

## Trade Level Issues

Cristhian Tucker, Property Tax Consultant

There are some complex issues that pop up when dealing with property tax appeals. One issue that I have seen pop up more is that of trade level. The trade level theory says that the value of a piece of machinery increases as it passes through the various levels of production (Manufacturer, Wholesale, Retail, and Consumer). State board rule 10 further elaborates and says that "Except as provided by the following subdivisions, tangible personal property held by a consumer shall be valued at the amount of cash or its equivalent for which the property would transfer to a consumer of like property at the same trade level if exposed for sale on the open market."

For example, a copier manufacturer sells their equipment to the consumer, but also keeps a couple of copiers for their own use. In theory, the in-house copiers should be valued at the same price that it is sold to the consumer or user level. In practice, when you deal with human beings that make judgment calls coupled with the complexity of the R&T code, mistakes are to be expected.

Take the example of a Medical Equipment Supplier who recently hired our company to handle their appeals. When some of their equipment was returned because they were defective, they were required by a quirky law to keep that equipment in their facilities for a certain amount of time and were prohibited from reselling it. The Assessor's Office valued the equipment on the books at the consumer level. The problems with doing this are obvious. 1.) How can something that was originally thought of as inventory, be considered personal property? 2.) Even at the consumer level, what is the value of defective equipment and 3.) If outside forces restrict the sale of such equipment, shouldn't the value be put at scrap value?

Another great example on how the trade level assumption can be open to interpretation is that of a plastic container manufacturer. The Assessor's Office decided to provide an arbitrary value on self constructed molds used to create food containers. Due to the specific nature of the use of the molds, the value that other companies would place on them would be minimal. Furthermore, no data existed on what a manufacturer of molds would charge the company to produce a similar product. It is very much possible that the production costs of producing those molds internally exceed those of having a secondary party produce the same product and therefore the Assessor's Office, without adequate market data to support their reasoning, unjustly made a trade level adjustment to the value of those molds.

As always the answer to dealing with complex issues of this nature may lie in the hiring of a professional consultant or agent that deal with these matters on an day in day out basis.



# INTEREST, AS A PENALTY?

Kris Chacko Esq. Senior Tax Consultant

Recently, a taxpayer had an incident where a Northern California County Assessor audited their books and records for a mandatory 4 year audit. During this audit it was revealed that the taxpayer had properly reported certain leased equipment on Part III of the Business Property statement, but due to oversight on the part of the Assessor, the property went unassessed for a number of years. Through their audit, the Assessor corrected this oversight which was proper and within the scope of the audit. Generally the Assessor will notate in the audit whether interest should be added. In prior years, the Assessor would notate that interest not be charged as the escape assessment was the result of his own error.



Under Revenue and Taxation Code (R&T) taxpayers are entitled to interest whenever money is owed to the taxpayer. R&T §5151 (a) states that "Interest at the greater of 3 percent per annum or the county pool apportioned rate shall be paid, when that interest is ten dollars (\$10) or more, on any amount refunded under Section 5096.7, or refunded to a taxpayer for any reason whatsoever". The County pool apportioned rate is generally less than 3%.

However when interest is owed to the County, the interest is far higher. Generally speaking the interest rate for escape assessment is at or around 9%. In our client's case this inherent unfairness was brought to the attention of the Assessor. The Assessor's staff kept insisting that the reporting was erroneous. When they were confronted with their own instructions, the Assessor relented cancelling the bill and reissuing it without interest. Contrary to what you might hear, it is worth noting, that neither the Assessor nor the Assessment Appeals Board has any jurisdiction to reduce the amount of interest owed. As a result filing appeals will have no bearing on the interest charged.



It is fairly common for the Assessor's Office to miss the assessment of leases. However when a taxpayer is charged such exorbitant interest as a result of the Assessor's own error, such an assessment now becomes a penalty and a source of generating additional revenue for the County. It is therefore prudent for taxpayers to be knowledgeable and vigilant and follow up with the Assessor's Office when leases are not assessed either directly or indirectly through the lessor.

