# LITIGATION ROSTER

# SALES AND USE TAX

FEBRUARY 2010

**Sales and Use Tax**
**February 2010**

# NEW CASES

| Case Name | Court/Case Number |
|---|---|
| ALHAMBRA, CITY OF | Los Angeles Superior Court No. BS124978 |
| LOS ANGELES, CITY OF | Los Angeles Superior Court No. BS124950 |
| PALMDALE, CITY OF | Los Angeles Superior Court No. BS124919 |

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# CLOSED CASES

| Case Name | Court/Case Number |
|---|---|
| PeoplePC, Inc. | San Diego Superior Court No. 37-2007-00066030<br>Court of Appeal No. D054163 |

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

# SALES AND USE TAX

LITIGATION ROSTER

February 2010

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

San Francisco Superior Court Case No. CPF-09-509234 — Filed –04/21/09

*Plaintiff's Counsel*
Charles Coleman
Holland & Knight, LP

*BOE's Counsel*
Kris Whitten

*BOE Attorney*
John Waid

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

Audit/Tax Period: 1995 - Present — Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE, City of Brisbane v. BOE, and the City of South San Francisco v. BOE* to a single judge for all purposes. BOE's Demurrer was overruled. BOE's Answer is due March 11, 2010.

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

Los Angeles Superior Court Case No. BS124978 — Filed – 02/19/10

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

*BOE's Counsel*
Marta Smith

*BOE Attorney*
John Waid

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

Audit/Tax Period: — Amount: Unspecified

Status: Hearing on petitioner's application for Temporary Restraining Order or administrative stay is scheduled for March 1, 2010.

**ASPECT SOFTWARE, INC. v. State Board of Equalization**

San Francisco Superior Court Case No. CGC 07-468134 — Filed –10/12/07

Court of Appeal, First Appellate District No. A127004

*Plaintiff's Counsel*
James P. Kleier
Reedsmith LLP

*BOE's Counsel*
Joyce Hee

*BOE Attorney*
Jeffrey Graybill

Issue(s): Whether tax applies to plaintiff's charges for what it alleges were intangible software license fees, and whether the charges should be excluded from tax as sales made pursuant to technology transfer agreements (Regulation 1502.)

Audit/Tax Period: 10/01/00-12/31/00 Amount: $804,778.84

Status: Trial court judgment in favor of BOE. Plaintiff filed an appeal on November 16, 2009. The case is currently being briefed in the Court of Appeal.

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

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|---|---|
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Kris Whitten |
| Charles Coleman | *BOE Attorney* |
| Holland & Knight, LP | John Waid |

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

Audit/Tax Period: 2001 - Present Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE, City of Brisbane v. BOE, and the City of South San Francisco v. BOE* to a single judge for all purposes. BOE's Demurrer was overruled. BOE's Answer is due March 11, 2010.

**CONNELL, WILLIAM M., et al. v. State Board of Equalization**
Sacramento County Superior Court Case No. 34-2008-00012293 Filed – 06/04/08
Court of Appeal, Third Appellate District No. C061180

| | |
|---|---|
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Jill Bowers |
| Herb Fox | *BOE Attorney* |
| Law Office of Herb Fox | Kiren Chohan |

Issue(s): Whether Business and Professions Code section 16102 exempts plaintiff from paying sales or use tax to the State

Audit/Tax Period: 1993 - Present Amount: Unspecified

Status: The parties agreed to settle this case. Plaintiff's Notice of Settlement was filed in the Court of Appeal and served on February 5, 2010.

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

| | |
|---|---|
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Leslie Branman Smith |
| Scott Savary | *BOE Attorney* |
| Savary, APC | Renee Carter |

Issue(s):

Audit/Tax Period: 04/01/02 – 12/31/05 Amount: $283,410.00

Status: Plaintiff's First Amended Complaint was filed on January 19, 2010. Hearing on BOE's Demurrer is scheduled for March 19, 2010.

