



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



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Housekeeping Note:
Please silence your electronic devices.



Assessing High Technology Equipment ...and the Software Inside

Presenter:

Lawrence E. Stone

Santa Clara County Assessor

Embedded Software – “It’s a Silicon Valley Thing”



From orchards to
HP, Intel, Apple...
Netscape, AOL,
Google, Intel,
Adobe, e-Bay –

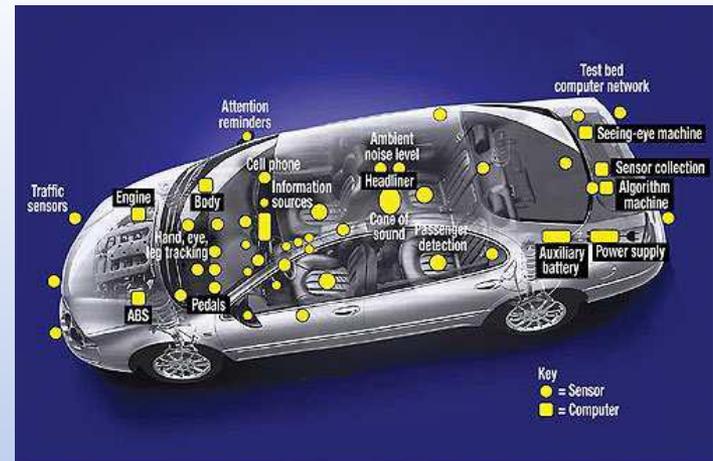


—all headquartered in Silicon Valley

Embedded Software – *Where Isn't It? (It's Everywhere!)*



Embedded Software – *What Does It Do?*



Automation of Cars- Embedded Systems Seminar For Electronics Students.

- Over 50 chips in most automobiles
- NY Times stated back in 2010 a Toyota had 100 million lines of computer code
- Chips manage not just cruise control and windshield wipers, but the very systems that control the right amount of fuel going to your engine

In Farm Counties Combines Are Outfitted with GPS, Lasers, and Other Specialized Computers



A 2013 USDA report states “many farmers use technology dedicated to specific tasks such as monitoring and adjusting climate and feed

systems in livestock and poultry barns, or linking a satellite with GPS-guided equipment in the field.”



Not Just a Silicon Valley Thing



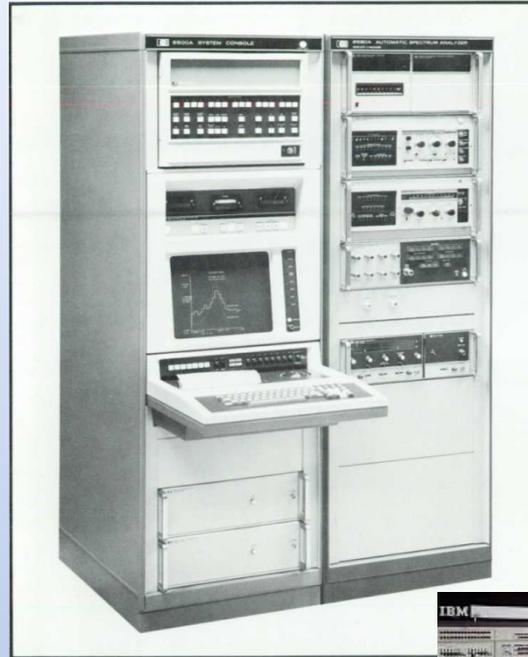
In your county, every hospital is outfitted with equipment worth hundreds of millions of dollars



1972 Assessment Laws vs. Today's Technology

Back to the Future

The fundamental problem in California is that assessors are required to interpret a 1972 law written in the era of punch cards and computer rooms as large as this one. A law that still references antiquated terms such as “punched cards, tapes, discs or drums.” It’s hard to believe, yet that is all we have as a guide for assessing billions of dollars in high-tech machinery, equipment, and computers.



1972 Assessment Laws vs. Today's Technology

Back to the Future

“Software” – a fledgling industry
in 1972

Is it operational, or application?