---

## ***Take a firm (clean) hand against disease***



It's a good time to remind people that the best way to cut down on disease is by washing your hands thoroughly throughout the day. Remember these important principles of "hand awareness," from the Henry the Hand website:

- Wash your hands when they're dirty, and always before eating.
- Don't cough or sneeze into your hands.
- Don't put your fingers in your eyes, nose, or mouth.

# Quotes

**In our work and in our living, we must recognize that difference is a reason for celebration and growth, rather than a reason for destruction.**

—Audre Lorde

**A vigorous five-mile walk will do more good for an unhappy but otherwise healthy adult than all the medicine and psychology in the world.**

—Paul Dudley White

**I made a commitment to completely cut out drinking and anything that might hamper me from getting my mind and body together. And the floodgates of goodness have opened upon me—spiritually and financially.**

—Denzel Washington

**The most important single ingredient in the formula of success is knowing how to get along with people.**

—Theodore Roosevelt

**Carry out a random act of kindness, with no expectation of reward, safe in the knowledge that one day someone might do the same for you.**

—Princess Diana

**Never mistake a clear view for a short distance.**

—Paul Saffo

**It has long been an axiom of mine that the little things are infinitely the most important.**

—Sir Arthur Conan Doyle

## Property Tax Update

### Appeal Filing Information

Linda Offringa, Director-Tax Compliance

Property tax is one of those unforgiving taxes in that the statute for the filing of appeals is absolute. In California, the State mandates when applications for appeal can be filed and there is no mercy on those who fail to meet those deadlines. The deadline to file an appeal on an annual tax bill in California varies from county to county. The filing period runs between July 2 and is no later than November 30. A few counties still utilize the former September 15th deadline. A list of these counties includes : Alameda, Inyo, Kings, Orange, Placer San Francisco, San Louis Obispo, Santa Clara, Sierra, and Ventura.

These deadlines do not apply to tax bills issued outside of the annual tax bill calendar. Supplemental taxes on new construction, a change of ownership, corrections to annual tax bills, or escape bills issued as a result of personal property audit can be issued at any time in the year. The deadline to file an appeal on these bills is 60 days from the date the bill was issued or the date the notice of escape was mailed. This too varies from county to county. On the personal property escape bills, the company has a second opportunity to file an appeal on the original assessment as well as on any audit escape at this time.

In addition, more and more counties are now charging a processing fee to file an application. This fee varies for each county from \$0 to \$60. For the Assessor, this understandably reduces their workload by drastically reducing the number of frivolous appeals. However, if the appeal is filed due to an error on the Assessor's part should an application fee be charged? To date, very few counties will refund the application fee if it can be proven that the assessment was due to a county error.

Although the rules may vary from county to county, keep in mind that each county takes their appeal process seriously. An appeal filed a day late is not a valid appeal.

## CALIFORNIA "SPLIT-ROLL"UPDATES

Sean P. Keegan, EVP & Principal

The "Split-Roll" proposals are surfacing this fall but require the proponents to follow certain filing requirements. The latest proposal was filed in late 2011. The title of the measure is titled "Protect Homeowners and Close Corporate Tax Loopholes Act". This initiative is labeled 11-0087 and is available on the CA Attorney General's Website or we can provide a copy to you.

This initiative is a concern since it is focused on the assessment of commercial property and it being assessed at fair market value. It outlines to "provide for periodic reassessment of non-residential, non-agricultural real property to market value" (CalTax E-Alert, 11/30/11, Teresa Casazza, President). It has placed a couple of items to encourage voters to think about this initiative (e.g. Homeowners Exemption increasing to \$14,000 from \$7,000 in value, Renter's Credit increasing-California has one of the nation's highest percentage of renters, and Personal Property Assessments would have the first \$1 million in value excluded). It should be noted that the California Assessor's Office (CAA) has not issued a position statement on this initiative.