**DAIMLERCHRYSLER CORPORATION v. State Board of Equalization**
San Francisco Superior Court Case No. CGC 07-459702 — Filed – 01/18/07

*Plaintiff's Counsel*
Jon D. Universal
Universal Shannon & Wheeler LLP

*BOE's Counsel*
Kris Whitten
*BOE Attorney*
John Waid

Issue(s): Whether the plaintiff is owed a refund of use tax it refunded under Civil Code section 1793.25 to customers who leased vehicles that had defects that could not be repaired after a reasonable number of attempts.

Audit/Tax Period: 10/01/01-01/10/05 — Amount: $2,000,000.00

Status: Settlement and status conference has been continued to April 28, 2010.

**FILLMORE, CITY OF v. California State Board of Equalization**
San Francisco Superior Court Case No. CPF-09-509234 — Filed – 05/26/09
Court of Appeal, Second Appellate District No. B219483

*Plaintiff's Counsel*
Jeffrey S. Baird, Joseph A. Vinatieri
Bewley, Lassleben & Miller, LLP

*BOE's Counsel*
Stephen Lew
*BOE Attorney*
John Waid

Issue(s): Whether Revenue & Taxation Code section 7056 requires that consultants contracting with cities regarding local sales tax allocation must be authorized by resolution to represent the city and must meet certain criteria, including that they may not also represent retailers.

Audit/Tax Period: None — Amount: Unspecified

Status: Judgment dismissing Fillmore's Petition for Writ of Mandate, and Intervenors' Petition and Complaint was entered August 13, 2009. Intervenors, City of Industry and City of Livermore, filed Notices of Appeal on October 1, 2009. The case is currently being briefed in the Court of Appeal.

**HOFSTADTER, DAVID, et al. v. The State Board of Equalization**
(Class Action Complaint for Constructive Trust, etc.)
Los Angeles Superior Court Case No. BC376547 — Filed – 08/24/07

*Plaintiffs' Counsel*
Mitch Kalcheim
Kalcheim/Salah

*BOE's Counsel*
Bonnie Holcomb
*BOE Attorney*
John Waid

Issue(s): Whether Dell properly collected use tax from its customers measured by the amount of a mail-in rebate on the sales (Revenue and Taxation Code 6011; Regulation 1671).

Audit/Tax Period: None | Amount: Unspecified

Status: Status conference continued to April 15, 2010.

**HSBC RETAIL SERVICES, INC. v. State of California Board of Equalization**
San Francisco Superior Court Case No. CGC 07-469572 | Filed – 11/28/07
Court of Appeal, First Appellate District No. A125995

| *Plaintiff's Counsel* | *BOE's Counsel* |
|---|---|
| Donald J. Querio, Erik Kemp | Anne Michelle Burr |
| Severson & Werson | *BOE Attorney* |
| | Jeffrey Graybill |

Issue(s): Plaintiff is a lender who purchased receivables from retailers, and the debts have gone bad. Plaintiff asserts that it is entitled to take a bad debt deduction (Regulation 1642).

Audit/Tax Period: 10/01/97-12/31/02 | Amount: $9,158,743.00

Status: Trial court judgment in favor of BOE. Plaintiff filed an appeal, and the case is currently being briefed in the Court of Appeal.

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

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

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

Audit/Tax Period: 04/01/97-12/31/00 | Amount: $208,513.38

Status: Pending trial setting.

**ISTRIN, JONATHAN v. Ralphs Grocery Company, California State Board of Equalization**
(Class Action Complaint for Constructive Trust, etc.)
San Francisco Superior Court Case No. CPF-09-509234 | Filed – 03/20/09

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

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

Audit/Tax Period: None | Amount: Unspecified

Status: BOE's Demurrer was filed July 29, 2009. Hearing on BOE's and Ralphs' Demurrers continued to February 1, 2010. The court granted BOE's and Ralphs' Demurrers with 30 days leave to amend.

**LOS ANGELES, CITY OF, et al. v. California State Board of Equalization**
Los Angeles Superior Court Case No. BS124950 | Filed – 02/16/10

*Plaintiff's Counsel*
Carmen Trutanich, Pejmon Shemtoob
Office of the Los Angeles City Attorney

*BOE's Counsel*
Marta Smith
*BOE Attorney*
John Waid

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

Audit/Tax Period: | Amount: Unspecified

Status: Hearing on petitioner's application for Temporary Restraining Order or administrative stay is scheduled for March 1, 2010.

