LITIGATION ROSTER

SALES AND USE TAX

JULY 2012

Sales and Use Tax
JULY 2012

NEW CASES

Case Name	Court/Case Number
BREA, CITY OF	Sacramento Superior Court, No. 34-2012-80001204
EL CERRITO, CITY OF	Sacramento Superior Court, No. 34-2012-80001200
MISSION VIEJO, CITY OF	Sacramento Superior Court, No. 34-2012-80001203
NATIONAL CITY, CITY OF	Sacramento Superior Court, No. 34-2012-80001198

CLOSED CASES

Case Name	Court/Case Number
TASTEE SUBS, INC.	Sacramento County Superior Court: 34-2012-80001178

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

SALES AND USE TAX

LITIGATION ROSTER

JULY 2012

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 October 17, 2011 and is still on-going.

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. Pursuant to stipulation, the court dismissed the appeals of the City of Pomona and the BOE on July 30, 2012. The case will go back to trial court and then remand to the Board for reconsideration of its prior decision regarding Pomona's local tax appeal.

BREA, CITY OF, et al. v. State of California
Sacramento Superior Court Case No. 34-2012-80001204 — Filed –07/12/12

	BOE's Counsel
Plaintiff's Counsel	Ryan Marcroft
James Markman	*BOE Attorney*
Brea City Attorney	John Waid

Issue(s): Dispute is over certain provisions of AB1484 (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None — Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case. Plaintiff and the Department of Finance have stipulated that the case will be stayed to resolve with the city the details of what amount is due. If these negotiations break down, plaintiff will notify defendants to file a response.

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

	BOE's Counsel
Plaintiff's Counsel	Kris Whitten
Charles Coleman	*BOE Attorney*
Holland & Knight, LP	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 October 17, 2011 and is still on-going.

D.R. SYSTEMS, INC. v. State of California; State Board of Equalization
San Diego County Superior Court Case No. 37-2009-00094087 — Filed –

	BOE's Counsel
Plaintiff's Counsel	Leslie Branman Smith
Scott Savary	*BOE Attorney*
Savary, APC	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, BOE'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 BOE 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. On December 23, 2011, the Court accepted the Plaintiff's Notice of Appeal upon its filing the Judgment. The case is being briefed in the Court of Appeal.

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

Sacramento County Superior Court, Case No. 34-2012-00117995-CU-MC-GDS	Filed – 10/01/10
	BOE's Counsel
Plaintiff's Counsel	James Phillips
Hubert Daniel	*BOE Attorney*
In Pro Per	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. The case transferred to Sacramento Superior Court upon receipt of the Plaintiff's payment of transfer fees on January 24, 2012. At the July 27, 2012 hearing, the Court tentatively ruled in favor of BOE. Plaintiff's amended complaint must be filed by August 8, 2012.

EL CERRITO, CITY OF, et al. v. County of Contra Costa, et al.

Sacramento Superior Court Case No. 34-2012-80001200	Filed –07/12/12
	BOE's Counsel
Plaintiff's Counsel	Seth Goldstein
Sky Woodruff	*BOE Attorney*
Meyers, Nave, Ribak, Silver & Wilson	John Waid

Issue(s): Dispute is over certain provisions of AB1484 (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case. BOE's response to the complaint was filed on August 13, 2012.

FIDELITY ASSET MANAGEMENT, INC. v. State Board of Equalization of the State of CA

Los Angeles County Superior Court, Case No. BC485481	Filed – 05/25/12
	BOE's Counsel
Plaintiff's Counsel	Marla Markman
Jeffrey S. Baird, Joseph A. Vinatieri	*BOE Attorney*
Bewley, Lassleben & Miller, LLP	Wendy Vierra

Issue(s): Whether Regulation 1660(c)(1) illegally shifts the incidence of sales taxes paid on equipment leased to tax-exempt insurance companies to the lessor.

