National Case Law Survey Concerning Local Treatment of Computer Software and Property Taxes

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Background

Property taxes are a major source of revenue for state and local governmental entities. They constitute 10 to 45 percent of a state's tax base. Property taxes fall disproportionately on capital intensive industries because they are allocated in proportion to the value of a taxpayer's asset base and assume that persons owning assets have the financial means to pay the tax. Taxes are assessed annually based on the value of property as of a state's lien date. The taxes are calculated by multiplying a property's appraised value by the applicable tax rate. They apply to all real property, and in many states, to personal property as well. Property tax revolts across the United States have been percolating for three decades.

Property tax appraisal tends to be a mixture of art and science. Three approaches to valuation are recognized: cost, income, and market. Under the cost approach, the value of property is determined by calculating the cost to reproduce a property, or the cost to replace a property, with a modern functional equivalent.[1] Cost values are reduced by accrued depreciation.[2] Under the

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[1] James A. Amdur, *Inclusion of Intangible Asset Values in Tangible Property Tax Assessments*, 90 A.L.R.5th 547, § 2[a] (2001).

[2] *Id.*

income approach, the value of property is calculated by taking the net operating income expected from a property and capitalizing that amount, and then further reducing it to present value.[3] Under the market approach, the value of a property is determined by the price of recent comparable sales of similar properties or by the sale of the property itself.[4] "While all three valuation methods are normally given consideration, the inherent strengths of each approach and the nature of the subject property must be evaluated to determine which method provides the most supportable estimate of market value."[5]

A state's position on the taxability of computer software can significantly affect *ad valorem* taxes based on the possible inclusion of its value in the greater amount of business enterprise value. Examples of intangible personal property creating business enterprise value include software, contracts, business name, patents, copyrights, an assembled workforce, franchise, credit, and goodwill. "Clearly, the business value component argument is enormously attractive to property owners facing significant property tax burdens on land and improvements. Establishing even a small proportion of total value as attributable to 'business value' could imply the potential for billions of dollars of property tax appeal cases."[6] Quickly it becomes important to learn a state's position on the taxability of various computer software applications, possibly reducing a client's tax liability by

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[3] *Id.*

[4] *Id.*

[5] Stephen Rushmore & Karen E. Rubin, *The Valuation of Hotel and Motels for Assessment Purposes*, THE APPRAISAL J., April 1984 at 272.

[6] Norman G. Miller, Steven T. Jones, and Stephen E. Roulac, *In Defense of the Land Residual Theory and the Absence of a Business Value Component for Retail Property*, THE J. OF REAL ESTATE RES., v. 10, no. 2 (1995).

removing values that are not taxable as personal property.

Effective property tax attorneys are able to realize that often times, an appraisal district, or tax assessor may include in a taxpayer's assessed value a nontaxable component of business enterprise value such as computer software, music CDs and DVDs. Some states do not authorize taxation of personal property, while others only prohibit the taxation of intangible personal property. Depending on the type of state in which an attorney is practicing law, he or she must examine each assessed value and ensure that nontaxable values are not inadvertently included in the amount.

This article will analyze recent cases and well established case law that deals with the classification of computer software for the purpose of property taxation, as well as with the determination of situs and valuation of computer software for the purpose of property taxation. Computer software includes, among other items, computer programs, the media on which they are recorded, and the services which may be rendered to the computer purchaser by the manufacturer after purchase of the machine; only the computer machinery itself is considered hardware.[7]

[7]Janet Fairchild, *Property Taxation of Computer Software*, 82 A.L.R.3d 606, § 1[a] (1978).

Computer software was traditionally viewed as an integral part of the computer hardware unit until 1969, when IBM announced a separate pricing policy.[8] Due to the uncertain nature of the software and the inexperience and lack of skill of both property owners and state assessment agencies in classifying this difficult material, local taxing authorities and taxpayers have been in conflict since that date over whether computer software constitutes tangible personal property or intangible intellectual property, which is not subject to personal property taxation in most jurisdictions.[9] Issues surrounding the taxation of computer software include the use of software recorded on tangible items – discs and CD-ROM – and canned computer programs, and that consisting of services rendered to the purchaser by the computer's manufacturer and custom computer software applications.

