

LITIGATION ROSTER

SALES AND USE TAX

JANUARY 2015

**Sales and Use Tax  
JANUARY 2015**

**NEW CASES**

<u>Case Name</u>	<u>Court/Case Number</u>
<b>VASKIN KOSHKERIAN. v. CALIFORNIA STATE BOARD OF EQUALIZATION</b>	Orange County Superior Court 34-2014-00165891

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**CLOSED CASES**

<u>Case Name</u>	<u>Court/Case Number</u>
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Please refer to the case roster for more detail regarding new and closed cases

**Sales and Use Tax**  
**LITIGATION ROSTER**  
**JANUARY 2015**

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**ALAMEDA, CITY OF, et al. v. The California State Board of Equalization**  
San Francisco Superior Court Case No. CPF-09-509234  
Court of Appeal, First Appellate District Case No. A137186  
Filed – 04/21/09

*Plaintiff's Counsel*

Charles Coleman - Holland & Knight, LP

*BOE's Counsel*

Kris Whitten

*BOE Attorney*

John Waid

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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 would 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 was filed on September 12, 2014. Oral argument was held on October 21, 2014. The appeals are under submission. On December 18, 2014, the Court of Appeal issued its opinion, which has been certified for publication, reversing the decision of the trial court. The appellate court ruled that the Board properly determined that the transactions at issue were subject to local use tax with the revenue being allocated to the location where the property was delivered. On January 27, 2015, petitioners filed a petition for review with the California Supreme Court.

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

Sacramento Superior Court Case No. 34-2012-80001269

Filed – 09/19/12

Plaintiff's Counsel

Michael G. Colantuono - Colantuono & Levin

BOE's Counsel

Kathleen Lynch

BOE Attorney

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 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. Petitioners' Appellants' opening brief was filed August 7, 2014. DOF filed its Respondent's Brief on November 18, 2014.

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**BIG BEAR LAKE, CITY OF, et al. v. Ana J. Matosantos, et al.**  
Sacramento Superior Court Case No. 34-2013-800015004  
Filed – 5/29/13

*Plaintiff's Counsel*

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

*BOE's Counsel*

Nancy Doig

*BOE Attorney*

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 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.

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**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  
Filed – 04/21/09

*Plaintiff's Counsel*

Charles Coleman - Holland & Knight, LP

*BOE's Counsel*

Kris Whitten

BOE Attorney  
John Waid

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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 would 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 was filed on September 21, 2014. Oral argument was set for October 21, 2014. On September 15, 2014 the court vacated the oral argument. The letter brief ordered by the court was filed on January 7, 2015. On January 20, 2015, BOE filed its reply brief. Oral argument has not yet been rescheduled.

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**CALIFORNIA CITY, THE CITY OF, et al. v. Ana J. Matosantos, et al.**  
Sacramento Superior Court Case No. 34-2012-80001501  
Filed – 05/24/13  
Plaintiff's Counsel  
Kimberly Hall Barlow - Jones & Mayer

BOE's Counsel  
Anthony Haki

BOE Attorney  
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 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.

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

Sacramento Superior Court Case No. 34-2013-00145407

Filed – 06/18/13

Plaintiff’s Counsel

Murray O. Kane - Kane, Ballmer & Berkman

Donald P. Johnson - Kane, Ballmer & Berkman

BOE’s Counsel

Nelson Richards

BOE Attorney

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: 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. On October 29, 2014, the court granted the petition and entered judgment in favor of petitioners. Judgment for petitioners was entered November 5, 2014. DOF filed its Notice of Appeal November 7, 2014.

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

Sacramento Superior Court Case No. 34-2013-80001585

Filed – 08/01/13

Plaintiff's Counsel

Dan Slater - Rutan & Tucker

BOE's Counsel

Alexandra R. Gordon

BOE Attorney

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 filed its response on September 4, 2013. Hearing date is March 27, 2015

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

Sacramento Superior Court Case No. 34-2013-80001518

Filed – 06/07/13

Plaintiff's Counsel

Daniel T. McCloskey - Tuttle & McCloskey

BOE's Counsel

Nancy Doig

BOE Attorney

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 filed its response on July 11, 2013.

