

LITIGATION ROSTER

SALES AND USE TAX

MARCH 2014

**Sales and Use Tax
MARCH 2014**

NEW CASES

Case Name

Court/Case Number

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

Sacramento County Superior Court
Case No. 34-2014-80001777

CLOSED CASES

Case Name

Court/Case Number

NONE

SALES AND USE TAX
LITIGATION ROSTER
MARCH 2014

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

San Francisco Superior Court Case No. CPF-09-509234

Court of Appeal, First Appellate District Case No. A137186

Filed -04/21/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Charles Coleman

Holland & Knight, LP

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: Trial Court. The parties 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 further trial proceedings were continued to November 1, 2011. The Court accepted petitioners' argument and judgment was entered on September 18, 2012. BOE filed its Notice of Appeal on November 16, 2012.

Court of Appeal: On August 19, 2013, counsels for Appellants City of El Segundo and Cities of Alameda, et al., filed certificates of interested entities. In a letter to the court, the City of El Segundo joined the combined Respondents' brief and Appellants' opening brief of the Cities and did not file its own. On November 15, 2013, the parties' stipulated request to consolidate appeals was granted and the appeals were ordered consolidated for all purposes. BOE filed its reply brief on December 3, 2013, in its own appeal, and a Cross-Respondent's brief in the Petitioner's cross-appeal. The Intervenor's reply briefs were filed on December 19, 2013. On March 18, 2014 BOE filed Appellant's Opening Brief. On March 21, 2014, Appellant's Brief on the merits was filed with the Court of Appeal.

BELLFLOWER, CITY OF, et al. v. State of California

Sacramento Superior Court Case No. 34-2012-80001269

Filed -09/19/12

BOE's Counsel

Kathleen Lynch

BOE Attorney

John Waid

Plaintiff's Counsel

Michael G. Colantuono

Colantuono & Levin

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 filed its response on October 25, 2012. On November 9, 2012, the Court denied a notice by Respondents/Defendants to re-assign this case with League of California Cities, et al., under a single judge. The court agreed there are common legal issues but each have their own unique claims and questions of law and fact. On October 4, 2013, the parties filed their supplemental briefs. On November 7, 2013, the court issued its ruling that the local sales and use tax withholding provisions of AB 1484 do not conflict with Propositions 1A and 22. The court also concluded that Propositions 1A and 22 do not prohibit the withholding of property tax revenues owed to successor agencies because, by their terms, neither proposition applies to successor agencies. Petitioners filed a Notice of Appeal on February 5, 2014.

BIG BEAR, CITY OF, et al. v. Ana J. Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-800015004

Plaintiff's Counsel

Iris P. Yang
T. Brent Hawkins
Best Best & Krieger

Filed -5/29/13

BOE's Counsel

Nancy Doig
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. On November 22, 2013, Petitioners filed memorandum of points and authorities in support of petition for writ of mandate and complaint for injunctive and declaratory relief, and a request for judicial notice in support of the petition. The Court issued a tentative ruling on January 24, 2014 denying the petition for writ of mandate. The petition was denied on March 5, 2014.

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

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

Court of Appeal, First Appellate District: A137185

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 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: Trial Court. The parties 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 further trial proceedings were continued to November 1, 2011. The Court accepted petitioners' argument and judgment was entered on September 18, 2012. BOE filed its Notice of Appeal on November 16, 2012.

Court of Appeal: On August 19, 2013, counsels for Appellants City of El Segundo and Cities of Alameda, et al., filed certificates of interested entities. In a letter to the court, the City of El Segundo joined the combined Respondents' brief and Appellants' opening brief of the Cities and did not file its own. On November 15, 2013, the parties' stipulated request to consolidate appeals was granted and the appeals were ordered consolidated for all purposes. BOE filed its reply brief on December 3, 2013, in its own appeal, and a Cross-Respondent's brief in the Petitioner's cross-appeal. The Intervenor's reply briefs were filed on December 19, 2013. On March 18, 2014 BOE filed Appellant's Opening Brief. On March 21, 2014, Appellant's Brief on the merits was filed with the Court of Appeal.

CALIFORNIA CITY, CITY OF, et al. v. Ana J. Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001501

Plaintiff's Counsel

Kimberly Hall Barlow
Jones & Mayer

Filed -05/24/13

BOE's Counsel

Kathleen Lynch

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. On May 29, 2013, the court denied Petitioner's Ex Parte Application for Temporary Restraining Order and Order to Show Cause. On June 12, 2013, the court endorsed the Attorney General's letter filed with a proposed order regarding Petitioner's ex parte application for temporary restraining order. BOE's response to petitioner's writ of mandate and complaint was filed on July 15, 2013. On September 23, 2013, the Sacramento Superior Court ordered that Plaintiffs be allowed to amend their complaint. On September 30, 2013, Plaintiffs filed a first amended complaint for declaratory relief. BOE filed its answer to the first amended complaint and petition for writ of mandate on October 29, 2013. On November 8, 2013, the attorney for Kern County Auditor-Controller filed its answer to petition for writ of mandate and complaint.

CORONADO, CITY OF, et al. v. Ana J. Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-00145407

Plaintiff's Counsel

Murray O. Kane
Donald P. Johnson
Kane, Ballmer & Berkman

Filed -06/18/13

BOE's Counsel

Nelson Richards

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: On November 13, 2013, Plaintiffs filed a stipulation and order to dismiss this action, and refile in the writ department. On November 25, 2013, Plaintiffs filed a petition for writ of mandate and complaint for declaratory and injunctive relief. On December 3, 2013, Plaintiffs filed a notice of hearing on petition for writ of mandate and complaint for declaratory and injunctive relief. On December 19, 2013, attorneys for the Respondents and Defendants filed their answers to the petition.

