

LITIGATION ROSTER

SALES AND USE TAX

APRIL 2011

**Sales and Use Tax
April 2011**

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

SALES AND USE TAX

LITIGATION ROSTER

April 2011

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. Pre-trial conference date is June 23, 2011. Trial is continued to October 17, 2011. Order Granting Motions to Intervene, Designating Issues to be Tried, Setting Briefing Schedule and Re-Setting Trial Date was filed April 11, 2011.

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

Los Angeles Superior Court Case No. BS124978

Plaintiff's Counsel

Richard R. Terzian, Mark J. Mulkerin
Burke, Williams & Sorensen, LLP

Filed - 02/19/10

BOE's Counsel

Marta Smith
BOE Attorney
John Waid

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administrative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. Status conference is set for June 2, 2011.

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

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

Filed -04/21/09

Plaintiff's Counsel

Charles Coleman
Holland & Knight, LP

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. Pre-trial conference date is June 23, 2011. Trial is continued to October 17, 2011. Order Granting Motions to Intervene, Designating Issues to be Tried, Setting Briefing Schedule and Re-Setting Trial Date was filed April 11, 2011.

CIGARETTES CHEAPER!, et al. v. State Board of Equalization, et al.

United States District Court, Eastern Dist. CA, No. 2:11-CV-00631-JAM-EFB

Filed - 01/18/11

Plaintiff's Counsel

William S. Bernheim
Bernheim, Gutierrez & McCready

BOE's Counsel

Jane O'Donnell
BOE Attorney
Wendy Vierra

Issue(s): Whether plaintiffs, retailers of cigarettes, are entitled to a refund of sales taxes paid on rebates plaintiffs received from various cigarette manufacturers under Volume Price Reduction Agreements (VPR).

Audit/Tax Period: Unstated

Amount: Unspecified

Status: Federal Court: Philip Morris filed a Notice of Motion and Motion to Dismiss on March 15, 2011. BOE's Motion to Dismiss was filed on April 7, 2011. Pursuant to stipulation, the hearing on the Motions to Dismiss has been continued from May 18, 2011 to June 15, 2011. Order Granting Continuance was entered April 14, 2011.

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

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

Filed -

Plaintiff's Counsel

Scott Savary
Savary, APC

BOE's Counsel

Leslie Branman Smith
BOE Attorney
Renee Carter

Issue(s): Did plaintiff file a timely Claim for Refund for self-help credits subsequently disallowed during an audit by the BOE's Sales & Use Tax Department?

Audit/Tax Period: 04/01/02 – 12/31/05

Amount: \$283,410.00

Status: Hearing on parties' motions for summary judgment and or summary adjudication is scheduled for May 13, 2011. Trial is set for June 13, 2011.

DANIEL, HUBERT v. State Board of Equalization, et al.

Stanislaus County Superior Court Case No. 658605

Filed – 10/01/10

BOE's Counsel

James Phillips

BOE Attorney

Greg Day

Plaintiff's Counsel

Hubert Daniel

In Pro Per

Issue(s): Whether or not plaintiff had exhausted administrative remedies before filing the action in the court, as required by [Revenue and Taxation Code section 6932](#) and [Government Code sections 900](#) et seq., [905](#) et seq., [910](#) et seq., and [915](#) et seq. BOE contends that an administrative appeal has not yet completed, so plaintiff is not entitled to seek judicial action.

Audit/Tax Period: None

Amount: Unspecified

Status: Hearing on BOE's Motion to Change Venue is scheduled for May 17, 2011.

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

Filed – 05/26/09

BOE's Counsel

Stephen Lew

BOE Attorney

John Waid

Plaintiff's Counsel

Jeffrey S. Baird, Joseph A. Vinatieri

Bewley, Lasselben & Miller, LLP

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: On April 20, 2011, the Second District Court of Appeal reversed the decision of the trial court and held that the Cities of Industry and Livermore need not await the completion of the administrative review proceedings before seeking relief in court. The Court also concluded that the so-called supplemental decision was final and that Industry and Livermore were entitled to a writ of mandate compelling BOE to implement the supplemental decision.

