



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date:	05/26/11	Bill No:	Assembly Bill 832
Tax Program:	Property	Author:	Ammiano
Sponsor:	California Assessors' Association	Code Sections:	RTC 995.3
Related Bills:		Effective Date:	01/01/13

BILL SUMMARY

Related to the taxation of certain computer programs in computer operated machinery and equipment (or equipment with computers), this bill:

- Generally codifies subdivisions (d), (e) and (f) of Property Tax Rule 152 "Computer Programs Storage Media."
- Requires a person claiming that a "single price" sale or lease includes charges for nontaxable programs (i.e., computer software) or services to prove, by clear and convincing evidence, (1) the existence of nontaxable programs or services and (2) to supply sales price, costs, or other information regarding the nontaxable programs or services including a recognized Board of Equalization valuation approach, method, or technique to assist the assessor in making an informed judgment concerning the proper value to ascribe to taxable and nontaxable components of the property.

Summary of Amendments

The amendments to this bill since the previous analysis recast its provisions and requires a taxpayer to specify a recognized Board of Equalization approach when making a claim related to a single price sale that included charges for nontaxable programs or services.

ANALYSIS

CURRENT LAW

Computer Software. Revenue and Taxation Code Section 995 generally provides that computer programs (i.e., software) are not taxable for purposes of property taxation.

Storage Media. Section 995 provides that storage media (i.e., hard drives or programmable memory with current technology) for computer programs are to be valued as if there were no computer programs on the media except basic operational programs.

Basic Operational Programs, as defined in Section 995.2, are those computer programs that are "fundamental and necessary to the functioning of a computer." For basic operational programs (also called control programs) to be taxable pursuant to Property Tax Rule 152(d), it must (1) meet the definition of a control program as defined in Section 995.2 *and* (2) be included in the sale or lease price of the computer equipment, either selling or leasing at a single price, or selling at separate prices but the customer has no choice to accept or reject the program.

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Application Programs. Application (or processing) computer software (distinct from software that is considered a basic operational program) are exempt from property tax under Section 995 and 995.2. However, there is a practical valuation problem when assessing equipment that is sold at a single price and includes “bundled” or “embedded” application programs.

- **Total Amount of Single Price Sales May be Assessed Lacking Evidence to the Contrary.** To address this issue, Property Tax Rule 152(e) provides that in valuing computer equipment that is sold or leased at a single price not segregated between taxable property (i.e., equipment and basic operational programs) and nontaxable programs (i.e., application computer software programs), the assessor, lacking evidence to the contrary, may regard the total amount charged as indicative of the value of the taxable tangible property.
- **Burden on Taxpayer to Identify and Segregate Value.** Property Tax Rule 152(f) provides that taxpayers claiming that a single price sale includes charges for nontaxable programs (i.e., application computer software programs) and services should be required to provide information to the assessor to (1) identify the nontaxable property and (2) supply sales prices, costs, or other information that will enable the assessor to make an informed judgment about the value to be ascribed to taxable and nontaxable components of the single price charged in the purchase.

PROPOSED LAW

This bill would add Section 995.3 to the Revenue and Taxation Code to codify subdivisions (d), (e), and (f) of Property Tax Rule 152. This bill would also increase the burden on taxpayers seeking to demonstrate that the single price paid for computers or equipment included nontaxable application software, by raising the standard of evidence needed to support the claim to a level that is clear and convincing.

Basic Operational Programs. Proposed subdivision (a) of Section 995.3 relating to basic operational programs is substantially the same as subdivision (d) of Property Tax Rule 152.

Bundled Software. Proposed subdivision (b) of Section 995.3 relating to application programs is substantively the same as (e) of Property Tax Rule 152.

However, proposed subdivision (c) of Section 995.3 is substantively different from subdivision (f) of Property Tax Rule 152. It raises the burden of proof placed on taxpayers who purchase computers or equipment at a single price that includes “bundled” or “embedded” application programs and who seek an assessment that is based on less than the sales price paid. Those taxpayers would be required to prove, by clear and convincing evidence, the existence of nontaxable programs and services. It definitively would require that information be provided to the assessor to assist the assessor ascribing value to the property between taxable and nontaxable portions that is clear and convincing. Property Tax Rule 152 suggests (i.e., “should be required to identify...and supply”) but does not seem to explicitly require such information. To show the language differences between Rule 152(f) and proposed Section 995.3(c), a strike out and underline format is provided below.