CYPRESS, CITY OF, et al. v. Ana J. Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001585

Plaintiff's Counsel

Dan Slater

Rutan & Tucker

Filed -08/01/13

BOE's Counsel

Alexandra R. Gordon

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: BOE filed its response on September 4, 2013.

DANSIG, INC. v. CA State Board of Equalization and Does 1 through 50

Sacramento Superior Court Case No. 34-2012-00134800

Plaintiff's Counsel

Steven E. Paganetti

Wild, Carter & Tipton

Filed -11/2/2012

BOE's Counsel

Steven J. Green

BOE Attorney

Kiren Chohan

Issue(s): The issue in this case is whether Plaintiff is entitled to a refund of sales tax paid ([Rev. & Tax. Code sections 6051, 6091](#)), ([Rev. & Tax. Code section 6561](#)) and ([Rev. & Tax. Code section 6902](#)).

Audit/Tax Period: None

Amount: \$70,304.48

Status: BOE's response was filed on April 16, 2013. Plaintiff filed its response on May 20, 2013. By agreement of the parties, all discovery, including pending responses and any discovery motion, was delayed to and including October 29, 2013. On January 15, 2014, BOE and Dansig reached a settlement agreement.

DINUBA, CITY OF, et al. v. Ana J. Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001518

Plaintiff's Counsel

Filed -06/07/13

BOE's Counsel

Nancy Doig

Daniel T. McCloskey
Tuttle & McCloskey

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: BOE filed its response on July 11, 2013.

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

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

Court of Appeal, Fourth Appellate District: D060856

Plaintiff's Counsel

Scott Savary

Savary, APC

Filed –

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: Trial Court: 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.

Court of Appeal: On December 23, 2011, the Court of Appeal accepted the Plaintiff's Notice of Appeal upon its filing the Judgment. Oral arguments, set for February 11, 2013, were heard and submitted to the Court. On March 7, 2013 the Court of Appeal reversed the trial court judgment and ruled that the parties shall bear their own costs on appeal.

Trial Court: A Status Conference was held on June 21, 2013. The parties reached a settlement on October 8, 2013. Dismissal was entered on December 11, 2013. BOE received notification of the dismissal on February 26, 2014.

EL CERRITO, CITY OF v. Michael Cohen, et al.

Sacramento County Superior Court Case No. 34-2013-80001671

Plaintiff's Counsel

Sky Woodruff

Meyers, Nave, Ribak, Silver & Wilson

Filed – 10/22/13

BOE's Counsel

Patty Li

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: Petitioners filed a new lawsuit for Writ of Mandate and Complaint for Declaratory Relief, on October 22, 2013. An amended petition was filed on October 25, 2013. BOE will file a timely response.

EL CERRITO REDEVELOPMENT AGENCY SUCCESSOR AGENCY, et al. v. Michael Cohen, et al.
Sacramento County Superior Court Case No. 34-2013- 80001671

Plaintiff's Counsel

Dante Foronda

Meyers, Nave, Ribak, Silver & Wilson

Filed – 10/22/13

BOE's Counsel

Patty Li

BOE Attorney

John Waid

Issue(s): The Court should enjoin Finance from: (1) demanding that the Successor Agency remit \$1,981,989.00 to the Contra Costa County Auditor-Controller for the purposes of distributing the funds to affected taxing entities pursuant to California Health & Safety Code Section 34179.5, as added by Assembly Bill 1484 ("AB 1484"), and (2) directing Petitioners to reverse the \$1,981,989.00 in tax increment payments, \$10,168,319.00 in property conveyances and a payment of \$400,243.00 in bond proceeds by the El Cerrito Redevelopment Agency. Petitioners also request an order that the self-help provisions of AB 1484 are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: On December 2, 2013, the DOJ, attorney for State Respondents, filed notice of representation of the BOE in lieu of response to complaint. State Respondents filed their answer to amended petition for writ of mandate and complaint for declaratory relief on the same date. On December 10, 2013, Real Party in Interest, Alameda-Contra Costa Transit District filed its response and answer to amended petition for writ of mandate and complaint for declaratory relief.

GMRI, INC. v. State Board of Equalization

Sacramento Superior Court Case No. 34-2013-001145890

Plaintiff's Counsel

Eric J. Coffill

Morrison & Foerster LLP

Filed –06/3/13

BOE's Counsel

Steven J. Green

BOE Attorney

John Waid

Issue(s): Plaintiff alleges that the tips that taxpayers added to their restaurant bills do not qualify as "mandatory" within the meaning of [Regulation 1602](#). Mandatory tips are not part of the gross receipts received by the taxpayers for their sales of meals.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE filed its response on November 7, 2013.

GOLETA, CITY OF, et al. v. Ana J. Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-8000521

Plaintiff's Counsel

Tim W. Giles

Gibson, Dunn & Crutcher, LLP

Filed -06/10/13

BOE's Counsel

John Killeen

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: On July 26, 2013, the AG's office filed a notice of representation of BOE in lieu of a response to the complaint. On November 21, 2013, Plaintiffs filed a first amended verified petition for writ of mandate, declaratory relief, injunctive relief and validation action. On November 27, 2013, Plaintiffs filed a request for judicial notice in support of their reply brief in support of their motion for preliminary injunction. On December 6, 2013, the Court heard oral argument on Plaintiff's motion for a preliminary injunction. The Court took the matter under submission. On December 19, 2013, Plaintiffs filed a status conference statement regarding motion for preliminary injunction.

