LITIGATION ROSTER

SPECIAL TAXES

JULY 2008

Special Taxes
July 2008

NEW CASES

Case Name	Court/Case Number
ANVARI, ALI	Contra Costa County Superior Court Case No. N07-0526

CLOSED CASES

Case Name	Court/Case Number
SMILAND PAINT COMPANY	Los Angeles County Superior Court Case No. BS103224

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

Special Taxes

LITIGATION ROSTER

July 2008

ANVARI, ALI v. State Board of Equalization of California

Contra Costa Superior Court Case No. N07-0526

Filed – 05/02/08

Plaintiff's Counsel
Barzin Barry Sabahat
Anchor Law Group, APC

BOE's Counsel
Karen Yiu

BOE Attorney
Dana Flanagan-McBeth

Issue(s): Was the Notice of Determination of Underground Storage Tank Maintenance Fees properly issued and were the subsequent levy actions taken by the Board appropriate. (Health and Safety Code sections 25299.41, 25284; Revenue and Taxation Code sections 50109, 50136, and 50113.1).

Audit/Tax Period: 1/1/97 – 12/6/97

Amount: $40,196.22

Status: Plaintiff's counsel has agreed to transfer the case from Contra Costa County Superior Court to San Francisco County Superior Court. Pending execution and filing of stipulation and transfer of case.

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

Filed – 04/13/04

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: 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

Filed – 01/13/05

Plaintiffs' Counsel
David A. Battaglia
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: 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	Filed – 04/26/06
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
David A. Battaglia	*BOE Attorney*
Gibson, Dunn & Crutcher LLP	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
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
David A. Battaglia, Alan N. Bick	*BOE Attorney*
Gibson, Dunn & Crutcher LLP	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
	BOE's Counsel
Plaintiff's Counsel	Steven J. Green
Elizabeth Mann, Jeffrey N. Goldberg	*BOE Attorney*
McDermot, Will & Emery LLP	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 was held July 16, 2008. On July 29, 2008, the court issued an Order denying the Motion. Notice of Ruling was served on July 30, 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: Mandatory Settlement Conference is set for September 9, 2008. Trial is set for October 7, 2008.

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

Sacramento Superior Court Case No. 05AS02406

Filed – 06/01/05

Plaintiffs' Counsel
Thomas H. Steele, Pilar M. Sansone
Morrison & Forrester LLP

BOE's Counsel
Molly Mosley

BOE Attorney
Carolee Johnstone

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: Trial court judgment was entered on April 8, 2008 in favor of defendants. Equilon's Notice of Appeal was filed June 4, 2008. Hearing on Intervenor National Paint & Coatings Association's Motion for Award of Attorneys' Fees was held July 25, 2008, and is pending decision.

GREYHOUND LINES, INC. v. California Board of Equalization
Sacramento Superior Court Case No. 07CS00054 — Filed – 01/12/07

Plaintiff's Counsel
William D. Taylor, Eli R. Makus
Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP

BOE's Counsel
Jeff Rich
BOE Attorney
Renee Carter

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

Plaintiff's Counsel
Brian C. Leighton, Richard Todd Luoma
Attorneys at Law

BOE's Counsel
Molly Mosley
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: 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
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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
	BOE's Counsel
Plaintiffs' Counsel	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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	Molly Mosley
Stuart L. Somach, Daniel Kelly	*BOE Attorney*
Somach, Simmons & Dunn	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
	BOE's Counsel
Plaintiff's Counsel	Molly Mosley
David R. Saunders	*BOE Attorney*
Clayson, Mann, Yaeger & Hansen	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
	BOE's Counsel
Plaintiffs' Counsel	Ron Ito
Marty Dakessian, Aleen L. Khanjian	*BOE Attorney*
Dakessian & Associates, PLC	Dana Flanagan-McBeth

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: Hearing on BOE's Motion for Summary Judgment is set for September 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

	BOE's Counsel
Plaintiffs' Counsel	Llewellyn/Graybill
Louise H. Renne, K. Scott Dickey	*BOE Attorney*
Renne, Sloan, Holtzman, Sakai LLP	Llewellyn/Graybill

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
Plaintiffs' Counsel	Diane Shaw
William K. Hanagami	*BOE Attorney*
The Hanagami Law Firm	Renee Carter

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' Demurrers was held July 25, 2008, and were overruled. Defendants were ordered to file their Answers to the Complaint within 15 days.

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
Plaintiffs' Counsel	William L. Carter
William M. Smiland, William Chase Ahders	*BOE Attorney*
Smiland & Khachigian	Mike Llewellyn

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.

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

San Francisco Superior Court Case No. CGC-06-455982 — Filed – 09/07/06

Plaintiff's Counsel	*BOE's Counsel*
Richard N. Wiley	Wang/Standen
Attorney at Law	*BOE Attorney*
	Carolee Johnstone

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: Oral argument at the trial has been continued from July 25, 2008 to November 14, 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

Plaintiff's Counsel	*BOE's Counsel*
Amy L. Silverstein, Edwin P. Antolin	Julian O. Standen
Silverstein & Pomerantz LLP	*BOE Attorney*
	Sharon Brady Silva

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

Plaintiff's Counsel	*BOE's Counsel*
Richard E. Nielsen	Elisa Wolfe
Pillsbury, Winthrop, Shaw, Pittman LLP	*BOE Attorney*
	Carolee Johnstone

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 (11th amendment) motion was heard by the court.

SPECIAL TAXES
CLOSED CASES
July 2008

SMILAND PAINT COMPANY v. State Board of Equalization	
Los Angeles Superior Court Case No. BS103224	Filed – 05/18/06
	BOE's Counsel
Plaintiff's Counsel	Brian Wesley
William Smiland, Christopher Foster	*BOE Attorney*
Smiland & Khachigian	Anthony Epolite

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

Disposition: After hearing oral argument on July 11, 2008, the court dismissed plaintiff's complaint. The court retains jurisdiction if plaintiff files an amended complaint.

DISCLAIMER

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