

LITIGATION ROSTER

SALES AND USE TAX

AUGUST 2014

**Sales and Use Tax
AUGUST 2014**

NEW CASES

<u>Case Name</u>	<u>Court/Case Number</u>
LITTLEJOHN, LARRY	San Francisco County Superior Court, CGC-13-531835
SAN RAFAEL, CITY OF	Sacramento County Superior Court, 34-2014-80001896
SMITH, GREGORY AND AMY ELAINE	Placer County Superior Court, SCV0035041

CLOSED CASES

<u>Case Name</u>	<u>Court/Case Number</u>
NONE	

SALES AND USE TAX
LITIGATION ROSTER
AUGUST 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

Plaintiff's Counsel

Charles Coleman

Holland & Knight, LP

Filed -04/21/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Alameda as being subject to use tax is valid.

Audit/Tax Period: 1995 - Present

Amount: Unspecified

Status: 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. On or about May 12, 2014, the parties agreed petitioners have until June 17, 2014 to file Respondents' Briefs on the attorneys' fees issue. On July 17, 2014, the Respondents' Brief was filed. BOE's Reply Brief is due on September 16, 2014.

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

Sacramento Superior Court Case No. 34-2012-80001269

Plaintiff's Counsel

Michael G. Colantuono

Colantuono & Levin

Filed -09/19/12

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 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. On April 16, 2014, the League of California Cities filed a motion to partially consolidate its appeal, in which BOE is no longer a party, with the Bellflower appeal, in which BOE is still a party. The League of Cities sought assignment to the same appellate panel and concurrent briefing and argument.

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. Petitioners filed a Notice of Appeal on May 14, 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.

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. On or about May 12, 2014, the parties agreed petitioners have until June 17, 2014 to file Respondents' Briefs on the attorneys' fees issue. On July 17, 2014, the Respondents' Brief was filed. BOE's Reply Brief is due on September 16, 2014.

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. Petitioner's Ex Parte Application for Temporary Restraining Order and Order to Show Cause filed on May 29, 2013, was denied by the court. 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 may 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's 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

Filed -06/18/13

BOE's Counsel

Nelson Richards

BOE Attorney

John Waid

Plaintiff's Counsel

Murray O. Kane

Donald P. Johnson

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: 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. Department of Finance filed its opposition brief on May 12, 2014.

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

Sacramento Superior Court Case No. 34-2013-80001585

Filed -08/01/13

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 filed its response on September 4, 2013. Hearing was scheduled for September 26, 2014.

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

Sacramento Superior Court Case No. 34-2013-80001518

Filed -06/07/13

BOE's Counsel

Nancy Doig

BOE Attorney

John Waid

Plaintiff's Counsel

Daniel T. McCloskey

Tuttle & McCloskey

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.

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. The State Respondents' opposition was filed on April 30, 2014. The reply brief was due on May 15, 2014. The hearing was scheduled for May 30, 2014. At the May 30, 2014 hearing, the judge requested supplement briefings, which were filed on June 27, 2014. The matter is now under submission.

CITY OF FONTANA, CITY OF LATHROP AND CITY OF SAN BERNADINO v. State Board of Equalization

Alameda County Superior Court: RG14721676

Plaintiff's Counsel

Les A. Hausrath

WENDEL, ROSEN, BLACK & DEAN LLP

Filed – 04/23/14

BOE's Counsel

Anne Michelle Burr

BOE Attorney

Wendy Vierra

Issue(s): The litigation arises out of petitioners' contentions that the Board is improperly allocating local sales tax derived from retail sales made by MedCal Sales, LLC, and allocated to the City of Ontario and/or the Ontario Redevelopment Agency for the tax period January 1, 2006, to present.

Audit/Tax Period: January 1, 2006, to present

Amount: Unspecified

Status: On April 23, 2014 BOE was served a Summons, Notice of Case Management Conference and Order and First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief. Petitioners' Ex Parte Application for Stay of Distribution of Local Sales Tax Revenues Pending Resolution of Petitioners' Claims was filed on June 9, 2014. On June 9, 2014, the Court ruled that what the petitioners sought was a preliminary injunction and not a TRO. The Court continued the hearing to July 8, 2014, in order to give the parties time to file briefing on whether or not a preliminary injunction should be granted. On June 25, 2014, BOE filed its Opposition to Petitioners' Motion. The hearing on the Petitioners' application for a preliminary injunction was held on July 8, 2014. On July 17, 2014, the order denying the preliminary injunction was filed.