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: Telephonic status conference continued to July 14, 2011.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558

Plaintiff's Counsel

R. Todd Luoma
Law Offices of Richard Todd Luoma

Filed – 06/13/05

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

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

Plaintiff's Counsel

Jordan L. Lurie, Joel E. Elkins
Weiss & Lurie

Filed – 03/20/09

BOE's Counsel

Elisa Wolfe-Donato

BOE Attorney

John Waid

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: The court granted BOE's and Ralphs' Demurrers with 30 days leave to amend. Plaintiff's First Amended Complaint was filed on March 3, 2010. Stipulation for Stay pending the results in *Loeffler* was filed on June 2, 2010.

LOS ANGELES, CITY OF, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BS124950

Filed – 02/16/10

BOE's Counsel

Marta Smith

BOE Attorney

John Waid

Plaintiff's Counsel

Carmen Trutanich, Pejmon Shemtoob

Office of the Los Angeles City Attorney

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administrative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. Status conference is set for June 2, 2011.

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

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: On December 21, 2010, the court issued its order consolidating *Lucent Technologies, Inc. v. BOE* (Lucent I), LASC Case No. BC402036, and *Lucent Technologies, Inc. v. BOE* (Lucent II), LASC Case No. BC448715. Lucent I is designated the lead case. The final settlement conference and trial dates were vacated. Trial setting conference is set for May 4, 2011.

LUCENT TECHNOLOGIES, INC. II v. State Board of Equalization of the State of California

Los Angeles Superior Court Case No. BC448715

Filed – 11/02/2010

Plaintiff's Counsel

Jeffrey G. Varga, Julian Decyk
Paul, Hastings, Janofsky & Walker LLP

BOE's Counsel

Stephen Lew
BOE Attorney
Jeffrey Graybill

Issue(s): Does the sale of software qualify for technology transfer agreement treatment. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 2/1/96 – 9/30/00

Amount: \$276,832,998.67

Status: On December 21, 2010, the court issued its order consolidating *Lucent Technologies, Inc. v. BOE* (Lucent I), LASC Case No. BC402036, and *Lucent Technologies, Inc. v. BOE* (Lucent II), LASC Case No. BC448715. Lucent I is designated the lead case. The final settlement conference and trial dates were vacated. Trial setting conference is set for May 4, 2011.

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

Plaintiffs' Counsel

Philip J. Eskanazi, Lee A. Cirsch
Akin, Gump, Strauss, Haur & Feld 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 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. Status Conference and hearing on Walgreen's Motion for Summary Judgment continued to June 6, 2011.

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

Plaintiffs' Counsel

Richard T. Williams
Holland & Knight 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 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. Status Conference and hearing on Walgreen's Motion for Summary Judgment continued to June 6, 2011.

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

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas A. Winthrop, Christopher Kao

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

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. Status Conference and hearing on Walgreen's Motion for Summary Judgment continued to June 6, 2011.

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

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas C. Rawles

ReedSmith 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. Status Conference and hearing on Walgreen's Motion for Summary Judgment continued to June 6, 2011.

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 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. Status Conference and hearing on Walgreen's Motion for Summary Judgment continued to June 6, 2011.

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

Plaintiffs' Counsel

Douglas C. Rawles
ReedSmith LLP

Filed – 02/24/06

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 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. Status Conference and hearing on Walgreen's Motion for Summary Judgment continued to June 6, 2011.

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
Anne Michelle Burr
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.

The court continued the Case Management/Settlement Conference to June 3, 2011.