Generally, practice in the area of computer software taxation does not differ from that in the area of distinguishing tangible and intangible personal property.[10] As a general rule, most jurisdictions do not tax intangible personal property.[11] Therefore, taxpayers have sought to avoid taxation of computer software by claiming that the programs and services of which it is composed constitute intangible property.[12]

Historic Lines of Reasoning

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[8] *Id.*

[9] *Id.*

[10] Janet Fairchild, *Property Taxation of Computer Software*, 82 A.L.R.3d 606, § 2[b] (1978).

[11] *Id.*

[12] *Id.*

Four lines of reasoning are used by courts across the nation to determine whether computer software is tangible or intangible. The first test is the "essence of the transaction."[13] This test focuses on two components, the physical storage medium and the knowledge and information contained on the medium. The test focuses on what is being purchased (i.e., a tangible medium or an intangible medium stored on a tangible medium).

[13] *Dallas Cent. Appraisal Dist. v. Tech Data,* 930 S.W.2d 119 (Tex. App.–Dallas 1996, pet. denied)

A second line of reasoning focuses on whether intangible knowledge contained within a tangible medium is a significant factor for tax purposes. A tangible medium may be considered "merely incidental to the purchase of the intangible knowledge and information stored on the tapes."[14] Under this test, a court determines whether a buyer purchases intangible knowledge or a tangible medium.[15] The"essence of the transaction" test is an expansion of this concept.

A third analysis courts have used is the "relative value" test.[16] This test recognizes that the software development process involves both tangible and intangible elements.[17] According to this test a tangible medium is simply a nominal and incidental cost to obtaining desired information.[18] The Ohio Supreme Court deviated from this analysis and held that "canned software" could be taxable.[19] Prior to this ruling, no distinction existed between system software and canned software.[20] The court reasoned that encoded instructions are always stored on a tangible medium that has physical existence and therefore the entire medium is taxable.[21]

The fourth and final test is the "mode of transmission" test. Under this test, if "knowledge

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[14]*Commerce Union Bank v. Tidwell*, 538 S.W.2d 405 (Tenn. 1976).

[15]*Id.*

[16]*Detroit Automobile Interinsurance Exchange v. Department of Treasury*, 361 N.W.2d 373, 375 (1984).

[17]*See* Robert W. McGee, Software Taxation in Ohio, 9 Akron Tax J. 49, 50 (1992).

[18]*Detroit Automobile*, 361 N.W.2d at 375.

[19]*Andrew Jergens Company v. Wilkins, Tax Commr.*, 848 N.E.2d 499 (Ohio 2006)

[20]*Id.*

[21]*Id.*

can be conveyed from the seller to the buyer without the use of a physical medium, the transaction involves the sale of intangible property."[22] Some states using this method end up with varied results because they differ in their analysis on how software is transmitted. Software transmitted by modem is not taxable, but software sold on a disk may be tangible and therefore taxable.

Even with these four lines of reasoning, there is a great deal of confusion regarding particular issues of valuation of the computer software. These include:

[22] *James v. Tres Computer Sys., Inc.*, 642 S.W.2d 347, 349 (Mo. 1982).

(a) The difficulty of determining the value of the software; since the components owned by the taxpayer may be and frequently are sold as a bundle or package, it may be difficult to determine the market value of the software. Unusual criteria, such as a wholesale or foreign market, the manufacturer's own informal estimates of the value, and the precise importance placed upon the software component by the individual parties in the case at hand, may be considered in determining the value of the software separate from the entire package or bundle.[23]

(b) The difficulty of allocating value of a bundled package of hardware and software between the hardware and the service and programming components of the software. The attorney for the taxpayer should be careful to see that the taxpayer lists hardware and software components separately in its business records, since these may be taken as an indication of how the taxpayer itself views the item.[24] Failure to do so may result in a holding that the price of the software is not separable from the entire bundle.

(c) The difficulty of determining the tangible value of property whose primary value stems from the intellectual services rendered in preparing it.[25]

(d) The discovery of the existence and location of software; information can be copied

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[23]*See County of Sacramento v. Assessment Appeals Bd. Number 2*, 32 Cal. App. 3d 654 (1973); *Dist. of Columbia v. Univ. Computer Assoc., Inc.*, 465 F.2d 615 (1972).

[24]*Greyhound Comp. Corp. v. State Dept. Of Assessments & Taxation*, 320 A.2d 52 (1974).

[25]*Id.*

from one tape to another or from one remote access computer terminal to another very quickly and at little expense. Thus packages of software can be created and destroyed easily and cheaply, creating numerous potential difficulties with tax evasion, since not all states tax business personalty.