The "Split-Roll" proposals have received substantial opposition from the business community. This state-wide revaluation would appear to place both a substantial workload and payroll expense on the County Assessor's Office(s) to administer what is proposed in these initiatives. The "Split-Roll" proposals would require the 2/3rds or "Supermajority" vote to pass. For 2012/2013 property tax planning and up to date information pertaining to these topics, we encourage you to view these websites.

California State Board of Equalization: <http://www.boe.ca.gov/>  
California Taxpayer Assn. (CalTax): <http://caltax.org>; and specific site:  
<http://www.caltax.org/SplitRoll.htm>  
Howard Jarvis Taxpayers Assn: <http://www.hjta.org/>

If we can be of assistance, please do not hesitate to contact me or visit our website (<http://www.property-taxes.com/RETD/>) (<http://www.property-taxes.com>).

# TOOTING OUR HORN!

Although this is an informational newsletter, we would like to take the opportunity to brag about a sampling of our successes, from various industries, in the last quarter. These are a few examples of the refunds that our clients have received from the county, due to our work.

### Personal Property

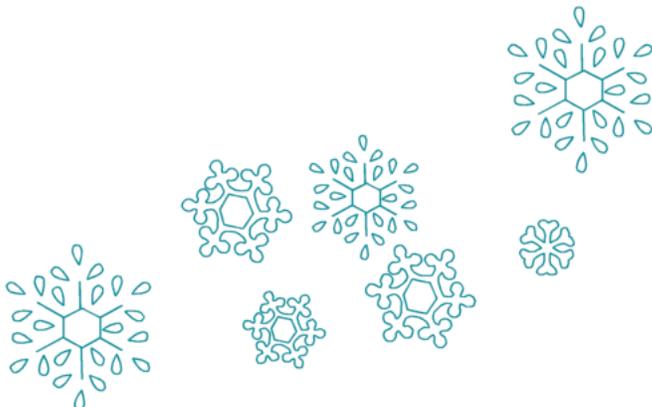
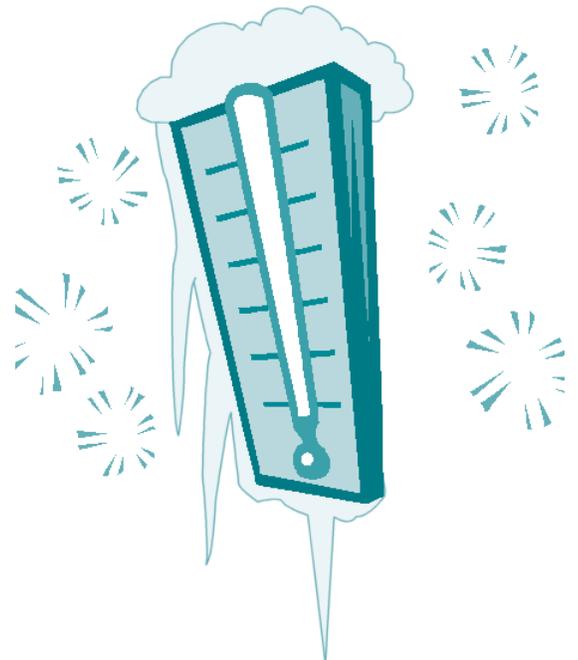
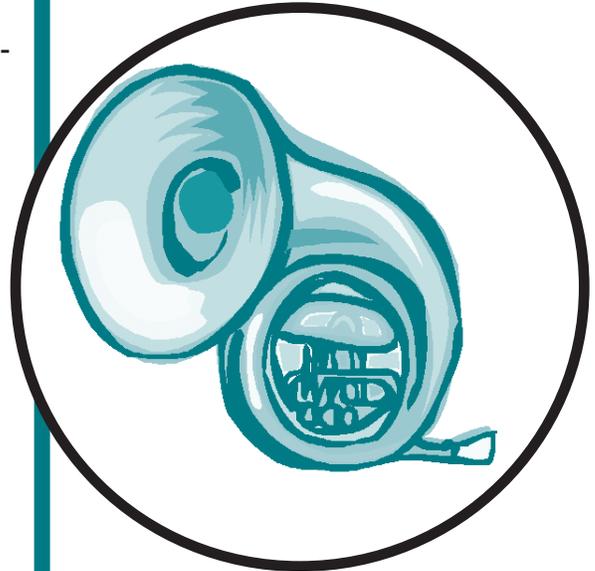
<i>Aircraft Components Manf</i>	\$50,629.
<i>Building Products</i>	\$83,632.
<i>Cement Plant</i>	\$34,650.
<i>Commercial Constuction</i>	\$105,093.
<i>Commercial Printing</i>	\$197,485.
<i>Dairy</i>	\$145,582.
<i>Display Advertising</i>	\$51,095.
<i>Food Manufacturing</i>	\$147,985.
<i>Moton Picture Production</i>	\$58,338.
<i>Paperboard Manf.</i>	\$48,955.
<i>Pharmaceutical Manf.</i>	\$29,356.
<i>Primary Metals Manufacturing</i>	\$29,672.
<i>Recreational Vehicle Parks</i>	\$119,772.
<i>Television Broadcasting</i>	\$180,199.

