# LITIGATION ROSTER

# SALES AND USE TAX

NOVEMBER 2011

Sales and Use Tax
NOVEMBER 2011

# NEW CASES

| Case Name | Court/Case Number |
| --- | --- |
| None | |

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# 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

NOVEMBER 2011

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

San Francisco Superior Court Case No. CPF-09-509234 — 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 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. Trial began on October 17, 2011, and was continued to November 1, 2011. The trial commenced on November 1, 2011, and was continued to December 8, 2011.

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

Los Angeles Superior Court Case No. BS124978

Court of Appeal, Second Appellate District No. B232833 — Filed – 02/19/10

*Plaintiff's Counsel*
Richard R. Terzian, Mark J. Mulkerin
Burke, Williams & Sorensen, LLP

*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: 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. BOE's and City of Pomona's Notice of Appeal were filed May 5, 2011. At the hearing on June 2, 2011, the judge summarily denied Petitioners' motion for attorney fees. The case is currently being briefed in the Court of Appeal.

**BRISBANE, CITY OF v. The California State Board of Equalization**
San Francisco Superior Court Case No. CPF-09-509232 — Filed –04/21/09

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|---|---|
| *Plaintiff's Counsel* | *BOE's Counsel* |
| Charles Coleman | Kris Whitten |
| Holland & Knight, LP | *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. The trial commenced on November 1, 2011, and was continued to December 8, 2011.

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. The trial commenced on November 1, 2011, and was continued to December 8, 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* | *BOE's Counsel* |
| Scott Savary | Leslie Branman Smith |
| Savary, APC | *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: In the court's Minute Order dated May 24, 2011, SBE's Motion for Summary Judgment was granted. Plaintiff's motion for reconsideration of the court's ruling denying the plaintiff's motion for summary judgment was denied on September 9, 2011. Plaintiff filed a Notice of Appeal on November 2, 2011, and SBE filed its Objection to Notice of Appeal on November 3, 2011, citing that the Plaintiff's time to file a notice of appeal lapsed on September 6, 2011.

**DANIEL, HUBERT v. State Board of Equalization, et al.**
Stanislaus County Superior Court Case No. 658605 — Filed – 10/01/10

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|---|---|
| *Plaintiff's Counsel* | *BOE's Counsel* |
| Hubert Daniel | James Phillips |
| In Pro Per | *BOE Attorney* |
| | Greg Day |

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 section 900 et seq. 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. The transfer of the case to Sacramento remains pending because the Plaintiff has not paid the transfer fees.

Audit/Tax Period: None | Amount: Unspecified

Status: On May 16, 2011, the court granted BOE's Motion to Change Venue. On June 6, 2011, the Court issued an Order Granting BOE's Motion to Change Venue to Sacramento County pursuant to Revenue and Taxation Code Section 6933.

**FILLMORE, CITY OF v. California State Board of Equalization**

| | |
|---|---|
| Los Angeles Superior Court Case No. BS120799 | Filed – 05/26/09 |
| Court of Appeal, Second Appellate District No. B219483 | *BOE's Counsel* |
| *Plaintiff's Counsel* | Stephen Lew |
| Jeffrey S. Baird, Joseph A. Vinatieri | *BOE Attorney* |
| Bewley, Lassleben & Miller, LLP | 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: On April 20, 2011, the Second District Court of Appeal reversed the decision of the trial court. On June 20, 2011, the Court of Appeal issued its remittitur. At the August 25, 2011 Status Conference, the judge issued an order that BOE is to reallocate to the petitioners local sales tax revenues from 4Q 2007 and all of 2008. The judgment was signed on September 15, 2011; writ is not yet served; and the Return must be filed by January 12, 2012. The Court of Appeal's decision to reverse the decision of the trial court became final on November 17, 2011. SBE will go back to the trial court to file the return on January 12, 2012.

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

(Class Action Complaint for Constructive Trust, etc.)

| | |
|---|---|
| Los Angeles Superior Court Case No. BC376547 | Filed – 08/24/07 |
| | *BOE's Counsel* |
| *Plaintiffs' Counsel* | Bonnie Holcomb |
| Mitch Kalcheim | *BOE Attorney* |
| Kalcheim/Salah | 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 September 9, 2011. The status conference has been continued to November 15, 2011. An Order to Show Cause was issued to Plaintiff to show why case should not be dismissed for lack of prosecution. Status Conference was continued to December 12, 2011.

**INTAGLIO CORPORATION v. State Board of Equalization**
Sacramento Superior Court Case No. 05AS02558 — Filed – 06/13/05

| *Plaintiff's Counsel* | *BOE's Counsel* |
|---|---|
| R. Todd Luoma | Steven J. Green |
| Law Offices of Richard Todd Luoma | *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.

