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STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

Assessment Standards Division

450 N Street, MIC: 64, Sacramento, California
(P. O. Box 942879, Sacramento, CA 94279-0064)

Telephone: (916) 445-4982
FAX: (916) 323-8765

JOHAN KLEHS
First District, Hayward

DEAN F. ANDAL
Second District, Stockton

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Third District, San Diego

BRAD SHERMAN
Fourth District, Los Angeles

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E. L. SORENSEN, JR.
Executive Director

No. 96/29

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TO COUNTY ASSESSORS:

THE PROPER ASSESSEE OF COMPUTER PROGRAM STORAGE MEDIA

As provided in Revenue and Taxation Code section 995, storage media for computer programs are assessable and should be valued as if there were no computer programs on them, except basic operational programs. Otherwise, computer programs cannot be assessed for purposes of property taxation. In part, section 995 states:

“Storage media for computer programs shall be valued on the 1972 lien date and thereafter as if there were no computer program on such media except basic operational programs. Otherwise, computer programs shall not be valued for purpose of property taxation.”

Thus, in this context, it is the “storage media” that is “taxable property.” Considered by itself, a computer program, even a basic operational program, is expressly excluded from assessment per section 995. Although the owner/licensor of a computer program may retain legal title to the program, and receive payment for use of the program, it is not the program that is assessable under California law; only the storage media is assessable. Since only the storage media is assessable, the assessor can make an assessment only to the persons owning, claiming, possessing or controlling the storage media. Subsection (a) of section 405 of the Revenue and Taxation Code provides as follows:

“Annually, the assessor shall assess all the taxable property in his county, except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date.”

If the licensee of a basic operational program owns the storage media on which that program is stored, then the licensee is the proper assessee for the storage media and its value should include the value of any basic operational program contained on the storage media. Storage media shall not be assessed to the owner of the copyright in 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 storage media is leased, then the assessor has the option of making the assessment to the owner (lessor), the lessee, or to both the lessor and lessee of the storage media. This flexibility is provided to assessors in section 405(b) as follows:

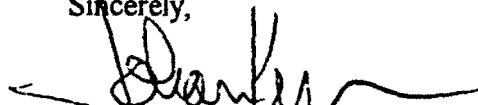
“The assessor may assess all taxable property in his county on the unsecured roll jointly to both the lessee and lessor of such property.”

Although the value of the storage media should include the value of any basic operational programs embedded on it, the proper assessee is determined only by the ownership and control of the storage media.

In summary, storage media for computer programs may be assessed only to the persons owning, claiming, possessing, or controlling the storage media. A person does not own, claim, possess, or control the storage media as a result of owning, claiming, or controlling the program that may be embodied or stored on the storage media. Accordingly, where the owner of the copyright in a computer program licenses another person to use the program, the storage media on which the program may be embodied or stored must be assessed to the person who owns the storage media, who may not necessarily be the person who owns the copyright in the program.

If you have any questions, please contact our Technical Services Section at (916) 445-4982.

Sincerely,



JOHAN KLEHS, Chair
Member, District One

JK:waj