**LUCENT TECHNOLOGIES, INC., et al. v. State Board of Equalization**
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: Trial is scheduled for October 13, 2010. Discovery continuing.

**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.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**
**Cross-Complaint: CVS, Inc. v. California State Board of Equalization**
Los Angeles Superior Court Case No. BC325272 | Filed – 01/24/06

| *Plaintiffs' Counsel* | *BOE's Counsel* |
|---|---|
| Richard T. Williams | Bonnie Holcomb |
| Holland & Knight LLP | *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 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.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**
**Cross-Complaint: Longs Drug Stores Corporation, et al. v. California State Board of Equalization**
Los Angeles Superior Court Case No. BC325272 | Filed – 01/24/06

| *Plaintiffs' Counsel* | *BOE's Counsel* |
|---|---|
| Douglas A. Winthrop, Christopher Kao | Bonnie Holcomb |
| Howard, Rice, Nemerovski, Canady, Falk & Rabkin | *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 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.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**
**Cross-Complaint: Rite Aid v. The California State Board of Equalization**
Los Angeles Superior Court Case No. BC325272 | Filed – 01/24/06

| *Plaintiffs' Counsel* | *BOE's Counsel* |
|---|---|
| Douglas C. Rawles, Neal Salisian | Bonnie Holcomb |
| Morgan, Lewis & Bockius LLP | *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 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.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**
**Cross-Complaint: Wal-Mart Stores, Inc. v. The California State Board of Equalization**
Los Angeles Superior Court Case No. BC325272 | Filed – 02/24/06

| | |
|---|---|
| | *BOE's Counsel* |
| *Plaintiffs' Counsel* | Bonnie Holcomb |
| Gail E. Lees, Brian Walters | *BOE Attorney* |
| Gibson, Dunn & Crutcher LLP | John Waid |

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

Audit/Tax Period: None | Amount: Unspecified

Status: By order dated November 17, 2007, the trial 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.

**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* |
| *Plaintiffs' Counsel* | Bonnie Holcomb |
| Douglas C. Rawles, Neal Salisian | *BOE Attorney* |
| Morgan, Lewis & Bockius LLP | John Waid |

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

Audit/Tax Period: None | Amount: Unspecified

Status: By order dated November 17, 2007, the trial 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.

**MERCEDES-BENZ USA, LLC v. California State Board of Equalization**
San Francisco Superior Court Case No. CGC 08-471310 | Filed – 01/23/08

| | |
|---|---|
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Kris Whitten |
| Jon D. Universal | *BOE Attorney* |
| Universal, Shannon & Wheeler | John Waid |

Issue(s): Whether the BOE has the authority to reimburse Mercedes Benz for payments it made to lessees of its cars as part of restitution payments made under the California Lemon Law that constituted returns of use tax payments the customers made on the leases.

Audit/Tax Period: None | Amount: $2,500,000.00

Status: Trial date taken off calendar. Settlement and status conference continued to April 28, 2010.

**MODERN MOLD INTERNATIONAL, INC., et al. v. State Board of Equalization of the State of CA**

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|---|---|
| Court of Appeal, Second Appellate District Case No. B200874 | Filed – 10/31/06 |
| Los Angeles Superior Court Case No. BC361123 | *BOE's Counsel* |
| *Plaintiffs' Counsel* | Elisa Wolfe-Donato |
| Jeffrey S. Baird, Joseph A. Vinatieri | *BOE Attorney* |
| Bewley, Lassleben & Miller, LLP | John Waid |

Issue(s): Whether plaintiffs make a taxable use in California of pens manufactured in Mexico intended as gifts when it transported the pens into California and deposited them with the post office for mailing to out-of-state donees (Revenue and Taxation Codes 6009.1 and 6094; Regulation 1620).