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**EL CERRITO REDEVELOPMENT AGENCY SUCCESSOR AGENCY, et al. v. Michael Cohen, et al.**

Sacramento Superior Court Case No. 34-2013- 80001671

Filed – 10/22/13

Plaintiff's Counsel

Dante Foronda - Meyers, Nave, Ribak, Silver & Wilson

BOE's Counsel

Patty Li

BOE Attorney

John Waid

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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. On September 3, 2014 the trial court issued its ruling, finding that the local sales and use tax withhold provisions of [AB 1484](#) violate California Constitution article XIII, section 24, subdivision (b).

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

Alameda County Superior Court: RG14721676  
Filed – 04/23/14

Plaintiff's Counsel

Les A. Hausrath - Wendel, Rosen, Black & Dean LLP

BOE's Counsel

Anne Michelle Burr

BOE Attorney

Wendy Vierra

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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. On December 22, 2014, BOE's answer was filed.

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**FRATILLA, BRIAN JEFFREY v. Big O Tires, LLC a Nevada Corporation, State Board of Equalization and Does 1through 130**

San Diego Superior Court Case No. 37-2013-00028542-CU-BT-CTL  
Filed – 09/24/14

Plaintiff's Counsel

Gregory M. Garrison

BOE's Counsel

Nhan Vu

BOE Attorney

Wendy Vierra

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Issue(s): This purported class action litigation arises out of plaintiff's contention that Big O Tires has been improperly collecting sales tax reimbursement in California on services provided to customers including, but not limited to, vehicle service contracts, tire disposal services, and tire mounting services.

Audit/Tax Period: None

Amount: Unspecified

Status: Plaintiff granted BOE an extension until December 11, 2014 to respond. On November 14, 2014, Plaintiff filed a Motion for Summary Adjudication on the first, second, and fourth Causes of Actions in his Second Amended Complaint. The Motion for Summary Adjudication was scheduled to be heard on February 6, 2015. BOE's answer to plaintiff's complaint was filed on December 11, 2014. On December 19, 2014, defendant / retailer Big O Tires took the deposition of the plaintiff. On January 13, 2015, Plaintiff filed his Motion for Class Certification. On January 14, 2015, Plaintiff filed his Reply to BOE's Opposition to his motion to compel Big O Tires to file a claim for refund. On January 14, 2015, BOE filed its Motion for Judgment on the Pleadings as to Plaintiff's Second Amended Complaint. Plaintiff's Motion for Class Certification and the Board's Motion for Judgment on the Pleadings are scheduled to be heard on February 6, 2015.

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**GMRI, INC. v. State Board of Equalization**

Sacramento Superior Court Case No. 34-2013-001145890  
Filed – 06/3/13

Plaintiff's Counsel

Eric J. Coffill - Morrison & Foerster LLP

BOE's Counsel  
Debbie J. Vorous

BOE Attorney  
John Waid

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Issue(s): Plaintiff alleges that the tips that taxpayers added to their restaurant bills do not qualify as “mandatory” within the meaning of [Regulation 1603\(g\)](#). 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. On December 5, 2014, the court set the trial date in this matter for October 5, 2015. The court scheduled a mandatory settlement conference for August 25, 2015.

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**GOLETA, CITY OF, et al. v. Ana J. Matosantos, et al.**  
Sacramento Superior Court Case No. 34-2013-8000521  
Filed – 06/10/13

Plaintiff's Counsel  
Tim W. Giles - Gibson, Dunn & Crutcher, LLP

BOE's Counsel  
John Killeen

BOE Attorney  
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: 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.

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**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*

Tim W. Giles - Gibson, Dunn & Crutcher, LLP

*BOE's Counsel*

John Killeen

*BOE Attorney*

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 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.

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

Santa Clara County Superior Court Case No. 113CV259336

Filed – 1/21/14

Plaintiff's Counsel

Plaintiffs in Pro Per

BOE's Counsel

Karen Yiu

BOE Attorney

John Waid

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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. The court on its own motion continued the Case Management Conference to March 11, 2015. On September 12, 2014, BOE filed a demurrer. The hearing date was set for January 28, 2015.