(e) Determining the situs of software: since tangible property is taxed according to its situs, that situs must be located; and since transportation of software presents no difficulty, it may be difficult to locate it."[26]

Authorities Against Taxation

[26]Janet Fairchild, *Property Taxation of Computer Software*, 82 A.L.R.3d 606, § 2[b] (1978).

Some courts have taken the stance that the intangibility of intellectual property embodied in a tangible medium remains intangible personal property not subject to taxation.[27] Computer software, consisting of punched cards containing programs, was held to constitute intangible personal property not subject to an *ad valorem* tax in *District of Columbia v. Universal Computer Associates, Inc.*[28] The court, applying District of Columbia law, held that 50 percent of the purchase price of a taxpayer's data processing unit was attributable to software, which, being intangible property, was not subject to the District of Columbia's *ad valorem* tax, but the other 50 percent was allocable to taxable tangible personal property.[29] The computer package purchased by the taxpayer included the computer machine itself and software used to program the computer. Computer "software," which was valuable only because of the intangible information made on the computer punch cards, represented intangible values and the "software" was not subject to the District of Columbia tangible personal property tax.[30] Finally, the court upheld the 50 percent to 50 percent allocation of the values between the hardware and the software on the basis of IBM's own informal estimates of the value of the standard software and the fact that the record showed that the special software package

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[27]*See County of Sacramento v. Assessment Appeals Bd.*, 108 Cal. Rptr. 434 (Cal. Ct. App. 1973); *Greyhound Computer Corp. v. State Dep't of Assessments & Taxation*, 320 A.2d 52 (Md. App. 1974); *Commerce Union Bank v. Tidwell*, 538 S.W.2d 405 (Tenn. 1976) *Ala. v. Central Computer Servs*., 349 So.2d 1160 (Ala. 1977); *First Nat'l Bank of Fort Worth v. Bullock*, 584 S.W.2d 548 (Tex. Ct. App.–Austin 1979, writ ref'd n.r.e.); *First Nat'l Bank of Springfield v. Department of Revenue*, 421 N.E.2d 175 (Ill. 1981); *James v. Tres Computer Sys.*, 642 S.W.2d 347 (Mo. 1982).

[28]465 F.2d 615 (D.C. Cir. 1972).

[29]*Id.* at 617.

[30]*Id.*

was so important that the taxpayer would not have accepted the computer without it.[31] In any event, the court held, the hardware could represent no more than 50 percent of the total package value.

The separation of the tangible medium of the software components and the intangible intellectual value of the actual software also played an important role in the Connecticut Supreme Court's decision. The court held that a computer program was fundamentally a form of intellectual property, although it was fixed in tangible medium.[32] It was impermissibly assessed as tangible personal property.[33]

Arizona practices a unique line of reasoning in determining if computer software is taxable.

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[31] *Id.* at 619.

[32] *Northeast Datacom, Inc. v. Wallingford*, 563 A.2d 688 (Conn. 1989).

[33] *Id.*

Initially, the state court of appeals held that computer software, as intangible property, should be excluded in determining the value of tangible computer equipment.[34] The trial court's reasoning that the corporation's software was tangible personal property subject to municipal taxation as it could be seen, touched and generally perceived by the senses was wholly rejected by the appeals when it noted that "there is little doubt computer software is intangible property," and as such, excluded from the taxable value of the computer hardware.[35] However, recently in *Southwest Airlines Company v. Arizona Department of Revenue*, the Arizona Court of Appeals took a different approach.[36] The taxpayer had avionics software within each airplane as part of the "type certification" of the aircraft. The planes were not airworthy without the software. This application software assisted the pilot in many respects with the functions of the cockpit and was loaded onto the aircraft's flight computer.[37] Because of that location, the software was a part of the "airframe" of the aircraft. As a part of the aircraft components, the software was not exempt from taxation. Further, when the Arizona legislature passed broad legislation for the taxation of airplanes and all component parts, it had chosen to tax this specific type of computer software.[38] While noting that intangibles may not be taxed because the legislature has failed to provide a means of equalization for or collection of a tax against intangibles, in this case a 1997 amendment mitigated concerns for

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[34]*Honeywell Info. Sys., Inc. v Maricopa County*, 575 P.2d 801 (Ariz. Ct. App. 1977).

[35]*Id.* at 803.

[36]175 P.3d 700 (Ariz. Ct. App. 2008).

