

LITIGATION ROSTER

SPECIAL TAXES

MAY 2010

**Special Taxes
May 2010**

NEW CASES

Case Name

Court/Case Number

None

CLOSED CASES

Case Name

Court/Case Number

None

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

Special Taxes
LITIGATION ROSTER
May 2010

CA FARM BUREAU FEDERATION I, et al. v. CA State Water Resources Control Board, et al.

California Supreme Court Case No. S150518

Sacramento Superior Court Case No. 04CS00473

Court of Appeal, Third Appellate District Case No. C050289

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

Filed – 04/13/04

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is before the California Supreme Court and is pending scheduling of oral argument.

CA FARM BUREAU FEDERATION II, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 05CS00538

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

Filed – 01/13/05

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION III, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 06CS00651

Plaintiffs' Counsel

David A. Battaglia

Gibson, Dunn & Crutcher LLP

Filed – 04/26/06

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION IV, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 07CS00485

Filed – 02/11/08

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick
Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007; 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

CA FARM BUREAU FEDERATION V, et al. v. CA State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2009-80000231

Filed – 05/07/09

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick
Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2009-2009

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

DIAGEO-GUINNESS USA, INC., et al. v. California State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00013031-CU-JR-GDS

Filed – 06/12/08

Court of Appeal, Third Appellate District No. C061227

Plaintiff's Counsel

Elizabeth Mann, Jeffrey N. Goldberg
McDermot, Will & Emery LLP

BOE's Counsel

Steven J. Green
BOE Attorney
Jeffrey Graybill

Issue(s): (1) Whether BOE has the authority to adopt new Alcoholic Beverage Tax Regulations [2558](#), [2559](#), [2559.1](#), [2559.3](#) and [2559.5](#) (“Regulations”) recently approved by the Office of Administrative Law on June 10, 2008; (2) whether the Regulations are consistent with governing law; (3) whether BOE is

required to follow federal regulations in this area; (4) whether BOE failed to comply with the Administrative Procedures Act; and (5) whether the Regulations violate the Commerce Clause of the United States Constitution (Revenue and Taxation Code sections [32002](#), [32152](#), [32451](#) and Business and Professions Code sections [23004](#), [23005](#), [23006](#), [23007](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Judgment for BOE's was entered February 19, 2009. Plaintiff's Notice of Appeal was filed on February 27, 2009. This case has been fully briefed in the Court of Appeal and is awaiting scheduling of oral argument.

EQUILON ENTERPRISES LLC, et al. v. California State Board of Equalization

Sacramento Superior Court Case No. 05AS02406
Court of Appeal, Third Appellate Dist. No. C059079
Plaintiffs' Counsel
Thomas H. Steele, Pilar M. Sansone
Morrison & Forrester LLP

Filed – 06/01/05
BOE's Counsel
Molly Mosley
BOE Attorney
Carolee Johnstone

Issue(s): Validity of the Childhood Lead Poisoning Prevention fee ([Health and Safety Code sections 105275-105310](#)) as it applies to Equilon Enterprises LLC, et al.

Audit/Tax Period: 2002

Amount: \$3,910,359.10

Status: Trial court judgment was entered on April 8, 2008 in favor of defendants. Equilon's Notice of Appeal was filed June 4, 2008. This case has been fully briefed in the Court of Appeal and is awaiting scheduling of oral argument.

GREYHOUND LINES, INC. v. California Board of Equalization

Sacramento Superior Court Case No. 07CS00054
Plaintiff's Counsel
William D. Taylor, Eli R. Makus
Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP

Filed – 01/12/07
BOE's Counsel
Jeff Rich
BOE Attorney
Renee Carter

Issue(s): Whether consumption of diesel fuel used to operate air conditioning systems on buses was exempt from the diesel fuel tax ([Revenue and Taxation Code section 60501\(a\)\(4\)\(A\)](#); [Regulation 1432](#)).

Audit/Tax Period: 08/01/01-12/31/03; 01/01/04-06/30/05

Amount: \$295,583.04

Status: BOE's Answer to the Second Amended Complaint was filed February 1, 2010. On March 5, 2010, Greyhound agreed to remove its Demurrer to BOE's Answer to the Second Amended Complaint from the court's March 19, 2010 calendar.

MORNING STAR COMPANY v. The State Board of Equalization, et al.

Sacramento Superior Court Case No. 34-2008-00005600-CU-MC-GDS
Court of Appeal, Third Appellate District No. C063437

Plaintiff's Counsel

Brian C. Leighton, Richard Todd Luoma
Attorneys at Law

Filed – 03/06/08

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 01/01/03-12/31/05

Amount: \$38,698.92

Status: Trial court judgment in favor of BOE was entered September 22, 2009. Plaintiff filed an appeal.

NORTHERN CA WATER ASSOCIATION I, et al. v. State Water Resources Control Board, et al.

California Superior Court Case No. S150518

Filed – 12/17/03

Sacramento Superior Court Case No. 03CS01776

Court of Appeal, Third Appellate District: 03CS01776

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is before the California Supreme Court and is pending the scheduling of oral argument.

NORTHERN CA WATER ASSOCIATION II, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 04CS01467

Filed – 10/29/04

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION III, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 05CS01488

Filed – 10/19/05

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION IV, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 06CS01517

Filed – 10/18/06

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION V, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2008-00003004-CU-WM-GDS

Filed – 02/07/08

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

NORTHERN CA WATER ASSOCIATION VI, et al. v. State Water Resources Control Board, et al.

Sacramento Superior Court Case No. 34-2009-80000183

Filed – 03/05/09

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly
Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2008-2009

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

PALO VERDE IRRIGATION DISTRICT v. State Water Resources Control Board, et al.