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

Sacramento Superior Court Case No. 34-2013- 80001672

Filed – 12/05/13

Plaintiff's Counsel

BOE's Counsel

Robert Wilson

BOE Attorney

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: On December 23, 2013, attorney for Respondents BOE, John Chiang and Michael Cohen filed their answer to the petition for writ of mandate and complaint for declaratory and injunctive relief.

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**VASKIN KOSHKERIAN. v. CALIFORNIA STATE BOARD OF EQUALIZATION**

Orange County Superior Court: 30-2014-00757964

Filed – 11/24/2014

*BOE's Counsel*

Jill Bowers

*Plaintiff's Counsel*

Alan Leigh Armstrong

*BOE Attorney*

John Waid

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Issue(s): This litigation concerns a claim for refund for sales taxes for the period October 1, 2000 through March 7, 2001. Plaintiff Vaskin Koshkerian filed a claim for refund for alleged overpayment on the account in the amount of \$103,127.30, which was rejected by the Board. Plaintiff claims he was improperly charged the taxes as an individual by the Board for partnership obligations; that he did not operate the business for all or part of the tax periods in question; and that the Board improperly collected the fees from his personal bankruptcy estate. The Board determined those allegations against him and denied the claim for refund.

Audit/Tax Period: October 1, 2000 through June 30, 2001

Amount: \$103,127.30

Status: PENDING

Orange County Superior Court received the stipulation to transfer the case to Sacramento County Superior Court.

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**LAKWOOD, CITY OF, et al. v. Ana J. Matosantos, et al.**  
Sacramento Superior Court Case No. 34-2013-80001683  
Filed – 08/01/13

Plaintiff's Counsel

Holly O. Whatley - Colantuono & Levin

BOE's Counsel

Sylvia Cates

BOE Attorney

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: 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. Petitioners filed their opening brief on August 19, 2014. The Department of Finance's opposition was due September 8, 2014. The hearing was set for October 3, 2014. On September 8, 2014, the State Defendants filed their opposition to Petitioners' petition. Petitioners' reply was due September 18, 2014. On October 21, 2014, the trial court denied the petition. The trial court upheld the determination of DOF that the loans at issue were not enforceable obligations; and, thus, the proceeds were available for allocation to taxing entities pursuant to [AB 1484](#). On January 27, 2015, judgment was entered. Petitioners have until April 1, 2015, to file their Notice of Appeal.

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**LEAGUE OF CALIFORNIA CITIES, et al. v. Ana Matosantos**  
Sacramento Superior Court Case No. 34-2012-80001275  
Filed – 09/27/12

Plaintiff's Counsel

Ann Taylor Schwing - Best Best & Krieger LLP

BOE's Counsel  
Kathleen Lynch

BOE Attorney  
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 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, did not participate in this motion. The Court ordered a new round of briefing to be completed by November 1, 2013. BOE did not participate. 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. The Department of Finance filed its brief on November 18, 2014. Hearing was set for January 9, 2015.

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**LITTLEJOHN, LARRY v. COSTCO WHOLESALE CORPORATION, COSTCO WHOLESALE MEMBERSHIP, INC., ABBOTT LABORATORIES, INC., ABBOTT LABORATORIES SALES, MARKETING & DISTRIBUTION CO., CALIFORNIA BOARD OF EQUALIZATION and DOES 1-20.**

San Francisco County Superior Court: CGC-13-531835

Filed – 8/06/2014

*Plaintiff's Counsel*

Daniel Berko - Law Office of Daniel Berko

*BOE's Counsel*

Nhan Vu

*BOE Attorney*

Wendy Vierra

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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: Demurrers were filed on November 4, 2014. The Case Management Conference was held November 7, 2014. Oppositions to the pending demurrers were due November 21, 2014, and replies were due December 9, 2014. The hearing on the demurrers was set for December 17, 2014. On December 9, 2014, BOE filed its Reply Brief to Plaintiff's Opposition to BOE's Demurrer to the Second Amended Complaint. On December 17, 2014, the court heard oral argument on BOE's Demurrer to Plaintiff's Second Amended Complaint. The court issued a written opinion following oral argument in which the court sustained BOE's Demurrer with leave to amend. Plaintiff filed his Third Amended Complaint on December 26, 2014. On January 12, 2015, BOE filed its Demurrer to Plaintiff's Third Amended Complaint, and on January 14, 2015, its Opposition to Plaintiff's Motion to Compel Costco to File a Refund Application with the BOE. BOE's Demurrer and Plaintiff's Motion to Compel are scheduled to be heard on January 21, 2015.