Example: “Windows” is operational –
“Excel” is application



Discovery is a serious challenge for assessors. In California, the burden is on the taxpayer to provide the cost or sales price data for “application” software that taxpayers wish to have excluded from the assessment. In the absence of reliable evidence, the entire cost is assessable.



“Where a computer or other item of equipment is bundled together with application software for purchase at a single price, Rule 152 allows the county assessor, lacking evidence to the contrary, to simply value the taxable tangible property at its acquisition cost.

Specifically, if the taxpayer can 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 [purchase] contract, then the county assessor must exclude the value of the nontaxable software from the value of the equipment.”

Industry Provides Sub-par Evidence

- Some in industry say Assessors demand standard of evidence impossible to provide.
- Assessors argue that State Constitution does not permit enrolling values without solid evidence - burden is on taxpayer to provide evidence.
- Not just me and staff setting bar too high. Santa Clara County has 3 assessment appeals boards. Separate cases have been heard by the three boards. In each case the taxpayer failed to provide sufficient evidence to satisfy taxpayer's burden of proof. Examples follow:

SANTA CLARA COUNTY ASSESSMENT APPEALS

Hitachi Global System Technologies

(DISK DRIVE MANUFACTURER)

Hitachi asked for 15% of virtually all machinery and equipment costs to be removed as an allowance for application software. In support of this claim, Applicant submitted 3 letters purported to be from equipment manufacturers.

Assessor's Response:

Assessor contacted the 3 equipment vendors. Two vendors stated equipment would not operate without the software. Third vendor disputed that the letter had been written by them.

SANTA CLARA COUNTY ASSESSMENT APPEALS
Hitachi Global System Technologies

Board's Decision:

Hitachi did not meet its burden of proof,
and did not submit any credible evidence
to support its claim.

SANTA CLARA COUNTY ASSESSMENT APPEALS

Infineon Technologies

(ELECTRONICS MANUFACTURER)

Infineon provided a few undated written quotes and nothing more than a spreadsheet summarizing verbal input from vendors - the majority of the equipment listed was acquired well after the lien dates at issue.

Board's Decision:

No credible evidence submitted to support the claim.

SANTA CLARA COUNTY ASSESSMENT APPEALS

Alliance Imaging

(MEDICAL IMAGING EQUIPMENT)

Alliance wanted the 30% removed from every piece of equipment, with one exception they did not provide actual invoices or cost data.

Assessor contacted person who signed the letter; he did not recall writing it. He also confirmed that the equipment would have no use without the basic software package.

SANTA CLARA COUNTY ASSESSMENT APPEALS

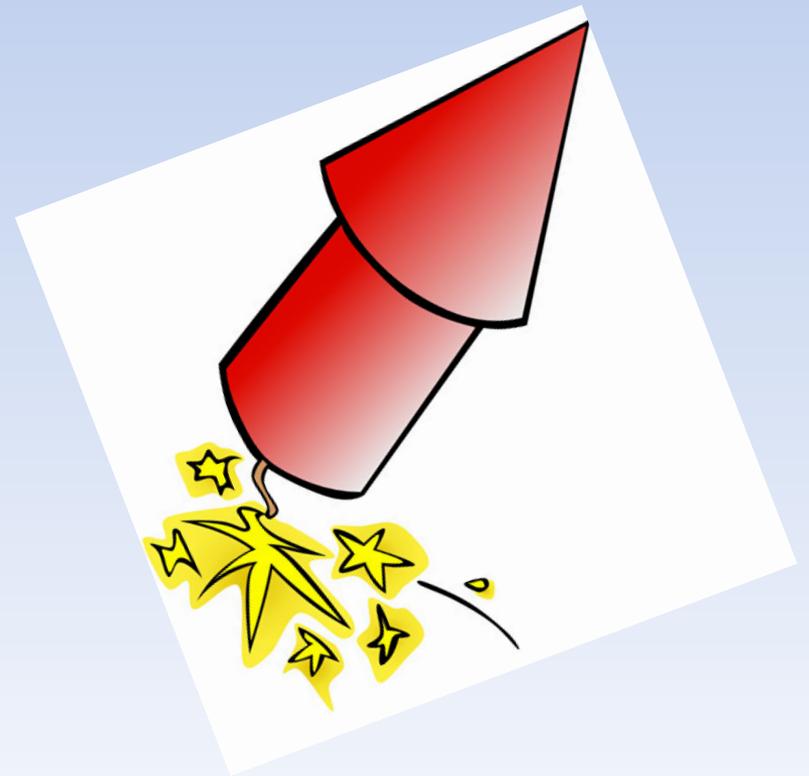
Alliance Imaging

Board's Decision:

Assessor's values were sustained.