Audit/Tax Period: None | Amount: $246,357.78

Status: Plaintiff Fidelity Asset Management has filed a Complaint for Refund of Sales and Use Tax.

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. BOE filed its return on December 21, 2011. At the May 8, 2012 Status Conference, the trial court issued a ruling implementing the recent decision of the Court of Appeal.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558	Filed – 06/13/05
	BOE's Counsel
Plaintiff's Counsel	Steven J. Green
R. Todd Luoma	*BOE Attorney*
Law Offices of Richard Todd Luoma	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
	BOE's Counsel
Plaintiff's Counsel	Kris Whitten
Charles L. Colman III	*BOE Attorneys*
Holland & Knight	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. This case is held in abeyance by trial court pending rulings in the Alameda, Brisbane, and South San Francisco cases.

Audit/Tax Period: None | Amount: Unspecified

Status: On September 19, 2011, Plaintiff filed a Petition for Writ of Mandate and Complaint. BOE 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
Jordan L. Lurie, Joel E. Elkins
Weiss & Lurie

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: First Amended Complaint was served on all parties on March 15, 2010. The parties negotiated a stay of proceedings pending the results in *Loeffler*, and the Stipulation 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 BOE 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 BOE'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 BOE's position and affirmed the decision of the trial court on all counts.

CA Supreme Court: The court granted BOE'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
Plaintiff's Counsel	Marta Smith
Carmen Trutanich, Pejmon Shemtoob	*BOE Attorney*
Office of the Los Angeles City 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. The case is currently being briefed in the Court of Appeal. Pursuant to stipulation, the court dismissed the appeals of the City of Pomona and the BOE on July 30, 2012. The case will go back to trial court and then remand to the Board for reconsideration of its prior decision regarding Pomona's local tax appeal.

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. The court has set a non-jury trial date on May 15, 2013. Discovery continues.

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. The court has set a non-jury trial date on May 15, 2013. Discovery continues.

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. A Status Conference is set for September 5, 2012.

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. A Status Conference is set for September 5, 2012.

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
	BOE's Counsel
Plaintiffs' Counsel	Bonnie Holcomb
Gail E. Lees, Brian Walters	*BOE Attorney*
Gibson, Dunn & Crutcher 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. A Status Conference is set for September 5, 2012.

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. A Status Conference is set for September 5, 2012.

MISSION VIEJO, CITY OF v. State of California
Sacramento Superior Court Case No. 34-2012-80001203 — Filed –07/18/12

Plaintiff's Counsel	*BOE's Counsel*
William Curley	Ryan Marcroft
Mission Viejo City Attorney	*BOE Attorney*
	John Waid

Issue(s): Dispute is over certain provisions of AB1484 (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None — Amount: Unspecified

Status: The BOE has not been properly served and is considered a "remedial defendant" in this case. Plaintiff is waiting for the Department of Finance to determine how much money is owed by the city.

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

Plaintiffs' Counsel	*BOE's Counsel*
Jason Bergmann	Anne Michelle Burr
Paul, Hastings, Janofsky & Walker, LLP	*BOE Attorney*
	John Waid

Issue(s): Whether Dell illegally collected use tax measured by the price of optional service contracts even though the contracts were not separately stated on the invoice (Revenue and Taxation Code 6011; Regulations 1546 and 1655).

Audit/Tax Period: None — Amount: Unspecified

Status: The trial court ruled that the service contracts were in fact optional and that the Dell entities should not have collected tax on their sales. Dell took up a writ of mandate on this issue to the First District Court of Appeal. In a published decision, the appeals court agreed with the trial judge. (*Dell, Inc. v. Sup. Ct.* (2008) 159 Cal.App.4th 911.) Plaintiffs' Unfair Competition Law claims are still pending.

The court continued the Case Management/Settlement Conference to December 9, 2011. On December 12, 2011, the trial court gave preliminary approval to the class action settlement reached by the parties.