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

Los Angeles Superior Court Case No. BC341568
Court of Appeal, Second Appellate District No. B213415
California Supreme Court No. S190946
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: On January 18, 2011, the Court of Appeal issued its opinion affirming the trial court's judgment that found Nortel's sales of switching software qualified as technology transfer agreements, and reversing the trial court's judgment which held valid that portion of Regulation 1507 stating that a technology transfer agreement does not mean an agreement for the sale of prewritten software. On February 3, 2011, the Second District Court of Appeal denied BOE's Petition for Rehearing. On February 25, 2011, BOE filed a Petition for Review with the California Supreme Court. On April 27, 2011, the California Supreme Court denied BOE's Petition for Review.

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

Los Angeles Superior Court Case No. BC375660
Plaintiff's Counsel
Jeffrey G. Varga
Paul, Hastings, Janofsky & Walker LLP

Filed – 08/09/07
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: 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.

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

Los Angeles Superior Court Case No. BS124919

Filed – 02/16/10

Plaintiff's Counsel

Mitchell E. Abbott, Veronica S. Gunderson
Richards, Watson & Gershon

BOE's Counsel

Marta Smith
BOE Attorney
John Waid

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administrative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. Status conference is set for June 2, 2011.

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

Plaintiff's Counsel

Peter S. Hayes
Meyers, Nave, Roback, Silver & Wilson

Filed – 02/20/09

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 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. Pre-trial conference date is June 23, 2011. Trial is continued to October 17, 2011. Order Granting Motions to Intervene, Designating Issues to be Tried, Setting Briefing Schedule and Re-Setting Trial Date was filed April 11, 2011.

TESTOUT CORPORATION v. State Board of Equalization

Los Angeles Superior Court Case No. BC442139

Filed – 07/22/2010

Plaintiff's Counsel

Jonathan G. Fetterly

Holme Roberts & Owen LLP

BOE's Counsel

Elisa Wolfe

BOE Attorney

Wendy Vierra

Issue(s): Is plaintiff, an out-of-state retailer, entitled to a refund of use taxes it collected on sales it made to its California customers and submitted to the BOE during the period it held a use tax registration with the Board? (Sales and Use Tax Regulation [1684\(c\)](#).)

Audit/Tax Period: 1/1/03 – 12/31/05

Amount: \$105,602.00

Status: Plaintiff's amended complaint was filed on April 8, 2011. Status conference is set for July 7, 2011.

UNIVERSAL CITY STUDIOS LLLP v. State Board of Equalization of the State of California

San Francisco Superior Court Case No. CGC-10-498151

Filed – 03/26/10

Plaintiff's Counsel

Jeffrey M. Vesely, Richard E. Nielsen

Pillsbury Winthrop Shaw Pittman LLP

BOE's Counsel

David Lew

BOE Attorney

Jeffrey Graybill

Issue(s): Whether plaintiff self reported the proper amount of taxable sales related to its lump sum charges for access to its theme park attractions and meals and beverages ([Sales and Use Tax Regulation 1603](#).)

Audit/Tax Period: 7/1/96 - 4/30/02

Amount: \$461,282.12

Status: BOE's Answer was filed May 17, 2010. Mandatory Settlement Conference continued to May 6, 2011. Trial date continued to May 23, 2011.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization

Los Angeles Superior Court Case No. CA000499
Court of Appeal, Second Appellate District: B113661
Plaintiff's Counsel
James M. Gansinger
Gansinger, Hinshaw

Filed – 06/20/78
BOE's Counsel
Diane Spencer-Shaw
BOE Attorney
Sharon Brady Silva

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: On July 21, 2010, the California Supreme Court denied Woosley's Petition for Review. As no further appeals may be taken from the appellate decision, the case will be remanded to the trial court to make further determinations in accordance with the appellate court's decision. Remittitur issued August 3, 2010. Hearing set for July 7, 2011.

**SALES & USE TAX
CLOSED CASES
LITIGATION ROSTER
April 2011**

No cases were closed during this period.

DISCLAIMER

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