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**LIVINGSTON, CITY OF, et al. v. Ana Matosantos**  
Sacramento Superior Court Case No. 34-2013-80001460  
Filed – 4/12/2013

*Plaintiff's Counsel*

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

*BOE's Counsel*

Michael Glenn Witmer

*BOE Attorney*

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 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.

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**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

*Plaintiff's Counsel*

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

BOE's Counsel

None

BOE Attorney

John Waid

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Issue(s): This action (between Loeffler and Target to which the BOE was not a party and was not informed of the existence of the litigation) alleges that Target had illegally collected sales tax reimbursement on sale of hot coffee to go. Loeffler sued Target in superior court under the Unfair Competition Law ([UCL-Bus. & Prof. Code, §§ 17200 et seq.](#))

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court dismissed the case on the grounds that there is no private right of action that permits customers to sue retailers in matters relating to sales tax.

Court of Appeal: On December 6, 2008, the court of appeal granted BOE's application to file an amicus brief in support of Target. In a published decision issued May 12, 2009, the Second District Court of Appeal upheld the BOE's position and affirmed the decision of the trial court on all counts.

CA Supreme Court: The court granted BOE's application to file an amicus brief and supplemental brief in support of Respondent Target, filed respectively on April 15, 2010 and July 8, 2011. The court ordered the parties to submit a letter brief by April 26, 2013, on the issue of primary jurisdiction of the BOE. Supplemental reply briefs and amicus curiae briefs were filed on behalf of Respondents and Petitioners in April 2013 in response to the judges' order regarding primary jurisdiction of the BOE. On December 16, 2013, The Supreme Court posed additional questions to the parties and directed them to serve and file simultaneous supplemental briefs on or before January 13, 2014. On December 23, 2013, the Court issued an order requiring the parties to file supplemental briefs as to whether the Plaintiffs could bring an action under the Unfair Competition Law (UCL) or Consumer Legal Remedies Act (CLRA). The deadline to serve and file simultaneous reply briefs was on or before January 27, 2014. Oral argument was held on February 4, 2014. On May 1, 2014, the Supreme Court, affirming the Court of Appeal, issued its opinion in favor of defendant retailer, holding that the Revenue and Taxation Code provides the sole means by which plaintiffs' dispute over the taxability of a retail sale may be resolved; and that plaintiffs' current lawsuit is inconsistent with California's statutory sales tax procedures. On June 3, 2014, the Supreme Court issued a remittitur sending the case back to the Second District Court of Appeals. On June 17, 2014, the Second District Court of Appeals

issued a remittitur returning the case to the trial court.

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

Sacramento Superior Court Case No. 34-2013-80001583

Filed – 07/31/13

Plaintiff's Counsel

Dan Slater - Rutan & Tucker

BOE's Counsel

Benjamin Glickman

BOE Attorney

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: 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. On December 13, 2013, Plaintiffs filed a stipulation regarding compliance with issued writ of mandate judgment, and/or final ruling; Order regarding compliance with issued writ of mandate, judgment, and/or final ruling.

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**LOS BANOS DESIGNATED LOCAL AUTHORITY v. CA Director of Finance, Ana Matosantos, et al.**

Sacramento Superior Court Case No. 34-2012-80001352

Filed –12/28/2012

Plaintiff's Counsel

John G. McClendon - Leibold McClendon & Mann, P.C.

BOE's Counsel

Jeff Rich

BOE Attorney

John Waid

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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 BOE is a “remedial defendant” in this case and has an open extension of time to respond to the petition.

