

## Quinn: Silicon Valley's stealthy, selfish war on taxes

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And they pay substantial taxes to the local community, chiefly through property taxes -- unless they can shave a little off by challenging the county's assessment of their properties.

And that's what some like Apple try to do.

Each year, lawyers and agents for tech firms visit the Santa Clara County building to register their disagreement with how the county assessor has valued their property. It's not the land or the buildings that are typically at issue. Instead, companies fight over how the county has valued their "business personal property," essentially everything in their buildings -- the specialized machinery, phones, office furniture, computers. Even robots.

I recently learned of this annual trek and became interested in how wealthy Silicon Valley firms challenge county officials over things like how to value machinery in a data center or semiconductor fabs. Some companies have argued that the value should be lower because it would be cheaper to make the same thing in China. Others have offered that the equipment is so specialized that it wouldn't be worth anything to anyone else.

Increasingly, tech firms, as their opening salvo with the assessor, list their equipment as valued at no more than \$1.

Sure, everyone likes to win a little back from the taxman, and corporations, as well as individuals, have a right to fight when money is at stake.

But in the case of prosperous tech companies that are making record profits during this economic boom, some of the tactics used in these battles, waged ultimately to reduce the tax bill, seem shortsighted. Thank goodness -- especially for the sake of schools that chiefly benefit from these taxes -- that Larry Stone, the county assessor, and his staff beat back these challenges 96 percent of the time.

Some companies in the tech industry make him work for it.

"There are large companies that play cat and mouse," Stone told me. "It's not about arguing over a valid assessment. If you can cheat and get away with it, if the referee doesn't see it, that's OK. Well, that's OK for sports -- but not for the largest discretionary revenue source local government has. You are cheating the school kids."

Most companies don't file appeals and many are cooperative when they do, insists Stone. But the auditors often find underreporting. Fights usually center around how fast the equipment depreciates.

And then the assessor hears the arguments: "What we have in here, no one will take" is a frequent one. "It isn't even worth anything to us after three years," they say.

Apple fights harder than most, according to the assessor's office. There is a lot at stake. Apple is No. 1 when it comes to the total assessed value of its machinery and No. 4 in the county for the taxes it pays just on land and buildings, and that doesn't even include the construction of its new Cupertino campus.

In 2013, Apple claimed that its business personal property in dispute was worth between \$100 to \$200 per appeal. (Generally, companies appeal their assessed property by location, by year, or they appeal the

audit, which happens every four years.)

In 2014, it bumped it up to \$100,000 to \$200,000, still remarkably low, given that the difference in opinion between the assessor and Apple is now \$5.4 billion -- although granted that includes multiple years of disputed value.

In 2014, Applied Materials and Google claimed per appeal that the disputed value of their business equipment was worth no more than \$2. Applied and the assessor's office are currently fighting over \$2.1 billion, and Google, the county's second-largest taxpayer on the secured roll, is fighting over \$1.3 billion.

"These are companies with millions of dollars worth of equipment," Stone said. Homeowners and many companies, in contrast, typically offer the assessor's office a rational ballpark figure of what their property is truly worth. Because some companies low-ball the assessment, it's hard to understand how this process is efficient, something that businesses often say they want.

Google and Applied did not respond to requests for comment. I also didn't hear back from Hitachi, which has a multiyear dispute of more than \$3.8 billion.

Apple did respond. The company "is proud to call Santa Clara County home, and we continue to grow and invest here," the company said in a statement. "We've always paid our fair share of taxes, as one of the county's largest taxpayers, and will continue working with the assessor to ensure we are equitably charged. We also invest in the community, creating jobs, building public improvement projects and with volunteerism."

Tax experts say there are good reasons for tech firms to submit lowball amounts in appeals. Appeal applications are just placeholders, they say, with company agents trying to do the best for their firms. And there may be some gamesmanship involved: If the county does not act on an appeal within two years, an absurdly low value would be granted to the taxpayer. Alan Schultz, senior managing consultant at Paradigm Tax Group, which counts some tech firms as clients, told me that "in our experience, we have seen some taxpayers list a low opinion of value as an expedient approach to filing."

