

LITIGATION ROSTER

SALES AND USE TAX

NOVEMBER 2008

**Sales and Use Tax
November 2008**

NEW CASES

Case Name

Court/Case Number

LUCENT TECHNOLOGIES, INC.

Los Angeles Superior Court BC402036

CLOSED CASES

Case Name

Court/Case Number

BARONA BAND OF MISSION INDIANS
CONNELL, WILLIAM M.
HERON, MICHAEL DION
REM CONCEPTS, INC.

USDC, So. Dist. CA, No. 05-CV0257
Sacramento Superior Court No. 34-2008-00012293
Sacramento Superior Court No. LC081016
Los Angeles Superior Court No. BC378831

SALES AND USE TAX

LITIGATION ROSTER

November 2008

ASPECT SOFTWARE, INC. v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-468134

Filed – 10/12/07

BOE's Counsel

Joyce Hee

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

James P. Kleier

ReedSmith LLP

Issue(s): Whether tax applies to plaintiff's charges for what it alleges were intangible software license fees, and whether the charges should be excluded from tax as sales made pursuant to technology transfer agreements ([Regulation 1502](#)).

Audit/Tax Period: 10/01/00-12/31/00

Amount: \$804,778.84

Status: Trial continued to June 22, 2009.

CARR BAZAAR, INC. v. State Board of Equalization

Fresno Superior Court Case No. 07 CE CG 04154 DRF

Filed – 12/12/07

BOE's Counsel

Jill Bowers

BOE Attorney

John Waid

Plaintiff's Counsel

Lenden F. Webb

Attorney at Law

Issue(s): Whether the BOE is utilizing a proper formula to assess a deficiency arising out of an audit ([Regulation 1705](#)).

Audit/Tax Period: 01/01/00-12/31/02

Amount: \$76,884.13

Status: Plaintiff's Second Amended Complaint was filed on October 10, 2008. BOE's response is due December 23, 2008.

DAIMLERCHRYSLER CORPORATION v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-459702

Filed – 01/18/07

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Jon D. Universal

Universal Shannon & Wheeler LLP

Issue(s): Whether the plaintiff is owed a refund of use tax it refunded under [Civil Code section 1793.25](#) to customers who leased vehicles that had defects that could not be repaired after a reasonable number of attempts.

Audit/Tax Period: 10/01/01-01/10/05

Amount: \$2,000,000.00

Status: At the hearing on the cross motions for summary judgment on September 17, 2008, the court adopted its tentative ruling denying BOE's motion, and granting plaintiff's motion. Hearing on the motion to continue the trial date to November 3, 2008 is scheduled for October 21, 2008.

GENERAL ELECTRIC CAPITAL CORPORATION v. State Board of Equalization

San Francisco Superior Court Case No. CGC 08-471479

Filed – 01/28/08

Plaintiff's Counsel

Amy L. Silverstein, Edwin P. Antolin
Silverstein & Pomerantz LLP

BOE's Counsel

Burr/Yiu
BOE Attorney
Jeffrey Graybill

Issue(s): Plaintiff is a lender who purchased receivables from retailers, and the debts have gone bad. Plaintiff asserts that it is entitled to take a bad debt deduction ([Regulation 1642](#)).

Audit/Tax Period: 01/01/94-03/31/01

Amount: \$6,983,601.83

Status: Mandatory Settlement Conference has been moved from December 31, 2008 to March 11, 2009. The trial date was continued from January 12, 2009 to March 30, 2009.

HAWARI, AHMED v. State of California/ State Board of Equalization

Fresno Superior Court Case No. 08 CE CL 07665

Filed – 07/28/08

Plaintiff's Counsel

Ahmed Hawari
In Pro Per

BOE's Counsel

Robert E. Asperger
BOE Attorney
Dana Flanagan-McBeth

Issue(s): As to the merits of the Complaint, if it were properly pleaded and served, plaintiff is contending that his liability never became final, and is now time barred, because the Notice of Redetermination that was issued to him never reflected the reduction in tax resulting from the re-audit (Revenue and Taxation Code [6561](#), [6561.5](#), [6562](#), [6563 subd. \(a\)](#), [6561](#), [6565](#), [6566](#)).

Audit/Tax Period: 07/01/93-09/30/96

Amount: \$0.00

Status: Hearing on BOE's Demurrer to plaintiff's complaint and Motion for Reclassification to Unlimited Civil Case is scheduled for December 4, 2008.

HOFSTADTER, DAVID, et al. v. The State Board of Equalization

(Class Action Complaint for Constructive Trust, etc.)

