

# LITIGATION ROSTER

## SPECIAL TAXES

JUNE 2008

**Special Taxes**  
**NEW CASES**  
June 2008

Case Name

Court/Case Number

DIAGEO-GUINNESS USA, INC.

Sacramento County Superior Court  
Case No. 34-2008-00013031

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**CLOSED CASES**  
June 2008

Case Name

Court/Case Number

TOBAR, IDALIA, et al.

Alameda County Superior Court  
Case No. RG06-266132

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

**Special Taxes**  
LITIGATION ROSTER  
June 2008

**CA FARM BUREAU FEDERATION, et al. v. CA State Water Resources Control Board, et al.**

California Supreme Court Case No. S150518

Sacramento Superior Court Case No. 04CS00473

Court of Appeal, Third Appellate District Case No. C050289

*Plaintiffs' Counsel*

David A. Battaglia, Alan N. Bick

Gibson, Dunn & Crutcher LLP

Filed – 04/13/04

*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is before the California Supreme Court and is pending scheduling of oral arguments.

**CA FARM BUREAU FEDERATION, et al. v. CA State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 05CS00538

*Plaintiffs' Counsel*

David A. Battaglia

Gibson, Dunn & Crutcher LLP

Filed – 01/13/05

*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**CA FARM BUREAU FEDERATION, et al. v. CA State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 06CS00651

*Plaintiffs' Counsel*

David A. Battaglia

Gibson, Dunn & Crutcher LLP

Filed – 04/26/06

*BOE's Counsel*

Molly Mosley

*BOE Attorney*

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**CA FARM BUREAU FEDERATION, et al. v. CA State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 07CS00485

Filed – 02/11/08

Plaintiffs' Counsel

David A. Battaglia, Alan N. Bick  
Gibson, Dunn & Crutcher LLP

BOE's Counsel

Molly Mosley  
BOE Attorney  
Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007; 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**DIAGEO-GUINNESS USA, INC., et al. v. California State Board of Equalization**

Sacramento Superior Court Case No. 34-2008-00013031-CU-JR-GDS

Filed – 06/12/08

Plaintiff's Counsel

Elizabeth Mann, Jeffrey N. Goldberg  
McDermot, Will & Emery LLP

BOE's Counsel

Steven J. Green  
BOE Attorney  
Jeffrey Graybill

Issue(s): (1) Whether BOE has the authority to adopt new Alcoholic Beverage Tax Regulations [2558](#), [2559](#), [2559.1](#), [2559.3](#) and [2559.5](#) (“Regulations”) recently approved by the Office of Administrative Law on June 10, 2008; (2) whether the Regulations are consistent with governing law; (3) whether BOE is required to follow federal regulations in this area; (4) whether BOE failed to comply with the Administrative Procedures Act; and (5) whether the Regulations violate the Commerce Clause of the United States Constitution (Revenue and Taxation Code sections [32002](#), [32152](#), [32451](#) and Business and Professions Code sections [23004](#), [23005](#), [23006](#), [23007](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Hearing on plaintiffs' Motion for Preliminary Injunction is scheduled for July 16, 2008.

**EMPLOYERS DEPOT, INC. v. The State Board of Equalization**

Sacramento Superior Court Case No. 03AS05773

Filed – 10/16/03

Plaintiff's Counsel

Peter J. Celeste  
Professional Law Corporation

BOE's Counsel

Amy J. Winn  
BOE Attorney  
Mike Llewellyn

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 1997-2001

Amount: Unspecified

Status: Pre-trial stay pending related litigation and implementation of new regulations. Trial setting conference scheduled for July 7, 2008.

**EQUILON ENTERPRISES LLC, et al. v. California State Board of Equalization**

Sacramento Superior Court Case No. 05AS02406

Filed – 06/01/05

BOE's Counsel

Molly Mosley

BOE Attorney

Carolee Johnstone

Plaintiffs' Counsel

Thomas H. Steele, Pilar M. Sansone

Morrison & Forrester LLP

Issue(s): Validity of the Childhood Lead Poisoning Prevention fee ([Health and Safety Code sections 105275-105310](#)) as it applies to Equilon Enterprises LLC, et al.

Audit/Tax Period: 2002

Amount: \$3,910,359.10

Status: On March 4, 2008, the Superior Court for the County of Sacramento issued a decision in favor of the BOE and Department of Public Health, and denied Equilon's claim for refund. Final judgment was entered on April 8, 2008. Equilon's Notice of Appeal was filed June 4, 2008. Hearing on Intervenor National Paint & Coatings Association's Motion for Award of Attorneys' Fees is scheduled for July 25, 2008.

**GREYHOUND LINES, INC. v. California Board of Equalization**

Sacramento Superior Court Case No. 07CS00054

Filed – 01/12/07

BOE's Counsel

Jeff Rich

BOE Attorney

Renee Carter

Plaintiff's Counsel

William D. Taylor, Eli R. Makus

Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP

Issue(s): Whether consumption of diesel fuel used to operate air conditioning systems on buses was exempt from the diesel fuel tax ([Revenue and Taxation Code section 60501\(a\)\(4\)\(A\)](#); [Regulation 1432](#)).