A person claiming that a single-price sale or lease includes charges for nontaxable programs and or services should be required to identify the ~~shall have the burden of proving, by clear and convincing evidence, the existence of~~

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nontaxable ~~property and programs or services and by supplying sales prices, costs, or other information regarding the nontaxable programs or services, including, but not limited to, a recognized State Board of Equalization valuation approach, technique, or method,~~ that will enable the assessor to make an informed judgment concerning the proper value to be ascribed to taxable and nontaxable components of the ~~contract~~ property.

IN GENERAL

Article XIII, Section 2 of the California Constitution authorizes the Legislature to classify personal property for differential taxation or exemption by means of a statute approved by a 2/3 vote of the membership of each house.

Business Personal Property. Personal property used in a trade or business is generally taxable, and its cost must be reported annually to the assessor on a business property statement, as provided by Revenue and Taxation Code Section 441.

Personal property is not subject to the valuation limitations of Proposition 13. Personal property is valued each lien date at current fair market value. However, it is not administratively possible to individually determine the fair market value of every item of personal property used by all of the businesses in California every year. Consequently, mass appraisal techniques are necessary to complete the annual reassessment process.

Valuation Process. Generally, the valuation of personal property is based on the acquisition cost of the property. The acquisition cost is multiplied by a price index, an inflation trending factor based on the year of acquisition, to provide an estimate of its reproduction cost new. The reproduction cost new is then multiplied by a depreciation index, also called percent good tables, to provide an estimate of the depreciated reproduction cost of the property (reproduction cost new less depreciation). The reproduction cost new less depreciation value becomes the taxable value of the property for the fiscal year. For some types of property, the acquisition cost is multiplied by a valuation factor to provide an estimate of the taxable value of the property.

With respect to business personal property assessments, the BOE annually publishes Assessors' Handbook Section 581 "Equipment and Fixtures Index, Percent Good and Valuation Factors." This handbook contains several tables of equipment index factors, percent good, and valuation factors that aid in the mass appraisal of various types of personal property and fixtures as well as serve to promote statewide uniformity.

Computer and Related Equipment

Non-production computers and related equipment must be reported separately from other types of personal property on Business Property Statements. This equipment includes nonproduction computers (excluding computer operated machinery and equipment), monitors, printers, scanners, disk drives, and cables. These items have relatively short-lives, and are influenced by rapidly changing technology and user needs.

Production computers (computer operated machinery and equipment or computers embedded in machinery) are not reported, considered, or valued with non-production computer equipment on Schedule A, Columns 5a., *Personal Computers* and 5b. *Local Area Network (LAN) Equipment and Mainframes*. They are valued as other types of machinery and equipment specific to an industry, and are normally reported on Schedule A, Column 1, *Machinery and Equipment for Industry, Profession, or Trade*. When computerized equipment is encountered, a special study of the equipment and the industry it serves may be required to determine the appropriate valuation method.

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General Valuation. Valuation of non-production computers and related equipment has become increasingly difficult, yet important, due to rapid changes in technology and the changing needs of users. Because of typically shorter lives, rapid depreciation, and little salvage value in many circumstances, the BOE has provided a separate valuation table to aid the appraiser using the cost approach to value. The table segregates computers by original cost, and applies different factors based on past value trends and computer classification guidelines. As with most equipment, these factors are not appropriate for all computers. In some cases, other approaches to value will be more appropriate. Appraisal judgment is necessary to determine the appropriateness of applying the factors to specific computers and estimating the accuracy of the resulting value.

Storage Media for Computer Programs. Section 995 provides that storage media for computer programs are to be valued as if there were no computer programs on such media except basic operational programs. The basic rule is that computer programs shall not be included in the assessed value for purposes of property taxation. Section 995.2 defines the terms "basic operational program" and "processing program." Rule 152 explains how to properly determine the classification of computer software.

Basic Operational Programs. Basic operational programs are those programs that are "fundamental and necessary to the functioning of a computer." They are, according to Section 995.2:

. . . that part of an operating system including supervisors, monitors, executives and control or master programs that consist of the control program elements of that system.

A *basic operational program* is a control program, as defined in Section 995.2, that is included in the sale or lease price of the computer equipment. The assessable value of storage media containing basic operational programs includes the value of the storage media *and* the value of the program embedded on it. The basic operational programs in personal computers and mainframe computers are the basic input output system (BIOS) and licensed internal code (LIC or microcode).