HUNTINGTON BEACH, CITY OF, et al. v. CA Director of Finance

Sacramento Superior Court Case No. 34-2013-80001441

Plaintiff's Counsel

Murray O. Kane

Kane, Ballmer & Berkman

Filed -03/15/2013

BOE's Counsel

Susan K. Smith

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: BOE's response was filed on April 17, 2013. On October 13, 2013, State Respondents filed their objections to Petitioners surreply and evidence submitted with surreply. Petitioners filed their opening brief on November 15, 2013. On December 6, 2013, Respondents filed a request for judicial notice, and a supplemental reply opposition to the petition for writ of mandate. On January 29, 2014, the trial court issued a writ of mandate along with a declaratory judgment and a permanent injunction, directing the Department of Finance to refrain from ordering local sales and use tax offsets against the Petitioners.

INGLEWOOD, CITY OF v. Ana J. Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001591

Plaintiff's Counsel

Murray O. Kane

Kane, Ballmer & Berkman

Filed - 08/08/13

BOE's Counsel

Benjamin Glickman

BOE Attorney

John Waid

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

Audit/Tax Period: None

Amount: Unspecified

Status: On September 23, 2013 BOE filed its response. On November 15, 2013, BOE filed a request for judicial notice in support of opposition to petition for writ of mandate and complaint for declaratory and injunctive relief. On December 5, 2013, Petitioners filed their reply brief in support of petition for writ of mandate. Petitioners also filed supplemental request for judicial notice on the same day. On December 16, 2013, Petitioner filed its surreply in support of its opening brief. The Court issued a tentative ruling on December 19, 2013, that denied the petition for writ of mandate. The Petitioner requested oral argument. The Court heard oral argument and took the matter under submission, and requested additional briefing to be filed by January 17, 2014. On February 20, 2014, the trial court held that a loan made by the Inglewood Redevelopment Agency to a Developer on June 28, 2011, was invalid. The loan was made the same day that Assembly Bill 26 I X, which dissolved the redevelopment agencies became effective. The trial court denied the petition in its entirety.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558

Filed – 06/13/05

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

R. Todd Luoma

Law Offices of Richard Todd Luoma

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

Kris Whitten

BOE Attorneys

John Waid/Kiren Chohan

Plaintiff's Counsel

Charles L. Colman III

Holland & Knight

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 was 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. The dismissal was entered on February 6, 2014.

IRVINE II, CITY OF v. California State Board of Equalization

Sacramento County Superior Court Case No. 34-2013-80001682

Plaintiff's Counsel

Filed – 11/05/13

BOE's Counsel

Seth Goldstein

BOE Attorney

John Waid

Issue(s): Petitioners contend: Dispute is over certain provisions of AB 1484 (2012). Petitioners allege that statutes that may require the Board to withhold local tax distributions are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: On January 28, 2014, Plaintiff filed request for dismissal, without prejudice. The dismissal was entered on February 6, 2014.

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: 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. On May 14, 2013, the Court issued an Order to Show Cause. The Court scheduled an order to show cause hearing on January 13, 2014, for failure to prosecute and dismissal; status of decision in the *Loeffler* case; and status of stay. A second hearing was scheduled for March 18, 2014, for a case and 5 year status review.

JEMBER, ASCHILEW. FEREDÉ NEGASH, AND LEILTI MESFIN, et al. v. California State Board of Equalization, et al.

Santa Clara County Superior Court Case No. 113CV257790

Filed –12/05/13

Plaintiff's Counsel
Plaintiffs in Pro Per

BOE's Counsel
Jeffrey Vincent
BOE Attorney
W. Gregory Day

Issue(s): Plaintiffs contend that the BOE Defendants caused Plaintiffs injury resulting in damages in excess of \$375,000.00 as a result of the creation and implementation of a racially-motivated KKK system of fraudulent tax liability claims aimed at the Plaintiffs, during the course of which the BOE Defendants used false levies to induce the Bank Defendants to hand over funds in Plaintiffs' accounts to the BOE Defendants. The BOE Defendants used an "Institutional Racism Pilot Program" to injure Plaintiffs and their business activities.

Audit/Tax Period: None

Amount: Unknown

Status: On February 20, 2014, the Attorney General's Office filed and served Reply Memorandum in Support of Demurrer, in response to the opposition of Plaintiffs. On February 26, 2014, the Attorney General's Office filed an Opposition to Plaintiff's motion to strike notice of suspension on behalf of the BOE, its Board Members, and BOE employee. The BOE's demurrer to the complaint was sustained with leave to amend on March 4, 2014. Plaintiffs filed their First Amendment Complaint on March 5, 2014. On March 11, 2014, the Order re Plaintiffs' motion to strike notice of suspension of alcoholic beverage license was denied.

JETHANI & ASSOCIATES, INC. v. California State Board of Equalization

Santa Clara County Superior Court Case No. 113CV259336

Filed -1/21/14
BOE's Counsel

Plaintiff's Counsel
Plaintiff in Pro Per

BOE Attorney
John Waid

Issue(s): This litigation arises out of plaintiff's contention that the auditor's use of purchase invoices from one of plaintiff's major suppliers to reconstruct mini-mart purchase invoices for a portion of the tax period at issue was improper. BOE denies plaintiff's contentions.