Audit/Tax Period: 10/01/95-06/30/00 | Amount: $530,039.00

Status: On November 6, 2008, the Court of Appeal issued its unpublished opinion reversing the trial court decision in favor of BOE. The parties are negotiating to determine the amount of refund. Once that is determined, judgment will be entered. Status conference continued from January 6, 2010 to March 22, 2010.

**MOHAN, DIANE, et al. v. Dell, Inc., et al.**

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|---|---|
| San Francisco Superior Court Case No. CGC 03-419192 | Filed – 11/01/04 |
| | *BOE's Counsel* |
| *Plaintiffs' Counsel* | Julian O. Standen |
| Jason Bergmann | *BOE Attorney* |
| Paul, Hastings, Janofsky & Walker, LLP | 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. At the case management conference on December 22, 2009, the court ordered further briefing on the issue of offset. Hearing is scheduled for April 12, 2010.

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

| | |
|---|---|
| Los Angeles Superior Court Case No. BC341568 | Filed – 10/17/05 |
| Court of Appeal, Second Appellate District No. B213415 | *BOE's Counsel* |
| *Plaintiff's Counsel* | Stephen Lew |
| Jeffrey Varga, Julian Decyk | *BOE Attorney* |
| Paul, Hastings, Janofsky & Walker LLP | Mike Llewellyn |

Issue(s): 1) Whether Regulation 1507 is valid, 2) whether the software sold by Nortel is prewritten, and 3) whether the software sales agreements technology transferred agreements.

Audit/Tax Period: 01/01/94-12/31/97 (audit); 01/01/96-06/30/01 (refund) Amount: $36,520,136.70

Status: Judgment in favor of plaintiff was entered August 29, 2008. BOE's appeal was filed on January 8, 2009. Nortel's cross-appeal was filed January 13, 2009. The case is currently being briefed in the appellate court.

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

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|---|---|
| Los Angeles Superior Court Case No. BC375660 | Filed – 08/09/07 |
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Lew/Wolfe-Donato |
| Jeffrey G. Varga | *BOE Attorney* |
| Paul, Hastings, Janofsky & Walker LLP | Mike Llewellyn |

Issue(s): Whether the engineering services rendered by Nortel were part of the sale of tangible personal property under Revenue and Taxation Code sections 6011(c)(10) and 6012(c)(10).

Audit/Tax Period: 01/01/94-12/31/97 Amount: $1,054,020.00

Status: The case went to trial on the first cause of action, which included claims relating to charges by Nortel for systems application engineering and equipment application engineering charges. The remaining causes of action for different charges were bifurcated and stayed, pending the results of the judgment in the Nortel I case. Nortel prevailed on its claims at trial, and the court has entered a statement of decision on such claims. With the remaining claims stayed, the case will remain in this status until it either settles or until resolution of the Nortel I appeal.

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

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|---|---|
| Los Angeles Superior Court Case No. BS124919 | Filed – 02/16/10 |
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Marta Smith |
| Mitchell E. Abbott, Veronica S. Gunderson | *BOE Attorney* |
| Richards, Watson & Gershon | John Waid |

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

Audit/Tax Period: Amount: Unspecified

Status: Hearing on petitioner's application for Temporary Restraining Order or administrative stay is scheduled for March 1, 2010.

| **SAN MATEO, COUNTY OF v. State Board of Equalization, et al.** | |
|---|---|
| San Francisco Superior Court Case No. CGC 07-459514 | Filed – 06/14/06 |
| Court of Appeal, First Appellate District No. A124917 | *BOE's Counsel* |
| *Plaintiff's Counsel* | Kris Whitten |
| John Nibbelin, David Silberman | *BOE Attorney* |
| San Mateo County Counsel | John Waid |

Issue(s): Regulation 1699, Buying Companies, is invalid, because it allows cities to manipulate the local sales tax by letting local consumer to form buying companies to re-direct local sales tax to the location of the buying company from the locations of the vendors, and local sales taxes derived in question should be reallocated as if subdivision (h) never existed (Revenue and Taxation Code section 1699).

