

LITIGATION ROSTER

SALES AND USE TAX

MAY 2008

Sales and Used Tax
NEW CASES
May 2008

<u>Case Name</u>	<u>Court/Case Number</u>
MERCEDES-BENZ USA, LLC	SFSC CGC 08-471310

CLOSED CASES
May 2008

<u>Case Name</u>	<u>Court/Case Number</u>
CAMERON, DAVID ALLAN	LASC BC 371647
HARWOOD, TYLER	SFSC CGC 05-44778
SEARLES VALLEY MINERAL OPERATIONS	SDSC GIC 840761

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

SALES AND USE TAX
LITIGATION ROSTER
May 2008

ASPECT SOFTWARE, INC. v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-468134

Filed -10/12/07

BOE's Counsel

Joyce Hee

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

James P. Kleier

ReedSmith LLP

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

Audit/Tax Period: 10/01/00-12/31/00

Amount: \$804,778.84

Status: Trial is scheduled for January 12, 2009.

BARNESANDNOBLE.COM LLC v. Betty T. Yee, et al.

USDC, Eastern Dist. CA Case No. 2:07CV2776-WBS-KJM

Filed -01/15/08

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

David W. Bertoni

Brann & Isaacson LLP

Issue(s): Whether the plaintiff had a substantial nexus with California to allow the BOE to impose a use tax collection duty. Plaintiff seeks declaratory and injunctive relief to preclude the BOE from imposing the use tax.

Audit/Tax Period: 05/01/00-03/31/04

Amount: Unspecified

Status: On May 29, 2008, the Board approved the settlement of this case. Pending preparation and filing of settlement documents.

barnesandnoble.com llc v. State Board of Equalization

Court of Appeal, First Appellate District Case No. A120834

San Francisco Superior Court Case No. CGC-06-456465

Filed -12/16/04

BOE's Counsel

David Lew

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Sharon Kirsch, Michelle Tidalgo

McManis, Faulkner & Morgan

Issue(s): Whether the plaintiff was a retailer engaged in business in this state and therefore had a duty to collect use tax arising from its sales within the state.

Audit/Tax Period: 11/15/99-03/31/00

Amount: \$697,607.52

Status: On May 29, 2008, the Board approved the settlement of this case. Pending preparation and filing of settlement documents.

BARONA BAND OF MISSION INDIANS v. John Chiang, et al.

U.S. Court of Appeals, Ninth Circuit Case No. 06-55918

USDC, So. Dist. CA Case No. 05-CV-0257-IEG (POR)

Plaintiff's Counsel

Art Bruce, Kathryn Clenney

Law Offices of Art Bruce

Filed – 02/07/05

BOE's Counsel

Leslie Branman-Smith

BOE Attorney

Jeffrey Graybill

Issue(s): Whether sales of electrical materials by a subcontractor on the Tribe's casino and resort properties are exempt as sales to an Indian tribe ([Regulations 1521 and 1616](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court entered judgment in favor of the Tribe and against the BOE, and the BOE appealed. Oral argument at the 9th Circuit Court of Appeal occurred February 7, 2008, and the parties are awaiting the Court's decision.

CARDINAL HEALTH 110, INC. v. State Board of Equalization of the State of California

San Francisco Superior Court Case No. CGC 04-437052

Court of Appeal, First Appellate District Case No. A-114257, A-114273

Plaintiff's Counsel

Jeffrey M. Vesely, Richard E. Nielsen

Pillsbury, Winthrop LP

Filed – 12/13/04

BOE's Counsel

Joyce Hee

BOE Attorney

John Waid

Issue(s): Whether the sales of insulin syringes, test strips, and skin puncture lancets to hospitals for use on their patients are subject to tax ([Revenue and Taxation Code 6369](#); [Regulation 1591.1](#)).

Audit/Tax Period: 07/01/93-09/30/96

Amount: \$525,387.64

Status: By an unpublished decision, the First District Court of Appeal concluded that while sales of insulin syringes were exempt from tax, sales of insulin test strips and skin puncture lancets were not. Case remanded to superior court to determine amount of refund due.

