

LITIGATION ROSTER

SALES AND USE TAX

JUNE 2017

**Sales and Use Tax
JUNE 2017**

NEW CASES

Case Name

Court/Case Number

ORTHO MATTRESS, Inc. v. BEDDING PROS; US-
MATTRESS; MATTRESS USA AND BOE

BC665853

CLOSED CASES

Case Name

Court/Case Number

SAN BERNARDINO, CITY OF v. John Chiang, State
Controller

6:12-BK-28006-MJ

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

Sales and Use Tax
LITIGATION ROSTER
JUNE 2017

JAMES G. BARRETT v. California Dept. of ABC, et al.

Los Angeles County Superior Court: ECU08527

Filed – 03/05/15

Plaintiff's Counsel

Pro Se

BOE's Counsel

Jane O'Donnell

BOE Attorney

John Waid

Issue(s): Petitioner contends that the BOE is not performing its statutory and mandatory duties in enforcing the Sales & Use Tax Law against certain tribal retailers.

Audit/Tax Period: None

Amount: Unspecified

Status: On March 20, 2015, the BOE filed a Motion to Transfer Venue to Sacramento County. On March 23, 2015, Petitioner filed a request to continue the April 1, 2015 hearing date of his Motion for a Writ of Prohibition to April 27, 2015. On March 25, 2015, the court denied the request and took the Motion off calendar pending Petitioner's attendance at the initial case management conference. On April 1, 2015, Plaintiff filed his Opposition to Motion to Transfer Venue. On April 13, 2015, the BOE filed its Reply Brief in support of its Motion to Transfer Venue. The court continued the April 22, 2015, hearing on the BOE's Motion to Transfer Venue to May 6, 2015 to allow the BOE to submit additional evidence in support of its motion. Following the hearing, the parties stipulated to transfer the case to Los Angeles County Superior Court and filed a joint stipulation on April 23, 2015. The Los Angeles Superior Court served a Notice of Incoming Transfer confirming that venue of this action was moved from Imperial County to Los Angeles County. Pursuant to the transfer of venue, the case was filed in the Los Angeles County Superior Court on May 14, 2015. The parties stipulated that the BOE would have until June 30, 2015, to file its response to the Petition for Writ of Mandate. On June 26, 2015, the BOE filed its Demurrer to Plaintiff's Writ Petition. Plaintiff's Opposition was due November 4, 2015. The BOE's Reply

was due November 10, 2015. Hearing was scheduled for November 18, 2015. On October 26, 2015, plaintiff filed his Opposition to BOE's demurrer. On November 10, 2015, the BOE filed its Reply Brief in support of its Demurrer. On November 18, 2015, the court heard oral argument on the BOE's Demurrer to petitioner's First Amended Petition for Writ of Mandate. On November 23, 2015, the trial court issued a ruling sustaining the BOE's Demurrer. The court granted plaintiff leave to amend only as to plaintiff's standing to bring an action to invalidate section 765.005 of the BOE's Compliance and Procedures Manual on the ground that it is contrary to the law. No amended writ petition has been filed or served. The BOE therefore moved on January 12, 2016, to have petitioner's action dismissed with prejudice. Hearing is set for May 4, 2016. On May 4, 2016, the court granted the BOE's Motion to Dismiss. On June 2, 2016, the judge signed the order dismissing the case and judgment was entered for the BOE.

On July 27, 2016, plaintiff filed a notice of appeal and his designation of the record on appeal. On August 11, 2016, the BOE filed its supplemental designation of the record on appeal. Plaintiff filed the Appellant's Opening Brief on April 10, 2017. BOE will request an extension to file a response. On May 9, 2017, the Court of Appeal granted BOE's request for a 60-day extension of time to file its Respondent's Brief, which is now due July 10, 2017. The court granted the BOE an extension to August 9, 2017, to file its Respondent's Brief.

**ALINA BEKKERMAN; BRANDON GRIFFITH; JENNY LEE; AND CHARLES LISSER
v. California Board of Equalization and DOES 1 to 20, inclusive**

Sacramento County Superior Court: 34-2015-80002242

Filed – 11/25/15

Plaintiffs' Counsel

Daniel M. Hattis

Tony J. Tanke, Law Offices of Tony J. Tanke

Jeffrey Burke, Burke Law Group

BOE's Counsel

Nhan T. Vu

BOE Attorney

Wendy Vierra

Issue(s): Whether [Regulation 1585, subdivisions \(a\)\(4\) and \(b\)\(3\)](#), are invalid and contrary to the Sales and Use Tax Law in that the Regulation imposes sales tax on the "unbundled sales price" of a mobile phone bundled with a service contract rather than the actual price paid by the consumer to the retailer. Whether the Board

failed to adequately assess the economic impact of [Regulation 1585](#) and failed to adequately consider less burdensome alternatives.

