LITIGATION ROSTER

SPECIAL TAXES

JUNE 2010

Special Taxes
June 2010

NEW CASES

Case Name	Court/Case Number
None	

CLOSED CASES

Case Name	Court/Case Number
Ultramar, Inc.	USDC, CDCA No. CV 04-6468 MR

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

Special Taxes

LITIGATION ROSTER

June 2010

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

California Supreme Court Case No. S150518	Filed – 04/13/04
Sacramento Superior Court Case No. 04CS00473	*BOE's Counsel*
Court of Appeal, Third Appellate District Case No. C050289	Molly Mosley
Plaintiffs' Counsel	*BOE Attorney*
David A. Battaglia, Alan N. Bick	Renee Carter
Gibson, Dunn & Crutcher LLP	

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	Filed – 01/13/05
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
David A. Battaglia	*BOE Attorney*
Gibson, Dunn & Crutcher LLP	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	Filed – 04/26/06
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
David A. Battaglia	*BOE Attorney*
Gibson, Dunn & Crutcher LLP	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
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
David A. Battaglia, Alan N. Bick	*BOE Attorney*
Gibson, Dunn & Crutcher LLP	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
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
David A. Battaglia, Alan N. Bick	*BOE Attorney*
Gibson, Dunn & Crutcher LLP	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	*BOE's Counsel*
Plaintiff's Counsel	Steven J. Green
Elizabeth Mann, Jeffrey N. Goldberg	*BOE Attorney*
McDermot, Will & Emery LLP	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	Filed – 06/01/05
Court of Appeal, Third Appellate Dist. No. C059079	*BOE's Counsel*
Plaintiffs' Counsel	Molly Mosley
Thomas H. Steele, Pilar M. Sansone	*BOE Attorney*
Morrison & Forrester LLP	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	Filed – 01/12/07
	BOE's Counsel
Plaintiff's Counsel	Bob Asperger
William D. Taylor, Eli R. Makus	*BOE Attorney*
Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP	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	Filed – 03/06/08
Court of Appeal, Third Appellate District No. C063437	*BOE's Counsel*
Plaintiff's Counsel	Molly Mosley
Brian C. Leighton, Richard Todd Luoma	*BOE Attorney*
Attorneys at Law	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. The case is currently being briefed in the Court of 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	*BOE's Counsel*
Plaintiffs' Counsel	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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
Plaintiffs' Counsel	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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.

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
Plaintiffs' Counsel	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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 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
Plaintiffs' Counsel	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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: 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
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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
	BOE's Counsel
Plaintiff's Counsel	Molly Mosley
David R. Saunders	*BOE Attorney*
Clayson, Mann, Yaeger & Hansen	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	*BOE's Counsel*
Plaintiffs' Counsel	Ron Ito
Marty Dakessian	*BOE Attorney*
ReedSmith LLP	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
	BOE's Counsel
Plaintiffs' Counsel	Steven J. Green
Louise H. Renne, K. Scott Dickey	*BOE Attorney*
Renne, Sloan, Holtzman, Sakai LLP	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	*BOE's Counsel*
Plaintiffs' Counsel	Leslie Branman Smith
Asher Shaitrit	*BOE Attorney*
In Pro Per	Renee Carter

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	*BOE's Counsel*
Plaintiffs' Counsel	Diane Shaw
William K. Hanagami	*BOE Attorney*
The Hanagami Law Firm	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

Filed – 05/22/07

Plaintiff's Counsel
Amy L. Silverstein, Edwin P. Antolin
Silverstein & Pomerantz LLP

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. The parties have agreed upon the language for the final judgment, and the judgment and order is being submitted to the court for approval.

SPECIAL TAXES
CLOSED CASES
LITIGATION ROSTER
June 2010

ULTRAMAR, INC. v. S. Kimberly Belshe, et al.
USDC, Central Dist. CA Case No. CV 04-6468 MRP

Filed – 08/04/04

Plaintiff's Counsel
Richard E. Nielsen
Pillsbury, Winthrop, Shaw, Pittman LLP

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

Disposition: Plaintiff entered into a settlement agreement with BOE and the Department of Public Health with respect to its disputed Childhood Lead Poisoning Prevention Fee liabilities. On June 28, 2010, the Court dismissed the case with prejudice.

DISCLAIMER

Every attempt has been made to ensure the information contained herein is valid and accurate at the time of publication. However, the tax laws are complex and subject to change. If there is a conflict between the law and the information found, decisions will be made based on the law.

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