### Real Property

<i>Multifamily Property (3 Properties) - No. Calif.</i>	- \$248,144
<i>Retail Property - No. Calif.</i>	- \$21,079
<i>Storage Property (2 Properties) - Orange County</i>	- \$34,386
<i>Industrial Property (3 Properties) - LA County</i>	- \$53,974
<i>Multifamily Property - LA County</i>	- \$83,204
<i>Industrial Property - Orange County</i>	- \$28,285
<i>Multifamily Property - So. Calif.</i>	- \$171,753
<i>Single Family Res. (2 Properties) - LA County</i>	- \$33,869
<i>Retail Property (4 Properties) - So. Calif.</i>	- \$62,285
<i>Industrial Property - San Joaquin County</i>	- \$29,540
<i>Office Property (3 Properties) - So. Calif.</i>	- \$74,294
<i>Multifamily Property - SD County</i>	- \$492,675
<i>Industrial Property - Napa County</i>	- \$27,275

### Out of State

<i>Hotel Property -Texas</i>	- \$16,687
<i>Hotel Property - Georgia</i>	- \$20,318



# Assessment of Embedded Software

Adrian Romero, Tax Consultant

On October 19th 2011, the California Assessors' Association held its 109th annual meeting between the State Board of Equalization and county assessors. Among the issues discussed pertaining to property taxation was the issue of embedded software.

In 1972, the legislature enacted Revenue and Taxation Code section 995, which provides that computer programs (i.e., computer software) are exempt from property taxation. Furthermore, R&T Code section 995.2 explains that only computer programs "fundamental and necessary to the functioning of a computer" are taxable. These are commonly referred to as the basic input output systems or BIOS. Any other software is considered "application" or "processing" and is exempt for property taxation.

CalTax Chief Tax Consultant David R. Doerr, who helped draft the 1972 law, testified at the meeting that the original legislation was written to specifically exempt embedded software because it constitutes an intangible good/property. Mr. Doerr said the principle of exempting intangibles should be upheld.

The complexity of this legislation has significantly progressed overtime. At the time of its enactment, it was unforeseen that software would be present in not only computers, but also common in many types of machinery and equipment spanning countless industries including medicine, airlines, manufacturing, shipping, agricultural, and numerous others.

When a computer or other equipment is bundled together with application software for purchase at a single price, Rule 152 Section 18 of the California Code of Regulations allows the county assessor, lacking evidence to the contrary, to simply value the taxable tangible property at its acquisition cost. This puts the burden of proof on the taxpayer to segregate out any exempt software that may be embedded in the purchase price.