Audit/Tax Period: None

Amount: Unspecified

Status: Plaintiff agreed to an extension of time for BOE to respond to January 12, 2016. The BOE filed its Answer on January 12, 2016. On February 8, 2016, plaintiff served the BOE with a notice of hearing on the merits, which is set for October 21, 2016. Based on the local rules, the parties would then have the following deadlines: Opening Brief Due September 6, 2016; Opposition Brief Due September 26, 2016; and Reply Brief Due October 6, 2016. On February 9, 2016, Plaintiff's counsel served the BOE with Form Interrogatories and Requests for Production of Documents. Response was initially due March 18, 2016, but Plaintiff granted the BOE an extension to April 18, 2016. On March 29, 2016, the parties stipulated to a new briefing schedule. Petitioners' Opening Brief is now due on August 9, 2016, the BOE's Respondent's Brief is due September 12, 2016, and Petitioners' Reply Brief is due October 6, 2016. Plaintiffs granted the BOE an extension to respond to Plaintiffs' discovery requests to May 2, 2016. BOE served its responses to Plaintiffs' written discovery requests on May 6, 2016.

On February 17, 2017, the court issued an order granting petitioners' request for a continuance of the writ hearing and resetting the briefing schedule. The new dates are as follows: (1) petitioners' opening memorandum is due August 4, 2017; (2) the BOE's opposition is due September 29, 2017; (3) petitioners' reply brief is due November 23, 2017; and the (4) hearing on the merits of the writ petition is December 8, 2017.

**ALINA BEKKERMAN; BRANDON GRIFFITH; JENNY LEE; AND CHARLES LISSER
v. California Board of Equalization et al.**

Sacramento County Superior Court: 34-2016-80002287

Filed – 04/04/16

Plaintiffs' Counsel

Daniel M. Hattis

Tony J. Tanke, Law Offices of Tony J. Tanke

Jeffrey Burke, Burke Law Group

BOE's Counsel

Nhan T. Vu

BOE Attorney

Wendy Vierra

Issue(s): Whether [Regulation 1585, subdivisions \(a\)\(4\) and \(b\)\(3\)](#), are invalid and contrary to the Sales and Use Tax Law in that the Regulation imposes sales tax on the "unbundled sales price" of a mobile phone bundled with a service contract rather than the actual price paid by the consumer to the retailer. Whether the Board failed to adequately assess the economic impact of [Regulation 1585](#) and failed to adequately consider less burdensome alternatives. Plaintiffs seek a refund of sales tax reimbursement paid on the unbundled sales price of mobile phones purchased from retailer defendants AT&T, Sprint, Verizon, and T-Mobile.

Audit/Tax Period: None

Amount: Unspecified

Status: On April 1, 2106, AT & T filed a Notice of Removal, divesting the superior court of jurisdiction and removing the case to the United States District Court of the Eastern District of California. On May 19, 2016, plaintiff stipulated that the BOE could file its response by June 6, 2016. Plaintiff stipulated to a further extension of time for BOE's response to July 28, 2016, due to remand issues.

On July 28, 2016, plaintiffs and BOE both filed motions for remand. Hearing was scheduled for August 25, 2016. On August 19, 2016, the court vacated the hearing on BOE's motion to remand the case to state court, and took the matter under submission without oral argument. On March 21, 2017, the Eastern District of California remanded the Bekkerman class action back to the Sacramento Superior Court. BOE filed a demurrer on June 9, 2017. A hearing on BOE's demurrer is scheduled for August 18, 2017.

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

Sacramento County Superior Court: 34-2012-80001269

Filed – 09/19/12

Plaintiff's Counsel

Michael G. Colantuono - Colantuono & Levin

BOE's Counsel

Kathleen Lynch

BOE Attorney

John Waid

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. The Third District Court of Appeal granted the petitioners' requests to consolidate the Bellflower and League of Cities appeals. Oral argument was held in the Court of Appeal on February 16, 2016. The court took the appeal under submission. On March 3, 2016, Third District Court of Appeal issued a ruling in favor of plaintiff cities. The court ruled that the self-help provisions of [AB 1484](#), by which the Department of Finance (DOF) could

order BOE to withhold local taxes from a city which had not paid amounts DOF determined were owed and transferred those funds to DOF, were unconstitutional. The attorney fees and costs issues have settled and the December 16, 2016, hearing was taken off calendar. Petitioners and DOJ are now working on a proposed judgement and writ.

BIG BEAR LAKE, CITY OF, et al. v. Ana J. Matosantos, et al.

California Court of Appeal, Third Appellate District: C076576

Sacramento County Superior Court: 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

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. The city filed its Opening Brief on December 23, 2014. DOF's Brief was due May 13, 2015. Department of Finance filed its Respondent's Brief on June 11, 2015. Appellants filed a Reply Brief on August 25, 2015. Oral argument is scheduled for May 22, 2017 at 2PM. Oral Argument was held on May 22, 2017. On June 14, 2017, the Third District Court of Appeal issued its opinion, concluding that: (1) the contested transactions did not create enforceable obligations of the former redevelopment agency, (2) the Dissolution Law's

invalidation of sponsor agreements (agreements between a city and its former redevelopment agency) does not violate the California Constitution, and (3) it is irrelevant that City of Big Bear Lake claims it no longer possesses the funds it received from the former redevelopment agency. The Court of Appeal also concluded, consistent with its decision in *City of Bellflower v. Cohen* (2016) 245 Cal.App.4th 438, that the statutory remedy of offsetting City of Big Bear Lake's sales, use, and property taxes to capture the \$2.6 million is unconstitutional. Therefore, the Court of Appeal modified the trial court's judgment to the extent it found the proposed sales, use, and property tax offsets constitutional, and otherwise affirmed the judgment as modified.