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

Debbie J. Vorous
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. On April 23, 2014, the case was reassigned to DAG Debbie J. Vorous.

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

Filed -03/15/2013

Plaintiff's Counsel

Murray O. Kane

Kane, Ballmer & Berkman

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. On April 11, 2014, the court granted judgment for declaratory relief and a preliminary injunction against the Department of Finance (DOF) precluding use of local sales and use tax offsets. However, the court denied the Petition for Mandate regarding the transactions that the city asserted but that DOF denied were enforceable obligations under the dissolution statutes.

APPEAL: Petitioners filed a Notice of Appeal on June 11, 2014.

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

Sacramento Superior Court Case No. 34-2013-80001591

Filed - 08/08/13

Plaintiff's Counsel

Murray O. Kane

Kane, Ballmer & Berkman

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: Notice of hearing on petition for writ of mandate was scheduled for December 20, 2013. 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, Petitioners filed its surreply in support of their 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 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.

APPEAL: On April 1, 2014, Plaintiffs/Appellants filed a Notice of Appeal in the Third District Court of Appeal. City of Inglewood filed an Appellant's Notice Designating Record on Appeal on May 14, 2014. Petitioner Regent filed an Appellant's Notice Designating Record on Appeal on May 22, 2014.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558

Plaintiff's Counsel

R. Todd Luoma

Law Offices of Richard Todd Luoma

Filed – 06/13/05

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Issue(s): Whether plaintiff can exempt from tax its charges for special printing aids ([Regulation 1541](#)).

Audit/Tax Period: 04/01/97-12/31/00

Amount: \$208,513.38

Status: Pending trial setting.

ISTRIN, JONATHAN v. Ralphs Grocery Company, California State Board of Equalization

(Class Action Complaint for Constructive Trust, etc.)

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

Plaintiff's Counsel

Jordan L. Lurie, Joel E. Elkins

Weiss & Lurie

Filed – 03/20/09

BOE's Counsel

Elisa Wolfe-Donato

BOE Attorney

John Waid

Issue(s): Plaintiff contends that Ralphs improperly collected sales tax reimbursement on sales of hot coffee to go. Plaintiff seeks an injunction against Ralphs. Plaintiff also seeks an order that Ralphs institute a system to accurately track tax on sales of hot coffee to go and to make refund applications to BOE, and an injunction ordering BOE to act on Ralphs' refund applications and to deposit moneys already collected with the court. BOE contends that the court lacks jurisdiction of this case because plaintiff lacks standing to bring a suit to adjudicate a sales tax dispute. Plaintiff may not use remedies not authorized by the Legislature.

Audit/Tax Period: None

Amount: Unspecified

Status: 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 and scheduled hearing for June 12,

2013. 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. The Case Management Conference was continued to June 16, 2014. At the Case Management Conference on June 16, 2014, the Case Management Conference was extended to August 25, 2014, in order to give the parties the opportunity to finalize a stipulation to dismiss.

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

Plaintiff's Counsel
Plaintiffs in Pro Per

Filed -12/05/13
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 Board's demurrer to the complaint was sustained with leave to amend on March 4, 2014. Plaintiff's filed their First Amendment Complaint on March 5, 2014. On March 11, 2014, the Order re Plaintiff's motion to strike notice of suspension of alcoholic beverage license was denied. BOE filed its demurrer to the First Amended Complaint on April 3, 2014, with the matter set for hearing on May 8, 2014. Plaintiffs filed their joint opposition on April 14, 2014. On May 1, 2014, BOE filed its Reply to the Opposition of Plaintiffs to BOE's demurrer to the First Amended Complaint. After hearing on May 8, 2014, an Order was signed sustaining BOE's demurrer without leave to amend. The Order was filed May 16, 2014. Plaintiffs filed their Motion for Reconsideration of the Order on May 19, 2014, setting a hearing date for June 26, 2014. The Case Management Conference was held on June 3, 2014. On June 13, 2014, BOE filed its Opposition to the Motion for Reconsideration. Plaintiffs filed their Reply to BOE's Opposition on June 16, 2014. The Court heard the Motion for Reconsideration on June 26, 2014, and denied the motion. The Court entered Judgment in BOE's favor that same day. BOE also served notice of the entry of the Judgment on June 26, 2014. Plaintiffs announced their intention to appeal the Judgment. On July 7, 2014, Plaintiffs filed a Notice of Appeal in the matter in the Court of Appeal. On July 10, 2014, the Court of Appeal notified plaintiffs that they were required to post their filing fees, or the appeal would be dismissed.