Audit/Tax Period: 08/01/01-12/31/03; 01/01/04-06/30/05

Amount: \$295,583.04

Status: Trial preparation.

**MORNING STAR COMPANY v. The State Board of Equalization, et al.**

Sacramento Superior Court Case No. 34-2008-00005600-CU-MC-GDS

Filed – 03/06/08

BOE's Counsel

Molly Mosley

BOE Attorney

Mike Llewellyn

Plaintiff's Counsel

Brian C. Leighton, Richard Todd Luoma

Attorneys at Law

Issue(s): Whether the requirement to pay fees into the Toxic Substances Control Account ([Health & Safety Code section 25205.6, subdivision \(c\)](#)) complies with the Administrative Procedure Act and due process.

Audit/Tax Period: 01/01/03-12/31/05

Amount: \$38,698.92

Status: BOE's answer was filed May 12, 2008.

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

California Superior Court Case No. S150518

Filed – 12/17/03

Sacramento Superior Court Case No. 03CS01776

Court of Appeal, Third Appellate District: 03CS01776

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is before the California Supreme Court and is pending the scheduling of oral arguments

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 04CS01467

Filed – 10/29/04

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 05CS01488

Filed – 10/19/05

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Somach, Simmons & Dunn

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 06CS01517

Filed – 10/18/06

BOE's Counsel

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Molly Mosley

Somach, Simmons & Dunn

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2006-2007

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**NORTHERN CA WATER ASSOCIATION, et al. v. State Water Resources Control Board, et al.**

Sacramento Superior Court Case No. 34-2008-00003004-CU-WM-GDS

Filed – 02/07/08

BOE's Counsel

Plaintiffs' Counsel

Stuart L. Somach, Daniel Kelly

Molly Mosley

Somach, Simmons & Dunn

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2007-2008

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**PALO VERDE IRRIGATION DISTRICT v. State Water Resources Control Board, et al.**

Riverside Superior Court Case No. INC 043178

Filed – 05/28/04

Plaintiff's Counsel

David R. Saunders

Clayson, Mann, Yaeger & Hansen

BOE's Counsel

Molly Mosley

BOE Attorney

Renee Carter

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 is valid ([Water Code sections 1525-1530; 1535-1541; 1550-1552; and 1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is stayed pending the decision of the California Supreme Court in *Northern California Water Association, et al. v. State Water Resources Control Board*, case number S150518.

**PARMAR, ASHOK V., et al. v. California State Board of Equalization**

Los Angeles Superior Court Case No. BC379013

Filed – 10/11/2007

Plaintiffs' Counsel

Marty Dakessian, Aleen L. Khanjian

Dakessian & Associates, PLC

BOE's Counsel

Ron Ito

BOE Attorney

Mike Llewellyn

Issue(s): Whether the BOE issued the Notice of Determination to the correct entity and whether plaintiff intentionally evaded payment of excise taxes as a distributor defined under [Revenue and Taxation Code sections 30008 and 30009](#).

Audit/Tax Period: 12/16/93-03/08/95

Amount: \$87,647.00

Status: Trial is scheduled for October 22, 2008.

**SANTA CLARA, COUNTY OF, et al. v. State Board of Equalization of California**

San Francisco Superior Court Case No. CPF-06-506789

Filed – 11/15/06

Plaintiffs' Counsel

Louise H. Renne, K. Scott Dickey

Renne, Sloan, Holtzman, Sakai LLP

BOE's Counsel

Graybill-Llewellyn

BOE Attorney

Graybill-Llewellyn

Issue(s): Whether the BOE is under a mandatory duty to tax flavored malt beverages as distilled spirits under [Revenue and Taxation Code section 32451](#).

Audit/Tax Period: None

Amount: Unspecified

Status: Civil proceedings are stayed pending the rule-making process. The Office of Administrative Law (OAL) approved the Board's regulatory changes on June 10, 2008, and sent them to the Secretary of State.

**SILVERS, STEPHEN F., et al. v. State Board of Equalization, et al.**

Los Angeles Superior Court Case No. BC388468

Filed – 04/04/08

BOE's Counsel

Diane Shaw

BOE Attorney

Renee Carter

Plaintiffs' Counsel

William K. Hanagami

The Hanagami Law Firm

Issue(s): Whether BOE has a duty and obligation to assess insurance taxes against Lexington Insurance Company, a Delaware Corporation and non-admitted insurer ([Insurance Code section 1760, et seq. and 1763.1](#)).

Audit/Tax Period: None

Amount: \$0.00

Status: Hearing on defendants' Demurrer is set for July 25, 2008. Case Management Conference is scheduled for September 5, 2008.

**SMILAND PAINT COMPANY, et al. v. California Department of Health Services, et al.**

Sacramento Superior Court Case No. 01CS01318

Filed – 09/14/01

BOE's Counsel

William L. Carter

BOE Attorney

Mike Llewellyn

Plaintiffs' Counsel

William M. Smiland, William Chase Ahders

Smiland & Khachigian

Issue(s): Whether the Childhood Lead Poisoning Prevention (CLLP) fee under the Childhood Lead Poisoning Prevention Act of 1991 ([Health and Safety Code sections 105275–105310](#)) are properly imposed on plaintiff who never manufactured or distributed lead-based products.