BRISBANE, CITY OF v. Ana J. Matosantos, et al.

California Court of Appeal, First Appellate District: A137185

San Francisco County Superior Court: CPF-09-509232

Filed – 04/21/09

Plaintiff's Counsel

Charles Coleman - Holland & Knight, LP

BOE's Counsel

Karen Yiu

BOE Attorney

John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in 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. The Court of Appeal scheduled oral argument in the Brisbane case for March 17, 2015. The court also scheduled oral argument for all three attorney appeals for the same day. On March 25, 2015, the Court of Appeal issued its unpublished opinion remanding the case back to the trial court for fact-finding proceedings. On June 2, 2015, the Court of Appeal remanded the case to the San Francisco County Superior Court for further proceedings in accordance with its opinion.

Remand to Trial Court: On August 13, 2015, BOE filed a Peremptory Challenge. On August 17, 2015, Brisbane filed an Opposition. On August 21, 2015, BOE filed a Reply. The court sustained BOE's Peremptory Challenge and scheduled a Case Management Conference for September 18, 2015. At the Case Management Conference on September 18, 2015, the court set the following briefing schedule: Opening Brief due Nov. 20, 2015; Reply Brief due Jan. 11, 2016. Court trial was set for January 25, 2016. On November 20, 2015, the parties filed their opening briefs on remand with respect to the issue of whether title transferred in California for any of the sales at issue. On January 11, 2016, the BOE filed its reply brief. The trial took place January 25, 27, and 29, 2016. The court ordered the parties to submit draft Statements of Decision by close of business February 22, 2016. The case will not be deemed submitted for decision until the court has reviewed the proposed Statements to ensure they do not contain new matter. On February 22, 2016, the City and the BOE filed proposed Statements of Decision. On August 2, 2016, the court issued its Tentative Decision in favor of the BOE. Plaintiff City of Brisbane filed its objections to the Tentative Decision on August 19, 2016. On January 4, 2017, the trial court issued a Statement of Decision in favor of the BOE – finding that the Internet sales at issue were properly allocated to California jurisdictions other than Brisbane as local use tax. The sales at issue were subject to use tax, rather than sales tax. On January 20, 2017, the trial court entered Judgment in favor of the BOE. On March 1, 2017, Plaintiff City of Brisbane filed a notice of appeal. On March 9, 2017, the City filed a notice designating its record on appeal. On May 7, 2017, Appellant filed its Civil Case Information Statement. Appellant's Opening Brief is due July 27, 2017, and the Reply Brief is due October 12, 2017.

CARTER , TORRIE GIDGET and CARTER, MICHAEL ANTHONY, HUSBAND AND WIFE, Plaintiffs, v. UNITED STATES BANKRUPTCY COURT Eastern District of California; CALIFORNIA STATE BOARD OF EQUALIZATION; JOHN W. REGER; JOHN and JANE DOES 1 through 20, Defendants.

Butte County Superior Court: 164455

Filed – 06/05/2015

Plaintiff's Counsel

Pro Se

BOE's Counsel

Jill Bowers

BOE Attorney

W. Gregory Day

Issue(s): This litigation arises out of a sales and use tax dispute between BOE and the Carters concerning the operation of Homestead Furnishings in Oroville, CA, and the bankruptcy proceedings thereafter filed by the Carters in which BOE filed a proof of claim. BOE denies plaintiffs' contentions.

Audit/Tax Period: None

Amount: \$233,000.00

Status: Plaintiffs have not yet served a Summons on BOE.

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

Sacramento County Superior Court: 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

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. The BOE is not participating in the appeal.

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

Sacramento County Superior Court: 34-2013-80001585

Filed – 08/01/13

Plaintiff's Counsel

Dan Slater - Rutan & Tucker

BOE's Counsel

Alexandra R. Gordon

BOE Attorney

John Waid

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 was scheduled for March 27, 2015. Plaintiff City and DOF are in settlement negotiations. Hearing was continued to October 16, 2016. Settlement negotiations are still ongoing.

The People of the State of California v. DEUTSCH, RUSSELL HOWARD

San Mateo County Superior Court: 16SF002763A

Filed – 05/05/16

Plaintiff's Counsel

BOE's Counsel

Lucy Wang

BOE Attorney

W. Gregory Day

Issue(s): Defendant Russell Howard Deutsch has filed a Motion to Compel seeking a court order to compel the BOE to produce certain subpoenaed documents in connection with the San Mateo District Attorney's prosecution of Defendant related to the BOE's criminal investigation of Old Port Lobster operated by Defendant, among other things.