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: Plaintiff filed his First Amended Complaint on May 15, 2014, in the San Francisco Superior Court. Plaintiff's original action, filed in the Santa Clara Superior Court, has yet to be dismissed. On July 17, 2014, BOE's Application for Extension of Time to File Responsive Pleading to First Amended Complaint was granted. BOE's filing deadline was extended to September 12, 2014.

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

Sacramento Superior Court Case No. 34-2013- 80001672

Filed -12/05/13

BOE's Counsel

Robert Wilson

BOE Attorney

John Waid

Plaintiff's Counsel

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 its answer to the petition for writ of mandate and complaint for declaratory and injunctive relief.

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

Sacramento Superior Court Case No. 34-2013-80001683

Filed -08/01/13

BOE's Counsel

Sylvia Cates

BOE Attorney

John Waid

Plaintiff's Counsel

Holly O. Whatley

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: 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 DOF, 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 notices. BOE, consistent with its no-position stance, is not participating in this motion. The Court ordered a new round of briefing to be completed by November 1, 2013. BOE is not participating. New hearing is set for November 15, 2013. 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 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. On April 16, 2014, the League of California Cities filed a motion to partially consolidate its appeal, in which BOE is no longer a party, with the Bellflower appeal, in which BOE is still a party. The League of Cities sought assignment to the same appellate panel and concurrent briefing and argument.

PHILIP A. LIPTAK v. STATE BOARD OF EQUALIZATION

Riverside County Superior Court: RIC 131431

Plaintiff's Counsel

Filed -1/03/2014

BOE's Counsel

Anthony Sgherzi

BOE Attorney

John Waid

Issue(s): Petitioner is a Taxpayer in which the proceeding is being brought. Petitioner is seeking a Writ of Alternative Mandate to force the State Board of Equalization (SBOE) to answer questions regarding alleged taxes Petitioner owes, and to show that Cheryl M. Liptak was never a partner in Round Concepts, but in fact a Court Reporter for the County of Los Angeles.

Audit/Tax Period: None

Amount: Unspecified

Status: On January 14, 2014, BOE filed a demurrer objecting to jurisdiction due to non-service. On February 21, 2014, the BOE's Motion for Change of Venue was heard. The judge granted the motion. As plaintiff elected to have venue in Los Angeles County, she transferred the case to Los Angeles County Superior Court. On April 15, 2014, Notice of Amended Demurrer, Amended Demurrer to Petition for Writ of Alternative Mandate Fact Finding on Discovery, and Memorandum of Points and Authorities in Support of Amended Demurrer to Petitioner's Writ of Alternative Mandate were filed. Hearing on the demurrer was set for July 29, 2014. On May 28, 2014, Petitioner filed an amended petition but actual notice was not provided to the assigned Deputy Attorney General; therefore, at the hearing on July 29, 2014, the Court ruled that BOE can file another demurrer. The court calendared the second demurrer hearing for October 16, 2014.

LITTLEJOHN, LARRY

San Francisco County Superior Court: CGC-13-531835

Plaintiff's Counsel

Daniel Berko

Law Office of Daniel Berko

Filed -8/06/2014

BOE's Counsel

Marguerite Stricklin

BOE Attorney

Wendy Vierra

Issue(s): Plaintiff seeks a refund of sales tax reimbursement on behalf of himself and a class of others paid on purchases of Ensure related products to Costco and other retailers from May 31, 2009 to the present. Plaintiff contends that Costco and other retailers improperly charged sales tax reimbursement on certain Ensure products when such products were considered food products not subject to sales tax under California's Sales and Use Tax law, including Regulation 1602. Plaintiff also alleges breach of contract and various tort claims against Costco and Abbott Laboratories.