CARR BAZAAR, INC. v. State Board of Equalization

Fresno Superior Court Case No. 07 CE CG 04154 DRF

Plaintiff's Counsel

Lenden F. Webb

Wild, Carter & Tipton

Filed – 12/12/07

BOE's Counsel

George C. Spanos

BOE Attorney

John Waid

Issue(s): Whether the BOE is utilizing a proper formula to assess a deficiency arising out of an audit ([Regulation 1705](#)).

Audit/Tax Period: 01/01/00-12/31/02

Amount: \$76,884.13

Status: BOE's response to plaintiff's First Amended Complaint is due July 10, 2008.

DAIMLERCHRYSLER CORPORATION v. State Board of Equalization

San Francisco Superior Court Case No. CGC 07-459702

Filed – 01/18/07

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Jon D. Universal

Universal Shannon & Wheeler LLP

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

Audit/Tax Period: 10/01/01-01/10/05

Amount: \$2,000,000.00

Status: Trial continued to September 29, 2008.

GENERAL ELECTRIC CAPITAL CORPORATION v. State Board of Equalization

San Francisco Superior Court Case No. CGC 08-471479

Filed – 01/28/08

BOE's Counsel

Burr/Yiu

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Amy L. Silverstein, Edwin P. Antolin

Silverstein & Pomerantz LLP

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

Audit/Tax Period: 01/01/94-03/31/01

Amount: \$6,983,601.83

Status: Case Management Conference is scheduled for June 27, 2008.

HERON, MICHAEL DION v. L. Albin, et al.

Los Angeles Superior Court Case No. LC081016

Filed – 04/04/08

BOE's Counsel

Christine Zarifian

BOE Attorney

Robert J. Stipe

Plaintiff's Counsel

Michael Dion Heron

In pro per

Issue(s): Whether plaintiff's Sales and Use Tax seller's permit was cancelled by the BOE without just cause ([Revenue and Taxation Code section 6072](#); [Regulation 1699](#)).

Audit/Tax Period: None

Amount: \$20,000,000.00 in gold &
\$30,000 in attorneys' fees

Status: Hearing on defendants' demurrer is scheduled for June 16, 2008. Status conference is scheduled for July 14, 2008. Case Management Conference is scheduled for August 21, 2008.

HOFSTADTER, DAVID, et al. v. The State Board of Equalization

(Class Action Complaint for Constructive Trust, etc.)

Los Angeles Superior Court Case No. BC376547

Filed – 08/24/07

BOE's Counsel

Donald Currier

BOE Attorney

John Waid

Plaintiffs' Counsel

Mitch Kalcheim

Kalcheim/Salah

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

Audit/Tax Period: None

Amount: Unspecified

Status: Plaintiff's First Amended Complaint filed on May 7, 2008. Hearing on BOE's Demurrer continued to July 10, 2008.

HSBC RETAIL SERVICES, INC. v. State of California Board of Equalization

San Francisco Superior Court Case No. CGC 07-469572

Filed – 11/28/07

BOE's Counsel

Anne Michelle Burr

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Donald J. Querio, Erik Kemp

Severson & Werson

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

Audit/Tax Period: 10/01/97-12/31/02

Amount: \$9,158,743.00

Status: Mandatory Settlement Conference is set for January 9, 2009. Trial is scheduled for January 26, 2009.

INTAGLIO CORPORATION v. State Board of Equalization

Sacramento Superior Court Case No. 05AS02558

Filed – 06/13/05

BOE's Counsel

Steven J. Green

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

R. Todd Luoma

Law Offices of Richard Todd Luoma

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

Audit/Tax Period: 04/01/97-12/31/00

Amount: \$208,513.38

Status: Pending trial setting.