Audit/Tax Period: None

Amount: Unspecified

Status: On May 3, 2016, the Defendant filed a Motion to Suppress Evidence and Return of Money Seized by the BOE. On May 5, 2016, the Defendant filed a Motion to Compel Discovery from the People and the BOE. On May 12 and May 13, 2016, the People filed Oppositions to Defendant's Motions. On May 20, 2016, the Motion to Compel was rescheduled to June 9, 2016. The criminal case trial date of June 6, 2016, was vacated at the Defendant's request. On May 23, 2016, Defendant filed an Amended Motion to Compel Discovery. The BOE filed a Sur-Reply to the amended Motion on May 27, 2016. On May 25 and 31, 2016, the Court denied Defendant's Motion to Suppress Evidence and ordered the BOE to return some of the money seized to the Defendant. On June 9, 2016, the Court rescheduled the Motion to Compel to August 26, 2016. On June 30, 2016, the Defendant filed with the Court of Appeal a Petition for Writ of Mandate or other Appropriate Relief seeking, among other things, that the BOE return all of the money seized from Defendant's property during its investigation. On October 11, 2016, on behalf of the County of San Mateo, the Department of Justice filed an

Opposition to Defendant's Deutsch's Petition. On October 31, 2016, the Court of Appeal denied Defendant Deutsch's Petition for Writ of Mandate.

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

Sacramento County Superior Court: 34-2013-80001518

Filed – 06/07/13

Plaintiff's Counsel

Daniel T. McCloskey - Tuttle & McCloskey

BOE's Counsel

Nancy Doig

BOE Attorney

John Waid

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.

DISIMONE, NICOLLE, v. State of California, et al.

San Francisco County Superior Court: CGC-16-552458

Filed – 03/23/16

Plaintiff's Counsel

Kevin Mahoney

BOE's Counsel

Lucy Wang

BOE Attorney

Kiren Chohan

Issue(s): Plaintiff alleges that the imposition of tax on the sale of tampons and certain feminine hygiene products is unconstitutional. Plaintiff asserts that these products meet the definition of “medicine” under [Regulation 1591](#) and therefore, the charges for these products should be exempt from tax under [Revenue and Taxation Code section 6369](#). BOE denies plaintiff’s contentions.

Audit/Tax Period: N/A

Amount: None

Status: The parties stipulated to transferring the action to San Francisco Superior Court. The Stipulation and Proposed Order were filed May 16, 2016. On May 24, 2016, the judge signed the order transferring the case to San Francisco County Superior Court. On June 9, 2016, the San Francisco County Superior Court issued a Notice of Filing and Transmittal, acknowledging that it had received the case and setting a Case Management Conference for November 9, 2016. At the parties’ July 7, 2016, Case Management Conference, the court granted plaintiff leave to amend her complaint by August 4, 2016. The court set a further Case Management Conference for August 22, 2016. On August 4, 2016, plaintiff filed her First Amended Complaint. On August 22, 2016, the court authorized plaintiff to file a Second Amended Complaint by September 1, 2016. On September 1, 2016, plaintiff filed her Second Amended Complaint, to which she added a new plaintiff. On November 18, 2016, the BOE filed a Demurrer to Plaintiffs’ complaint without leave to amend. Plaintiffs’ reply is due December 9, 2016, and the hearing on the Demurrer is scheduled for January 18, 2017. Plaintiffs filed their brief in opposition to the BOE’s demurrer on December 9, 2016, and the BOE filed its reply on December 21, 2016. Hearing on the BOE’s demurrer was held on January 18, 2017. The court took the case under submission. On January 20, 2017, the trial court sustained the BOE’s demurrer with leave to amend. Plaintiffs must file an amended complaint by February 2, 2017, and the next case management conference is scheduled for February 16, 2017. Plaintiffs filed a third amended complaint on January 31, 2017. At the February 21, 2017 case management conference, the court scheduled the next case management conference for April 20, 2017. Plaintiffs filed a third amended complaint on April 4, 2017. On April, 17, 2017, the BOE filed its answer to Plaintiff’s third amended complaint. On April 20, 2017, the parties attended a case management conference. At the conference, the court ordered that the parties should commence discovery, if need, and file cross-motions for summary judgment. The court set another case management conference for June 30, 2017. At the June 30, 2017 Case Management Conference, the court set another Case Management Conference to take place on July 18, 2017.

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

Sacramento County Superior Court: 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

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). On February 11, 2015, DOF filed an abandonment of cross-appeal. BOE is not participating in the appeal. On January 4, 2016, the Court of Appeal accepted the Respondents' brief which was

initially filed on December 28, 2015. The case is now fully briefed.

CITY OF FONTANA, CITY OF LATHROP AND CITY OF SAN BERNADINO v. State Board of Equalization, City of Ontario and Does 1 Through 10, Inclusive

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

John Waid

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. At the Case Management Conference on February 10, 2015, the court set a briefing schedule and a hearing date. Petitioners' opening brief was due March 31, 2015, the BOE's opposition was due on May 19, 2015, and the petitioners' reply was due June 10, 2015. The hearing was set for July 15, 2015. On March 30, 2015, Petitioners filed their Opening Brief. On May 19, 2015, the BOE filed its Opposition to Petitioners' Opening Brief. On July 15, 2015, the Court ordered a Case Management Conference scheduled September 1, 2015. On September 21, 2015, the court

