LITIGATION ROSTER

SALES AND USE TAX

APRIL 2010

Sales and Use Tax
April 2010

NEW CASES

Case Name	Court/Case Number
UNIVERSAL CITY STUDIOS LLLP	SFSC Case No. CGC-10-498151

CLOSED CASES

Case Name	Court/Case Number
NONE	

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

SALES AND USE TAX

LITIGATION ROSTER

April 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 to plaintiff's First Amended Complaint was filed on March 23, 2010. Case Management Conference is continued to May 20, 2010. Trial date of April 19, 2010 is continued to May 27, 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: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Hearing on the merits on the Rev. & Tax. Code section 7209 issue is set for August 30, 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	*BOE's Counsel*
Plaintiff's Counsel	Joyce Hee
James P. Kleier	*BOE Attorney*
Reedsmith LLP	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
	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 to plaintiff's First Amended Complaint was filed on March 23, 2010. Case Management Conference is continued to May 20, 2010. Trial date of April 19, 2010 is continued to May 27, 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. The parties entered into a settlement agreement, and filed a stipulation and proposed order with the Court of Appeal for the Court's consideration.

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. On the court's own motion, the hearing on BOE's Demurrer was moved to May 28, 2010.

DAIMLERCHRYSLER CORPORATION v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-459702	Filed – 01/18/07
	BOE's Counsel
Plaintiff's Counsel	Kris Whitten
Jon D. Universal	*BOE Attorney*
Universal Shannon & Wheeler LLP	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 from April 28, 2010 to June 23, 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	*BOE's Counsel*
Plaintiff's Counsel	Stephen Lew
Jeffrey S. Baird, Joseph A. Vinatieri	*BOE Attorney*
Bewley, Lassleben & Miller, LLP	John Waid

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

Audit/Tax Period: None Amount: Unspecified

Status: 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. Fillmore's Cross Appeal was filed on October 30, 2009, and dismissed on April 9, 2010, at Fillmore's request. 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	*BOE's Counsel*
Mitch Kalcheim	Bonnie Holcomb
Kalcheim/Salah	*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 from April 15, 2010 to October 22, 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: The court granted BOE's and Ralphs' Demurrers with 30 days leave to amend. Plaintiff's First Amended Complaint was filed on March 3, 2010. Hearing on Ralphs' demurrer is set for June 15, 2010.

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	*BOE's Counsel*
Carmen Trutanich, Pejmon Shemtoob	Marta Smith
Office of the Los Angeles City Attorney	*BOE Attorney*
	John Waid

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

Audit/Tax Period: — Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Hearing on the merits on the Rev. & Tax. Code section 7209 issue is set for August 30, 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
Richard T. Williams
Holland & Knight 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 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
	BOE's Counsel
Plaintiffs' Counsel	Bonnie Holcomb
Douglas A. Winthrop, Christopher Kao	*BOE Attorney*
Howard, Rice, Nemerovski, Canady, Falk & Rabkin	John Waid

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

Audit/Tax Period: None Amount: Unspecified

Status: By order dated November 17, 2007, the trial 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
	BOE's Counsel
Plaintiffs' Counsel	Bonnie Holcomb
Douglas C. Rawles	*BOE Attorney*
ReedSmith LLP	John Waid

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

Audit/Tax Period: None Amount: Unspecified

Status: By order dated November 17, 2007, the trial 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	*BOE Attorney*
ReedSmith LLP	John Waid

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

Audit/Tax Period: None Amount: Unspecified

Status: By order dated November 17, 2007, the trial 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 June 23, 2010.

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

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 have negotiated an amount to be refunded. Pending filing of Stipulation and court approval.

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

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. Settlement conference is set for June 30, 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

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

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: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Hearing on the merits on the Revenue and Taxation Code section 7209 issue is set for August 30, 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. On April 28, 2010, the First District Court of Appeal issued its opinion affirming the decision of the trial court that plaintiff failed to exhaust its administrative remedies and granting BOE's demurrer without leave to amend.

SAWL, HARRY R. v. State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00028711-CU-MC-GDS — Filed – 12/04/08

Plaintiff's Counsel
Harry R. Sawl
Attorney at Law

BOE's Counsel
Bob Asperger

BOE Attorney
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 has been rescheduled and is set to begin on May 10, 2010.

SONOMURA, AKIRA v. State Board of Equalization

San Diego Superior Court Case No. 37-2007-00074759-CU-MC-CTL — Filed – 05/30/08

Plaintiff's Counsel
Bob Mullen
Attorney at Law

BOE's Counsel
Leslie Smith

BOE Attorney
John Waid

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

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

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

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

San Francisco Superior Court Case No. CPF-09-509231 — Filed – 02/20/09

Plaintiff's Counsel
Peter S. Hayes
Meyers, Nave, Roback, Silver & Wilson

BOE's Counsel
Kris Whitten

BOE Attorney
John Waid

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

Audit/Tax Period: 1996 - Present | Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE, City of Brisbane v. BOE, and the City of South San Francisco v. BOE* to a single judge for all purposes. BOE's Answer to plaintiff's First Amended Complaint was filed on March 23, 2010. Case Management Conference is continued to May 20, 2010. Trial date of April 19, 2010 is continued to May 27, 2010.

UNIVERSAL CITY STUDIOS LLLP v. State Board of Equalization of the State of California

San Francisco Superior Court Case No. CGC-10-498151 | Filed – 03/26/10

Plaintiff's Counsel
Jeffrey M. Vesely, Richard E. Nielsen
Pillsbury Winthrop Shaw Pittman LLP

BOE's Counsel
David Lew
BOE Attorney
Jeffrey Graybill

Issue(s): Whether plaintiff self reported the proper amount of taxable sales related to its lump sum charges for acess to its theme park attractions and meals and beverages (Sales and Use Tax Regulation 1603.)

Audit/Tax Period: 7/1/96 - 4/30/02 | Amount: $461,282.12

Status: BOE's response to the Complaint is due May 14, 2010. Case Management Conference is set for August 27, 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

Plaintiff's Counsel
James M. Gansinger
Gansinger, Hinshaw

BOE's Counsel
Diane Spencer-Shaw
BOE Attorney
Sharon Brady Silva

Issue(s): Whether the taxpayer is entitled to a refund of the vehicle license fee (Revenue and Taxation Code sections 10753 and 10758) and use tax imposed.

Audit/Tax Period: None | Amount: $1,492.00

Status: 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 Court of Appeal issued its decision on April 16, 2010. The decision is partially favorable to the BOE. The Court upheld the award of fees to plaintiff's counsel in general under the private attorney general theory. However, the Court found that plaintiff's attorneys had not been entirely successful in their efforts, particularly in their failure to get the cause of action concerning the BOE's use tax certified as a class action. In light of this unsuccessful effort, the appellate court remanded the case to the trial court to reconsider the award of attorneys' fees, including a potential reduction in the amount awarded. The court also found that the efforts by plaintiff Woosley (who also acted as counsel in the matter) were duplicative and excessive

and likely needed to be further reduced, in addition to the potential reductions to the plaintiff's attorneys in general.

DISCLAIMER

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