Los Angeles Superior Court Case No. BC376547

Filed – 08/24/07

Plaintiffs' Counsel

Mitch Kalcheim
Kalcheim/Salah

BOE's Counsel

Bonnie Holcomb
BOE Attorney
John Waid

Issue(s): Whether Dell properly collected use tax from its customers measured by the amount of a mail-in rebate on the sales ([Revenue and Taxation Code 6011](#); [Regulation 1671](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: Plaintiff's First Amended Complaint filed on May 7, 2008. Hearing on BOE's Demurrer to the First Amended Complaint and Motion to Dismiss has been continued from November 24, 2008 to January 23, 2009.

HSBC RETAIL SERVICES, INC. v. State of California Board of Equalization

San Francisco Superior Court Case No. CGC 07-469572

Filed – 11/28/07

BOE's Counsel

Anne Michelle Burr

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Donald J. Querio, Erik Kemp

Severson & Werson

Issue(s): Plaintiff is a lender who purchased receivables from retailers, and the debts have gone bad. Plaintiff asserts that it is entitled to take a bad debt deduction ([Regulation 1642](#)).

Audit/Tax Period: 10/01/97-12/31/02

Amount: \$9,158,743.00

Status: Mandatory Settlement Conference has been rescheduled for April 7, 2008. The trial has been rescheduled for April 27, 2008.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558

Filed – 06/13/05

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

R. Todd Luoma

Law Offices of Richard Todd Luoma

Issue(s): Whether plaintiff can exempt from tax its charges for special printing aids ([Regulation 1541](#)).

Audit/Tax Period: 04/01/97-12/31/00

Amount: \$208,513.38

Status: Pending trial setting.

LUCENT TECHNOLOGIES, INC., et al. v. State Board of Equalization

Los Angeles Superior Court Case No. BC402036

Filed – 11/14/08

BOE's Counsel

Ronald Ito

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

Issue(s): Does the sale of software qualify for technology transfer agreement treatment; (2) have the plaintiffs established that the engineering and support charges are related to sales of tangible personal property; and (3) did plaintiffs use the prior agreement to calculate their tax liability for the subject quarter. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 1/1/95 - 12/31/99

Amount: \$3,480,913.12

Status: Complaint for Refund and Notice of Related Case (*Nortel Networks, Inc. v. BOE*) were filed November 14, 2008.

MARGARETICH, MITCHELL v. State Board of Equalization

San Diego County Superior Court Case No. 37-2008-00088344 CU-MC-CTL

Filed – 07/24/08

BOE's Counsel

Leslie Branman Smith

BOE Attorney

W. Gregory Day

Plaintiffs' Counsel

Mitchell Margaretich

In Pro Per

Issue(s): The issue in this case is whether or not plaintiff was a partner in a partnership that purchased and used a vessel within the State of California ([Revenue and Taxation Code sections 6201](#) and [6202](#); see [Revenue and Taxation Code section 6009](#)). BOE contends that plaintiff was in fact such a partner; that the partnership purchased and used the vessel; and plaintiff, as a partner, therefore owed the tax on the purchase and use of the vessel within California.

Audit/Tax Period: 07/01/02

Amount: \$9,300.00

Status: BOE's Answer was filed September 11, 2008.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross Complaint: Albertson's Inc, et al. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Philip J. Eskanazi, Lee A. Cirsch

Akin, Gump, Strauss, Haur & Feld LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: CVS, Inc. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Richard T. Williams

Holland & Knight LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Longs Drug Stores Corporation, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

Plaintiffs' Counsel

Douglas A. Winthrop, Christopher Kao

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Rite Aid v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

Plaintiffs' Counsel

Douglas C. Rawles, Neal Salisian

Morgan, Lewis & Bockius LLP

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Wal-Mart Stores, Inc. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

Plaintiffs' Counsel

Gail E. Lees, Brian Walters

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Walgreen Co. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas C. Rawles, Neal Salisian

Morgan, Lewis & Bockius LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McKOON, HOSMER, et al. v. The Commission of the State Board of Equalization for the State of CA

Los Angeles Superior Court Case No. BS111440

Filed – 10/09/07

BOE's Counsel

Anthony Sgherzi

BOE Attorney

Victoria Baker

Plaintiffs' Counsel

Dennis Connelly

Law Office of Dennis Connelly

Issue(s): (1) Whether the BOE's application of an eight-year statute of limitations under [Revenue and Taxation Code section 6487](#), is constitutional. (2) Whether BOE's Notice of Determination issued pursuant to [Revenue and Taxation Code section 6829](#) was timely.