**IRVINE, CITY OF v. California State Board of Equalization**
San Francisco Superior Court Case No. CPF-11-511586 — Filed – 9/19/11

| *Plaintiff's Counsel* | *BOE's Counsel* |
|---|---|
| Charles L. Colman III | Kris Whitten |
| Holland & Knight | *BOE Attorneys* |
| | John Waid/Kiren Chohan |

Issue(s): Whether BOE has violated the Bradley-Burns Uniform Local Tax Law, wherein BOE purportedly improperly distributed local sales tax revenues from transactions involving sales negotiated in the City of Irvine and fulfilled by shipment of merchandise from out of state.

Audit/Tax Period: None — Amount: Unspecified

Status: On September 19, 2011, Plaintiff filed a Petition for Writ of Mandate and Complaint. SBE filed its Answer in response on November 2, 2011.

**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

| *Plaintiff's Counsel* | *BOE's Counsel* |
|---|---|
| Jordan L. Lurie, Joel E. Elkins | Elisa Wolfe-Donato |
| Weiss & Lurie | *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.

**LOEFFLER, KIMBERLY and AZUCENA LEMUS v. TARGET CORPORATION**
*(Amicus Curiae Brief)*
California Supreme Court Case No. S173972
Court of Appeal, Second Appellate District, Case No. B199287

Filed – 12/15/2008
*BOE's Counsel*
None
*BOE Attorney*
John Waid

Issue(s): This action (between Loeffler and Target to which the SBE was not a party and was not informed of the existence of the litigation) alleges that Target had illegally collected sales tax reimbursement on sale of hot coffee to go. Loeffler sued Target in superior court under the Unfair Competition Law (UCL-Bus. & Prof. Code, §§ 17200 et seq.)

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court dismissed the case on the grounds that there is no private right of action that permits customers to sue retailers in matters relating to sales tax.

Court of Appeal: On December 6, 2008, the court of appeal granted SBE's application to file an amicus brief in support of Target. In a published decision issued May 12, 2009, the Second District Court of Appeal upheld the SBE's position and affirmed the decision of the trial court on all counts.

CA Supreme Court: The court granted SBE's application to file an amicus brief and supplemental brief in support of Respondent Target, filed respectively on April 15, 2010 and July 8, 2011.

**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. BOE's and City of Pomona's Notice of Appeal were filed May 5, 2011. At the hearing on June 2, 2011, the judge summarily denied Petitioners' motion for attorney fees. Appellant's Opening Brief is due December 23, 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* |
| *Plaintiff's Counsel* | Ronald Ito |
| Jeffrey G. Varga | *BOE Attorney* |
| Paul, Hastings, Janofsky & Walker LLP | Jeffrey Graybill |

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.

**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 |
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Stephen Lew |
| Jeffrey G. Varga, Julian Decyk | *BOE Attorney* |
| Paul, Hastings, Janofsky & Walker LLP | 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.

**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* |
| *Plaintiffs' Counsel* | Bonnie Holcomb |
| Philip J. Eskanazi, Lee A. Cirsch | *BOE Attorney* |
| Akin, Gump, Strauss, Haur & Feld LLP | 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. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 25, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**
**Cross-Complaint: CVS, Inc. v. California State Board of Equalization**

| | |
|---|---|
| Los Angeles Superior Court Case No. BC325272 | Filed – 01/24/06 |
| | *BOE's Counsel* |
| *Plaintiffs' Counsel* | Bonnie Holcomb |
| Richard T. Williams | *BOE Attorney* |
| Holland & Knight LLP | 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. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case.

Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing.

**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* |
| *Plaintiffs' Counsel* | Bonnie Holcomb |
| Douglas A. Winthrop, Christopher Kao | *BOE Attorney* |
| Howard, Rice, Nemerovski, Canady, Falk & Rabkin | 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. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing.

**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* |
| *Plaintiffs' Counsel* | Bonnie Holcomb |
| Douglas C. Rawles | *BOE Attorney* |
| ReedSmith LLP | 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. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing.

**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. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing.

**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
ReedSmith 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. On July 6, 2011, the court heard Walgreen's motion for summary judgment or summary adjudication of issues. The court denied summary judgment as to all issues against both plaintiffs. The court granted summary adjudication as to the sales of skin lancets as to both plaintiffs and as to the sales of glucose test strips as to plaintiff Feigenblatt. Plaintiff Feigenblatt was dismissed from the case. Plaintiff McClain remains in the case but only as to sales of glucose test strips. The court did not grant summary judgment as to all causes of action because the court is still awaiting the California Supreme Court's ruling in *Loeffler*. Plaintiffs' motion to compel discovery and defendants' motion for judgment on the pleadings is continued, along with the Status Conference, from September 27, 2011, to October 26, 2011. At the hearing, the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. A Joint Status Report regarding *Loeffler* and the parties' recommendations for discussion must be submitted on January 11, 2012, for the February 1, 2012 hearing.

**MOHAN, DIANE, et al. v. Dell, Inc., et al.**
San Francisco Superior Court Case No. CGC 03-419192 — Filed – 11/01/04

*Plaintiffs' Counsel*
Jason Bergmann
Paul, Hastings, Janofsky & Walker, LLP

*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 December 9, 2011.