issued an order on its own motion vacating submission of the petition for decision on July 15, 2015 and finding the matter to be resubmitted on September 15, 2015. As a result, the 90-day period for the court to issue its decision commences from the new submission date of September 15, 2015. The Case Management Conference set for October 21, 2015, was continued to November 18, 2015. The Case Management Conference was continued by order of court to December 18, 2015. On December 15, 2015, the court continued the Case Management Conference again to January 15, 2016. On December 16, 2015, the trial court granted the petition for Writ of Mandate. The court ordered the matter remanded to the BOE with instructions to vacate the BOE's January 16, 2014, Summary Decision, and to reconsider the issue of which entity passed title to consumers and was the retailer in light of the court's opinion and California law on the transfer of title. On remand, the order provides that the BOE may also address whether, or how, to reallocate the tax revenue for the years at issue. The court granted the parties' request for a continuance of the Case Management Conference and moved it from January 27, 2016, to February 17, 2016. On January 29, 2016, the BOE filed its Objections to the Proposed Writ and Judgment. The City of Ontario filed its Objections the same day. On February 11, 2016, the BOE filed a notice of appeal with respect to the trial court's ruling in favor of petitioner cities. The trial court ordered the BOE to vacate its decision to allocate the local sales and use tax revenue derived from retail sales made by MedCal Sales, LLC to the City of Ontario because such decision was not supported by substantial evidence. The trial court also permitted the BOE to hold a new hearing to determine the proper allocation of the local sales and use tax revenue from the retail sales at issue in accordance with the court's discussion of the proper evidence in its ruling. The City of Ontario has also filed a notice of appeal. Petitioners submitted a proposed judgment and proposed writ of mandate. The BOE and the City of Ontario filed objections thereto. On February 22, 2015, the BOE filed and served its Appellant's Notice Designating Record on Appeal. On February 26, 2016, the Superior Court entered judgment in this matter against the BOE and the City of Ontario. On March 2, 2016, petitioners filed a Notice of Cross-Appeal to the BOE's Appeal from the Order granting Petition. On March 24, 2016, the BOE filed its Notice of Appeal. On March 25, 2016, the BOE filed its Notice Designating Record on Appeal. The Court of Appeal ordered that the appeals of the BOE and the City of Ontario be consolidated for the purpose of briefing, oral argument, and decision. BOE's brief was due July 1, 2016. On June 27, 2016, the BOE filed its Appellant's Opening Brief. Respondents City of Fontana et al. filed their Respondents' Brief on September 22, 2016. The BOE filed the Appellant's Reply Brief and Cross Respondent's Brief on November 7, 2016. The City of Ontario filed its Reply Brief on November 14, 2016. On January 23, 2017, petitioners filed their cross-reply brief. The appeals court will schedule an oral argument. Oral argument was initially set for June 12, 2017. On May 24, 2017, the City of Ontario requested continuance of oral argument. The Court of Appeal granted this request and oral argument in this matter is continued to the July calendar, date and times to be advised. Oral argument is scheduled for July 18, 2017.

GMRI, INC. v. State Board of Equalization

Sacramento County Superior Court: 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

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. On May 19, 2015, the parties made a joint motion to continue the trial date from October 5, 2015, to February 8, 2016, or the first available trial date thereafter and to continue all pre-trial dates in accordance with the trial date. The parties also requested that the Mandatory Settlement Conference currently set for August 25, 2015, be continued. The Court granted the parties' Joint Motion to continue the trial date. Trial was set for February 8, 2016, and the Mandatory Settlement Conference for January 6, 2016. On September 29, 2015, the parties filed cross-motions for summary judgment. A hearing on the parties' motions was scheduled for December 15, 2015. On December 1, 2015, BOE filed Opposition to GMRI's Motion for Summary Judgment. GMRI filed its Opposition to BOE's Motion for Summary Judgment that same date. On December 10, 2015, the parties filed Reply Briefs in support of their respective Motions for Summary Judgment. On December 15, 2015, trial court issued its ruling granting BOE's Motion for Summary Judgment and denying Plaintiff's cross-motion. On December 28, 2015, the trial court entered Judgment in favor of BOE. The BOE served Notice of Entry of Judgment on

January 7, 2016. On January 28, 2016, the court awarded costs to BOE. On February 22, 2016, GMRI filed a Notice of Appeal. The appeal is in the Third District Court of Appeal, Case No. C081471. Appellant's Opening Brief is due on June 16, 2016. GMRI filed its Appellant's Opening Brief on June 13, 2016. The Court of Appeal rejected the brief and ordered GMRI to refile the brief by June 20, 2016. Pursuant to order of the Court of Appeal GMRI refiled its Appellant's Opening Brief on June 20, 2016. On August 19, 2016, BOE filed its Respondent's Brief. On September 22, 2016, plaintiff filed its Appellant's Reply Brief.

GOLETA, CITY OF, et al. v. Ana J. Matosantos, et al.

Sacramento County Superior Court: 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

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. Hearing on the petition was continued by stipulation of the parties to September 11, 2015. Hearing on the petition was further continued to November 18, 2015. Petitioners filed their

Opening Brief on August 27, 2014. Department of Finance filed its Opposition and Request for Judicial Notice on October 8, 2015. On January 20, 2016, the court issued its final ruling denying the petition. Hearing is set for September 11, 2016. On May 6, 2016, the trial court entered judgment in favor of the BOE and Department of Finance. On May 10, 2016, petitioners filed a Notice of Appeal. BOE is not participating in the appeal.