Audit/Tax Period: 07/01/98-05/28/99 (Dual 07/29/04)

Amount: \$108,994.45

Status: BOE is conducting discovery. The court granted the parties' stipulation to continue the trial date from February 9, 2009 to June 1, 2009. Final status conference is set for May 29, 2009.

MERCEDES-BENZ USA, LLC v. California State Board of Equalization

San Francisco Superior Court Case No. CGC 08-471310

Filed – 01/23/08

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Jon D. Universal

Universal, Shannon & Wheeler

Issue(s): Whether the BOE has the authority to reimburse Mercedes Benz for payments it made to lessees of its cars as part of restitution payments made under the California Lemon Law that constituted returns of use tax payments the customers made on the leases.

Audit/Tax Period: None

Amount: \$2,500,000.00

Status: Mandatory Settlement Conference continued to April 21, 2009. Trial continued to May 4, 2009.

MODERN MOLD INTERNATIONAL, INC., et al. v. State Board of Equalization of the State of CA

Court of Appeal, Second Appellate District Case No. B200874

Los Angeles Superior Court Case No. BC361123

Plaintiffs' Counsel

Jeffrey S. Baird, Joseph A. Vinatieri

Bewley, Lasseben & Miller, LLP

Filed – 10/31/06

BOE's Counsel

Dean Freeman

BOE Attorney

John Waid

Issue(s): Whether plaintiffs make a taxable use in California of pens manufactured in Mexico intended as gifts when it transported the pens into California and deposited them with the post office for mailing to out-of-state donees ([Revenue and Taxation Codes 6009.1 and 6094](#); [Regulation 1620](#)).

Audit/Tax Period: 10/01/95-06/30/00

Amount: \$530,039.00

Status: Oral argument held September 16, 2008. On November 6, 2008, the Court of Appeal issued its unpublished opinion reversing the trial court decision in favor of BOE.

MOHAN, DIANE, et al. v. Dell, Inc., et al.

San Francisco Superior Court Case No. CGC 03-419192

Plaintiffs' Counsel

Jason Bergmann

Paul, Hastings, Janofsky & Walker, LLP

Filed – 11/01/04

BOE's Counsel

Julian O. Standen

BOE Attorney

John Waid

Issue(s): Whether Dell illegally collected use tax measured by the price of optional service contracts even though the contracts were not separately stated on the invoice ([Revenue and Taxation Code 6011](#); [Regulations 1546 and 1655](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court ruled that the service contracts were in fact optional and that the Dell entities should not have collected tax on their sales. Dell took up a writ of mandate on this issue to the First District Court of Appeal. In a published decision, the appeals court agreed with the trial judge. (*Dell, Inc. v. Sup. Ct.* (2008) 159 Cal.App.4th 911.) Plaintiffs' Unfair Competition Law claims are still pending. Case Management Conference continued from November 18, 2008 to February 9, 2009.

NORTEL NETWORKS INC. v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC341568

Plaintiff's Counsel

Jeffrey Varga, Julian Decyk

Paul, Hastings, Janofsky & Walker LLP

Filed – 10/17/05

BOE's Counsel

Stephen Lew

BOE Attorney

Mike Llewellyn

Issue(s): 1) Whether [Regulation 1507](#) is valid, 2) whether the software sold by Nortel is prewritten, and 3) whether the software sales agreements technology transferred agreements.

Audit/Tax Period: 01/01/94-12/31/97 (audit); 01/01/96-06/30/01 (refund) Amount: \$36,520,136.70

Status: Judgment for plaintiff. Notice of Entry of Judgment was served November 14, 2008. BOE's appeal must be filed no later than January 13, 2008.

NORTEL NETWORKS INC. v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC375660

Filed – 08/09/07

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

BOE's Counsel

Lew/Wolfe-Donato

BOE Attorney

Mike Llewellyn

Issue(s): Whether the engineering services rendered by Nortel were part of the sale of tangible personal property under [Revenue and Taxation Code sections 6011\(c\)\(10\) and 6012\(c\)\(10\)](#).

Audit/Tax Period: 01/01/94-12/31/97

Amount: \$1,054,020.00

Status: Mandatory Settlement Conference is set for November 18, 2008. Trial has been continued from September 8, 2008 to March 9, 2009.

PeoplePc, INC. v. State Board of Equalization

San Diego Superior Court Case No. 37-2007-00066036-CU-MC-CTL

Filed – 05/01/07

Plaintiff's Counsel

Mark L. Mann, Jaikaran Singh

Luce, Forward, Hamilton & Scripps LLP

BOE's Counsel

Leslie Branman-Smith

BOE Attorney

Mike Llewellyn

Issue(s): Whether the mass-mailed promotional CDs were printed sales messages under [Revenue and Taxation Code section 6379.5](#).