Often, computer equipment is purchased or leased at a single price. When the price is not segregated, or not able to be segregated, between taxable and nontaxable property and programs, the total purchase price may be used as an indicator of taxable value. Pursuant to Rule 152(f), when an assessee can identify and segregate the costs (and supply information to support such separation) the value must be ascribed to taxable and nontaxable components.

The assessee is determined by the ownership and control of the storage media. The value of the storage media is assessable to "the person owning, claiming, possessing, or controlling the storage media on the lien date." (Property Tax Rule 152(c)) Storage media shall not be assessed to the owner of the copyright of the computer program embodied or stored on the media unless the owner of the copyright also owns, claims, possesses, or controls the storage media on the lien date. If the licensee of a basic operational program owns the storage media on which a program is stored, then the licensee is the assessee. If the storage media is leased, then the assessor has the option of making the assessment to the owner (lessor), the lessee, or to both according to Section 405(b).

Application or Processing Programs. A processing program is a program used to develop and implement the specific applications which the computer is to perform. It consists of:

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. . . language translators, including but not limited to, assemblers and compilers; service programs, including, but not limited to, data set utilities, sort/merge utilities, and emulators; data management systems, also known as generalized file processing software, and application programs including, but not limited to, payroll, inventory control, and production control. Also excluded from the term "basic operational program" are programs or parts of programs developed for or by a user if they were developed solely for the solution of an individual operational problem of the user. . . .(Section 995.2)

The processing program's operation is possible only through the facilities provided by the basic operational program (or control program). By itself, however, a processing program is not fundamental and necessary to the functioning of a computer.

Only the storage media for processing programs are assessable and they are valued as if there were no computer processing programs on them. This value is assessable to "the persons owning, claiming, possessing, or controlling on the lien date."

Property Tax Rule 152

Property Tax Rule 152 reads as follows:

(a) Computer programs shall not be valued for purposes of property taxation, except with respect to the valuation of storage media as provided in section 995 of the Revenue and Taxation Code. A licensor of a computer program who does not own, claim, possess or control the storage media on which the program is embodied or stored shall not be subject to assessment with respect to the value of the licensor's copyright interest in the computer program, or with respect to the value of the license fees charged for the use of the computer programs.

(b) Storage media for computer programs, as defined in section 995 of the Revenue and Taxation Code, shall be valued as if there were no computer program on such media except basic operational programs.

(c) In accordance with Revenue and Taxation Code Section 405, storage media for computer programs shall be assessed to the person owning, claiming, possessing or controlling the storage media on the lien date. Storage media shall not be assessed to the owner of the copyright in the computer program embodied or stored on the media if the owner of the copyright does not also own, claim, possess or control the storage media subject to assessment.

(d) The term "basic operational program" refers to a "control program," as defined in section 995.2 of the Revenue and Taxation Code, that is included in the sale or lease price of the computer equipment. A program is included in the sale or lease price of computer equipment if (i) the equipment and the program are sold or leased at a single price, or (ii) the purchase or lease documents set forth separate prices for the equipment and the program, but the program may not be accepted or rejected at the option of the customer.

(e) In valuing computer equipment that is sold or leased at a single price not segregated between taxable property and nontaxable programs as defined in section 995.2 of the Revenue and Taxation Code, the assessor, lacking evidence to the contrary, may regard the total amount charged as indicative of the value of the taxable tangible property.

(f) A person claiming that a single-price sale or lease includes charges for nontaxable programs and services should be required to identify the nontaxable property and services and supply sale prices, costs or other information that will enable the assessor to make an informed judgment concerning the proper value to be ascribed to taxable and nontaxable components of the contract.

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(g) When the nontaxable components of a package composed of computer hardware, basic operational programs and nontaxable programs and services may be accepted or rejected at the option of the customer and the charge for each is itemized, such itemization constitutes evidence of the value of the component. Prices charged, whether at the wholesale or the retail level, for hardware only or hardware and basic operational programs also constitute evidence of the value of such property that may be used in segregating values when taxable and nontaxable properties or services are covered by a single-price contract.

(h) Examples

(1) Example 1 (Personal Computers).

Included in the price of every IBM and IBM compatible personal computer and every Apple and every Apple compatible personal computer is a basic input output system (BIOS). BIOS is a copyrighted computer program that controls basic hardware operations, such as interactions with diskette drives, hard disk drives and the keyboard, and that facilitates the transfer of data and control instructions between the computer and peripherals. The operation of other computer programs, such as the various versions of Disk Operating Systems (DOS), Windows, OS/2, UNIX and similar programs, is possible only through the facilities provided by BIOS, but operational programs other than BIOS are not in themselves fundamental and necessary to the functioning of the computer.