Audit/Tax Period: None Amount: Unspecified

Status: BOE's Demurrer to plaintiff's First Amended Complaint was granted without leave to amend on November 19, 2008. Order Sustaining Demurrer was entered December 23, 2008. Plaintiff's Notice of Appeal was filed March 30, 2009. The case has been fully briefed. Oral argument is scheduled for March 23, 2010.

| **SAWL, HARRY R. v. State Board of Equalization** | |
|---|---|
| Sacramento Superior Court Case No. 34-2008-00028711-CU-MC-GDS | Filed – 12/04/08 |
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Bob Asperger |
| Harry R. Sawl | *BOE Attorney* |
| Attorney at Law | Sharon Brady Silva |

Issue(s): Whether the plaintiff has met the burden of proof under Revenue and Taxation Code sections 6201, 6202, 6246, 6247 and Cal. Code Regs, tit.18, sections 1610 and 1620, in showing that an aircraft purchased outside the state and brought into California was not subject to use tax.

Audit/Tax Period: Purchase Date 4/7/2000 Amount: $40,845.12

Status: Trial continued to April 6, 2010.

| **SONOMURA, AKIRA v. State Board of Equalization** | |
|---|---|
| San Diego Superior Court Case No. 37-2007-00074759-CU-MC-CTL | Filed – 05/30/08 |
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Leslie Smith |
| Bob Mullen | *BOE Attorney* |
| Attorney at Law | John Waid |

Issue(s): (1) Whether BOE's issuance of a Notice of Determination pursuant to Revenue and Taxation Code section 6829 was proper; and (2) whether BOE's Notice of Determination was timely (Revenue and Taxation Code section 6487).

Audit/Tax Period: 04/01/1993 – 03/31/1996 (dual 04/25/2002) Amount: $79,000.00

Status: BOE's Answer was filed July 8, 2008. BOE is conducting discovery.

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

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|---|---|
| San Francisco Superior Court Case No. CPF-09-509231 | Filed – 02/20/09 |
| | *BOE's Counsel* |
| *Plaintiff's Counsel* | Kris Whitten |
| Peter S. Hayes | *BOE Attorney* |
| Meyers, Nave, Roback, Silver & Wilson | John Waid |

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

Audit/Tax Period: 1996 - Present Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE, City of Brisbane v. BOE, and the City of South San Francisco v. BOE* to a single judge for all purposes. BOE's Answer is due March 11, 2010.

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

| | |
|---|---|
| Los Angeles Superior Court Case No. CA000499 | Filed – 06/20/78 |
| Court of Appeal, Second Appellate District: B113661 | *BOE's Counsel* |
| *Plaintiff's Counsel* | Diane Spencer-Shaw |
| James M. Gansinger | *BOE Attorney* |
| Gansinger, Hinshaw | 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: State defendants' Notice of Appeal (from that portion of the Judgment filed May 30, 2008 awarding attorneys' fees to the plaintiff and various counsel) was filed August 1, 2008. The case has been fully briefed, and oral argument is scheduled for March 2, 2010.

# SALES AND USE TAX

CLOSED CASES

LITIGATION ROSTER

February 2010

| | |
|---|---|
| **PeoplePc, INC. v. State Board of Equalization** | |
| San Diego Superior Court Case No. 37-2007-00066036-CU-MC-CTL | Filed – 05/01/07 |
| Court of Appeal, Fourth Appellate District No. D054163 | *BOE's Counsel* |
| *Plaintiff's Counsel* | Leslie Branman-Smith |
| Mark L. Mann, Jaikaran Singh | *BOE Attorney* |
| Luce, Forward, Hamilton & Scripps LLP | Kiren Chohan |

Issue(s): Whether the mass-mailed promotional CDs were printed sales messages under Revenue and Taxation Code section 6379.5.

Audit/Tax Period: 07/01/99-06/30/02 Amount: $486,372.83

Disposition: In its unpublished opinion issued September 4, 2009, the Court of Appeal reversed the trial court decision in favor of BOE, and directed that judgment instead be entered for the plaintiff. Appellant's request for publication of the opinion was denied. Following receipt of the appellate decision in favor of the plaintiff, the parties agreed on a resolution of the matter without further litigation. Final Judgment and Stipulation as to Amount of Judgment and Order was entered November 12, 2009.


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