KASHE, MOHAMMED, et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC371154

Filed – 05/16/07

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Marty Dakessian, Aleen L. Khanjian

Dakessian & Associates, PLC

Issue(s): Whether the BOE is liable for damages under [Revenue and Taxation Code section 7099](#) for its conduct of an audit of plaintiff's business ([Revenue and Taxation Codes 6561 and 7053](#)).

Audit/Tax Period: 07/01/92-06/30/96 (Kashe)

Amount: Unspecified

Status: Trial court ruled in favor of BOE's demurrer on the grounds that plaintiff's claim for damages were not first submitted to the Victims Compensation Board as required by statute. Plaintiff filed Notice of Appeal March 20, 2008.

MADISON GRAHAM COLOR GRAPHICS, INC. v. State Board of Equalization of the State of CA

Los Angeles Superior Court Case No. BC386153

Filed – 02/26/08

BOE's Counsel

Lisa Chao

BOE Attorney

Mike Llewellyn

Plaintiff's Counsel

Richard J. Ayooob

Ajalat, Polley, Ayooob & Matarese

Issue(s): Whether claimant's sales of special printing aids to product manufacturers were nontaxable sales for resale, thus entitling plaintiff to a refund of tax that plaintiff paid to third-party vendors at the time the special printing aids were purchased ([Revenue and Taxation Code sections 6007, 6091, 6092](#)).

Audit/Tax Period: 01/01/02-03/31/05

Amount: \$412,792.38

Status: BOE's Answer was filed on May 22, 2008. Case Management Conference and Trial Setting is scheduled for July 1, 2008.

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

BOE's Counsel

Donald Currier

BOE Attorney

John Waid

Plaintiffs' Counsel

Philip J. Eskanazi, Lee A. Cirsch

Akin, Gump, Strauss, Haur & Feld LLP

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

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: CVS, Inc. v. California State Board of Equalization
Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06
BOE's Counsel
Donald Currier
BOE Attorney
John Waid

Plaintiffs' Counsel
Richard T. Williams
Holland & Knight LLP

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

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: Longs Drug Stores Corporation, et al. v. California State Board of Equalization
Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06
BOE's Counsel
Donald Currier
BOE Attorney
John Waid

Plaintiffs' Counsel
Douglas A. Winthrop, Christopher Kao
Howard, Rice, Nemerovski, Canady, Falk & Rabkin

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

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: Rite Aid v. The California State Board of Equalization
Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06
BOE's Counsel
Donald Currier
BOE Attorney
John Waid

Plaintiffs' Counsel
Douglas C. Rawles, Neal Salisian
Morgan, Lewis & Bockius LLP

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

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Wal-Mart Stores, Inc. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

Plaintiffs' Counsel

Gail E. Lees, Brian Walters

Gibson, Dunn & Crutcher LLP

BOE's Counsel

Donald Currier

BOE Attorney

John Waid

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

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.

Cross-Complaint: Walgreen Co. v. The California State Board of Equalization

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

Plaintiffs' Counsel

Douglas C. Rawles, Neal Salisian

Morgan, Lewis & Bockius LLP

BOE's Counsel

Donald Currier

BOE Attorney

John Waid

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

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending.

McKOOON, HOSMER, et al. v. The Commission of the State Board of Equalization for the State of CA

Los Angeles Superior Court Case No. BS111440

Filed – 10/09/07

Plaintiffs' Counsel

Dennis Connelly

Law Office of Dennis Connelly

BOE's Counsel

Anthony Sgherzi

BOE Attorney

Victoria Baker

Issue(s): (1) Whether the BOE's application of an eight-year statute of limitations under [Revenue and Taxation Code section 6487](#), is constitutional. (2) Whether BOE's Notice of Determination issued pursuant to [Revenue and Taxation Code section 6829](#) was timely.

Audit/Tax Period: 07/01/98-05/28/99 (Dual 07/29/04)

Amount: \$108,994.45

Status: BOE's answer and cross-complaint was filed on April 11, 2008. Plaintiff's answer to BOE's cross-complaint was filed on April 29, 2008. Discovery to commence.

