



State Board of Equalization

News Release

Chairman Jerome E. Horton

4th District – Los Angeles

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Nortel Case Does Not Affect Sales Tax On Off-The-Shelf Software

Jerome Horton, Chairman of the State Board of Equalization, today announced that the Board authorized an amendment to make its current regulations consistent with a recent California Court of Appeal decision holding that sales tax does not apply to interests in patents and copyrights transferred with prewritten (or canned) software in a technology transfer agreement (TTA). The Board made the clarifying regulatory change at its Sacramento meeting this week.

The Board announced that the change does not affect the way sales tax is applied to the typical off-the-shelf retail sale of canned, mass-marketed software because the typical retailer does not hold any copyright or patent interests in the software. The change only clarifies that when the holder of copyrights or patents also sells that intellectual property to another in a technology transfer agreement that includes the transfer of software, the amount charged for the copyrights or patents is excluded from the application of sales tax.

“The courts have spoken and the message is clear, canned software is taxable and intellectual property is not,” Horton said. “With the help of the industry we will provide further guidance on how tax applies to sales of software.”

The California Court of Appeal in January 2011 filed an opinion in *Nortel Networks, Inc. v. State Board of Equalization* that expressly provides that:

“To the extent that regulation 1507, subdivision (a)(1) excludes from the definition of a TTA prewritten computer programs that are subject to a copyright or patent, the regulation exceeds the scope of the Board’s authority and does not effectuate the purpose of the TTA statutes: It is, for these reasons, invalid.”

On April 27, 2011, the California Supreme Court issued a notice denying the Board’s Petition for Review of the Court of Appeal’s opinion.

Elected in 2010, Chairman Jerome E. Horton is the Fourth District Member of the California State Board of Equalization, representing more than 8.5 million residents in Los Angeles County . He is also the Board of Equalization Legislative Committee chairman. He is the first to serve on the Board

of Equalization with over 21 years of experience with the Board of Equalization. Horton previously served as an Assembly Member of the California State Assembly from 2000-2006.

The five-member California State Board of Equalization is a publicly elected tax board. The Board of Equalization collects more than \$48 billion annually in taxes and fees supporting state and local government services. It hears business tax appeals, acts as the appellate body for franchise and personal income tax appeals, and serves a significant role in the assessment and administration of property taxes. For more information on other taxes and fees in California, visit www.taxes.ca.gov.

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