Riverside Superior Court Case No. INC 043178

Filed – 05/28/04

Plaintiff's Counsel

David R. Saunders
Clayson, Mann, Yaeger & Hansen

BOE's Counsel

Molly Mosley
BOE Attorney
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases (see *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.)

PARMAR, ASHOK V., et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC379013

Filed – 10/11/2007

Court of Appeal, Second Appellate District No. B215789

Plaintiffs' Counsel

Marty Dakessian
ReedSmith LLP

BOE's Counsel

Ron Ito
BOE Attorney
John Waid

Issue(s): Whether the BOE issued the Notice of Determination to the correct entity and whether plaintiff intentionally evaded payment of excise taxes as a distributor defined under [Revenue and Taxation Code sections 30008 and 30009](#).

Audit/Tax Period: 12/16/93-03/08/95

Amount: \$87,647.00

Status: Judgment in favor of plaintiffs was entered February 23, 2009. The case is on appeal, and is currently being briefed in the Court of Appeal.

SANTA CLARA, COUNTY OF, et al. v. State Board of Equalization of California

San Francisco Superior Court Case No. CPF-06-506789

Filed – 11/15/06

Plaintiffs' Counsel

Louise H. Renne, K. Scott Dickey
Renne, Sloan, Holtzman, Sakai LLP

BOE's Counsel

Steven J. Green
BOE Attorney
Kiren Chohan

Issue(s): Whether the BOE is under a mandatory duty to tax flavored malt beverages as distilled spirits under [Revenue and Taxation Code section 32451](#).

Audit/Tax Period: None

Amount: Unspecified

Status:. On June 2, 2009, the court granted Third Party Diageo-Guinness USA, Inc.'s Motion to Enforce Stay. The court ordered that the existing stay order, entered June 18, 2007, shall remain in effect until a Remittitur is filed and served by the clerk of the Court of Appeal in *Diageo-Guinness USA, Inc. v. California State Board of Equalization*, Case No. C061227, and that this stay order bars all discovery activity in the case.

SHAITRIT, ASHER v. California State Board of Equalization

San Diego Superior Court Case No. 37-2008-00094283

Filed – 11/15/06

Court of Appeal, Fourth Appellate District Case No. D056858

Plaintiffs' Counsel

Asher Shaitrit
In Pro Per

BOE's Counsel

Leslie Branman Smith
BOE Attorney
Gregory Day

Issue(s): The issue in this case is whether plaintiff, a licensed distributor of cigarettes, purchased and distributed unstamped cigarettes subject to the Cigarette and Tobacco Products Tax Law (Revenue and Taxation Code section [30000](#) et seq.).

Audit/Tax Period: 5/1/99 – 5/31/01

Amount: \$157,871.09

Status: Trial court judgment in favor of BOE. Plaintiff filed a Notice of Appeal on December 28, 2009.

SILVERS, STEPHEN F., et al. v. State Board of Equalization, et al.

Los Angeles Superior Court Case No. BC388468

Filed – 04/04/08

Court of Appeal, Second Appellate District No. B221229

Plaintiffs' Counsel

William K. Hanagami
The Hanagami Law Firm

BOE's Counsel

Diane Shaw
BOE Attorney
Renee Carter

Issue(s): Whether BOE has a duty and obligation to assess insurance taxes against Lexington Insurance Company, a Delaware Corporation and non-admitted insurer ([Insurance Code section 1760, et seq. and 1763.1](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Trial court judgment in favor of defendants. Plaintiff filed a Notice of Appeal on December 17, 2009.
The case is currently being briefed in the Court of Appeal.

U.S. SMOKELESS TOBACCO BRANDS INC. v. State Board of Equalization

San Francisco Superior Court Case No. CGC-07-463592

Plaintiff's Counsel

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

Filed – 05/22/07

BOE's Counsel

Julian O. Standen

BOE Attorney

Sharon Brady Silva

Issue(s): [Revenue & Taxation Code section 30123](#) requires distributors of tobacco products to pay an excise tax on distribution of tobacco products based on the wholesale cost of the products. Plaintiff purchased the product from an affiliated manufacturing corporation owned by the same parent company. Plaintiff contends that the taxable wholesale cost should be based on its price to purchase from the manufacturer, rather than its sales price to distributors, which it previously used to calculate the tax base.

Audit/Tax Period: 01/94-11/96

Amount: \$725,977.90

Status: Trial completed December 15, 2009. The court's Decision After NonJury Trial was entered March 23, 2010. The court found that a high percentage of the tobacco samples were "discounted" per the definition in Rev. & Tax Code section 30017, resulting in a re-calculation of the tax base at a higher rate than claimed by plaintiff. However, the court found for plaintiff that other samples were not discounted, and the plaintiff is entitled to a refund for those samples. Pursuant to the judge's decision, the parties will meet and confer in an attempt to agree upon the language for the final judgment.

ULTRAMAR, INC. v. S. Kimberly Belshe, et al.

USDC, Central Dist. CA Case No. CV 04-6468 MRP

Plaintiff's Counsel

Richard E. Nielsen
Pillsbury, Winthrop, Shaw, Pittman LLP

Filed – 08/04/04

BOE's Counsel

Elisa Wolfe

BOE Attorney

Carolee Johnstone

Issue(s): Ultramar, Inc., a paint manufacturer, contends that certain regulations issued with respect to the Childhood Lead Poisoning Prevention (CLPP) fee ([Health and Safety Code sections 105275 – 105310](#)) should be declared invalid and unconstitutional and that the BOE and Department of Public Health should be enjoined from enforcing the CLPP program and collecting and assessing the CLPP fee against Ultramar.

Audit/Tax Period: 1991-1999 and 2001

Amount: \$6,348,189.19

Status: The parties have agreed to a settlement in this case. Pending filing of Stipulation for Dismissal.

DISCLAIMER

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