Audit/Tax Period: May 31, 2009 to the present

Amount: Unspecified

Status: By stipulation of the parties entered September 23, 2014, the time for BOE to respond to the allegations of the complaint is extended to November 3, 2014. The Case Management Conference has been continued to November 7, 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 has 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. On May 1, 2014, the Supreme Court ruled that the case was to be returned to the Second District Court of Appeal. On

June 3, 2014, a remittitur sending the case back to the Second District Court of Appeals was issued by the Supreme Court. On June 17, 2014, the Second District Court of Appeals issued a remittitur returning the case to the trial court.

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, 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

Plaintiff's Counsel

John G. McClendon

Leibold McClendon & Mann, P.C.

Filed -12/28/2012

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

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

Filed - 11/14/08

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. On April 18, 2014, the Court awarded Plaintiffs attorneys' fees in the sum of \$2,625,469.87.

On May 29, 2014, the trial court entered judgment for Plaintiffs. The court awarded Plaintiffs a refund of taxes in the amount of \$4,746,743.59 and credit interest in the amount of \$755,523.42. The trial court also granted judgment in favor of the Board on the Board's cross-complaint, in part, for unpaid debit interest in the amount of \$1,938,574.24. The court awarded Plaintiffs litigation costs under Revenue and Taxation Code section 7156 in the amount of \$2,625,469.87 in the consolidated actions.

On July 28, 2014, BOE appealed the judgment in favor of Plaintiffs to the Second District Court of Appeal.

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: \$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 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. On April 18, 2014, the Court awarded Plaintiffs attorneys' fees in the sum of \$2,625,469.87.

On May 29, 2014, the trial court entered judgment for Plaintiffs. The court awarded Plaintiffs a refund of taxes in the amount of \$4,746,743.59 and credit interest in the amount of \$755,523.42. The trial court also granted judgment in favor of the Board on the Board's cross-complaint, in part, for unpaid debit interest in the amount of \$1,938,574.24. The court awarded Plaintiffs litigation costs under Revenue and Taxation Code section 7156 in the amount of \$2,625,469.87 in the consolidated actions.

On July 28, 2014, BOE appealed the judgment in favor of Plaintiffs to the Second District Court of Appeal.

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

Anthony Sgherzi

BOE Attorney

John Waid

Plaintiffs' Counsel

Philip J. Eskanazi, Lee A. Cirsch

Akin, Gump, Strauss, Haur & Feld LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. 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 October 25, 2011 hearing, 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. On June 26, 2014, parties filed a

stipulation with the Court agreeing to lift the stay so that Plaintiffs' counsel could file a Motion for Leave to File a Fourth Amended Complaint. The parties agreed to allow Plaintiffs' counsel until July 28, 2014, to file the Motion. Notice of Motion and Motion for Leave to Amend Complaint, as well as a proposed draft of the Fourth Amended Complaint, were filed on July 28, 2014.

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
Anthony Sgherzi
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 October 25, 2011 hearing, 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. On June 26, 2014, parties filed a stipulation with the Court agreeing to lift the stay so that Plaintiffs' counsel could file a Motion for Leave to File a Fourth Amended Complaint. The parties agreed to allow Plaintiffs' counsel until July 28, 2014, to file the Motion. Notice of Motion and Motion for Leave to Amend Complaint, as well as a proposed draft of the Fourth Amended Complaint, were filed on July 28, 2014.

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
Anthony Sgherzi
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 October 25, 2011 hearing, 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. On June 26, 2014, parties filed a stipulation with the Court agreeing to lift the stay so that Plaintiffs' counsel could file a Motion for Leave to File a Fourth Amended Complaint. The parties agreed to allow Plaintiffs' counsel until July 28, 2014, to file the Motion. Notice of Motion and Motion for Leave to Amend Complaint, as well as a proposed draft of the Fourth Amended Complaint, were filed on July 28, 2014.

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

Anthony Sgherzi

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 October 25, 2011 hearing, 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. On June 26, 2014, parties filed a

stipulation with the Court agreeing to lift the stay so that Plaintiffs' counsel could file a Motion for Leave to File a Fourth Amended Complaint. The parties agreed to allow Plaintiffs' counsel until July 28, 2014, to file the Motion. Notice of Motion and Motion for Leave to Amend Complaint, as well as a proposed draft of the Fourth Amended Complaint, were filed on July 28, 2014.