In many ways, these are the best of times for the county and the assessor's office. Silicon Valley's boom economy is boosting its property rolls. Taxing business personal property is one of the few ways the public can get some tax benefit from the incredible amount of new investment that is occurring.

"It's the assessor's day," said Liz Conroy, a property tax consultant at Declaration Services, which counts some tech firms as clients. "Values are trending upward, resulting in fewer appeals."

But the amount at risk in potential tax refunds due to appeals has skyrocketed in recent years, with the county fighting for more than \$370 million this year, up nearly 47 percent since 2012.

So far, there hasn't been much real-world effect of these battles; most are resolved before reaching the Assessment Appeals Board, an independent panel that decides the final value of the dispute. Still, as the amount of tax revenue at risk has grown, county officials are watchful.

"It's not an insignificant amount of money," said Jeff Smith, the county executive. "It's a concern. We watch it carefully."

So, are companies doing anything wrong?

Annette Nellen, a tax professor at San Jose State, said not at all. "If you pay more, you are not managing

your resources well," she said. "It's almost as bad to overpay as it is to underpay." But Bob Brownstein, research and policy director for Working Partnerships USA, said given the limits on property assessments imposed by Proposition 13, companies fighting the county is galling.

"The theory behind bringing economic development into a city is that it creates a 'virtuous cycle,' " he said. "Considering San Jose's crippling low property tax revenues, fighting assessments by firms with billions in cash reserves doesn't seem all that virtuous."

Lenny Goldberg, executive director of the California Tax Reform Association, has fought to reform Proposition 13, the state's landmark property tax law, as it relates to commercial property. He said ideally, the government should properly assess and tax commercial land and buildings instead of equipment, which discourages investment and is tricky to boot. "It's an area so fraught with subjective judgment that large companies are doing a cost-benefit analysis to see what their lawyers get out of it," he said.

What do I think?

Aggressiveness may be Silicon Valley's hallmark of success. Tech companies, used to going to the mat over patents, trade secrets and other issues, know how to do legal warfare.

But the opponent here isn't just the assessor's office but the community at large. The tech industry is not just the region's economic driver, but its executives and employees are also its leaders and neighbors.

When it comes to money for services, companies ought to play fair. No company should list all of its business personal property at \$1 or even \$1,000. Come on!

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TOP 10 FIRMS Challenging property assessment\*

#### Company Assessment

1. Apple \$5.4 billion
2. Lockheed Martin \$3.9 billion
3. Hitachi \$3.8 billion
4. Juniper Networks \$3 billion
5. Applied Materials \$2.2 billion
6. VM Ware \$1.9 billion
7. Digital Realty Trust \$1.8 billion
8. CC-Palo Alto \$1.7 billion
9. Cisco Systems \$1.3 billion
10. Google \$1.3 billion

Should they win all their appeals, Apple could receive a total tax refund of \$54.8 million. Hitachi \$38 million and Google \$13 million.

\*The disputed amount of property over multiple years. Source: Santa Clara County Assessor's Office

#### How the tax appeal process works

When a homeowner disagrees with the county's assessment, the burden is on the assessor's office to prove the value.

With commercial property, the dynamic is reversed, with businesses offering evidence on why they think

the assessor is wrong.

But the assessor's office needs information from the companies to figure out what equipment they have. If a firm hides something, it usually turns up when the county audits, which happens every four years for firms with business personal property valued at more than \$400,000.

Figuring out the value of a used chair or a 2-year-old copier or specialized factory machinery can be subjective -- and that's where the disputes normally occur.

Piece by piece, the tax value may not be much. But all told, the dollars add up, with the amount disputed in appeals reaching \$370 million this year, up nearly 47 percent since 2012.