(2) Example 2 (Mainframe Computers).

Included in the price of the IBM mainframe computers is a license to use IBM's Licensed Internal Code (LIC) on the computer. LIC is a set of copyrighted computer programs (commonly referred to in the computer industry as microcode) that include the programs that implement the basic functions of the mainframe computer and operate the control logic necessary to execute user instructions to the computer. Manufacturers of other computers likewise include in the price of their computers the microcode necessary to implement the basic functions of the computer. The operation of other computer programs is possible only through the facilities provided by microcode, but operational programs other than microcode are not in themselves fundamental and necessary to the functioning of the computer.

Presumptions

Presumptions. Property tax assessments, and some factual circumstances on which property tax assessments are based, carry certain legal presumptions determining the manner in which evidence is presented as well as the quantum of evidence that a party is required to present. Under the Evidence Code, a *presumption* is defined as:

... an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence. §600

A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof. §601

Both the presumption affecting the burden of producing evidence and the presumption affecting the burden of proof may be used in an appeals hearing. Evidence Code Section 606 provides that the effect of a presumption affecting the burden of proof is to impose upon the party against whom it operates the burden of proving the nonexistence of the presumed fact. Depending upon the matter in issue, a presumption may operate against either the assessor or the applicant.

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An appeals board must apply an applicable presumption as the starting point for determination as to which party has the burden of the production of evidence. The appeals board then proceeds with examination of the evidence to determine whether the evidence is sufficient to rebut the presumption and to establish a different value for the protested property. If the presumption operates against the applicant and the applicant fails to present evidence sufficient to rebut the correctness of the assessed value, at the request of the assessor, the appeals board will dismiss the case without requiring the assessor to provide evidence substantiating the assessed value. If the appeals board determines the applicant has presented evidence sufficient to make a prima facie case, the burden shifts to the assessor to present evidence to support his or her opinion of value. (See *Fujitsu Microelectronics, Inc. v Assessment Appeals Board* (1997) 55 Cal.App.4th 1120.) However, if the presumption operates against the assessor and the assessor fails to present evidence sufficient to rebut the presumption, the appeals board should rule in favor of the applicant providing that there is substantial evidence in the record to support the applicant's value.

Presumption of Correctness. The property tax system is based on the assumption that county assessors properly perform their assessment duties in accordance with the law and other applicable standards. Evidence Code Section 664 provides that "it is presumed that official duty has been regularly performed." With regard to assessments, courts have held that "[I]n the absence of evidence to the contrary, it will be presumed that an assessor has regularly and correctly assessed property." *E.E. McCalla Co. v. Sleeper* (1930) 105 Cal.App. 562

The presumption of correctness operates against the applicant and the applicant may overcome it by presenting substantial, competent evidence different than the assessor's sufficient to make material the inquiry as to whether the assessor's methods were proper. *Campbell Chain Co. v. County of Alameda* (1970) 12 Cal. App.3d 248

Property Rule 321 relates to the burden of proof during an appeals hearing and provides, in part:

(a) Subject to exceptions set by law, it is presumed that the assessor has properly performed his or her duties. The effect of this presumption is to impose upon the applicant the burden of proving that the value on the assessment roll is not correct, or, where applicable, the property in question has not been otherwise correctly assessed. The law requires that the applicant present independent evidence relevant to the full value of the property or other issue presented by the application.

Where the assessor holds the presumption of correctness, the appeals board then proceeds with examination of the evidence to determine whether the applicant's evidence is sufficient to establish an opinion of value and that the evidence demonstrates that the assessor did not establish a correct assessment.

Exceptions. For assessment appeals hearings, there are five instances when the burden of proof shifts to the county assessor; that is, the county assessor must affirmatively establish by a preponderance of evidence the correctness of his or her opinion of value or other assessment action. Those instances are appeals involving:

- The value of owner-occupied single-family dwellings;
- Penalty assessments;
- Escape assessments;
- Nonenrollment of a purchase price; and

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- When the county assessor intends to request a higher assessed value than is on the roll.

Evidence Standards

Evidence Code Section 115 defines *burden of proof* as "the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court." The party with the burden of proof is required to establish the existence or nonexistence of a fact by producing evidence that satisfies a required standard.