[37]*Id.*

[38]*Id.*

collection of a tax on the intangible software permitting its taxation.[39]

[39] *Id.*

Customized computer software is often held as intangible property exempt from property taxation.[40] Software programs purchased by a certified public accountant under an annual licensing agreement, which was composed of particularized instructions for computation of taxes, was applications software, not an operational program, and thus intangible property not subject to property tax for tangible personal property.[41] Custom software licensed by a developer to a firm was determined to be intangible property not subject to personal property tax since the developer provided substantial services in modifying the program to suit the firm's specific needs.[42]

In 1996 the Texas Court of Appeals held in *Tech Data,* that software was intangible property and therefore not subject to *ad valorem* taxation.[43] The court said that the software was intangible because the "essence of the transaction" was not the tangible medium that was used to transport the software to the consumer (for example a disk or CD-ROM) but rather the software it contained.[44] "Computer application software" is intangible personal property consisting of imperceivable binary pulses, programs, routines, and symbolic mathematical code that controls functioning of computer hardware and directs hardware operations, and therefore it was not subject to *ad valorem* taxation as tangible personal property.[45]

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[40]*Cache County v. Prop. Tax Div. of the Utah State Tax Comm'n*, 922 P.2d 758 (Utah 1996).

[41]*In Re Protest of Strayer*, 716 P.2d 588 (Kan.1986).

[42]*Computer Assoc. Int'l, Inc. v East Providence*, 615 A.2d 467 (R.I. 1992).

[43] *Tech Data,* 930 S.W.2d at 123.

[44]*Id.*

[45]*Id.* at 122.

Finally, and more recently, a Florida appellate court, applying the essence of the transaction test, held that the Florida Constitution permits local governments, including counties, to levy and collect *ad valorem* taxes on real property and tangible personal property, not computer software.[46] Computer application software is not tangible personal property subject to local taxation because the imperceptible binary impulses that make up computer application software are not capable of being seen, weighed, measured, felt or otherwise perceived by the senses. The essence of the property is the software itself, and not the tangible medium on which the software might be stored.[47] "The physical components of software, the discs, tapes, hard drives, etc., are only tangential incidents of the program. The fact that tangible property is used to store or transmit the software's binary instructions does not change the character of what is fundamentally a classic form of intellectual property."[48]

Authorities Supporting Taxation

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[46] *Gilreath v. Gen. Elec. Co.*, 751 So. 2d 705, 707-708 (Fla. Dist. Ct. App. 2001).

[47] *Id.* at 708.

[48] *Id.* at 709.

Many courts have supported some form of *ad valorem* taxation for computer software. Some jurisdictions tax all software, some only "canned" or non-specialized software. There is a trend towards taxation of at least certain types of computer software.[49] Indiana has considered the taxability of application software. The taxpayer was not entitled to deduction of application software for property tax purposes, where taxpayer did not prove that value of application software was recorded on its books and records.[50] Further, a corporate taxpayer's canned application software in Ohio was tangible personal property subject to personal property tax for property used in business.[51] The instructions encoded in canned software were always stored on tangible medium having physical existence, in a sense a form of writing capable of being copied into and physically stored in a computer and then read by the computer as instructions on how to perform a given application.[52] The Kansas Supreme Court has held that under the tax statutes, software programs which constitute operational programs, without which a computer cannot operate, have a value that is to be considered an essential portion of the computer hardware and therefore taxable as tangible personal property in conjunction with the hardware.[53] Application programs, which are particularized instructions adopted for special programs, are intangible property and not subject to

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[49] *South Cent. Bell Tel. Co. v. Barthelemy*, 643 So. 2d 1240, 1245 (La. 1994).

[50] *Standard Plastic Corp. v. Dep't of Local Gov't Fin.*, 773 N.E.2d 379, 387 (Ind. Tax Ct. 2002).

[51] *Andrew Jergens Co. v. Wilkins*, 848 N.E.2d 499 (Ohio 2006).