Audit/Tax Period: 2002-2006; 2009-2012

Amount: Unknown

Status: BOE will file a timely response.

KING CITY, CITY OF, et al. v. Michael Cohen, et al.
Sacramento Superior Court Case No. 34-2013- 80001672

Plaintiff's Counsel

Filed –12/05/13
BOE's Counsel
Robert Wilson
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: On December 23, 2013, attorney for Respondents BOE, John Chiang and Michael Cohen filed their answer to the petition for writ of mandate and complaint for declaratory and injunctive relief.

LAKWOOD, CITY OF, et al. v. Ana J. Matosantos, et al.
Sacramento Superior Court Case No. 34-2013-80001683

Plaintiff's Counsel
Holly O. Whatley
Colantuono & Levin

Filed –08/01/13
BOE's Counsel
Sylvia Cates
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: On November 5, 2013, Plaintiffs filed a complaint for declaratory and injunctive relief, and petition for writ of mandate. On December 13, 2013, DOJ filed an answer on behalf of the Director of the Department of Finance, and notice of representation of the BOE, in lieu of response to the complaint for declaratory and injunctive relief and petition for writ of mandate.

LEAGUE OF CALIFORNIA CITIES, et al. v. Ana Matosantos
Sacramento Superior Court Case No. 34-2012-80001275

Plaintiff's Counsel
Ann Taylor Schwing
Best Best & Krieger LLP

Filed –09/27/12
BOE's Counsel
Kathleen Lynch
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. BOE’s response was filed on November 20, 2012. Petitioners filed a Petitioners’ Memorandum of Points and Authorities in Support of Petition for Writ of Mandate and Complaint for Injunctive Relief on February 1, 2013. BOE’s response was filed on

March 12, 2013. On July 10, 2013, the Petitioners' request for declaratory relief and for all other relief related to their request such as injunctive relief and issuance of a writ of mandate was denied. Judgment was entered in favor of respondents. Petitioners filed their third request for judicial notice; a motion for reconsideration or a new trial on their petition for writ of mandate and complaint for injunctive and declaratory relief; and a notice of intent to move for a new trial on July 22, 2013. Petitioners filed their fourth request for judicial notice and a supporting memorandum of points and authorities on August 21, 2013. On September 20, 2013, the Court heard oral argument on Petitioner's motion for reconsideration, or new trial on complaint for declaratory and injunctive relief and petition for writ of mandate. The Court granted the motion for judicial notice. BOE, consistent with its no-position stance, did not participating in this motion. The Court ordered a new round of briefing to be completed by November 1, 2013. BOE did not participate. On November 14, 2013, the County of Santa Clara filed its surreply. On December 9, 2013, the trial court issued a ruling in favor of Plaintiffs and Petitioners. On December 13, 2013, the DOF issued to the BOE a letter suspending its prior orders for the BOE to withhold local sales and use tax revenues from the Cities of Ontario, Cerritos and Pinole.

On February 28, 2014, Petitioners filed Notice of Entry of Judgment and Order granting declaratory and injunctive relief, and petition for writ of mandate. DOF filed its Notice of Appeal on March 19, 2014.

LIVINGSTON, CITY OF, et al. v. Ana Matosantos
Sacramento Superior Court Case No. 34-2013-80001460

Plaintiff's Counsel
Deborah J. Fox
Meyers, Nave, Riback, Silver & Wilson

Filed -4/12/2013
BOE's Counsel
Michael Glen Witmer
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. BOE filed its response on May 13, 2013. On November 8, 2013, Plaintiffs filed their opening brief in support of petition for writ of mandate. On November 12, 2013, Plaintiffs filed notice of hearing on petition for writ of mandate. On December 6, 2013, Respondents filed memorandum of points and authorities in opposition to petition for writ of mandate. Respondents also filed objections to Petitioners' evidence and declarations in support of petition for writ of mandate. On January 10, 2014, the trial court denied Plaintiffs' petition for writ of mandate and complaint for declaratory and injunctive relief. On March 27, 2014, the Plaintiff filed a proposed judgment adopting the January 10, 2014 tentative ruling denying the Petition for Writ of Mandate.

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. The court ordered the parties to submit a letter brief by April 26, 2013, on the issue of primary jurisdiction of the BOE. Supplemental reply briefs and amicus curiae briefs were filed on behalf of Respondents and Petitioners in April 2013 in response to the judges' order regarding primary jurisdiction of the BOE. On December 16, 2013, The Supreme Court posed additional questions to the parties and directed them to serve and file simultaneous supplemental briefs on or before January 13, 2014. On December 23, 2013, the Court issued an order requiring the parties to file supplemental briefs as to whether the Plaintiffs could bring an action under the Unfair Competition Law (UCL) or Consumer Legal Remedies Act (CLRA). The deadline to serve and file simultaneous reply briefs was on or before January 27, 2014. Oral argument was held on February 4, 2014.

LOMA LINDA, CITY OF v. Ana J. Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001583

Plaintiff's Counsel

Dan Slater

Rutan & Tucker

Filed –07/31/13

BOE's Counsel

Benjamin Glickman

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: On October 4, 2013, the Department of Justice (DOJ) filed a notice of representation of the BOE in lieu of a response to the verified petition for writ of mandate and declaratory and injunctive relief.