Preponderance of Evidence Standard. Unless otherwise provided by law, the required standard of proof in California is proof by a preponderance of the evidence. This standard also generally applies to assessment appeal proceedings. Thus, with respect to the assessor's presumption of correctness and its exceptions, the party with the burden must prove his or her case by a preponderance of the evidence. A *preponderance of evidence* is usually defined "in terms of probability of truth" and as evidence which, when weighed against evidence offered in opposition to it, "has more convincing force and the greater probability of truth."

Clear and Convincing Evidence Standard. There are certain legal presumptions applicable in property tax assessment matters in which the required standard of proof is that of *clear and convincing* proof. The clear and convincing standard is a higher standard than preponderance of the evidence and has been held to require evidence "so clear as to leave no substantial doubt." In other words, a preponderance calls for a probability while "clear and convincing" proof demands a high probability.

Examples of situations in property taxation where the clear and convincing standard apply are:

- Evidence that a clerical or other error occurred that requires correction more than four years after the year of the enrollment. §51.5(e)
- Proof that an electronic transmittal of a tax payment was made on a specific date and time. §2512
- In the valuation of possessory interests, if the assessor uses a term of possession other than the stated term of possession in a contract. *Property Tax Rule 21(d)*
- The owner of the legal title is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof. *Evidence Code Section 662*

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the California Assessors' Association (CAA) to establish a burden of proof standard of clear and convincing evidence for taxpayers seeking a reduction of assessed values on equipment that was sold or leased in a single price sale on the basis that the single price sale included nontaxable computer software (i.e., bundled software.).
2. **The May 26 amendments** recasts its provisions and specifies that the taxpayer is to specify a recognized State Board of Equalization valuation approach, technique, or method to aid the assessor when claiming a deduction for nontaxable components of a single price sale.
3. **Issue.** According to the sponsor, the Court of Appeals decision in *Cardinal Health 301 Inc., v. County of Orange* (2008) 167 Cal. App. 4th 219 has caused an increase in assessment appeals surrounding the issues of basic operating software and bundled or embedded software. There is concern that there will be an increased administrative burden on business personal property assessments for any equipment containing software or a computer chip. Most modern machinery and equipment is primarily sold with both (1) basic operating software and (2) bundled or embedded computer software. This is an emerging issue that will likely be fraught with contention as these particular assessments move from a factual determination, the price paid, to a more grey area. Assessors note that determining the value of modern machinery and equipment to the extent that bundled software exists will be increasingly difficult. To make an informed judgment as to the deduction from a sales price to be made as required by the *Cardinal Health* decision, the CAA proposes that a request for the exclusion of the value of bundled software must be based on the information provided to the assessor from the taxpayer and that the evidence presented should be clear and convincing.
4. **Related Court Cases.** Assessors have lost two court cases related to the taxation of computer programs. The first case related to the assessment of basic operational software: *Hahn, et al. v. State Board of Equalization* (1999) 73 Cal. App. 4th 985. Assessors challenged amendments the BOE made in 1996 to Property Tax Rule 152 to clarify the term "basic operational program" used in Sections 995 and 995.2. In that case, the court upheld the 1996 amendments to Rule 152. *Cardinal Health*, the second case, related to the subject of this bill and to the assessment of application software in bundled single price transactions. The court held that the "bundling" by itself is not dispositive of whether computer software included in a bundled package was taxable. It stated that a taxpayer is allowed to demonstrate that a portion of the value of a computer represents nontaxable computer software despite the fact that it came bundled inside the computer when the customer bought or leased it. Previously, some assessors had treated software as taxable if it was bundled in the sales price of the machinery and equipment. The decision in *Cardinal Health* found that this was not proper.
5. **MedStations: Automated Medicine Dispensing and Computerized Tracking System Leased to Hospitals.** The taxable business personal property at issue in the *Cardinal Health* appellate court decision was the Pyxis MedStation 2000 leased to hospitals by Cardinal Health 301 Inc., a Delaware corporation (Cardinal Health 301) with its principal place of business in California. The system is a series of standup medicine storage cabinets, each called a "MedStation" with a built in computer. The Orange County Assessor's Office audited Cardinal Health 301 and

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issued escape assessments for the equipment it owned and leased to hospitals (the MedStations). Cardinal Health 301 appealed the escape assessments. In valuing the leased equipment, the assessor used the cost of the MedStation units as the basis for valuing each unit, with no deduction or offset for software “embedded” or “bundled” in the unit. The assessor’s position was that the fact of “embedding” or “bundling” of the software in the equipment was dispositive and made the otherwise nontaxable computer software taxable. Cardinal Health 301 contended that about 90% of the value for each MedStation Unit was for nontaxable computer software. The court ruled against the assessor and remanded the issue back to the assessment appeals board.

