

LITIGATION ROSTER

SALES AND USE TAX

DECEMBER 2009

**Sales and Use Tax
December 2009**

NEW CASES

Case Name

Court/Case Number

NONE

CLOSED CASES

Case Name

Court/Case Number

HAIRABEDIAN, ARA
JOHNNY QUIK FOOD STORES, INC.
SC AVIATION, LLC

Los Angeles County Superior No. BC405915
Fresno County Superior No. 08CECG 01774 DRF
San Diego County Superior No. 37-2008-00098260

Please refer to the case roster for more detail regarding new and closed cases

SALES AND USE TAX

LITIGATION ROSTER

December 2009

ALAMEDA, CITY OF, et al. v. The California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509234

Plaintiff's Counsel

Charles Coleman
Holland & Knight, LP

Filed -04/21/09

BOE's Counsel

Kris Whitten
BOE Attorney
John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Alameda as being subject to use tax is valid.

Audit/Tax Period: 1995 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. On September 9, 2009, Presiding Judge McBride granted the motion. At the Case Management Conference on October 14, 2009, the court approved scheduling the demurrers in all three cases for consolidated hearing. The court continued the hearing from December 17, 2009 to February 9, 2010.

ASPECT SOFTWARE, INC. v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-468134

Plaintiff's Counsel

James P. Kleier
ReedSmith LLP

Filed -10/12/07

BOE's Counsel

Joyce Hee
BOE Attorney
Jeffrey Graybill

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 court judgment in favor of BOE. Plaintiff filed an appeal on November 16, 2009.

BRISBANE, CITY OF v. The California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509232

Plaintiff's Counsel

Charles Coleman
Holland & Knight, LP

Filed -04/21/09

BOE's Counsel

Kris Whitten
BOE Attorney
John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Brisbane as being subject to use tax is valid.

Audit/Tax Period: 2001 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE, City of Brisbane v. BOE, and the City of South San Francisco v. BOE* to a single judge for all purposes. On September 9, 2009, Presiding Judge McBride granted the motion. At the Case Management Conference on October 14, 2009, the court approved scheduling the demurrers in all three cases for consolidated hearing. The court continued the hearing from December 17, 2009 to February 9, 2010.

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

Sacramento County Superior Court Case No. 34-2008-00012293

Court of Appeal, Third Appellate District No. C061180

Plaintiff's Counsel

Herb Fox

Law Office of Herb Fox

Filed – 06/04/08

BOE's Counsel

Jill Bowers

BOE Attorney

Kiren Chohan

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

Audit/Tax Period: 1993 - Present

Amount: Unspecified

Status: Trial court judgment in favor of BOE. Plaintiff filed an appeal.

D.R. SYSTEMS, INC. v. State of California; State Board of Equalization

San Diego County Superior Court Case No. 37-2009-00094087

Plaintiff's Counsel

Scott Savary

Savary, APC

Filed –

BOE's Counsel

Leslie Branman Smith

BOE Attorney

Renee Carter

Issue(s):

Audit/Tax Period: 04/01/02 – 12/31/05

Amount: \$283,410.00

Status: Hearing on BOE's Demurrer is scheduled for January 22, 2010.

DAIMLERCHRYSLER CORPORATION v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-459702

Plaintiff's Counsel

Jon D. Universal

Universal Shannon & Wheeler LLP

Filed – 01/18/07

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

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: Settlement and status conference has been continued to February 24, 2010.

FILLMORE, CITY OF v. California State Board of Equalization

San Francisco Superior Court Case No. CPF-09-509234

Court of Appeal, Second Appellate District No. B219483

Plaintiff's Counsel

Jeffrey S. Baird, Joseph A. Vinatieri

Bewley, Lassleben & Miller, LLP

Filed – 05/26/09

BOE's Counsel

Stephen Lew

BOE Attorney

John Waid

Issue(s): Whether [Revenue & Taxation Code section 7056](#) requires that consultants contracting with cities regarding local sales tax allocation must be authorized by resolution to represent the city and must meet certain criteria, including that they may not also represent retailers.

Audit/Tax Period: None

Amount: Unspecified

Status: Judgment dismissing Fillmore's Petition for Writ of Mandate, and Intervenors' Petition and Complaint was entered August 13, 2009. Intervenors, City of Industry and City of Livermore, filed Notices of Appeal on October 1, 2009.

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

(Class Action Complaint for Constructive Trust, etc.)

Los Angeles Superior Court Case No. BC376547

Plaintiffs' Counsel

Mitch Kalcheim

Kalcheim/Salah

Filed – 08/24/07

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: Status conference continued to April 15, 2010.