[52] *Id.*

[53] *In re AT&T Techs., Inc.*, 749 P.2d 1033, 1042 (Kan. 1988).

the personal property tax for tangible personal property.[54]

[54] *Id.*

Recently, the Pennsylvania Commonwealth Court held that while the 1997 amendments deleted custom computer software from the definition of a "sale at retail," thereby eliminating it as a taxable service, they did not indicate that "tangible personal property" no longer included canned computer software.[55] The taxpayer used computer software programs in connection with its business, and paid a software company for a two-year renewal of multiple licenses to use various canned computer software programs that it had previously purchased.[56] The taxpayer petitioned for a refund of the sales tax paid in connection with the license renewals, which the Board denied.[57] The taxpayer argued that the 1997 amendments to the Pennsylvania Tax Reform Code of 1971 repealed the tax on canned software.[58] The court noted that under the "essence of the transaction" test, which the court adopted, canned software was tangible property because the purchaser acquired an electronic copy of a computer program that was stored on a computer's hardware.[59] "The Pennsylvania Department of Revenue's statement of policy, properly interpreted the Code by stating that the sale of canned software remained subject to tax as the sale of tangible personal property."[60] Some jurisdictions have ruled that all software is tangible and therefore subject to taxation. Louisiana has consistently taken this position.[61] In *South Central*, the court found that

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[55]*Graham Packaging Co., LP v. Commonwealth of Pennsylvania*, 882 A.2d 1076 (Pa. 2005).

[56]*Id.* at 1078.

[57]*Id.*

[58]*Id.* at 1079.

[59]*Id.* at 1079-1080.

[60]*Id.*

South Central's switching and data software were tangible items.[62] The court said "the software at issue is not merely knowledge, but rather is knowledge recorded in a physical form which has physical existence, takes up space on the tape, disc or hard drive, makes physical things happen, and can be perceived by the senses."[63] Even if the software had been delivered to South Central in a non-tangible medium, such as over the phone lines, the court still would hold it to be taxable.[64]

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[61] *South Cent. Bell Tel. Co.*, 643 So.2d at 1245.

[62] *Id*.

[63] *Id*.

[64] *Id*.

The Nebraska Supreme Court also considered the question of intangibility in *American Business Information, Inc. v. Mary Jane Egr, State Tax Commissioner*.[65] In this case American Business Information produced data about business prospects and sold them to customers. The lists were either in paper form, on index cards, on diskettes or magnetic tapes, or on a CD-ROM.[66] The court found that the data as used by the customers was tangible property.[67] They drew a distinction between the actual intellectual property and the "acquisition of license to use the physical embodiment of intellectual property."[68]

Music CD's and DVD Movies

[65]650 N.W.2d 251, 256 (Neb. 2002).

[66]*Id.*

[67]*Id.*

[68]*Id.*

Several other states have emphasized the difference between intellectual property itself and intellectual property embodied in a physical form. Movies stored in the form of video tapes have been ruled to be tangible because the owner only acquires the end product of the intangible property, and does not acquire all of the incidents of ownership associated with the intangible property.[69] Three dimensional pictures stored on a CD-ROM were held to be tangible because the owner was paying for "more than just the information on the CD-ROM, diskette or video tape; it is paying for the particular portable and retrievable 'form' of the information."[70] In *Dynamic Digital,* the court ruled that it did not matter that there was another intangible medium over which the CD-ROM could have been delivered, the CD-ROM was still tangible and subject to taxation.[71] The courts in these cases found that the medium of transfer was part of the "true essence" of the property. Likewise, if a court were to rule on the tangibility of a movie or music DVDs or CDs, it would probably hold that the consumer buys the work in order to have a physical, portable embodiment of the property. This would mean that the essence of the transaction to the consumer is obtaining the physical form of the property, which would make the property tangible.

Secondary sources also support this distinction. The comparison of software to records and video tapes is directly addressed in Property Taxation, 2nd Edition, Institute of Property Taxation, 1993 which says, "Software has often been compared to records and video tapes, which have been found to be tangible personal property for tax purposes. However, even a cursory review highlights

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[69] *Reynaud v. Town of Winchester*, 644 A.2d 976, 978 (Conn. App. 1994).

[70] *Dynamic Digital Design, Inc. v. Commissioner of Revenue*, 2004 Minn. Tax LEXIS 3, (Minn. Tax Court, 2004).

[71] *Id.*

the fundamental invalidity of such a comparison. Lost or damaged licensed software may often be replaced by the licensor at a nominal cost. The same cannot be said of the replacement policy for records or videotapes. While it is the objective of a software licensee to have the software reside in a computer, independent of the transfer medium, the objective of a record or videotape purchaser is to acquire the physical property. Consequently, for the software licensee the medium is not essential to the transaction but for the audio or videotape purchaser the tangible medium is essential to the transaction. While software upgrades often require the user to return the original tape or disk, this requirement rarely, if ever, applies to those who buy records or videotapes. The opportunity to upgrade alone is also unique to software. When software users return the original transfer tape or disk, they can retain the value of their bargain. The same cannot be said for records or video tapes because the buyer did not bargain for the right to copy and usually modify the material in question, but the right to use the physical property."