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

Anthony Sgherzi

BOE Attorney

John Waid

Plaintiffs' Counsel

Gail E. Lees, Brian Walters

Gibson, Dunn & Crutcher LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. 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 October 25, 2011 hearing, 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. On June 26, 2014, parties filed a stipulation with the Court agreeing to lift the stay so that Plaintiffs' counsel could file a Motion for Leave to File a Fourth Amended Complaint. The parties agreed to allow Plaintiffs' counsel until July 28, 2014, to file the Motion. Notice of Motion and Motion for Leave to Amend Complaint, as well as a proposed draft of the Fourth Amended Complaint, were filed on July 28, 2014.

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

BOE's Counsel

Anthony Sgherzi

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas C. Rawles

ReedSmith LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. 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 October 25, 2011 hearing, 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. On June 26, 2014, parties filed a stipulation with the Court agreeing to lift the stay so that Plaintiffs' counsel could file a Motion for Leave to File a Fourth Amended Complaint. The parties agreed to allow Plaintiffs' counsel until July 28, 2014, to file the Motion. Notice of Motion and Motion for Leave to Amend Complaint, as well as a proposed draft of the Fourth Amended Complaint, were filed on July 28, 2014.

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

Plaintiffs' Counsel

Jason Bergmann

Paul, Hastings, Janofsky & Walker, LLP

Filed – 11/01/04

BOE's Counsel

Anne Michelle Burr

BOE Attorney

John Waid

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

Audit/Tax Period: None

Amount: Unspecified

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

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.

As of April 1, 2014, all briefs have been filed in the appeal of objector Fred Sondheimer, and the parties are awaiting the setting of oral argument by the Court of Appeal. The Board is awaiting a decision from the Court of Appeal before it begins issuing refunds to claimants.

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. On April 23, 2014, the Petitioners' Opening Brief was filed with the Court. The Respondents' oppositions are due June 6, 2014.

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

Sacramento County Superior Court: 34-2014-80001777

Filed -03/14/2014

BOE's Counsel

Aaron Jones

BOE Attorney

John Waid

Plaintiff's Counsel

Mark D. Hensley

Jenkins & Hogin, LLP

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. On April 11, 2014, the Board filed its answer to Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.

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 was set for May 2, 2014. Department of Finance's brief was filed on April 2, 2014. After the hearing on May 2, 2014, the court took the matter under submission. On May 20, 2014, the court affirmed its tentative order denying most of Petitioners' claims. However, the court ruled that the local sales and use tax withhold provisions are improper. The Court issued a writ of mandate against Department of Finance. Judgment was entered on July 2, 2014. The last day to file a notice of appeal is September 8, 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. Hearing on cross-Defendants' demurrer and demurrer to cross complaint and memorandum of points and authorities in support thereof was held on April 18, 2014. This hearing involved the cross action against the city only.

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

Sacramento Superior Court Case No. 34-2013-80001692

Plaintiff's Counsel

Benjamin T. Reyes, II

Myers, Nave, Riback, Silver & Wilson

Filed -08/01/13

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: 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. On April 9, 2014, the Respondents' opposition to the Opening Brief was filed. On May 19, 2014, the Superior Court denied the petition.

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.

APPEAL :On April 29, 2014, Petitioners filed a Notice of Appeal.

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.

Petitioner dismissed this case and filed a new case on March 1, 2014.

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

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

Plaintiff's Counsel

James F. Penman
Attorney for the City of San Bernardino

Filed -03/26/13

BOE's Counsel

None

BOE Attorney

John Waid

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. On June 4, 2014, the District Court reversed the Bankruptcy Court's finding denying DOF and SCO Eleventh Amendment immunity from suit.

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

Sacramento Superior Court Case No. 34-2013-80001454

Plaintiff's Counsel

Meghan Ashley Wharton
San Diego Deputy City Attorney

Filed -4/19/2013

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: 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

Plaintiff's Counsel

Deborah J. Fox
Meyers, Nave, Riback, Silver & Wilson

Filed -12/12/2013

BOE's Counsel

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 is 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.

SAN RAFAEL, CITY OF Sacramento Superior Court Case No. 34-2014-80001896 <u>Plaintiff's Counsel</u> Lynn Hutchins Goldfarb & Lipman LLP	Filed -7/17/2014 <u>BOE's Counsel</u> Ryan Marcroft <u>BOE Attorney</u> John Waid
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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 Department of Finance has agreed to resolve a true-up dispute with San Rafael in a redevelopment agency case by way of a stipulated judgment. San Rafael has filed its petition for writ of mandate and complaint for declaratory relief. As soon as the parties are served, a stipulated judgment will be drawn up in which San Rafael and Finance will agree on the amount San Rafael owes to the auditor-controller as the successor agency to its redevelopment agency.

