



80<sup>th</sup> Annual International Conference on Assessment Administration  
**The Gold Standard for 80 Years**  
August 24–27 ♦ Sacramento, California



A nighttime photograph of the San Francisco skyline, featuring several illuminated skyscrapers and the Bay Bridge with its two prominent towers. The city lights are reflected in the water of the bay. The text is overlaid on the top half of the image.

# ASSESSING HIGH TECHNOLOGY EQUIPMENT... AND THE SOFTWARE INSIDE?

PRESENTATION BY  
CALIFORNIA BOARD OF EQUALIZATION  
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# **ONLY BUNDLED, BASIC OPERATIONAL SOFTWARE IS TAXABLE**

- **1972 statute clarifies software exemption, excluding basic operational software, which is assessable.**
- **The statute did not clearly address software embedded in modern machines, with computer programs now performing previously mechanical functions.**
- **Board of Equalization (BOE) clarified the scope of taxable software in 1996 as bundled programs included in the sale or lease price of computer equipment.**
- **BOE's clarification was upheld by the Court of Appeal in *Hahn v. SBOE* [1999] 73 Cal. App. 4<sup>th</sup> 985.**

# **BOE PROPERTY TAX RULES: BUNDLED SOFTWARE IS PRESUMED TAXABLE**

- **In 1974, BOE adopted Property Tax Rule 152 to implement the 1972 statute.**
- **Rule 152 creates a presumption that bundled software is assessable with taxable personal property, unless the taxpayer submits data enabling the assessor to judge the value of the nontaxable software.**
- **The rule burdens the taxpayer with providing necessary data.**
- **However, county assessors and local assessment appeal boards must determine whether the data is sufficiently reliable to exclude the value.**

# **SOFTWARE BUNDLED WITH ASSESSABLE PERSONAL PROPERTY IS NOT NECESSARILY TAXABLE**

- **In 2008, the Court of Appeal clarified that mere bundling does not mean the value of nontaxable software is not severable from the value of the equipment.**
- **In the case of *Cardinal Health 301, Inc. v. County of Orange* [2008] 167 Cal. App. 4th 219, the court found the county assessor wrong in assessing certain medical equipment at its total cost and remanded the case to examine data submitted by the plaintiff hospital.**
- **The *Cardinal Health* decision did not address what types of data taxpayers would need to submit.**

# **EXPERIENCE VARIES AMONG COUNTIES BUT DATA NEEDS ARE CONSISTENT**

**In April of this year, BOE staff sent a questionnaire to 48 of 58 county assessors seeking information regarding embedded software assessments:**

- 20 of 48 counties made adjustments to remove nontaxable software from assessable values in response to taxpayer-submitted data.**
- 18 of 48 counties made no adjustments because no requests were submitted.**
- 10 of 48 counties declined requests for adjustment because the submitted evidence was deemed insufficient.**

# APPEALS ARE INCREASING BUT CONCENTRATED AMONG SPECIFIC FACTS AND TAXPAYERS

- Most of the appeals seemed to be focused on medical devices and television provider equipment.
- Growth of assessment appeals in recent years:
  - 2007-08: 53 appeals filed as reported by 12 counties
  - 2008-09: 141 appeals filed as reported by 13 counties
  - 2009-10: 105 appeals filed as reported by 11 counties
  - 2010-11: 236 appeals filed as reported by 12 counties
  - 2011-12: 192 appeals filed as reported by 15 counties
  - 2012-13: 285 appeals filed as reported by 15 counties
- While the number of appeals increased dramatically, many filings represent multiple appeals filed by the same taxpayer on the same issues.

# STATES VARY IN SOFTWARE TREATMENT FOR PROPERTY TAX

- **BOE Staff surveyed the other 49 states regarding software and property taxation. Twenty states responded:**
  - Five states only tax basic operational software as does California (AZ, CO, KS, NE, TX)
  - Five states only tax “canned” (pre-written) software (ID, MT, NC, OK, WA)
  - One state only taxes custom software (WI)
  - One state only assesses embedded software (FL)
  - One state assesses all software for property tax purposes (NV)
  - Six states do not assess personal property tax generally (AK, IA, HI, NY, OH, SD)
- **None of the “California-like” states reported a method to adjust for nontaxable software bundled with other taxable property.**

# **CURRENT STATUS OF EMBEDDED SOFTWARE AT BOE**

- **Two staff reports submitted for Board discussion this year on January 16, 2014 and May 22, 2014.**
- **On April 4, 2014, the BOE issued Letter to Assessors (LTA) No. 2014/018, explaining methods BOE uses to Evaluate Embedded Software Studies for State Assessed Properties.**
- **BOE continues to accept proposals for data and methods to value nontaxable embedded software.**
  - Framework needs to rely on verifiable data.
  - Focus only on specific industries?
- **Should the Legislature revisit the issue?**



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**QUESTIONS?**

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