High-tech Lobby

- California Assessors have so far been unsuccessful against the lobbying power of the high-tech industry.
- Assessment appeals have skyrocketed by 500 percent.



ACROSS-THE-BOARD REDUCTIONS: **NO EVIDENCE, UNSUBSTANTIATED STUDIES**

Cost of responding to appeals is high, especially for counties where embedded software is less prevalent.

To eliminate costly appeals, industry asked Assessors for across-the-board percentage reductions.

When Assessors asked for data to support reductions, as burden is squarely on the taxpayer to provide evidence, industry has claimed they have third-party studies to support reductions.

Despite these claims, Santa Clara County has received no study that could be used to justify an assessment reduction. This year, BOE staff concluded there are no usable studies. Here are excerpts from their report:

**REPORT ON
BUNDLED NONTAXABLE
SOFTWARE**

~Embedded Software~

Presented at the
January 16, 2014
Property Tax Committee Meeting

Compiled by
State Board of Equalization
Property and Special Taxes Department
County-Assessed Properties Division

“Many studies are not acceptable and provide inconclusive data.”

“No studies have been unconditionally accepted as submitted. Well-documented studies have provided a ‘starting point’ for analysis.”

“Some methodologies may be appropriate for one industry and inappropriate for another.”

“An acceptable study must be fact-driven...will be for a specific lien date and must be evaluated annually to determine applicability to subsequent lien dates. Rapidly changing technology may require frequent updates to the study.”

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Industry seems to want assessors to accept ambiguity. Assessors need certainty. The law doesn't allow assessors to accept the undocumented word of a taxpayer, nor apply arbitrary percentages to embedded software without credible documentation.

In Santa Clara County, companies that sell leading-edge information storage and retrieval equipment tell us they can't provide the information and data that does what they manufacture and sell to customers. That seems inconceivable.

If the tables were turned and the burden was on assessors, taxpayers would demand nothing less than absolute proof, and they would be entitled to it by law. They certainly would never agree to studies they could not validate.

Assessors are not revenue agents for local government. When they provide us the evidence, we provide the exclusion.



GOING FORWARD

CAA Ad-hoc Committee on Embedded Software

- California Assessors' Association created Ad-hoc Committee on Embedded Software to work with BOE toward uniformity in assessing equipment with software.
- Outcome of prior approaches has been more assessment appeals and less uniformity.
- Allowing courts to mediate the problem is untenable solution for taxpayers, assessors, and BOE.
- Courts have said twice, solution lies with State Legislature that created the problem in 1972.

GOING FORWARD

CAA Ad-hoc Committee on Embedded Software Helping the Legislature Understand

- CAA engaged software engineer experienced in embedded systems to perform technical, non-valuation analysis, to determine possibility of separating application software from operational software embedded in high-tech machinery and equipment.
- White paper now in draft form performed independently without involvement or influence by Assessors or industry.
- Paper to be presented to CAA and BOE, and suitable for publishing in professional journals.
- Comprehensive RFP issued to deans and academics at 35 prominent universities with programs directed toward issues related to embedded software and embedded systems.



The individual selected, Dr. Marilyn Wolf, is a Farmer Distinguished Chair in Embedded Computing Systems and Georgia Research Alliance Eminent Scholar at the Georgia Institute of Technology.

She holds bachelor's, master's, and doctorate degrees in electrical engineering from Stanford University. She has worked for AT&T's Bell Laboratories, served on the faculty at Princeton University for nearly 20 years, authored over 350 technical publications and textbooks; received the ASEE Terman Award and IEEE Circuits and Systems Society Education Award, and holds nine U. S. patents.