Audit/Tax Period: 07/01/99-06/30/02

Amount: \$486,372.83

Status: Judgment granting BOE's motion for summary judgment was entered October 15, 2008. Plaintiff's appeal was filed November 25, 2008.

REYNOLDS, ROBERT L., et al. v. California State Board of Equalization

Sacramento County Superior Court Case No. 34-2008-00020131

Filed – 08/25/08

Plaintiffs' Counsel

Jason W. Harrel, Richard S. Calone

Calone Law Group, LLC

BOE's Counsel

Amy Winn

BOE Attorney

Sharon Silva

Issue(s): Whether plaintiff was a retailer engaged in business pursuant to [Revenue and Taxation Code section 6203](#).

Audit/Tax Period: 7/1/98 - 6/30/01

Amount: \$176,575.77

Status: BOE's answer was filed October 21, 2008.

SAN MATEO, COUNTY OF v. State Board of Equalization, et al.

San Francisco Superior Court Case No. CGC 07-459514

Plaintiff's Counsel

John Nibbelin, David Silberman
San Mateo County Counsel

Filed – 06/14/06

BOE's Counsel

Kris Whitten
BOE Attorney
John Waid

Issue(s): Regulation 1699, Buying Companies, is invalid, because it allows cities to manipulate the local sales tax by letting local consumer to form buying companies to re-direct local sales tax to the location of the buying company from the locations of the vendors, and local sales taxes derived in question should be reallocated as if subdivision (h) never existed ([Revenue and Taxation Code section 1699](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: BOE's Demurrer to plaintiff's First Amended Complaint was granted without leave to amend on November 19, 2008.

SCOTT, BRUCE and HAL LAWRENCE v. State of California

San Diego Superior Court Case No. 37-200800091863-CU-BC-CTL

Plaintiff's Counsel

Duane S. Horning
California Business Law Group, Pc

Filed – 09/16/2008

BOE's Counsel

Leslie Branman-Smith
BOE Attorney
W. Gregory Day

Issue(s): Vehicle retailer plaintiffs contend that: (1) they were erroneously charged for sales tax due on vehicles sold and delivered to customers within California who intended thereafter to export the vehicles into Mexico (California Code of Regulations, title 18, section 1620 ([Regulation 1620](#))); (2) they detrimentally relied on the advice of State agencies other than BOE in deciding not to pay the sales tax amounts in dispute ([Revenue and Taxation Code section 6596](#)); and (3) they detrimentally relied on an erroneous statement of tax liability that was later corrected ([Revenue and Taxation Code section 6596](#)).

Audit/Tax Period:

Amount: \$74,980.54

Status: Hearing on BOE's Demurrer to the Complaint is scheduled for January 30, 2009.

SONOMURA, AKIRA v. State Board of Equalization

San Diego Superior Court Case No. 37-2007-00074759-CU-MC-CTL

Plaintiff's Counsel

Bob Mullen
Attorney at Law

Filed – 05/30/08

BOE's Counsel

Leslie Branman-Smith
BOE Attorney
Victoria Baker

Issue(s): (1) Whether BOE's issuance of a Notice of Determination pursuant to [Revenue and Taxation Code section 6829](#) was proper; and (2) whether BOE's Notice of Determination was timely ([Revenue and Taxation Code section 6487](#)).

Audit/Tax Period: 04/01/1993 – 03/31/1996 (dual 04/25/2002)

Amount: \$79,000.00

Status: BOE's Answer was filed July 8, 2008. BOE is conducting discovery.

WIMATEX, INC. v. State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00001968

Filed – 01/25/2008

Plaintiff's Counsel

Alan I. Kaplan

Law Offices of Alan I. Kaplan

BOE's Counsel

Jeff Rich

BOE Attorney

Mike Llewellyn

Issue(s): Whether the taxpayer is entitled to relief under [Revenue and Taxation Code section 6596](#) for an inapplicable exemption claimed under Revenue and Taxation Code section 6377 (repealed).

Audit/Tax Period: 01/01/00-12/31/02

Amount: \$132,487.25

Status: Hearing on plaintiff's motion for leave to file a first amended complaint is scheduled for December 4, 2008. BOE's opposition was timely filed. Mandatory Settlement Conference is set for January 20, 2009. Trial is scheduled for February 23, 2009.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization

Los Angeles Superior Court Case No. CA000499

Court of Appeal, Second Appellate District: B113661

Filed – 06/20/78

BOE's Counsel

Diane Spencer-Shaw

Plaintiff's Counsel

James M. Gansinger

Gansinger, Hinshaw

BOE Attorney

Mike Llewellyn

Issue(s): Whether the taxpayer is entitled to a refund of the vehicle license fee ([Revenue and Taxation Code sections 10753 and 10758](#)) and use tax imposed.

