

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA  
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)  
(916) 445-5550

November 7, 1991

---

Re: Sales of Satellites

Dear Mr. ---:

Your letter dated October 23, 1991 to the Honorable Ernest J. Dronenburg, Jr. has been referred to the Legal Staff for response. You asked for the application of sales tax to the sale of satellites that will be launched from A Air Force Base in California. You note that there are several scenarios for the transfer of ownership of these satellites, but the following situation is the one of immediate importance:

“ A world-wide organization (WWO) wants to establish a network of satellites in polar orbits to sell a service throughout the world. The WWO will negotiate a contract with a builder of satellites to build, launch and check out on-orbit the functional capability of each satellite prior to passing ownership to the WWO. Does California sales tax apply to the passage of ownership in orbit?

“It is believed that the satellite builder will buy the service of a launch contractor (rocket manufacturer who launches his own rockets) who may guarantee the prescribed orbit insertion by paying for the satellite if it does not achieve orbit. This is seen as an insurance policy. Does California State sales tax apply here?”

California sales tax applies to a retailer's retail sale of tangible personal property in California unless that sale is specifically exempted by statute. (Rev. & Tax. Code § 6051.) For example, a person builds a satellite and contracts to sell it to WWO. WWO takes possession of the satellite at the seller's location in California. WWO then transports the satellite to the launch site and launches it. In this example, the sale occurs in California no later than when WWO takes possession of the satellite in California at the builder's site. Sales tax applies to that sale. You have described a scenario different from this example. The critical question is where the sale occurs for purposes of the California Sales and Use Tax Law. (See Rev. & Tax. Code § 6010.5.)

Under section 2401 of the California Uniform Commercial Code, the sale of tangible personal property occurs no later than when the seller completes its responsibility with respect to physical delivery of the property. If the purchaser, WWO, was in control of launching the satellite, then it is likely that we would conclude that the seller had completed its responsibility with respect to physical delivery of the property in California. This would mean that the sale was completed in California and sales tax would apply. However, the scenario you describe is one in which the seller of the satellite launches the satellite and does not pass ownership of the satellite to WWO until certain functional requirements are satisfied. Furthermore, if the satellite is not inserted into the prescribed orbit, the launch contractor may pay for the satellite. I assume that if such payment is made, the launch contractor would own the satellite (for example, if it is ever retrieved). This would support the conclusion that title to the satellite does not pass to WWO until after successful orbit insertion.

I note that we answer your inquiry based upon your characterization of the potential contract. Upon review of those contracts ourselves, we might reach different conclusions with respect to the proper characterization of when title passes. This opinion is based upon the following specific assumptions: the satellite seller contracts with the launch contractor to launch the satellite into the prescribed orbit; the launch contractor purchases the satellite if the satellite is not inserted into the prescribed orbit; title to and control of the satellite is not passed to WWO until after insertion into the prescribed orbit. Based upon these assumptions, we conclude that the sale to WWO does not occur until the satellite is inserted into the prescribed orbit. Under such circumstances, we conclude that the sale does not occur in California regardless of the location of the satellite over the earth's surface at the time of title transfer. No sales tax applies.

If you have further questions, feel free to contact me.

Sincerely,

David H. Levine  
Senior Tax Counsel

DHL:cl

cc: Honorable Ernest J. Dronenburg, Jr.

bc: Ventura District Administrator