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

San Francisco Superior Court Case No. CGC 07-469572

Court of Appeal, First Appellate District No. A125995

Plaintiff's Counsel

Donald J. Querio, Erik Kemp

Severson & Werson

Filed – 11/28/07

BOE's Counsel

Anne Michelle Burr

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: 10/01/97-12/31/02

Amount: \$9,158,743.00

Status: Trial court judgment in favor of BOE. Plaintiff filed an appeal, and the case is currently being briefed in the Court of Appeal.

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.

ISTRIN, JONATHAN v. Ralphs Grocery Company, California State Board of Equalization

(Class Action Complaint for Constructive Trust, etc.)

San Francisco Superior Court Case No. CPF-09-509234

Filed – 03/20/09

BOE's Counsel

Elisa Wolfe-Donato

BOE Attorney

John Waid

Plaintiff's Counsel

Jordan L. Lurie, Joel E. Elkins

Weiss & Lurie

Issue(s): Plaintiff contends that Ralphs improperly collected sales tax reimbursement on sales of hot coffee to go. Plaintiff seeks an injunction against Ralphs. Plaintiff also seeks an order that Ralphs institute a system to accurately track tax on sales of hot coffee to go and to make refund applications to BOE, and an injunction ordering BOE to act on Ralphs' refund applications and to deposit moneys already collected with the court. BOE contends that the court lacks jurisdiction of this case because plaintiff lacks standing to bring a suit to adjudicate a sales tax dispute. Plaintiff may not use remedies not authorized by the Legislature.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE's Demurrer was filed July 29, 2009. Hearing on BOE's and Ralphs' Demurrers continued to February 1, 2010.

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): (1) 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: Trial is scheduled for October 13, 2010. Discovery continuing.

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

Tim Nader

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: Trial court judgment in favor of BOE. Pending appeal.

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

Plaintiffs' Counsel

Richard T. Williams

Holland & Knight LLP

Filed – 01/24/06

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

Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel

Douglas A. Winthrop, Christopher Kao

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

Filed – 01/24/06

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

Plaintiffs' Counsel

Douglas C. Rawles, Neal Salisian

Morgan, Lewis & Bockius LLP

Filed – 01/24/06

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

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.

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

San Francisco Superior Court Case No. CGC 08-471310

Filed – 01/23/08

Plaintiff's Counsel

Jon D. Universal

Universal, Shannon & Wheeler

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

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: Trial date taken off calendar. Settlement and status conference continued to February 24, 2010.

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

Filed – 10/31/06

Los Angeles Superior Court Case No. BC361123

BOE's Counsel

Plaintiffs' Counsel

Elisa Wolfe-Donato

Jeffrey S. Baird, Joseph A. Vinatieri

BOE Attorney

Bewley, Lasseben & Miller, LLP

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: On November 6, 2008, the Court of Appeal issued its unpublished opinion reversing the trial court decision in favor of BOE. The parties are negotiating to determine the amount of refund. Once that is determined, judgment will be entered. Status conference continued to January 6, 2010.

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

San Francisco Superior Court Case No. CGC 03-419192

Filed – 11/01/04

Plaintiffs' Counsel

BOE's Counsel

Jason Bergmann

Julian O. Standen

Paul, Hastings, Janofsky & Walker, LLP

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. At the case management conference on December 22, 2009, the court ordered further briefing on the issue of offset. Hearing is scheduled for April 12, 2010.

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

Los Angeles Superior Court Case No. BC341568

Filed – 10/17/05

Court of Appeal, Second Appellate District No. B213415

BOE's Counsel

Plaintiff's Counsel

Stephen Lew

Jeffrey Varga, Julian Decyk

BOE Attorney

Paul, Hastings, Janofsky & Walker LLP

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 in favor of plaintiff was entered August 29, 2008. BOE's appeal was filed on January 8, 2009. Nortel's cross-appeal was filed January 13, 2009. The case is currently being briefed in the appellate court.

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

Los Angeles Superior Court Case No. BC375660

Filed – 08/09/07

BOE's Counsel

Lew/Wolfe-Donato

BOE Attorney

Mike Llewellyn

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

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: The case went to trial on the first cause of action, which included claims relating to charges by Nortel for systems application engineering and equipment application engineering charges. The remaining causes of action for different charges were bifurcated and stayed, pending the results of the judgment in the Nortel I case. Nortel prevailed on its claims at trial, and the court has entered a statement of decision on such claims. With the remaining claims stayed, the case will remain in this status until it either settles or until resolution of the Nortel I appeal.

PeoplePc, INC. v. State Board of Equalization

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

Filed – 05/01/07

Court of Appeal, Fourth Appellate District No. D054163

BOE's Counsel

Leslie Branman-Smith

Plaintiff's Counsel

Mark L. Mann, Jaikaran Singh

BOE Attorney

Luce, Forward, Hamilton & Scripps LLP

Kiren Chohan

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: Trial court judgment in favor of BOE. In an unpublished opinion issued September 4, 2009, the Court of Appeal reversed the trial court decision and directed that judgment be entered for the plaintiff. Following receipt of the appellate decision in favor of the plaintiff, the parties agreed on a resolution of the matter without further litigation. Final Judgment and Stipulation was entered November 12, 2009. Pending issuance of refund and dismissal.