**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. BOE's and City of Pomona's Notice of Appeal were filed May 5, 2011. At the hearing on June 2, 2011, the judge summarily denied Petitioners' motion for attorney fees. Appellant's Opening Brief is due December 23, 2011.

**SONOMURA, AKIRA v. State Board of Equalization**
San Diego Superior Court Case No. 37-2007-00074759-CU-MC-CTL — Filed – 05/30/08

*Plaintiff's Counsel*
Bob Mullen
Attorney at Law

*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. Trial began on October 17, 2011 and was continued to November 1, 2011. The trial commenced on November 1, 2011, and was continued to December 8, 2011.

**TESTOUT CORPORATION v. State Board of Equalization**
Los Angeles Superior Court Case No. BC442139 | Filed – 07/22/2010

| *Plaintiff's Counsel* | *BOE's Counsel* |
|---|---|
| Jonathan G. Fetterly | Elisa Wolfe |
| Holme Roberts & Owen LLP | *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. A hearing on matters presented in briefs is scheduled for November 10, 2011, and a Case Management Conference is scheduled for December 1, 2011. On November 4, 2011, the Court notified the Plaintiffs that effective November 10, 2011, Judge John L. Segal was now assigned the case and all dates were vacated to be rescheduled in the newly assigned Department.

**TRIANGLE FOODS, INC.**
**Kristine E. Cazadd, et al. v. Triangle Foods, Inc.**
(*Petition to Enforce Administrative Subpoena Duces Tecum*)
Los Angeles Superior Court Case No. BS132161 | Filed – 05/23/2011

| *Plaintiff's Counsel* | *BOE's Counsel* |
|---|---|
| Philip C. Greenwald | Brian Wesley |
| Law Offices of Philip C. Greenwald | *BOE Attorney* |
| | W. Gregory Day |

Issue(s): Respondent supplies and services catering trucks, and has refused to produce documents and records in response to an administrative subpoena concerning those catering trucks that was issued pursuant to Revenue and Taxation Code section 6074 and Government Code sections 15613, 15617 and 15618.

Audit/Tax Period: None | Amount: $0.00

Status: On October 3, 2011, Triangle Foods filed a motion to quash in response to SBE's Petition to Enforce Administrative Subpoena Duces Tecum. Hearing on October 20, 2011, was continued. SBE's opposition to the motions filed by Respondent must be filed by December 5, 2011. Case Management Conference is schedule for December 16, 2011.

**WOOSLEY, CHARLES PATRICK v. State Board of Equalization**

Los Angeles Superior Court Case No. CA000499
Court of Appeal, Second Appellate District, Case No. 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. Woosley filed his brief on August 22, 2011. The hearing was held on November 15, 2011, and was continued to conclude arguments regarding the first attorney's fee issue. A hearing is scheduled to begin on January 23, 2012 concerning the second and third attorneys' fees issues.

**YABSLEY, RICHARD A. v. CINGULAR WIRELESS LLC**

*(Amicus Curiae Brief)*
California Supreme Court, Case No. S176146
Court of Appeal, Second Appellate District, Case No. B198827

Filed – 12/15/08
*BOE's Counsel*
None
*BOE Attorney*
John Waid

Issue(s): This is an Unfair Competition Law case in which plaintiff alleges that the retailer illegally collected sales tax reimbursement based on the full value of the cellular phone purchased rather than the bundled price. The trial court found that Regulation 1585, which required that the sales tax be imposed on the regular price, provided a safe harbor from the customer's unfair competition and false advertising claims. The appeal court affirmed on that basis and also held that Cal. Const., art. XII, § 32, and Rev. & Tax. Code, § 6932, barred the action because the customer's sole remedy for the return of excess sales tax collected was under Rev. & Tax. Code 6901.5. The court also found that the plaintiff lacked standing to maintain his claims because he cited no independently actionable violations, did not show that he was entitled to reimbursement, and could not prove causation. The receipt gave the customer notice of the amount of the tax and, under Civ. Code, § 1555.1 created a rebuttable presumption that he agreed to pay it. SBE filed an amicus brief to support the taxpayer's position that: 1) SBE consumer remedy statutes cannot be used to adjudicate tax disputes; and 2) SBE regulations provided a safe harbor from allegations of illegal activities under the unfair competition law.

Audit/Tax Period: None

Amount: Unspecified

Status: The Court of Appeal issued its opinion on August 19, 2009, and published as 176 Cal.App.4th 1156, agreeing with the SBE's position. On November 19, 2009, the taxpayer petitioned the Supreme Court for review. The Court deferred further action pending consideration and disposition of a related issue in *Loeffler v. Target Corp.*, California Supreme Court Case No. S173972 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the Court. The Court vacated the Court of Appeal's opinion. Oral argument in Loeffler has not yet been set.

# SALES & USE TAX

CLOSED CASES

LITIGATION ROSTER

NOVEMBER 2011

NONE

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