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**Wm. Gregory Turner**  
Vice President, Senior Tax Counsel  
December 12, 2013

Dean Kinnee  
Chief County-Assessed Properties Division  
State Board of Equalization  
Sacramento, CA 95184

**RE: Embedded Software**

Dean,

Although I was unable to attend the annual BOE/County Assessor meeting in Redding this year, I had an opportunity to review the webcast as well as the draft survey of County Assessors on the subject of embedded software. What struck me about the discussion in Redding, and I believe validated by the survey results, is that everyone seems to have agreed that the predominate problem is not the lack of standardized tables *per se*, but standardized norms for what *evidence* is probative of the value of excluded software when it is embedded in or bundled with tangible property.

As noted by both Mr. Stone and Mr. Hoenig on that panel, the *existence* of embedded software is rarely in dispute. The issue that tends to produce controversy for taxpayers and assessors is its *valuation*. While it might be theoretically useful for the Board to embark on a project to produce standardized depreciation tables as it has done for other types of equipment (computers for example) in my view such a project is not likely to be successful; the data necessary to conduct such a project is not readily accessible by the Board, the equipment at issue does not lend itself to generic tables, any data the Board might gain access to is not likely to be timely enough to support generic valuation tables, and the Board's staff resources are simply too constrained to take on such an endeavor in a manner that will produce meaningful results. Even presuming the Board could acquire reliable data it would likely be obsolete before it could be published simply because the technology is changing so rapidly.

Moreover, as a practical matter, absent an invoice or other express information from the manufacturer, the valuation of embedded software is far from precise. What both taxpayers and assessors need is for the Board to provide guidance on the types of data or evidence that is probative as to the value of embedded software. As discussed on the Redding panel, Santa Clara County has experienced at least a few cases where the Assessor's office believed the *evidence* supporting the

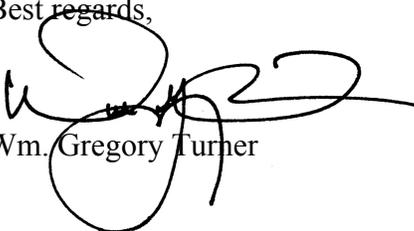
**RE: Embedded Software**

taxpayer's attributed value to embedded software was lacking. It is my understanding that in those cases, the Assessment Appeals Board agreed with the Assessor. However, to ensure uniform treatment, and hopefully the avoidance of unnecessary appeals, the Board should consider drafting a memorandum, perhaps to ultimately be published as an LTA, which discusses the *types* of evidence or guidelines for comprehensive studies, that taxpayers and assessors can reasonably rely on to be probative of the value of bundled or embedded software. Some types of data are obviously more reliable than others and the Board's experience in the state assessed arena could provide insight that will assist taxpayers and Assessors.

The goal, however, would not be to create black and white rules, but guidelines for what types of information, documents, studies, and/or data taxpayers, Assessors, and Assessment Appeals Boards can reasonably rely on to establish the value of embedded software. Such guidelines will help taxpayers be better equipped to answer Assessor inquiries, Assessors more secure in knowing that property is neither escaping assessment nor being over assessed, and Assessment Appeals Boards better equipped to resolve disputes.

We would be happy to assist the Board in such a project, whether simply commenting on staff drafts, participating in meetings among a small group, or more publicly through an interested parties process. Let me know how we might be of assistance.

Best regards,

A handwritten signature in black ink, appearing to read 'Wm. Gregory Turner', written over the printed name below it.

Wm. Gregory Turner