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

San Francisco Superior Court Case No. CGC 07-459514

Court of Appeal, First Appellate District No. A124917

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. Order Sustaining Demurrer was entered December 23, 2008. Plaintiff's Notice of Appeal was filed March 30, 2009. Briefing is complete. Awaiting scheduling of oral argument.

SAWL, HARRY R. v. State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00028711-CU-MC-GDS

Plaintiff's Counsel

Harry R. Sawl

Attorney at Law

Filed – 12/04/08

BOE's Counsel

Bob Asperger

BOE Attorney

Sharon Brady Silva

Issue(s): Whether the plaintiff has met the burden of proof under Revenue and Taxation Code sections [6201](#), [6202](#), [6246](#), [6247](#) and Cal. Code Regs, tit.18, sections [1610](#) and [1620](#), in showing that an aircraft purchased outside the state and brought into California was not subject to use tax.

Audit/Tax Period: Purchase Date 4/7/2000

Amount: \$40,845.12

Status: Mandatory settlement conference is set for January 13, 2010. Trial is scheduled to begin on February 1, 2010.

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 Smith

BOE Attorney

John Waid

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.

SOUTH SAN FRANCISCO, CITY OF v. California State Board of Equalization, et al.

San Francisco Superior Court Case No. CPF-09-509231

Filed – 02/20/09

Plaintiff's Counsel

Peter S. Hayes

Meyers, Nave, Roback, Silver & Wilson

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in South San Francisco as being subject to use tax is valid.

Audit/Tax Period: 1996 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. On September 9, 2009, Presiding Judge McBride granted the motion. At the Case Management Conference on October 14, 2009, the court approved scheduling the demurrers in all three cases for consolidated hearing. The court continued the hearing from December 17, 2009 to February 9, 2010.

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

Kiren Chohan

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: The parties have agreed to settle this case. Stipulation for Settlement and Payment; Order Thereon was entered October 27, 2009. Refund has been issued to plaintiff. Pending dismissal.

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

BOE Attorney

Sharon Brady Silva

Plaintiff's Counsel

James M. Gansinger

Gansinger, Hinshaw

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. The case is currently being briefed in the appellate court.

SALES AND USE TAX
CLOSED CASES
LITIGATION ROSTER
December 2009

HAIRABEDIAN, ARA, et al. v. California State Board of Equalization

Los Angeles County Superior Court Case No. BC405915

Plaintiff's Counsel

Marty Dakessian, Aleen L. Khanjian
Dakessian & Associates, PLC

Filed – 03/27/09

BOE's Counsel

Marta Smith
BOE Attorney
Renee Carter

Issue(s): Whether the amounts levied from plaintiffs' personal bank accounts were proper and whether the BOE's determination was time-barred.

Audit/Tax Period: 1/1/96 – 12/31/98

Amount: \$73,440.75

Disposition: Case settled. Pursuant to the terms of the settlement, BOE will retain the taxes paid and agreed to waive interest and penalties. Dismissal entered November 30, 2009.

JOHNNY QUIK FOOD STORES, INC. v. State Board of Equalization of the State of California

Fresno County Superior Court Case No. 08CECG01774 DRF

Plaintiff's Counsel

Erin E. Castillo
Dowling, Aaron & Keeler, Inc.

Filed – 11/23/08

BOE's Counsel

Steven J. Green
BOE Attorney
Renee Carter

Issue(s): Whether plaintiff is entitled to a sales tax refund from overpayments revealed by a BOE audit. The Victim Compensation and Government Claims Board (VCBCG) approved the claim, and the plaintiff is waiting to receive the money which the Legislature must first appropriate.

Audit/Tax Period: 04/01/00 – 06/30/01

Amount: \$54,421.01

Status: The VCBCG issued payment on plaintiff's claim. Dismissal was entered on December 10, 2009.

SC AVIATION LLC, et al. v. State Board of Equalization

San Diego Superior Court Case No. 37-2008-00098260-CU-MC-CTL

Plaintiff's Counsel

Cris J. Wenthur
Wenthur Law Group

Filed – 12/17/08

BOE's Counsel

Leslie Smith
BOE Attorney
Renee Carter

Issue(s): Whether use tax applies to plaintiffs' purchase of an aircraft in 2000. (Revenue and Taxation Code sections [6009-6010](#), [6010.5](#), [6246-6248](#), and Cal. Code Regs, tit.18, sections [1610](#) and [1620](#).)

Audit/Tax Period: Purchase Date 7/21/2000

Amount: \$103,190.78

Disposition: Case settled. Stipulation for Settlement was entered on October 26, 2009. Dismissal was entered December 18, 2009.

DISCLAIMER

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