6. **The Revenue and Taxation Code is silent on the issue of “bundled” or “embedded” software.** Section 995 refers to hard drives or programmable memory (“storage media for computer programs”) on which computer programs may be “embodied.” Property Tax Rule 152, while not using the terms “bundled” or “embedded” software, uses language referring to “single prices,” “single-price sales,” “single-price contracts,” “taxable and nontaxable components of contracts,” and “components of a package.”
7. **As noted in the *Cardinal Health* decision, Property Tax Rule 152(e) creates a de facto presumption that the assessor can base the property tax assessment of equipment sold with bundled software on the total sales price unless the assessor has “evidence to the contrary.”** Property Tax Rule 152(f) places the burden on the taxpayer to “identify” what it is “nontaxable” so that the assessor can “make an informed judgment” as to the “taxable and nontaxable components.” This bill moves the de facto presumption and the burden on the taxpayer to overcome that presumption into the Revenue and Taxation Code. It also increases the burden on the taxpayer to present such evidence to the trier of fact (the assessor, appeals board, or court depending on where in the assessment process the issue is being claimed) to the higher evidentiary standard of “clear and convincing.”
8. **Standard of Proof.** Unless otherwise provided by law, the required standard of proof in California is proof by a preponderance of the evidence. The clear and convincing standard is a higher standard than preponderance of the evidence and has been held to require evidence “so clear as to leave no substantial doubt.” In other words, a preponderance calls for probability while “clear and convincing” proof demands a high probability. [Note that in the Cardinal Health 301 assessment appeal at the local appeals board, the assessor had the burden of proof since it related to an *escape* assessment. Thus, in the case of an escape assessment appeal, in addition to establishing a higher evidentiary standard of clear and convincing evidence, this bill would transfer the burden of proof from the assessor to the taxpayer.]
9. **Assessors note that the provisions in the Revenue and Taxation were drafted nearly 40 years ago.** The statutes have not addressed the progression of technology. Nor have they recognized the migration of computers into virtually every piece of equipment and machinery. The CAA states that this migration is creating a practical administration problem to efficiently and cost-effectively assess such property in the mass appraisal construct system within which the California property tax system necessarily operates. For that reason, it is proposing the clear and convincing evidence standard, so that required deductions for claims of nontaxable

property can be quickly and efficiently processed based on the taxpayer provided information.

10. Mass appraisal techniques must be used in valuing business personal property. The law requires the annual taxation of business personal property at its current market value. Thus, the assessment of business personal property for tax purposes is by necessity a mass appraisal system. Generally, the foundation of this mass appraisal system is based on the acquisition cost. For instance, it is noted that with respect to the vehicle license fee (VLF) imposed on automobiles, there is no requirement to deduct the value of the various computer programs that operate the automobile from the total sales price. Rather, the VLF is imposed based upon the total sales price.

11. This bill is applicable to state assessed property as well as locally assessed property. The provisions of Property Tax Rule 152 and Revenue and Taxation Code Sections 995, 995.2, and proposed 995.3 equally apply to the valuation of property subject to assessment by the BOE.

12. Assessment appeals applications have been filed in multiple counties citing the *Cardinal Health* decision. The sponsor reports that in one county, for instance, a major manufacturer of technology equipment, with over \$250 million in personal property, has filed an appeal requesting a reduction in their assessed values. In the coming months, assessors expect businesses to file annual business property statements with substantial reductions to reflect non-taxable “application” software in line with the *Cardinal Health* decision.

13. Should a separate code section be created for provisions related to application software? While all three subdivisions of Section 995.3 refer to “single price” sales, subdivision (a) of Section 995.3 is limited to basic operational computer programs. To minimize confusion, it might be helpful to move subdivisions (b) and (c) into a separate code section.

COST ESTIMATE

The BOE would incur some absorbable costs in informing and advising county assessors, the public, and staff of the change in law.

REVENUE ESTIMATE

This measure has no direct impact on revenue. It does raise the standard of proof that a taxpayer would have to present to claim that a single price included charges for nontaxable programs and services. Should the taxpayer not have clear and convincing evidence to support that claim and/or be unable to provide information to assist the assessor in making an informed judgment about the value to ascribe to taxable and nontaxable property, it is possible that the assessor would regard the total amount charged as indicative of the value of taxable tangible property.

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