A few states have addressed what happens to the nature of software when it is stored on a computer hard drive and the tangible medium it once embodied is no longer needed. The Utah Supreme Court ruled that the transference of software to a computer did not change the tangible nature of the product.[72] The Supreme Court of Missouri has rejected the idea that software can ever be severed from its tangible method of transfer.[73] The court opined that "taxability of a sale of a

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[72] *South Cent. Utah Tel. Ass'n Inc v. Auditing Div. of the Utah State Tax Comm'n*, 951 P.2d 218, 223 (Utah 1997).

[73] *Int'l Bus. Mach. Corp. v. Dir. of Revenue, State of Missouri*, 765 S.W.2d 611, 613 (Mo. banc1989).

canned program copy should not turn on whether the buyer stores the program in memory."[74] These courts would find it immaterial that the purchaser of a CD or DVD might discard the disk once the movie or music is stored on its hard drive and would consider the CD or DVD tangible property subject to taxation.

[74] *Id*. (citing *Comptroller of Treasury v. Equitable Trust Co*., (1983) 296 Md. 459, 464 A.2d 248).

The Colorado Supreme Court held that tangible and intangible components of a product must be separated in order to tax the tangible portion of the item.[75] When an object's tangible aspects cannot be separated from its intangible aspects the "true or real object" test should be used.[76] If the true object of the contract is incidental to the performance of a service, then the transfer is intangible and therefore not taxable.[77] The Supreme Court of California has also adopted this view in *Preston v. State Board of Equalization.*[78] There they required that an artist separate the transfer of tangible artwork from the intangible copyrights in order to tax only the tangible portion of the transaction. This theory of tangibility would be beneficial because the cost of the tangible medium of transfer, the CD or DVD, is very small compared with the costs associated with the intangible portion of the CD and DVD.

The concept of disposability was at issue in *Sneary v. Director of Revenue.*[79] In this case Sneary was an architect who produced watercolor and ink drawings for a customer. *Id*. He argued that the drawings were merely a tangible medium to convey his intangible service. The Court rejected his argument, but used a "true object" or "essence of the transaction" test to determine if a transaction is tangible or intangible.[80] The test seeks to determine the real object the buyer seeks. The court says that if the intangible component is what is truly sought, the tangible component can

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[75] *City of Boulder v. Leanin' Tree, Inc*., 72 P.3d 361, 362 (Colo. 2003).

[76] *Id.*

[77] *Id.*

[78] 19 P.3d 1148 (Cal. 2001)

[79] 865 S.W.2d 342 (Mo. banc 1993).

[80] *Id*. at 345.

be discarded after it has been used to obtain the intangible component.[81] This case implies that if a medium can be discarded after transfer then the object is considered intangible. This would directly apply to CDs and DVDs that have been stored on a computer hard drive and are no longer necessary to enjoy the intangible work. Since the medium is disposable, the true essence that the consumer seeks is the intellectual property, which is intangible and therefore not subject to taxation. While no company is currently offering movies in a downloadable format that can then be copied to a DVD, there are companies who will offer movies to be downloaded to be viewed for up to a month at a time. For example, MovieLink, CinemaNow, and Starz Encore Group all offer movies that can be downloaded to a computer and viewed for a specific amount of time. As with music, it is only a matter of time before movies will be downloaded on to a computer and then transferred to a DVD or to any number of other mediums for the convenience of the purchaser making the DVD disposable medium of transfer.

Conclusion

In some jurisdictions, computer software is intangible personal property and not subject to *ad valorem* taxation. Arizona holds that even though some computer software is intangible, it is subject to *ad valorem* taxation. Still other states hold that computer software is tangible personal property and subject to taxation in the same respects as other business and personal property not included in the value of real estate. Still even, other states categorize between application software and custom software. Determining the classification in any jurisdiction is important when saving clients tax dollars. Removing non taxable software from the value of personal property reduces tax

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[81] *Id.*

liability. Further, valuing computer software as determined by each jurisdiction will help to reduce a client's tax liabilities when the software has been over valued. Attorneys should consult the case law in their specific jurisdiction.