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**LUCENT TECHNOLOGIES, INC. I, et al. v. State Board of Equalization of the State of California**

Los Angeles Superior Court Case No. BC402036

Filed – 11/14/08

*Plaintiff's Counsel*

Jeffrey G. Varga - Paul, Hastings, Janofsky & Walker LLP

*BOE's Counsel*

Ronald Ito

*BOE Attorney*

Crystal Yu

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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 pre-judgment 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. On November 26, 2014, the Court of Appeal granted BOE's application to extend time to file the Appellant's Opening Brief to January 30, 2015.

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**LUCENT TECHNOLOGIES, INC. II, et al. v. State Board of Equalization of the State of California**

Los Angeles Superior Court Case No. BC448715  
Filed – 11/02/2010

Plaintiff's Counsel

Jeffrey G. Varga, Julian Decyk - Paul, Hastings, Janofsky & Walker LLP

BOE's Counsel

Stephen Lew

BOE Attorney

Crystal Yu

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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. On November 26, 2014, the Court of Appeal granted BOE's application to extend time to file the Appellant's Opening Brief to January 30, 2015.

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**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

Plaintiff's Counsel

Philip J. Eskanazi, Lee A. Cirsch - Akin, Gump, Strauss, Haur & Feld LLP

BOE's Counsel

Nhan Vu

BOE Attorney

Wendy Vierra

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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 were 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 Plaintiffs' 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. As permitted by the court at the August 7, 2014 Status Conference, plaintiffs filed their Fourth Amended Complaint on August 11, 2014. On October 1, 2014, BOE filed a demurrer. Hearing was set for January 9, 2015. On November 26, 2014, Plaintiffs filed their Opposition to BOE's Demurrer to the Fourth Amended Complaint and Cross-Complaint. On December 15, 2014, BOE filed its Reply Brief in support of its Demurrer to the Fourth Amended Complaint.

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**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

Plaintiff's Counsel  
Richard T. Williams - Holland & Knight LLP

BOE's Counsel  
Nhan Vu

BOE Attorney  
Wendy Vierra

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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 Plaintiffs' 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. As permitted by the court at the August 7, 2014 Status Conference, plaintiffs filed their Fourth Amended Complaint on August 11, 2014. On October 1, 2014, BOE filed a demurrer. Hearing was set for January 9, 2015. On November 26, 2014, Plaintiffs filed their Opposition to BOE's Demurrer to the Fourth Amended Complaint and Cross-Complaint. On December 15, 2014, BOE filed its Reply Brief in support of its Demurrer to the Fourth Amended Complaint.

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**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

Plaintiff's Counsel

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

BOE's Counsel

Nhan Vu

BOE Attorney

Wendy Vierra

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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 Plaintiffs' 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. As permitted by the court at the August 7, 2014 Status Conference, plaintiffs filed their Fourth Amended Complaint on August 11, 2014. On October 1, 2014, BOE filed a demurrer. Hearing was set for January 9, 2015. On November 26, 2014, Plaintiffs filed their Opposition to BOE's Demurrer to the Fourth Amended Complaint and Cross-Complaint. On December 15, 2014, BOE filed its Reply Brief in support of its Demurrer to the Fourth Amended Complaint.

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**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

Plaintiff's Counsel  
Douglas C. Rawles - ReedSmith LLP

BOE's Counsel  
Nhan Vu

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 Plaintiffs' 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. As permitted by the court at the August 7, 2014 Status Conference, plaintiffs filed their Fourth Amended Complaint on August 11, 2014. On October 1, 2014, BOE filed a demurrer. Hearing was set for January 9, 2015. On November 26, 2014, Plaintiffs filed their Opposition to BOE's Demurrer to the Fourth Amended Complaint and Cross-Complaint. On December 15, 2014, BOE filed its Reply Brief in support of its Demurrer to the Fourth Amended Complaint.