Audit/Tax Period: None

Amount: \$1,492.00

Status: State defendants' Notice of Appeal (from that portion of the Judgment filed May 30, 2008 awarding attorneys' fees to the plaintiff and various counsel) was filed August 1, 2008. Motions of James Gansinger and Patrick Woosley for interim Fee Awards was held August 27, 2008. State defendants' Opposition to Motions was filed August 14, 2008. The motion was denied, without prejudice. Further status conference is set for January 8, 2009.

SALES AND USE TAX
CLOSED CASES
LITIGATION ROSTER
November 2008

BARONA BAND OF MISSION INDIANS v. John Chiang, et al.

U.S. Court of Appeals, Ninth Circuit Case No. 06-55918
USDC, So. Dist. CA Case No. 05-CV-0257-IEG (POR)
Plaintiff's Counsel
Art Bruce, Kathryn Clenney
Law Offices of Art Bruce

Filed – 02/07/05
BOE's Counsel
Leslie Branman-Smith
BOE Attorney
Jeffrey Graybill

Issue(s): Whether sales of electrical materials by a subcontractor on the Tribe's casino and resort properties are exempt as sales to an Indian tribe (Regulations [1521](#) and [1616](#)).

Audit/Tax Period: None

Amount: Unspecified

Disposition: **The district court ruled in favor of Barona and granted its Motion for Summary Judgment. On June 18, 2008, the Ninth Circuit Court of Appeals issued a published opinion reversing the district court's ruling in favor of Barona. The Court of Appeals agreed with BOE in holding that a non-Indian construction contractor's purchase of construction materials from a non-Indian vendor, which materials are later delivered to a construction site on Indian land, is not exempt from state sales tax.**

On June 30, 2008, Barona filed petitions for rehearing with the Ninth Circuit Court of Appeals. In an Order entered August 25, 2008, the Court of Appeals denied Barona's petition for panel rehearing and its petition for rehearing en banc.

Barona did not file a writ with the United States Supreme Court, and the time to do so has expired.

CONNELL, WILLIAM M., et al. v. State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00012293
Plaintiff's Counsel
William M. Connell
In Pro Per

Filed – 06/04/08
BOE's Counsel
Jane O'Donnell
BOE Attorney
Robert J. Stipe

Issue(s): Whether [Business and Professions Code section 16102](#) exempts plaintiff from paying sales or use tax.

Audit/Tax Period: 1993 to present

Amount: Unspecified

Disposition: **On August 18, 2008, the court sustained BOE's Demurrer without leave to amend. Order and Judgment of Dismissal was entered September 4, 2008. Notice of Entry of Judgment was served by mail on September 24, 2008. No appeal.**

HERON, MICHAEL DION v. L. Albin, et al.
Los Angeles Superior Court Case No. LC081016

Plaintiff's Counsel
Michael Dion Heron
In pro per

Filed – 04/04/08
BOE's Counsel
Christine Zarifian
BOE Attorney
Robert J. Stipe

Issue(s): Whether plaintiff's Sales and Use Tax seller's permit was cancelled by the BOE without just cause ([Revenue and Taxation Code section 6072](#); [Regulation 1699](#)).

Audit/Tax Period: None

Amount: \$20,000,000.00 in gold &
\$30,000 in attorneys' fees

Disposition: **The trial court issued its ruling sustaining the defendants' (BOE and Albin) demurrer, with leave to amend, on June 16, 2008. Defendants's Motion to Dismiss (for failure to file amended complaint) was granted in its entirety. Order Granting Motion to Dismiss was entered September 8, 2008. Notice of Entry of Judgment was served September 11, 2008. Plaintiff did not appeal.**

REM CONCEPTS, INC., et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC378831

Plaintiffs' Counsel
Joseph A. Vinatieri, Jason De Mille
Bewley, Lasseben & Miller

Filed – 10/09/07
BOE's Counsel
Brian Wesley
BOE Attorney
Elizabeth Abreu

Issue(s): (1) Whether plaintiff was a construction contractor or retailer of windows physically installed by other persons. (2) Whether plaintiff is entitled to relief from liability under [Revenue and Taxation Code section 6596](#); [Regulations 1521](#) and [1705](#).

Audit/Tax Period: 07/01/00-01/05/04

Amount: \$5,185,716.89

Disposition: **Case settled. Stipulation and Order entered August 18, 2008. Notice of Dismissal was filed and entered November 7, 2008.**

DISCLAIMER

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