GTE COMMUNICATION SYSTEMS CORPORATION v. California State Board of Equalization

San Diego County Superior Court: 37-2016-00021928-CU-MC-CTL
Filed – 6/29/2016

Plaintiff's Counsel

Carly A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

Issue(s): Whether taxpayer overpaid sales tax reimbursement and/or use taxes on purchases on completed telephone cables, conduit and poles it purchased from third party vendors and affiliates. [Revenue and Taxation Code section 6016.5](#) excludes such items from the definition of tangible personal property.

Audit/Tax Period: None

Amount: Unspecified

Status: On August 15, 2016, BOE filed its demurrer to the complaint. On October 17, 2016, Plaintiff filed its Opposition to BOE's demurrer. On October 21, 2016, BOE filed its reply in support of its demurrer. On October 27, 2016, the court transferred the case to the Hon. Judge Meyer in department C-61. A new hearing date on BOE's demurrer will be set in that department. On November 1, 2016, the court issued a notice of hearing setting a status conference in the matter for December 2, 2016. At the parties' December 2, 2016 status conference, the court set the date for the hearing on the BOE's demurrer for March 10, 2017. On March 10, 2017, the court granted the BOE's demurrer but with leave to amend. The amended complaint is due March 17, 2017. Anticipating another demurrer, the court set the hearing for May 5, 2017. On March 17, 2017, Plaintiff filed its First Amended Complaint. On April 12, 2017, BOE filed its demurrer to GTE's First Amended Complaint. On April 24, 2017, Plaintiff filed an opposition to

BOE's demurrer. On April, 28, 2017, BOE filed a reply brief in support of its demurrer. A hearing on the BOE's demurrer is scheduled for May 5, 2017. On May 5, 2017, following oral argument by the parties, the court sustained BOE's demurrer without leave to amend. GTE filed its Notice of Appeal on June 7, 2017, and its Notice of Designation of Record on Appeal on June 16, 2017.

HUNTINGTON BEACH, CITY OF, et al. v. CA Director of Finance

Sacramento County Superior Court: 34-2013-80001441

Filed – 03/15/2013

Plaintiff's Counsel

Murray O. Kane, Kane, Ballmer & Berkman

BOE's Counsel

Kim Nguyen

BOE Attorney

John Waid

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' sur-reply and evidence submitted with sur-reply. 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. Plaintiffs' Opening Brief

was filed on March 20, 2015. On August 17, 2015, the Department of Finance's Respondent's Brief was filed. Briefing is now complete. Awaiting scheduling of oral argument.

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

Sacramento County Superior Court: 34-2013- 80001672

Filed – 12/05/13

Plaintiff's Counsel

Roy A. Hanley, Hanley & Fleishman

BOE's Counsel

BOE Attorney

John Waid

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. There has been no activity in this case since BOE filed its answer. In November 2015, petitioners opened settlement negotiations with the Department of Finance. The Department of Finance ultimately rejected petitioners' proposals. There has been no activity in the case since then.

LAKEWOOD, CITY OF, et al. v. Ana J. Matosantos, et al.

Sacramento County Superior Court: 34-2013-80001683

Filed – 08/01/13

Plaintiff's Counsel

Holly O. Whatley - Colantuono & Levin

BOE's Counsel

Sylvia Cates

BOE Attorney

John Waid

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 had until April 1, 2015, to file their Notice of Appeal.

Appeal: Lakewood filed its Notice of Appeal on March 10, 2015. BOE is not participating in the appeal. On February 4, 2016, the Department of Finance filed its Respondent's Brief and Request for Judicial Notice.

LEVITZ, ALAN v. CALIFORNIA STATE BOARD OF EQUALIZATION

San Francisco County Superior Court: CGC-17-558763

Filed – 5/09/2017

Plaintiff's Counsel

Jessie W. McCellan

BOE's Counsel

Heather Hoesterey

BOE Attorney

Crystal Yu

Issue(s): This is an action for refund of taxes, interest and penalties paid by Plaintiff in the approx. amount of \$42,000 ("Tax Dispute"), plus interest as provided by law, for the period covering January 1, 2009, through April 10, 2009 (the "Period at Issue"). Plaintiff contends that the BOE has failed to meet the burden to prove that he willfully failed to pay the tax in dispute in violation of the Revenue and Taxation Code section 6829, and alleges that he is not personally liable for the tax in dispute. The BOE denies Plaintiff's contentions.

Audit/Tax Period: January 1, 2009 through April 10, 2009

Amount: \$42,000.00

Status: The deadline to file an Answer was initially June 9, 2017. The deadline to file the BOE's Answer was extended to June 26, 2017. On June 24, 2017, the BOE filed an Answer to Plaintiff's Verified Complaint.

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

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 were scheduled to be heard on January 21, 2015. On February 10, 2015, final judgment was entered in favor of the BOE and electronically served. Notice of Appeal was due to be filed by plaintiff on or before April 10, 2015. On February 19, 2015, plaintiff filed his Notice of Appeal. The appeal is in the First District Court of Appeal, Case No. A144440. On July 16, 2015, Appellant filed his Appellant's Opening Brief. The parties filed a joint stipulation to extend the BOE's time to file its Respondent's Brief. The BOE's deadline to file its Respondent's Brief was September 23, 2015. Pursuant to the stipulation of the parties, the court granted appellant's motion to file an amended appellant's opening brief. Appellant filed his amended opening brief pursuant to the order. The BOE's brief was due to be filed on October 26, 2015. On October 15, 2015, the BOE filed a stipulation extending the time to file its Respondents' Brief to November 18, 2015. On December 7, 2015, BOE filed its Respondent's Brief. Pursuant to a stipulation of the parties, the Court of Appeal extended appellant's time to file its Reply Brief to January 19, 2016. On January 26, 2016, Appellant filed his Reply Brief with the Court of Appeal. On February 4, 2016, the court concluded that the matter was fully briefed and eligible for oral argument. On February 9, 2016, Appellant requested oral argument.