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**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

Plaintiff's Counsel

Gail E. Lees, Brian Walters - Gibson, Dunn & Crutcher LLP

BOE's Counsel

Nhan Vu

BOE Attorney

Wendy Vierra

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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 Plaintiffs' 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. As permitted by the court at the August 7, 2014 Status Conference, plaintiffs filed their Fourth Amended Complaint on August 11, 2014. On October 1, 2014, BOE filed a demurrer. Hearing was set for January 9, 2015. On November 26, 2014, Plaintiffs filed their Opposition to BOE's Demurrer to the Fourth Amended Complaint and Cross-Complaint. On December 15, 2014, BOE filed its Reply Brief in support of its Demurrer to the Fourth Amended Complaint.

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**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

Plaintiff's Counsel

Douglas C. Rawles - ReedSmith LLP

BOE's Counsel

Nhan Vu

BOE Attorney

Wendy Vierra

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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 Plaintiffs' 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. As permitted by the court at the August 7, 2014 Status Conference, plaintiffs filed their Fourth Amended Complaint on August 11, 2014. On October 1, 2014, BOE filed a demurrer. Hearing was set for January 9, 2015. On November 26,

2014, Plaintiffs filed their Opposition to BOE's Demurrer to the Fourth Amended Complaint and Cross-Complaint. On December 15, 2014, BOE filed its Reply Brief in support of its Demurrer to the Fourth Amended Complaint.

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**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

Douglas C. Rawles - ReedSmith LLP

BOE's Counsel

Jeff Rich

BOE Attorney

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 BOE is a "remedial defendant" in this case and has an open extension of time to respond to the petition.

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**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

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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 BOE is a “remedial defendant” in this case and has an open extension of time to respond to the petition.

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

San Francisco Superior Court Case No. CGC 03-419192

Filed – 11/01/04

Plaintiff's Counsel

Jason Bergmann - Paul, Hastings, Janofsky & Walker, LLP

BOE's Counsel

Anne Michelle Burr

BOE Attorney

Jeffrey Graybill

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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. The Court of Appeal set oral argument for October 30, 2014. On December 10, 2014, the Court of Appeal issued an unpublished opinion, affirming the trial court judgment that approved the settlement agreements on refund claims to be paid by BOE. The deadline to file a Petition for Review with the California Supreme Court is January 20, 2015. On January 16, 2015, counsel for Fred Sondheimer filed a Petition for Review with the Supreme Court. Answers must be filed by February 5, 2015.

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**MONTEBELLO, CITY OF, et al. v. Ana Matosantos, et al.**  
Sacramento Superior Court Case No. 34-2013-80001703  
Filed –12/05/13

Plaintiff's Counsel

BOE's Counsel  
Sylvia Cates

BOE Attorney  
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: 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 were due June 6, 2014. On October 28, 2014, the court entered an order denying the petition in part and remanding the action for further proceedings consistent with the order.

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

Sacramento Superior Court Case No. 34-2014-80001777

Filed -03/14/2014

Plaintiff's Counsel

Mark D. Hensley - Jenkins & Hogin, LLP

BOE's Counsel

Aaron Jones

BOE Attorney

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: 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.

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

Sacramento Superior Court Case No. 34-2013-80001496

Filed -5/22/13

Plaintiff's Counsel

Dan Slater - Rutan & Tucker

BOE's Counsel

Alexandra R. Gordon

BOE Attorney

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 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.

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

Sacramento Superior Court Case No. 34-2013-8000162

Filed – 09/09/13

Plaintiff's Counsel

T. Brent Hawkins - Best Best & Krieger

BOE's Counsel

Jonathan Eisenberg

BOE Attorney

John Waid

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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 was September 8, 2014.

APPEAL: On August 28, 2014, Petitioners filed a Notice of Appeal. The Notice of Appeal for the Department of Finance was filed on August 28, 2014.

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**PALM SPRINGS, CITY OF, et al. v. Ana Matosantos, et al.**  
Sacramento Superior Court Case No. 34-2013-80001440  
Filed – 4/2/2013

Plaintiff's Counsel

Douglas C. Holland - Woodruff, Spradlin & Smart

BOE's Counsel

Jeff Rich

BOE Attorney

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 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.