Audit/Tax Period: None

Amount: \$2,400,000.00

Status: Civil proceedings are stayed pending bankruptcy. Order re dismissal set for July 11, 2008.

**SMILAND PAINT COMPANY v. State Board of Equalization**

Los Angeles Superior Court Case No. BS103224

Filed – 05/18/06

BOE's Counsel

Brian Wesley

BOE Attorney

Anthony Epolite

Plaintiff's Counsel

William Smiland, Christopher Foster

Smiland & Khachigian

Issue(s): Whether plaintiff is exempt from assessment of the Childhood Lead Poisoning Prevention (CLPP) fee and whether BOE's denial of its petition for redetermination should be set aside and other relief granted to plaintiff ([Health and Safety Code sections 105275–105310](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: On June 26, 2007, the trial court struck plaintiff's first cause of action for equitable relief and transferred the remaining complaint to the supervising court for reassignment to a court of law. Case is being transferred.

**SPRINT COMMUNICATIONS COMPANY, L.P. v. State Board of Equalization**

San Francisco Superior Court Case No. CGC-06-455982

Filed – 09/07/06

BOE's Counsel

Wang/Standen

BOE Attorney

Johnstone/Graybill

Plaintiff's Counsel

Richard N. Wiley

Attorney at Law

Issue(s): Whether the BOE appropriately applied the Emergency Telephone Users Surcharge ([Revenue and Taxation Code section 41001 et seq.](#)) to certain charges Sprint bills to its California customers.

Audit/Tax Period: 12/01/97-04/30/00

Amount: \$2,289,936.82

Status: Opening trial briefs filed by both parties. Opposition briefs are due by July 18, 2008. Oral argument at the trial is scheduled for July 25, 2008.

**U.S. SMOKELESS TOBACCO BRANDS INC. v. State Board of Equalization**

San Francisco Superior Court Case No. CGC-07-463592

Filed – 05/22/07

BOE's Counsel

Julian O. Standen

BOE Attorney

Sharon Brady Silva

Plaintiff's Counsel

Amy L. Silverstein, Edwin P. Antolin

Silverstein & Pomerantz LLP

Issue(s): [Revenue & Taxation Code section 30123](#) requires distributors of tobacco products to pay an excise tax on distribution of tobacco products based on the wholesale cost of the products. Plaintiff purchased the product from an affiliated manufacturing corporation owned by the same parent company. Plaintiff contends that the taxable wholesale cost should be based on its price to purchase from the manufacturer, rather than its sales price to distributors, which it previously used to calculate the tax base.

Audit/Tax Period: 01/94-11/96

Amount: \$725,977.90

Status: On May 2, 2008, the court denied the plaintiff's Motion for Summary Judgment. The trial date has been continued from June 30, 2008 to September 8, 2008.

**ULTRAMAR, INC. v. S. Kimberly Belshe, et al.**

USDC, Central Dist. CA Case No. CV 04-6468 MRP

Filed – 08/04/04

BOE's Counsel

Elisa Wolfe

BOE Attorney

Carolee Johnstone

Plaintiff's Counsel

Richard E. Nielsen

Pillsbury, Winthrop, Shaw, Pittman LLP

Issue(s): Ultramar, Inc., a paint manufacturer, contends that certain regulations issued with respect to the Childhood Lead Poisoning Prevention (CLPP) fee ([Health and Safety Code sections 105275 – 105310](#)) should be declared invalid and unconstitutional and that the BOE and Department of Public Health should be enjoined from enforcing the CLPP program and collecting and assessing the CLPP fee against Ultramar.

Audit/Tax Period: 1991-1999 and 2001

Amount: \$6,348,189.19

Status: The lawsuit was stayed by the District Court on July 14, 2005, after an abstention and sovereign immunity (11<sup>th</sup> amendment) motion was heard by the court.

## SPECIAL TAXES

### CLOSED CASES

June 2008

**TOBAR, IDALIA, et al. v. California State Franchise Tax Board, et al.**

Alameda Superior Court Case No. RG06-266132

Plaintiffs' Counsel

Robert Pellinen  
Attorney at Law

Filed – 04/26/07

BOE's Counsel

David Lew/Yiu  
BOE Attorney  
Jeffrey Graybill

Issue(s): Whether BOE properly asserted tax on sales of tobacco products against plaintiffs, who assert that it was their tenant and not them, who actually sold the products. Plaintiffs also assert that the BOE caused them damages for wrongfully levying bank accounts in an effort to collect the tax.

Audit/Tax Period: 07/01/00-01/31/02

Amount: Unspecified

Disposition: Pursuant to the Court's Order dated January 24, 2008, BOE's Demurrer to plaintiff's Second Amended Complaint was sustained with leave to amend on the first cause of action; without leave to amend on the second cause of action. Plaintiff's third amended complaint was not filed by the February 4, 2008 deadline. Order for Dismissal was entered on April 29, 2008.

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