



CALIFORNIA ASSESSORS' ASSOCIATION

EXECUTIVE COMMITTEE

President

JIM ROONEY
Amador County
810 Court Street
Jackson, CA 95642-2132
Telephone: (209) 223-6351
Fax: (209) 223-6721
jrooney@amadorgov.org

February 28, 2013

Immediate Past President

* **TOM BORDONARO, JR.**
San Luis Obispo County
tbordonaro@co.slo.ca.us

Hon. Jerome Horton
Chair, State Board of Equalization
450 N Street, MIC 72
Sacramento, CA 95814

(via email to jerome.horton@boe.ca.gov)

President-Elect

LARRY WARD
Riverside County
lward@asrclkrec.com

Vice-President

MARC TONNESEN
Solano County
mctonnesen@solanocounty.com

Treasurer

KATHLEEN KELLEHER
Sacramento County
kelleherk@saccounty.net

Dear Chairman Horton,

* DAVE PEETS

Alpine County
dpeets@alpinecountyca.gov

As President of the California Assessors' Association (CAA) I am writing with further clarification concerning the CAA Executive Committee decision not to participate in the proposed working group on embedded software.

* DAN GOODWIN

Ventura County
dan.goodwin@ventura.org

When the CAA proposed that a working group be created, we were cautiously optimistic about the prospect for success. It became clear, however, by January 2013, that the progress and direction of the proposed working group were insufficient toward reaching a reliable conclusion, as the project, both in scope and the membership of the working group, was significantly modified from our original proposal. The courts also reached a similar conclusion on two separate occasions. More recently, the Orange County Court of Appeals urged the state legislature to intervene and update the 40-year-old code which the Court concluded had no applicability in today's high-technology environment. The CAA tends to concur with Senator Runner that, absent legislative intervention, we may be pursuing an outcome for which there may "not be an answerable problem."

* RON THOMSEN

Alameda County
ron.thomsen@acgov.org

* LARRY STONE

Santa Clara County
lstone96@hotmail.com

WEBSTER GUILLORY
Orange County

RICHARD BENSON

Marin County
rbenson@marincounty.org

TOM KIDWELL

Madera County
tkidwell@madera-county.com

It is important to note that the CAA decision to withdraw was made in the context of several years of unsuccessful efforts to work through the interested parties' process to resolve similar complex and controversial valuation issues concerning the assessment of business personal property. While many of the same parties (assessors, property tax agents, BOE staff, Cal-Tax, etc.) have conscientiously expended extensive time and resources on similar projects in the past, the results have been disappointing. For example, in 2006 and 2007 BOE studies to develop valuation factors were largely unproductive due to the lack of reliable data from industry.

LESLIE MORGAN

Shasta County
lmorgan@co.shasta.ca.us

Ex-Officio/Secretary

KRISTEN SPEARS
Placer County
2980 Richardson Drive
Auburn, CA 95603-2640
Telephone: (530) 889-4309
Fax: (530) 889-4305
kspears@placer.ca.gov

Similarly in 2010, after a spirited legislative debate, the CAA withdrew legislation intended to increase the uniformity for assessing embedded software in favor of another interested party process. As stated in the amended legislation agreed to by all parties, the interested parties' process was established to work toward creating "a standard for the fair and reasonable valuation of software embedded in business personal property that could subsequently be codified." The CAA immediately

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Legislative

DAVE COGDILL
Stanislaus County

Standards

RICHARD BENSON
Marin County

Conference

KEN BLAKEMORE
San Joaquin County

*Past President

created an ad-hoc committee to implement the terms of the understanding. While there have been numerous meetings with industry representatives and BOE staff as well as a formal panel discussion at the BOE/CAA annual joint meeting in 2011, there has been no meaningful progress or quantifiable outcome. A major roadblock continues to be the absence of supporting data. Despite an earnest effort by assessors, BOE staff and industry representatives, collectively we have been unable to separate, supported by accurate and measurable cost data, operational software from application software embedded or bundled in sophisticated high-tech machinery and equipment. Nor have we been able to obtain, identify and capture reliable cost information from vendors that manufacture and sell such equipment to high-tech companies.

In September, prompted by a lack of progress, the CAA ad-hoc committee suggested the creation of a working group consisting exclusively of software engineering experts to take a small step toward the development of guidelines for evaluating what “standard of evidence would be required prior to a review for potential embedded software.” This initiative has also been unproductive, as evidenced by the change in scope and proposed appointment of individuals that have no experience in software development. It was for all these reasons the CAA determined recently that further efforts would not be productive or a good use of limited public resources.

Following the CAA’s decision to withdraw, we support the BOE decision to suspend further efforts to create a working group on embedded software, and to seek additional information from assessors, industry, and BOE staff. Specifically, the BOE directed its staff to:

- Perform a survey to determine how embedded software is being valued by counties, and what lessons can be learned. The survey may include the following:
 - (1) The outcome of assessment appeals that involve embedded software, and the amount of value in dispute;
 - (2) Identify studies on embedded software that have been provided to assessors in support of an appellant’s request for reductions, the documentation provided to Assessors to support these studies; and how these counties verified information contained in studies received;
 - (3) Assess the level of cooperation from taxpayers.
- Provide an overview of how the BOE values embedded software for state-assessed properties. That overview may include a discussion as to the data provided to the BOE, information about existing studies provided, the level of taxpayer cooperation, key differences and similarities in the equipment held by state assesses and local property taxpayers, as well as the key differences between how property is assessed locally and by the BOE.
- Examine how other states and the IRS are dealing with this issue.
- Include recommendations as to the scope of any future efforts by the BOE

We fully support this direction and are eager to assist the BOE and your staff in any way possible. Finally, it should be noted that our decision to withdraw from this

process in no way reflects upon the strong working relationship with the Board, BOE staff, assessors and this association. Rather, our decision is based on our belief that the statute is so antiquated and modern technology so complex, that a successful outcome was extremely doubtful. Please do not hesitate to contact me at (209) 223-6454 or Santa Clara County Assessor Larry Stone, chair of the CAA ad-hoc committee on embedded software, at (408) 299-5588.

Sincerely,


James Rooney
President

CC: Larry Stone, Santa Clara County Assessor/Chair, CAA Ad-Hoc Committee
on Embedded Software
Members of the CAA Ad-Hoc Committee on Embedded Software
Cal-Tax
Members of the BOE
Dean Kinnee, BOE
Gregg Cook and Rob Grossglauser, Government Affairs Consulting