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**PINOLE, CITY OF, et al. v. Michael Cohen, et al.**  
Sacramento Superior Court Case No. 34-2013-80001692  
Filed – 08/01/13

Plaintiff's Counsel

Benjamin T. Reyes, II - Myers, Nave, Riback, Silver & Wilson

BOE's Counsel

Patty Li

BOE Attorney

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: 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.

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**REDWOOD CITY, CITY OF v. State of California**  
Sacramento Superior Court Case No. 34-2012-80001447  
Filed – 03/22/13

Plaintiff's Counsel

Iris Yang - Best & Krieger, LLP

BOE's Counsel

Jonathan Eisenberg

BOE Attorney

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 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.

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**RIVERSIDE, COUNTY OF v. CA Dept. of Finance**  
Sacramento Superior Court Case No. 34-2012-80001425  
Filed – 03/1/13

Plaintiff's Counsel

Thomas W. Barth - Barth Tozer & Daly LLP

BOE's Counsel

Michael Glenn Witmer

BOE Attorney

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 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.

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**SAN BERNARDINO, CITY OF v. John Chiang, State Controller**  
USBC, Central District, Riverside, Case No. 6:12-BK-28006-MJ  
Filed – 03/26/13

Plaintiff's Counsel

James F. Penman - Attorney for the City of San Bernardino

BOE's Counsel

None

BOE Attorney

John Waid

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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.

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

Sacramento Superior Court Case No. 34-2013-80001454

Filed – 4/19/2013

*Plaintiff's Counsel*

Meghan Ashley Wharton - San Diego Deputy City Attorney

*BOE's Counsel*

Michael Glenn Witmer

*BOE Attorney*

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: 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. On October 10, 2014 the court adopted the tentative ruling denying the petition as its final ruling. A proposed order and judgment were submitted on October 24, 2014.

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

Sacramento Superior Court Case No. 34-2013-80001708

Filed – 12/12/2013

*Plaintiff's Counsel*

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

*BOE's Counsel*

Paul Stein

*BOE Attorney*

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 filed its answer on April 23, 2013. A Hearing was set for July 18, 2014. On January 10, 2014, Respondent BOE filed its answer to the petition for writ of mandate and complaint for declaratory relief. On October 21, 2014, the Notice of Entry of Judgment was entered.

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**SAN RAFAEL, CITY OF v. Michael Cohen, et al.**

Sacramento Superior Court Case No. 34-2014-80001896

Filed – 7/17/2014

Plaintiff's Counsel

Lynn Hutchins - Goldfarb & Lipman LLP

BOE's Counsel

Ryan Marcroft

BOE Attorney

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 agreed to resolve a true-up dispute with San Rafael in a redevelopment agency case by way of a stipulated judgment. San Rafael filed its petition for writ of mandate and complaint for declaratory relief. After the parties were served, a stipulated judgment was drawn up in which San Rafael and Finance agreed on the amount San Rafael owed to the auditor-controller as the successor agency to its redevelopment agency. On November 18, 2014, Judgment and Dismissal were entered.

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**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

Filed – 4/29/2013

Plaintiff's Counsel

Iris Yang - Best Best & Krieger, LLP

BOE's Counsel

Jonathan Eisenberg

BOE Attorney

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 set for December 20, 2013, was taken off the calendar and no new date was 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. Notice of Entry of Judgment was filed on October 6, 2014.

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

Sacramento Superior Court Case No. 34-2013-80001528

Filed – 6/14/2013

Plaintiff's Counsel

Holly O. Whatley - Colantuono & Levin, PC

BOE's Counsel

None

BOE Attorney

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: 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 was scheduled for October 24, 2014.

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**SMITH, GREGORY AND AMY ELAINE v. California State Board of Equalization**

Placer County Superior Court Case No. SCV0035041

Filed – 08/14/14

Plaintiff's Counsel

Allan R. Frumkin - Law Offices of Allan R. Frumkin

BOE's Counsel

Debbie Vorous

BOE Attorney

Renee Carter

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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. BOE issued Notices of Determination 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 was due November 4, 2014. BOE's reply was due November 10, 2014. The hearing on BOE's demurrer in this case was set for November

18, 2014. BOE's Reply to Plaintiff's opposition to BOE's demurrer was filed on November 18, 2014. The Motion for Transfer was continued to December 9, 2014. On December 10, 2014, the court granted BOE's Motion for Change of Venue.

