

State of California
BOARD OF EQUALIZATION
PROPERTY TAX RULES

Chapter 1. State Board of Equalization — Property Tax
Subchapter 2. Assessment
Article 3.5. Special Classifications

Rule 152. COMPUTER PROGRAMS STORAGE MEDIA.

Reference: Article XIII, Section 2, California Constitution; Sections 110, 401, 405, 995, 995.2, Revenue and Taxation Code. Stats. 1972, Ch. 165, sec 2. (p.385)

(a) Computer programs shall not be valued for purposes of property taxation, except with respect to the valuation of storage media as provided in section 995 of the Revenue and Taxation Code. A licensor of a computer program who does not own, claim, possess or control the storage media on which the program is embodied or stored shall not be subject to assessment with respect to the value of the licensor's copyright interest in the computer program, or with respect to the value of the license fees charged for the use of the computer programs.

(b) Storage media for computer programs, as defined in section 995 of the Revenue and Taxation Code, shall be valued as if there were no computer program on such media except basic operational programs.

(c) In accordance with Revenue and Taxation Code Section 405, storage media for computer programs shall be assessed to the person owning, claiming, possessing or controlling the storage media on the lien date. Storage media shall not be assessed to the owner of the copyright in the computer program embodied or stored on the media if the owner of the copyright does not also own, claim, possess or control the storage media subject to assessment.

(d) The term "basic operational program" refers to a "control program," as defined in section 995.2 of the Revenue and Taxation Code, that is included in the sale or lease price of the computer equipment. A program is included in the sale or lease price of computer equipment if (i) the equipment and the program are sold or leased at a single price, or (ii) the purchase or lease documents set forth separate prices for the equipment and the program, but the program may not be accepted or rejected at the option of the customer.

(e) In valuing computer equipment that is sold or leased at a single price not segregated between taxable property and nontaxable programs as defined in section 995.2 of the Revenue and Taxation Code, the assessor, lacking evidence to the contrary, may regard the total amount charged as indicative of the taxable tangible property.

(f) A person claiming that a single-price sale or lease includes charges for nontaxable programs and services should be required to identify the nontaxable property and services and 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 contract.

(g) When the nontaxable components of a package composed of computer hardware, basic operational programs and nontaxable programs and services may be accepted or rejected at the option of the customer and the charge for each is itemized, such itemization constitutes evidence of the value of the component. Prices charged, whether at the wholesale or the retail level, for hardware only or hardware and basic operational programs also constitute evidence of the value of such property that may be used in segregating values when taxable and nontaxable properties or services are covered by a single-price contract.

RULE 152. *(Continued)*

(h) Examples

(1) Example 1 (Personal Computers).

Included in the price of every IBM and IBM compatible personal computer and every Apple and Every Apple compatible personal computer is a basic input output system (BIOS). BIOS is a copyrighted computer program that controls basic hardware operations, such as interactions with diskette drives, hard disk drives and the keyboard, and that facilitates the transfer of data and control instructions between the computer and peripherals. The operation of other computer programs, such as the various versions of Disk Operating Systems (DOS), Windows, OS/2. UNIX and similar programs, is possible only through the facilities provided by BIOS, but operational programs other that BIOS are not in themselves fundamental and necessary to the functioning of the computer.

(2) Example 2 (Mainframe Computers).

Included in the price of the IBM mainframe computers is a license to use IBM's Licensed Internal Code (LIC) on the computer. LIC is a set of copyrighted computer programs (commonly referred to in the computer industry as microcode) that include the programs that implement the basic functions of the mainframe computer and operate the control logic necessary to execute user instructions to the computer. Manufacturers of other computers likewise include in the price of their computers the microcode necessary to implement the basic functions of the computer. The operation of other computer programs is possible only through the facilities provided by microcode, but operational programs other than microcode are not in themselves fundamental and necessary to the functioning of the computer.

NOTE: Authority Cited: Section 15606, Government Code.

History: Adopted September 14, 1972, effective October 19, 1972.

Repealed Old Rule and Adopted New Rule February 21, 1974, effective February 26, 1974.

Amended July 24, 1996, effective November 3, 1996. The amendments to the rule clarify the property taxation of computer programs and storage media.