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

Sacramento County Superior Court: 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

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.

MAINSTREET ENTERPRISES DBA KILLARNEY; AND CRAIG S. GLATZHOFFER

Los Angeles County Superior Court: BC648293

Filed – 01/26/2017

Plaintiff's Counsel

BOE's Counsel

Van Nguyen

BOE Attorney

Crystal Yu

Issue(s): Plaintiff seek refund of sales and use taxes that they allegedly overpaid to the Board during the audit periods from October 1, 2008 to February 28, 2016, in the amount of approximately \$384,000. Plaintiffs also contend that Board staff recklessly disregarded the Board audit procedures by failing to perform an adequate and complete audit as required by the Board's published audit manual. Plaintiffs allege that, as the consequence, they suffered significant financial losses, so they brought this action for damages under Revenue and Taxation Code section 7099 for over \$ 2 million.

Audit/Tax Period: 10/1/2008-9/30/2011; 1/1/2012-2/28/2016

Amount: \$2,564,478.44

Status: BOE's response to plaintiff's complaint is due April 10, 2017. On April 21, 2017, plaintiffs filed the First Amended Complaint. On May 22, 2017, the BOE filed its Demurrer, Motion to Strike, and Request for Judicial Notice. On June 27, 2017, Plaintiffs filed the Second Amended Complaint.

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 County Superior Court: BC325272
Filed – 02/24/06

Plaintiff's Counsel

Taras P. Kick, The Kick Law Firm, APC
G. James Strenio, The Kick Law Firm, APC
Bruce R. Macleod, McKool Smith Hennigan P.C.
Shawna L. Ballard, McKool Smith Hennigan P.C

BOE's Counsel

Nhan Vu

BOE Attorney

Wendy Vierra

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. On February 24, 2015, following oral argument, the trial court granted the demurrers of BOE and the corporate defendants without leave to amend. Judgment in favor of defendants was entered on April 15, 2015.

Appeal: Plaintiffs filed their Notice of Appeal on June 11, 2015. On June 30, 2015, the Superior Court issued Notices of Default to plaintiffs for failure to designate the record on appeal. Plaintiffs subsequently designated the record on appeal. The deadline for the court reporter to deliver transcripts of the four hearings to the Court of Appeal was October 9, 2015. The court was to set a briefing schedule after that date. The parties moved to consolidate the appeals. The Court ordered that the appeals be consolidated on October 8, 2015. The Second District Court of Appeal, Division 8, ordered that the appeals be consolidated on October 8, 2015 (Case Nos. B265011 and B265029). On December 14, 2015, the Second District Court of Appeal issued an order setting the due date for plaintiff's opening brief as January 13, 2016. The respondents' briefs were due February 12, 2016. Appellants failed to file their opening brief on time. As a result, on February 22, 2016, the court issued a notice that if the brief was not on file within 15 days after the date of this notice, or good cause shown for relief from default, the appeal would be dismissed. The opening brief was due on or before March 8, 2016. Appellant filed a request for extension of time to file his Appellant's Opening Brief on March 9, 2016, which was denied by the Court of Appeal. Appellant served his Opening Brief, Appendix, and a Motion to File Overlength Brief on March 9, 2016. On April 22, 2016, the parties stipulated to extending Respondents' time to file their Respondents' Briefs. On July 13, 2016, the BOE filed its Respondent's Brief. On September 12, 2016, plaintiffs / appellants filed their Reply Brief. Briefing is now complete. On November 17, 2016, the Second District Court of Appeal transferred the matter from Division Eight to Division Two due to a recusal of the majority of the Justices in Division Eight. On December 14, 2016, the Court of Appeal scheduled the hearing in this matter for January 26, 2017. On December 16, 2016, the Court of Appeal granted the BOE's request to continue the hearing date in this matter due to a conflict with the January 26th date. On February 24, 2017, the parties presented oral argument on the matter before the Second District Court of Appeal. Appellants filed a Petition for Rehearing on March 30, 2017. On April 10, 2017, the Court of Appeal issued an order modifying its earlier opinion, and denying Plaintiff's Petition for

Rehearing. The Court's modified opinion continues to affirm the trial court's prior ruling in favor of the BOE. On April 24, 2017, Plaintiffs/Appellants filed a Petition for Review. A response, if one is to be filed, is due May 15, 2017. BOE filed a response to plaintiffs/appellant's Petition for Review on May 15, 2017. On June 14, 2017, the Supreme Court granted plaintiffs'/appellants' Petition for Review.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: CVS, Inc. v. California State Board of Equalization
Los Angeles County Superior Court: BC325272
Filed – 01/24/06

Plaintiff's Counsel

Richard T. Williams - Holland & Knight LLP

BOE's Counsel

Nhan Vu

BOE Attorney

Wendy Vierra

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 was 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. On February 24, 2015, following oral argument, the trial court granted the demurrers of BOE and the corporate defendants without leave to amend. Judgment in favor of defendants was entered on April 15, 2015.