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**SOUTHGATE, CITY OF v. Michael Cohen, et al.**

Sacramento County Superior Court: Case No. 34-2014-800001915

Filed – 8/12/2014

BOE's Counsel

Peter H. Chang

Plaintiffs' Counsel

Alvarado Smith

Raul F. Salinas

BOE Attorney

John Waid

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

Audit/Tax Period: None

Amount: Not Specified

Status: PENDING. BOE's answer was filed on September 11, 2014.

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**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

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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 Intervenors' reply briefs were filed on December 19, 2013. On March 18, 2014 BOE filed Appellant's Opening Brief. On March 21, 2014, Appellants' 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 was due on September 16, 2014. Oral argument was held on October 21, 2014. The appeals are under submission. On December 18, 2014, the Court of Appeal issued its opinion, which has been certified for publication, reversing the decision of the trial court. The appellate court ruled that BOE properly determined that the transactions at issue were subject to local use tax with the revenue being allocated to the location where the property was delivered. On January 27, 2015, petitioners filed a petition for review with the California Supreme Court.

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**STATE BOARD OF EQUALIZATION, by and through CYNTHIA BRIDGES, its EXECUTIVE DIRECTOR and SECRETARY v. SHORELINE FOODS, INC. dba ROSCOE'S - Long Beach**

Los Angeles County Superior Court: Case No. BS146524

Filed – 10/24/2014

BOE's Counsel

Brian Wesley

Plaintiffs' Counsel

BOE Attorney  
W. Gregory Day

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Issue(s): BOE seeks an order compelling respondents Shoreline Foods, Inc. to comply with the administrative Subpoena Duces Tecum issued by petitioner.

Audit/Tax Period: None  
Amount: Not Specified

Status: PENDING.

On December 17, 2014, the Court at hearing continued the matter to January 29, 2015, to permit the taxpayer more time to produce the requested records to BOE.

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**TORRANCE, CITY OF v. California State Board of Equalization, et al.**  
San Francisco Superior Court Case No. CPF-12-512338  
Filed – 08/09/12

Plaintiff's Counsel  
Charles Coleman - Holland & Knight

BOE's Counsel  
Kris Whitten

BOE Attorney  
John Waid

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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.

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

Los Angeles Superior Court Case No. CA000499

Court of Appeal, Second Appellate District, Case No. B113661

Filed – 06/20/78

*Plaintiff's Counsel*

James M. Gansinger - Gansinger, Hinshaw

*BOE's Counsel*

Diane Spencer-Shaw

*BOE Attorney*

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 was 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. Hearing was 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 awaited 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 was to 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.

On December 9, 2014, the judge issued a Judgment on Fees after Remand adopting the findings in the October 29, 2014 decision. On the same date, the judge also approved the stipulated briefing schedule of the parties on the remaining attorney's fees issues, with Motions for Fees and Expenses to be filed by February 17, 2014, Responses to Motions for Fees and Expenses by May 8, 2014, and Replies to Responses to Motions for Fees and Expenses by June 9, 2015. A hearing will be set after briefing is completed. On December 23, 2014, an order issued making Stephanie Boswick the trial judge for the remaining issues, effective January 5, 2015. On January 15, 2015, class counsel Gansinger filed a notice of appeal concerning the December 9, 2014 decision.

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**YABSLEY, RICHARD A. v. CINGULAR WIRELESS LLC**

*(Amicus Curiae Brief)*

California Supreme Court, Case No. S176146

Court of Appeal, Second Appellate District, Case No. B198827

Filed – 12/15/08

*Plaintiff's Counsel*

*BOE's Counsel*

None

*BOE Attorney*

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.4<sup>th</sup> 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. The appellate court opinion in favor of the Board remains in place. On September 14, 2014, BOE received notice that the case has been dismissed.

**Sales and Use Tax  
CLOSED CASES  
LITIGATION ROSTER  
JANUARY 2015**

Case Name

Court/Case Number

None

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