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 <u>Plaintiff's Counsel</u> Iris Yang Best Best & Krieger, LLP	Filed -4/29/2013 <u>BOE's Counsel</u> Jonathan Eisenberg <u>BOE Attorney</u> John Waid
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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.* The hearing currently set for December 20, 2013, was been taken off the calendar and no new date was been set. 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. On August 19, 2014, the trial court adopted its tentative ruling issued on August 7, 2014, denying the petition for writ of mandate.

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

Sacramento Superior Court Case No. 34-2013-80001528

Filed –6/14/2013

BOE's Counsel

Plaintiff's Counsel

Holly O. Whatley

Colantuono & Levin, PC

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 January 8, 2014, Respondent filed a notice of change of assignment of counsel, within the county counsel's office. The Department of Finance's Opposition Brief was filed on or about August 29, 2014. Hearing is scheduled for October 24, 2014.

SMITH, GREGORY AND AMY ELAINE

Placer County Superior Court Case No. SCV0035041

Filed – 08/14/14

BOE's Counsel

Debbie Vorous

BOE Attorney

Renee Carter

Plaintiff's Counsel

Allan R. Frumkin

Law Offices of Allan R. Frumkin

Issue(s): On August 14, 2014, Petitioners, Gregory and Amy Smith, filed a verified Complaint for Declaratory Relief, Mandamus Relief, and Injunctive Relief against BOE with respect to sales and use taxes assessed against Petitioners in Stars and Stripes Telecom, Inc. (SR GH 053-006050). BOE issued Notice of Determinations against them as individuals for the period January 1, 2007, through April 30, 2007.

Audit/Tax Period: Jan 1 2007 – April 30, 2007

Amount: Unspecified

Status: PENDING

The Petitioner's opposition is due November 4, 2014. BOE's reply is due November 10, 2014. The hearing on BOE's demurrer in this case is set for November 18, 2014.

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. On or about May 12, 2014, the parties agreed petitioners have until June 17, 2014 to file Respondents' Briefs on the attorneys' fees issue. On July 17, 2014, the Respondents' Brief was filed. BOE's Reply Brief is due on September 16, 2014.

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.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization Los Angeles Superior Court Case No. CA000499 Court of Appeal, Second Appellate District, Case No. B113661 <u>Plaintiff's Counsel</u> James M. Gansinger Gansinger, Hinshaw	Filed – 06/20/78 <u>BOE's Counsel</u> Diane Spencer-Shaw <u>BOE Attorney</u> Sharon Brady Silva
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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. Hearing held on May 16, 2014, concerning fees through 2008, with post-trial briefs to be filed by July 10, 2014. Parties' post-trial briefs were submitted in early July. Issues of attorneys' fees through 2008 are awaiting the court's decision. On August 27, 2014, the trial court issued a tentative ruling concerning attorney's fees awards covering the time period 1978 to 2006. The ruling reduced the original trial court decision awarding over \$24 million in attorney's fees, costs and interest to a total award of slightly over \$2.6 million. The decision will become final fifteen (15) days from August 27, 2014 unless any party lodges objections. After the decision regarding attorney's fees awards for the period 1978-2006 is final, the court will conduct proceedings concerning attorney's fees claims after 2006.

YABSLEY, RICHARD A. v. CINGULAR WIRELESS LLC <i>(Amicus Curiae Brief)</i> California Supreme Court, Case No. S176146 Court of Appeal, Second Appellate District, Case No. B198827	Filed – 12/15/08 <u>BOE's Counsel</u> None <u>BOE Attorney</u> John Waid
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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. On May 1, 2014, the California Supreme Court issued its opinion in *Loeffler v. Target*. On July 9, 2014, the Supreme Court issued an order that, in view of the decision in *Loeffler v. Target, Inc.*, review of *Yabsley v. Cingular Wireless* has been cancelled. On July 16, 2014, Division 6 of the 2nd District Court of Appeals issued a Remittitur returning the case to the trial court.

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

Case Name

Court/Case Number

NONE

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