LOS BANOS DESIGNATED LOCAL AUTHORITY v. CA Director of Finance, Ana Matosantos, et al.
Sacramento Superior Court Case No. 34-2012-80001352

Filed –12/28/2012

Plaintiff's Counsel

John G. McClendon

Leibold McClendon & Mann, P.C.

BOE's Counsel

Jeff Rich

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 and has an open extension of time to respond to the petition.

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

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

BOE's Counsel

Ronald Ito

BOE Attorney

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 was designated the lead case. Lucent's Answer to BOE's Cross-Complaint for Unpaid Interest was filed February 4, 2011. The hearing on the parties' motions for summary judgment and/or summary adjudication was held on August 26, 2013. The Court entered a Minute Order on September 27, 2013, granting Plaintiff's motion for summary judgment, and denying BOE's motion for summary judgment. The Court requested the parties to submit further briefing on whether Plaintiffs are entitled to prejudgment interest. The court heard argument on the subject of prejudgment interest on November 18, 2013, and took the matter under submission to review the parties' arguments. On December 4, 2013, the Court entered a minute order, ruling in favor of BOE and adopting BOE's calculations. On December 30, 2013, BOE filed an objection to the proposed judgment submitted to the Court by Plaintiffs. On March 6, 2014, BOE filed an Opposition to Plaintiff's Motion for Judgment for Reasonable Litigation Costs Pursuant to Revenue and Taxation Code section 7156.

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: \$22,493,838.00

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 was designated the lead case. The hearing on the parties' motions for summary judgment and/or summary adjudication was held on August 26, 2013. The Court entered a Minute Order on September 27, 2013, granting Plaintiff's motion for summary judgment, and denying BOE's motion for summary judgment. The Court requested the parties to submit further briefing on whether Plaintiffs are entitled to prejudgment interest. The court heard argument on the subject of prejudgment interest on November 18, 2013, and took the matter under submission to review the parties' arguments. On December 4, 2013, the Court entered a minute order, ruling in favor of BOE and adopting BOE's calculations. On December 30, 2013, BOE filed an objection to the proposed judgment submitted to the Court by Plaintiffs. On March 6, 2014, BOE filed an Opposition to Plaintiff's Motion for Judgment for Reasonable Litigation Costs Pursuant to Revenue and Taxation Code section 7156.

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. 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*. At the hearing on October 26, 2011 the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. On February 20, 2014, Notice of Change of Attorney was filed, substituting DAG Anthony Sgherzi for DAG Bonnie Holcomb.

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

Plaintiffs' Counsel

Richard T. Williams
Holland & Knight LLP

Filed – 01/24/06

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. 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*. At the hearing on October 26, 2011 the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. On February 20, 2014, Notice of Change of Attorney was filed, substituting DAG Anthony Sgherzi for DAG Bonnie Holcomb.

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

Plaintiffs' Counsel

Douglas A. Winthrop, Christopher Kao
Howard, Rice, Nemerovski, Canady, Falk & Rabkin

Filed – 01/24/06

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. 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*. At the hearing on October 26, 2011 the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. On February 20, 2014, Notice of Change of Attorney was filed, substituting DAG Anthony Sgherzi for DAG Bonnie Holcomb.

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

Plaintiffs' Counsel
Douglas C. Rawles
ReedSmith LLP

Filed – 01/24/06
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. 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*. At the hearing on October 26, 2011 the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. On February 20, 2014, Notice of Change of Attorney was filed, substituting DAG Anthony Sgherzi for DAG Bonnie Holcomb.

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

Plaintiffs' Counsel
Gail E. Lees, Brian Walters
Gibson, Dunn & Crutcher 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. 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*. At the hearing on October 26, 2011 the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. On February 20, 2014, Notice of Change of Attorney was filed, substituting DAG Anthony Sgherzi for DAG Bonnie Holcomb.

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. 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*. At the hearing on October 26, 2011 the Court continued the stay on the Plaintiff's motion to compel discovery and defendants' motion for judgment on the pleadings. On February 20, 2014, Notice of Change of Attorney was filed, substituting DAG Anthony Sgherzi for DAG Bonnie Holcomb.

MENDOTA DESIGNATED LOCAL AUTHORITY v. CA Director of Finance, Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001353

Filed –12/23/12

Plaintiff's Counsel

John G. McClendon

Leibold McClendon & Mann, P.C.

BOE's Counsel

Jeff Rich

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 and has an open extension of time to respond to the petition.

MERCED DESIGNATED LOCAL AUTHORITY v. CA Director of Finance, Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001351

Filed –12/28/12

Plaintiff's Counsel

John G. McClendon

Leibold McClendon & Mann, P.C.

BOE's Counsel

Jeff Rich

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 and has an open extension of time to respond to the petition.

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.

On December 12, 2011, the trial court gave preliminary approval to the class action settlement reached by the parties. A Settlement Administrator was retained to print announcements of the class action settlement to be mailed to eligible customers with instructions on how claimants can go online to complete their refund claims. Notices were mailed to approximately 3.6 million potential claimants, and claims have started to be filed with the third party settlement administrator. The deadline to opt out of the settlement, and to file objections, was March 19, 2013. The hearing for final court approval of the settlement was April 18, 2013. The court stated that it would approve the settlement, and the parties prepared a form of judgment for consideration and entry by the court. The last day on which claims were to be filed was May 29, 2013. The Board does not plan to mail any refunds until after the court's final judgment, and any appeal periods, have passed.