Joseph Vinatieri, a property tax attorney, explained that it is difficult for taxpayers to provide an exact valuation of embedded software, because purchase invoices do not separately itemize software from hardware equipment. To provide a fair and reasonable valuation, businesses have relied on the purchase price of similar stand-alone software as the basis. Mr. Vinatieri suggested that the BOE amend Rule 152 to establish percentages of presumed exemptions for different categories of equipment.

California Court of Appeal, Cardinal Health 301, Inc. v County of Orange, addressed this issue of exempt application software. The Court of appeal held that the value of the application or processing software should not be included in the taxable value of machinery and equipment IF the taxpayer can provide information which segregates the values of these non-taxable components, allowing the assessor to make an informed judgment.

Given that much of today's modern machinery is controlled by an abundance of software, it would be valuable for taxpayers to investigate how much exempt software lies within their equipment. Although this task might be quite troublesome, it can lead to drastic reductions in your business's property tax liability.

## DON'T TALK TO THE PARROT

SHEILA'S DISHWASHER QUIT WORKING. IT WAS STILL UNDER WARRANTY, SO THE COMPANY SENT A REPAIRMAN NAMED OSCAR TO FIX IT. OSCAR SHOWED UP THE NEXT MORNING JUST AS SHEILA WAS GETTING READY FOR WORK.

"OK," SHEILA SAID. "THERE'S THE DISHWASHER. I HAVE A DOG NAMED SPIKE, BUT HE WON'T BOTHER YOU. BUT WHATEVER YOU DO, DON'T TALK TO MY PARROT. THAT'S VERY IMPORTANT."

"GOT IT," SAID OSCAR. "DON'T TALK TO THE PARROT."

SHEILA LEFT, AND OSCAR GOT TO WORK. SPIKE, A MEAN-LOOKING ROTTWEILER, SLEPT PEACEFULLY NEXT TO THE REFRIGERATOR. BUT THE PARROT, WHOSE CAGE HUNG IN THE KITCHEN WINDOW, TALKED THE ENTIRE TIME. AND HIS VOCABULARY SEEMED TO CONSIST EXCLUSIVELY OF PROFANITY AND INSULTS.

AFTER A WHILE, THE CONSTANT STREAM OF INVECTIVE GOT ON OSCAR'S NERVES. HE FINALLY FINISHED HIS WORK ON THE DISHWASHER AND PREPARED TO LEAVE WHEN THE PARROT SAID, "LAZY! STUPID! JERK! USELESS!"

OSCAR SNAPPED. "SHUT UP, YOU STUPID PARROT! JUST SHUT UP!"

TO WHICH THE PARROT REPLIED, "SPIKE—GET HIM!"

# PTA

Volume 17, Issue 1

Presort Std  
U.S. Postage  
PAID  
WMS

David L. Gangloff Jr., Esq. CEO &  
Principal  
Property Tax Assistance Co., Inc.  
16600 Woodruff Ave. Suite 200  
Bellflower, CA 90706

For inquiries on our services, or questions  
about this newsletter, please contact:

**Lisa Henry**  
Direct Line 562-282-5911  
LHenry@property-taxes.com

[www.property-taxes.com](http://www.property-taxes.com)

Bellflower, CA (Corporate Headquarters)  
Property Tax Assistance Co., Inc.  
16600 Woodruff Ave.  
Bellflower, CA 90706  
Phone 562-920-1864 Fax 562-920-5775  
PTA@property-taxes.com

Bay Area Office  
Property Tax Assistance Co., Inc.  
1981 N. Broadway, Suite 342  
Walnut Creek, CA 94596  
Phone 925-942-1004 Fax 925-942-0369

## Property Tax Update

*Be always at  
war with your vices,  
at peace with your  
neighbors,  
and let each  
New Year find you  
a better man."*

*- Benjamin Franklin*