NATIONAL CITY, CITY OF, et al. v. Ana Matosantos, et al.
Sacramento Superior Court Case No. 34-2012-80001198 — Filed –07/12/12

Plaintiff's Counsel	*BOE's Counsel*
Guillermo Frias	Stephanie Zook
Kane, Ballmer & Berkman	*BOE Attorney*
	John Waid

Issue(s): Dispute is over certain provisions of AB1484 (2012). Plaintiff alleges that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None — Amount: Unspecified

Status: The BOE is a "remedial defendant" in this case. Plaintiff notified defendants that they will file an amended complaint upon the court's denial of their Temporary Restraining Order to halt the State from withholding local tax distributions.

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. The case is currently being briefed in the Court of Appeal. Pursuant to stipulation, the court dismissed the appeals of the City of Pomona and the BOE on July 30, 2012. The case will go back to trial court and then remand to the Board for reconsideration of its prior decision regarding Pomona's local tax appeal.

RUBIN, TAL v. State Board of Equalization and DOES 1 to 10

Los Angeles County Superior Court, Case No. BC 476985

Filed – 1/17/2012

Plaintiffs' Counsel
Tal Rubin
In Pro Per

BOE's Counsel
Marla Markman
BOE Attorney
John Waid

Issue(s): Whether BOE issued two Notices of Determination (NODS) beyond the applicable statute of limitations provided by Revenue and Taxation Code section 6487.

Audit/Tax Period: 7/1/2000 – 6/30/2003

Amount: $30,764.54

Status: Parties have agreed to settle the case.

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	*BOE's Counsel*
Bob Mullen	Leslie Smith
Attorney at Law	*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. Plaintiff appears to not be actively pursuing the case at this time.

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	*BOE's Counsel*
Peter S. Hayes	Kris Whitten
Meyers, Nave, Roback, Silver & Wilson	*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 October 17, 2011 and is still on-going.

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. On December 1, 2011, the court scheduled an Order to Show Cause re dismissal hearing, Trial Setting Conference, and Case Management Conference for January 25, 2012.

On December 9, 2011, Plaintiff filed a Notice of Settlement of Entire Case, setting forth March 30, 2012, as the proposed Request for Dismissal deadline. On January 25, 2012, the court (incorrectly) ordered the case dismissed. Parties have reached a settlement. Waiting to obtain a court order.

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 BOE's Petition to Enforce Administrative Subpoena Duces Tecum. Hearing on October 20, 2011, was continued. BOE's opposition to the motions filed by Respondent must be filed by December 5, 2011. Respondent's agent for service of process was personally served on May 16, 2012.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization
Los Angeles Superior Court Case No. CA000499 — Filed – 06/20/78
Court of Appeal, Second Appellate District, Case No. B113661

Plaintiff's Counsel	*BOE's Counsel*
James M. Gansinger	Diane Spencer-Shaw
Gansinger, Hinshaw	*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. Arguments as to the first, second, and third attorney's fees issues were continued to March 1, 2012, and completed. Hearing scheduled for June 26, 2012 was removed from court calendar. Next hearing date is scheduled on September 7, 2012.

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. BOE filed an amicus brief to support the taxpayer's position that: 1) BOE consumer remedy statutes cannot be used to adjudicate tax disputes; and 2) BOE 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 BOE'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

JULY 2012

TASTEE SUBS, INC., dba OLD TOWNE MARKET v. CA Board of Equalization

Sacramento County Superior Court: 34-2012-80001178 — Filed – 06/15/12

Plaintiff's Counsel
Caitlin Anne Colman
Attorney at Law

BOE Attorney
John Waid

Issue(s): Whether BOE's 30-day suspension and fine imposed on petitioner's Cigarette and Tobacco Product and Retailer License were improper because it did not violate Business and Professions Code section 22974 (failure to maintain invoices at retailer premises for one year after purchase).

Audit/Tax Period: 2007 — Amount: Unknown

Disposition: Case was resolved.

DISCLAIMER

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