MERCEDES-BENZ USA, LLC v. California State Board of Equalization

San Francisco Superior Court Case No. CGC 08-471310

Filed – 01/23/08

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Jon D. Universal

Universal, Shannon & Wheeler

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

Audit/Tax Period: None

Amount: \$2,500,000.00

Status: BOE's Answer was filed May 23, 2008. Case Management Conference scheduled for June 27, 2008.

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

Court of Appeal, Second Appellate District Case No. B200874

Filed – 10/31/06

Los Angeles Superior Court Case No. BC361123

BOE's Counsel

Donald Currier

BOE Attorney

John Waid

Plaintiffs' Counsel

Jeffrey S. Baird, Joseph A. Vinatieri

Bewley, Lasseben & Miller, LLP

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

Audit/Tax Period: 10/01/95-06/30/00

Amount: \$530,039.00

Status: Trial court ruled in favor of the BOE. Plaintiffs appealed. BOE's Respondent's Brief filed April 8, 2008. The Appellants' Reply brief is due June 27, 2008.

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

San Francisco Superior Court Case No. CGC 03-419192

Filed – 11/01/04

BOE's Counsel

Julian O. Standen

BOE Attorney

John Waid

Plaintiffs' Counsel

Jason Bergmann

Paul, Hastings, Janofsky & Walker, LLP

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. Case Management Conference scheduled for June 13, 2008.

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

Los Angeles Superior Court Case No. BC341568

Filed – 10/17/05

Plaintiff's Counsel

Jeffrey Varga, Julian Decyk

Paul, Hastings, Janofsky & Walker LLP

BOE's Counsel

Stephen Lew

BOE Attorney

Mike Llewellyn

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

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

Status: Trial was completed May 2, 2008-pending decision.

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

Los Angeles Superior Court Case No. BC375660

Filed – 08/09/07

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

BOE's Counsel

Lew/Wolfe-Donato

BOE Attorney

Mike Llewellyn

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

Audit/Tax Period: 01/01/94-12/31/97

Amount: \$1,054,020.00

Status: Trial is scheduled for September 8, 2008.

PeoplePc, INC. v. State Board of Equalization

San Diego Superior Court Case No. 37-2007-00066036-CU-MC-CTL

Filed – 05/01/07

Plaintiff's Counsel

Mark L. Mann, Jaikaran Singh

Luce, Forward, Hamilton & Scripps LLP

BOE's Counsel

Leslie Branman-Smith

BOE Attorney

Mike Llewellyn

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

Audit/Tax Period: 07/01/99-06/30/02

Amount: \$486,372.83

Status: Trial is scheduled for September 5, 2008.

REM CONCEPTS, INC., et al. v. California State Board of Equalization

Los Angeles Superior Court Case No. BC378831

Plaintiffs' Counsel

Joseph A. Vinatieri, Jason De Mille
Bewley, Lasseben & Miller

Filed – 10/09/07

BOE's Counsel

Brian Wesley
BOE Attorney
Elizabeth Abreu

Issue(s): (1) Whether plaintiff was a construction contractor or retailer of windows physically installed by other persons. (2) Whether plaintiff is entitled to relief from liability under [Revenue and Taxation Code section 6596](#); [Regulations 1521](#) and [1705](#).

Audit/Tax Period: 07/01/00-01/05/04

Amount: \$5,185,716.89

Status: Trial is scheduled for August 22, 2008.

SAN MATEO, COUNTY OF v. State Board of Equalization, et al.

San Francisco Superior Court Case No. CGC 07-459514

Plaintiff's Counsel

John Nibbelin, David Silberman
San Mateo County Counsel

Filed – 06/14/06

BOE's Counsel

Kris Whitten
BOE Attorney
John Waid

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

Audit/Tax Period: None

Amount: Unspecified

Status: Mandatory Settlement Conference is scheduled for August 20, 2008. Trial is set for September 8, 2008.