On June 12, 2013, Judge Kramer entered Judgment in the case, along with Orders approving the class action settlements. Notice of Entry of Judgment was issued by Plaintiffs' counsel. On August 5, 2013, Ronald Schonbrun, attorney for objector Fred Sondheimer, filed a Notice of Appeal, appealing the trial court's denial of his objections to the settlement agreements. The Objector's brief was filed on January 17, 2014. On February 19, 2014, the Plaintiffs filed their Respondents' brief. The Board, and the Dell entities filed joinders with the Respondents' brief.

MONTEBELLO, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001703

Plaintiff's Counsel

Filed –12/05/13

BOE's Counsel

Sylvia Cates

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: On December 18, 2013, Respondent Wendy Watanabe, and County Real Parties in Interest filed their answer to petition for writ of mandate and complaint for declaratory and injunctive relief. On December 30, 2013, DOJ filed its notice of representation of the BOE in lieu of response to petition for writ of mandate and complaint for declaratory and injunctive relief. On December 30, 2013, attorney for Respondents Ana J. Matosantos and Michael Cohen filed their answer to petition for writ of mandate and complaint for declaratory and injunctive relief.

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

Sacramento County Superior Court: 34-2014-80001777

Plaintiff's Counsel

Mark D. Hensley

Jenkins & Hogin, LLP

Filed –03/14/2014

BOE's Counsel

Aaron Jones

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: On March 17, 2014, case was assigned to DAG Aaron Jones.

NATIONAL CITY, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001198

Filed -07/12/12

BOE's Counsel

Patty Li

BOE Attorney

John Waid

Plaintiff's Counsel

Guillermo Frias

Kane, Ballmer & Berkman

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. Plaintiffs notified defendants that they planned to file an amended complaint upon the court's denial of their Temporary Restraining Order to halt the State from withholding local tax distributions. Plaintiff filed its Amended Petition for Writ of Mandate and Complaint for Declaratory Relief and Injunction on August 30, 2012. BOE filed its response on October 9, 2012. On October 18, 2013, Respondents filed their supplemental brief in opposition to the opening brief of *San Marcos and National City* for the first amended writ petition and complaint. On November 7, 2013, the Court issued its ruling in favor of Respondents. The Court further found that the Petitioners failed to show that they were prevented from meeting their other enforceable obligations by making their AB 1484 payments. On December 6, 2013, Plaintiffs filed an order and judgment denying amended petition for writ of mandate, and dismissing complaint for declaratory relief and injunction. BOE filed its notice of entry of judgment on December 18, 2013.

NOVATO, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001496

Filed -5/22/13

BOE's Counsel

Alexandra R. Gordon

BOE Attorney

John Waid

Plaintiff's Counsel

Dan Slater

Rutan & Tucker

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: BOE's response was filed on June 28, 2013. Marin County Transit District, Real Party in Interest, filed its response to the petition for writ of mandate and complaint for declaratory and injunctive relief on August 6, 2013.

ONTARIO, CITY OF, et al. v. Ana J. Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001625

Plaintiff's Counsel

T. Brent Hawkins
Best Best & Krieger

Filed -09/09/13

BOE's Counsel

Jonathan Eisenberg
BOE Attorney
John Waid

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

Audit/Tax Period: None

Amount: Unspecified

Status: On September 16, 2013, the Court signed the order denying ex parte motion for temporary restraining order. On October 18, 2013, Petitioners filed an amended petition for writ of mandate and complaint for injunctive and declaratory relief. On November 15, 2013, the DOF issued to the BOE local sales and use tax withhold orders to commence with the November 2013 distributions. On November 18, 2013, Respondents filed an answer to amended petition for writ of mandate and complaint for injunctive and declaratory relief. A hearing on the petition for writ of mandate and complaint for injunctive and declaratory relief is set for May 2, 2014.

PALM SPRINGS, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001440

Plaintiff's Counsel

Douglas C. Holland
Woodruff, Spradlin & Smart

Filed -4/2/2013

BOE's Counsel

Jeff Rich
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: BOE's response was filed on May 6, 2013. Petitioner's Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction was denied on May 31, 2013. Petitioner filed an amended Summons and Complaint on June 26, 2013. On July 24, 2013, the court denied Plaintiffs' ex parte application for a temporary restraining order in order to show cause regarding an issuance of a preliminary injunction.

PINOLE, CITY OF, et al. v. Michael Cohen, et al.

Sacramento Superior Court Case No. 34-2013-80001692

Filed -08/01/13

BOE's Counsel

Patty Li

BOE Attorney

John Waid

Plaintiff's Counsel

Benjamin T. Reyes, II

Myers, Nave, Riback, Silver & Wilson

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: On November 15, 2013, the DOF issued the BOE local sales and use tax withhold orders to commence with the November 2013 distributions. On December 20, 2013, DOJ filed its notice of representation of the BOE in lieu of response to complaint. Respondents filed their answer to petition for writ of mandate and complaint for declaratory relief on December 20, 2013. On December 31, 2013, Real Party in Interest Alameda-Contra Costa Transit District filed its response and answer to petition for writ of mandate and complaint for declaratory relief.

