board sets a very bad precedent. Moreover, neither the BOE nor the taxpayer has offered a compelling state interest for providing this company with a very special benefit exempting it from the normal due process afforded all other taxpayers.

In summary, the proposed ruling is contrary to law and to previous advice provided by the BOE to county assessors. Allowing the revision to occur will set a bad precedent and encourage other companies to seek the same exemption. I urge the BOE staff to halt further discussion of this ill-conceived proposal.

Sincerely,



Lawrence E. Stone
Assessor

Cc: Members of the California Assessors' Association
Brian Donnelly, Los Angeles County Assessor's Office
Dean Kinnee, Board of Equalization
Rob Grossglauser and Gregg Cook, Government Affairs Consulting

LES:dhl