WIMATEX, INC. v. State Board of Equalization

Sacramento Superior Court Case No. 34-2008-00001968

Plaintiff's Counsel

Alan I. Kaplan
Law Offices of Alan I. Kaplan

Filed – 01/25/2008

BOE's Counsel

Jeff Rich
BOE Attorney
Mike Llewellyn

Issue(s): Whether the taxpayer is entitled to relief under [Revenue and Taxation Code section 6596](#) for an inapplicable exemption claimed under Revenue and Taxation Code section 6377 (repealed).

Audit/Tax Period: 01/01/00-12/31/02

Amount: \$132,487.25

Status: BOE's answer and cross-complaint were filed May 15, 2008.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization

Los Angeles Superior Court Case No. CA000499
Court of Appeal, Second Appellate District: B113661

Filed – 06/20/78

BOE's Counsel

Diane Spencer-Shaw

Plaintiff's Counsel

James M. Gansinger
Gansinger, Hinshaw

BOE Attorney

Mike Llewellyn

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: Judgment has been entered. Status conference set for July 1, 2008.

SALES AND USE TAX
CLOSED CASES
LITIGATION ROSTER
May 2008

CAMERON, DAVID ALLAN, et al. v. State Board of Equalization

Los Angeles Superior Court Case No. BC371647

Plaintiffs' Counsel

Robert F. Klueger

Boldra Klueger & Stein LLP

Filed – 05/24/07

BOE's Counsel

Anthony Sgherzi

BOE Attorney

Mike Llewellyn

Issue(s): Whether the taxpayer correctly reported taxable sales for eat-in customers under [Revenue and Taxation Code section 6359\(d\)\(2\)](#).

Audit/Tax Period: 01/01/98-02/10/00; 02/11/00-12/31/04

Amount: \$66,997.38

Disposition: Case settled. Stipulation for Judgment; Judgment Pursuant to Stipulation entered May 2, 2008.

HARWOOD, TYLER v. Vanguard Car Rental USA Inc., et al.

Cross-Complaint: Vanguard Car Rental USA Inc. v. State Board of Equalization

San Francisco Superior Court Case No. CGC 05-447786

Plaintiff's Counsel

Robert B. Hancock

Law Offices of Robert B. Hancock

Filed – 07/01/05

BOE's Counsel

Paul D. Gifford

BOE Attorney

John Waid

Issue(s): Whether Vanguard illegally collected use tax from the lessees of its automobiles measured by an airport facilities fee. ([Revenue and Taxation Code 7053](#); [Regulation 1660](#))

Audit/Tax Period: None

Amount: Unspecified

Disposition: Case settled. Final Judgment and Order Granting Motion for Final Approval of Class Action Settlement was filed on May 7, 2008.

SEARLES VALLEY MINERAL OPERATIONS, INC., et al. v. State Board of Equalization

Court of Appeal, Fourth Appellate District Case No. D049905

San Diego Superior Court Case No. GIC 840761

Plaintiffs' Counsel

Charles J. Moll

Morrison & Foerster LLP

Filed – 01/04/05

BOE's Counsel

Leslie Branman-Smith

BOE Attorney

John Waid

Issue(s): Whether the BTU content of the coal used in plaintiffs' electricity generation process is incorporated into the electricity offered for sale on the power grid so that the coal is purchased for resale, with no sales or use tax due on plaintiffs' purchases ([Revenue and Taxation Code 6007](#); [Regulation 1525](#)).

Audit/Tax Period: 04/01/99-09/30/02

Amount: \$5,014,591.00

Disposition: In a published decision issued February 26, 2008, the Court of Appeal affirmed the trial court judgment in favor of BOE. The Court concluded that Searles' purchases of coal were not for the purpose of resale and thus were properly subject to California's use tax. On March 12, 2008, Searles filed a Petition for Rehearing in the Court of Appeal. On March 25, 2008, the Petition for Rehearing was denied. On April 8, 2008, Searles filed a Petition for Review in the California Supreme Court. The Petition for Review was denied. Remittitur issued May 19, 2008.

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