RANCHO CORDOVA, CITY OF v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2012-80001356

Filed -12/28/12

BOE's Counsel

Anthony O'Brien

BOE Attorney

John Waid

Plaintiff's Counsel

David W. Skinner

Myers, Nave, Riback, Silver & Wilson

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 filed its response on February 13, 2013. On October 1, 2013, Petitioners filed their opening brief. On October 21, 2013, the Department of Justice filed a request for judicial notice in support of Defendant. On November 15, 2013, the court issued a tentative ruling denying the petition for writ of mandate. On December 13, 2013, judgment was entered against Petitioners denying the petition for writ of mandate. The complaint for declaratory and injunctive relief was dismissed. Respondent shall recover her costs of suit, pursuant to section 6103.5 of the Government Code, payable to the court.

REDWOOD CITY, CITY OF v. State of California
Sacramento Superior Court Case No. 34-2012-80001447

Plaintiff's Counsel
Iris Yang
Best & Krieger, LLP

Filed -03/22/13
BOE's Counsel
Jonathan Eisenberg
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: BOE's response was filed on April 25, 2013. On October 31, 2013, the Court tentatively denied Petitioner's petition for writ of mandate. On November 22, 2013, Petitioners filed a supplemental briefing in support of petition for writ of mandate. On January 4, 2014, the court issued an order denying the petition for writ of mandate.

RIVERSIDE, COUNTY OF v. CA Dept. of Finance
Sacramento Superior Court Case No. 34-2012-80001425

Plaintiff's Counsel
Thomas W. Barth
Barth Tozer & Daly LLP

Filed -03/1/13
BOE's Counsel
Michael Glenn Witmer
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: BOE's response was filed on April 15, 2013. Petitioners filed their opening brief on October 8, 2013. On November 12, 2013, attorney for Real Party in Interest filed their response to the writ of mandate by affected real party in interest, Desert Alliance For Community Empowerment, Inc. On November 13, 2013, attorneys for Real Party in Interest, Alliant Consulting filed its answer to petition for writ of mandate and complaint for declaratory relief, injunctive relief and promissory estoppel. A brief in support of Plaintiffs' opening brief was filed on the same date. On November 13, 2013, Respondents filed an opposition to writ of mandate, and a request for judicial notice in opposition to writ of mandate. On December 9, 2013, Plaintiffs filed a reply in support of petition for writ of mandate and complaint for declaratory relief, injunctive relief and equitable estoppel. Plaintiffs also filed objections to request for judicial notice on the same date. Respondent Ana Matosantos filed a response to the brief of Desert Alliance on December 9, 2013. The Court heard argument from the respective parties and took the matter under submission at the December 20, 2013 hearing, on petition for writ of mandate. On December 30, 2013, Plaintiffs filed Ex Parte Applications for Stay and Order to Show Cause regarding preliminary injunction. On December 31, 2013, the Court granted a three-day TRO and continued the case to Friday, January 3, 2014, for further review regarding a motion for preliminary injunction and/or further extension of the TRO. The Court signed the Order on Ex Parte Application for Stay and Order to Show Cause regarding Preliminary Injunction.

SAN BERNARDINO, CITY OF v. John Chiang, State Controller

USBC, Central District, Riverside, Case No. 6:12-BK-28006-MJ

Filed -03/26/13

BOE's Counsel

None

BOE Attorney

John Waid

Plaintiff's Counsel

James F. Penman

Attorney for the City of San Bernardino

Issue(s): Even though this case was filed in bankruptcy court, the 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: Plaintiff San Bernardino filed an amended complaint on May 23, 2013. BOE's response was filed on June 5, 2013. On September 11, 2013, the Trial Court entered an order granting the motions of the Department of Finance (DOF) and State Controller's Office (SCO), to dismiss San Bernardino's complaint for declaratory relief with leave to amend and to deny its motion, without prejudice for an order that DOF violated the automatic stay in bankruptcy by issuing its demand letter. On September 24, 2013, Defendants submitted their election to have the appeal heard by the District Court.

SAN DIEGO, CITY OF v. Ana J. Matosantos, CA Director of Finance

Sacramento Superior Court Case No. 34-2013-80001454

Filed -4/19/2013

BOE's Counsel

Michael Glen Witmer

BOE Attorney

John Waid

Plaintiff's Counsel

Meghan Ashley Wharton

San Diego Deputy City Attorney

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: Plaintiffs' application for Temporary Restraining Order was heard April 25, 2013, and denied from the bench. On May 29, 2013, Plaintiff/Petitioner filed an amended notice. Petitioner filed a Verified First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief on May 31, 2013. On October 28, 2013, Petitioners filed a stipulation and proposed order to continue hearing on the merits and establish briefing schedule. The judge approved the order on the same day.

SAN LEANDRO (III), CITY OF, v. Ana J. Matosantos, CA Director of Finance

Sacramento Superior Court Case No. 34-2013-80001708

Filed -12/12/2013

BOE's Counsel

Plaintiff's Counsel
Deborah J. Fox
Meyers, Nave, Riback, Silver & Wilson

Paul Stein
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: BOE filed its answer on April 23, 2013. A Hearing was set for July 18, 2014. On January 10, 2014, Respondent BOE filed its answer to the petition for writ of mandate and complaint for declaratory relief.

SANTA ANA, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001477

Court of Appeal, Third Appellate District No. C074528

Plaintiff's Counsel

Iris Yang

Best Best & Krieger, LLP

Filed -4/29/2013

BOE's Counsel

Jonathan Eisenberg

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: BOE's response was filed on May 31, 2013. Plaintiff filed an amended petition for writ of mandate and declaratory relief on May 30, 2013. BOE's response was filed on June 11, 2013. On August 22, 2013, Plaintiff City of Santa Ana filed a notice of appeal in the Court of Appeal, Third Appellate District. On August 28, 2013, the court granted petitioners' request for judicial notice as to exhibits one, two and three, and denied as to exhibit four. The petition for writ of supersedeas with request for stay was denied.

Trial Court: On September 11, 2013, the Court filed BOE's order on motion for Temporary Restraining Order (TRO). On October 3, 2013, the court issued an order relating the Santa Ana case to *Cuenca v. Matosantos et al.* On November 4, 2013, Plaintiffs filed proof of publication of Summons. On February 28, 2014, Plaintiffs filed a second amended petition for writ of mandate and complaint for injunctive and declaratory relief.

SANTA FE, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento Superior Court Case No. 34-2013-80001528

Plaintiff's Counsel

Holly O. Whatley

Colantuono & Levin, PC

Filed -6/14/2013

BOE's Counsel

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: BOE will file a timely response. On January 8, 2014, Respondent filed a notice of change of assignment of counsel, within the county counsel's office.

SOUTH SAN FRANCISCO, CITY OF v. California State Board of Equalization, et al.

San Francisco Superior Court Case No. CPF-09-509231

Court of Appeal, First Appellate District: A137186

Filed – 02/20/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Peter S. Hayes

Meyers, Nave, Roback, Silver & Wilson

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: Trial Court. The parties 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 further trial proceedings were continued to November 1, 2011. The Court accepted petitioners' argument and judgment was entered on September 18, 2012. BOE filed its Notice of Appeal on November 16, 2012.

Court of Appeal: On August 19, 2013, counsels for Appellants City of El Segundo and Cities of Alameda, et al., filed certificates of interested entities. In a letter to the court, the City of El Segundo joined the combined Respondents' brief and Appellants' opening brief of the Cities and did not file its own. On November 15, 2013, the parties' stipulated request to consolidate appeals was granted and the appeals were ordered consolidated for all purposes. BOE filed its reply brief on December 3, 2013, in its own appeal, and a Cross-Respondent's brief in the Petitioner's cross-appeal. The Intervenor's reply briefs were filed on December 19, 2013. On March 18, 2014 BOE filed Appellant's Opening Brief. On March 21, 2014, Appellant's Brief on the merits was filed with the Court of Appeal.

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

San Francisco Superior Court Case No. CPF-12-512338

Filed –08/09/12

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Charles Coleman

Holland & Knight

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 the City of Torrance as being subject to use tax is valid.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE filed its response on September 21, 2012.

TRIANGLE FOODS, INC. III

(Subpoena Duces Tecum)

Los Angeles Superior Court Case No. BS143434

Plaintiff's Counsel

Phillip C. Greenwald

Law Offices of Peter Greenwald

Filed – 4/25/2013

BOE's Counsel

Brian Wesley

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](#). BOE served an administrative subpoena duces tecum on the Respondents on April three (3) administrative subpoenas duces tecum on the Respondents on May 16, 2012. Respondents have indicated that the issuance of the subpoena to each respondent was legally improper and violated the due process rights of the respondent.

Audit/Tax Period: None

Amount: \$0.00

Status: BOE served an administrative subpoena duces tecum on the Respondents on April 25, 2013, with a compliance date of May 28, 2013. The Court denied Triangle Foods' motion to quash service of the subpoena at the September 25, 2013 hearing. On October 22, 2013, Triangle served its Notice of Demurrer and Notice of Motion to Strike in the matter. On November 4, 2013, BOE filed its opposition to the demurrer and motion to strike. On November 14, 2013, Triangle Foods filed its reply to BOE's opposition. On November 18, 2013, the Court heard the matter and held a case management conference. The Court took the demurrer and motion to strike off calendar and ordered that an Order to Show Cause be issued and served on Triangle Foods. On December 30, 2014, Triangle Foods filed its opposition brief on the Order to Show Cause. BOE filed its reply brief on January 13, 2014. Triangle Foods then filed a Sur-Reply brief and declaration on January 20, 2014. On March 6, 2014, the Court granted the Board's petition for enforcement of the administrative subpoena duces tecum, ruling that Rev. & Tax Code sec. 6074(a) is constitutional. The court set the case for further hearing on April 2, 2014, as to the logistical details of the final order to be issued at that time.

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: Supreme Court of CA. 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.

Trial Court. 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. On October 11, 2012, the court issued a Minute Order to reassign the case to a new judge. On October 25, 2012, Plaintiff filed a petition challenging the reassignment. The State's opposition was filed on November 30, 2012. The superior court vacated its decision on February 5, 2013, and set a further hearing on February 13, 2013. On February 14, 2013, the superior court assigned the matter back to the judge who conducted the hearing in 2011 and 2012. A final status conference took place on January 8, 2014. Current trial, to be reset, covers attorney's fees through 2008; an additional trial will be held at a later date concerning post-2008 attorney's fees.

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* was held on February 4, 2014.

**SALES & USE TAX
CLOSED CASES
LITIGATION ROSTER
MARCH 2014**

NONE

DISCLAIMER

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

Links to information on sites not maintained by the Board of Equalization are provided only as a public service. The Board is not responsible for the content and accuracy of the information on those sites.