Appeal: Plaintiffs filed their Notice of Appeal on June 11, 2015. On June 30, 2015, the Superior Court issued Notices of Default to plaintiff for failure to designate the record on appeal. Plaintiffs subsequently designated the record on appeal. The deadline for the court reporter to deliver transcripts of the four hearings to the Court of Appeal was October 9, 2015. The court was to set a briefing schedule after that date. The parties moved to consolidate the appeals. The Court ordered that the appeals be consolidated on October 8, 2015. The Second District Court of Appeal, Division 8, ordered that the appeals be consolidated on October 8, 2015 (Case Nos. B265011 and B265029). On December 14, 2015, the Second District Court of Appeal issued an order setting the due date for plaintiff's opening brief as January 13, 2016. The respondents' briefs were due February 12, 2016. Appellants failed to file their Opening Brief on time. As a result, on February 22, 2016, the court issued a notice that if the brief was not on file within 15 days after the date of this notice, or good cause shown for relief from default, the appeal would be dismissed. The opening brief was due on or before March 8, 2016. Appellant filed a request for extension of time to file his Appellant's Opening Brief on March 9, 2016, which was denied by the Court of Appeal. Appellant served his Opening Brief, Appendix, and a Motion to File Overlength Brief on March 9, 2016. On April 22, 2016, the parties stipulated to extending Respondents' time to file their Respondents' Briefs. On July 13, 2016, the BOE filed its respondent's brief. On September 12, 2016, plaintiffs / appellants filed their Reply Brief. Briefing is now complete. On November 17, 2016, the Second District Court of Appeal transferred the matter from Division Eight to Division Two due to a recusal of the majority of the Justices in Division Eight. On December 14, 2016, the Court of Appeal scheduled the hearing in this matter for January 26, 2017. On December 16, 2016, the Court of Appeal granted the BOE's request to continue the hearing date in this matter due to a conflict with the January 26th date. On February 24, 2017, the parties presented oral argument on the matter before the Second District Court of Appeal. Appellants filed a Petition for Rehearing on March 30, 2017. On April 10, 2017, the Court of Appeal issued

an order modifying its earlier opinion, and denying Plaintiff's Petition for Rehearing. The Court's modified opinion continues to affirm the trial court's prior ruling in favor of the BOE. On April 24, 2017, Plaintiffs/Appellants filed a Petition for Review. A response, if one is to be filed, is due May 15, 2017. BOE filed a response to plaintiffs/appellant's Petition for Review on May 15, 2017. On June 14, 2017, the Supreme Court granted plaintiffs'/appellants' Petition for Review.

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 County Superior Court: 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

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 was 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. On February 24, 2015, following oral argument, the trial court granted the demurrers of BOE and the corporate defendants without leave to amend. Judgment in favor of defendants was entered on April 15, 2015.

Appeal: Plaintiffs filed their Notice of Appeal on June 11, 2015. On June 30, 2015, the Superior Court issued Notices of Default to plaintiff for failure to designate the record on appeal. Plaintiffs subsequently designated the record on appeal. The deadline for the court reporter to deliver transcripts of the four hearings to the Court of Appeal was October 9, 2015. The court was to set a briefing schedule after that date. The parties moved to consolidate the appeals. The Court ordered that the appeals be consolidated on October 8, 2015. The Second District Court of Appeal, Division 8, ordered that the appeals be consolidated on October 8, 2015 (Case Nos. B265011 and B265029). On December 14, 2015, the Second District Court of Appeal issued an order setting the due date for plaintiff's opening brief as January 13, 2016. The respondents' briefs were due February 12, 2016. Appellants failed to file their opening brief on time. As a result, on February 22, 2016, the court issued a notice that if the brief was not on file within 15 days after the date of this notice, or good cause shown for relief from default, the appeal would be dismissed. The opening brief was due on or before March 8, 2016. Appellant filed a request for extension of time to file his Appellant's Opening Brief on March 9, 2016, which was denied by the Court of Appeal. Appellant served his Opening Brief, Appendix, and a Motion to File Overlength Brief on March 9, 2016. On April 22, 2016, the parties stipulated to extending Respondents' time to file their Respondents' Briefs. On July 13, 2016, the BOE filed its Respondent's Brief. On September 12, 2016, plaintiffs / appellants filed their Reply Brief. Briefing is now complete. On November 17, 2016, the Second District Court of Appeal transferred the matter from Division Eight to Division Two due to a recusal of the majority of the Justices in Division Eight. On December 14, 2016, the Court of Appeal scheduled the hearing in this matter for January 26, 2017. On December 16, 2016, the Court of Appeal granted the BOE's request to continue the hearing date in this matter due to a conflict with the January 26th date. No new hearing date has been scheduled at this time. Oral

Argument is scheduled for February 24, 2017. The Second District Court of Appeal issued a notice, dated January 17, 2017, setting the matter on calendar for February 24, 2017. On January 20, 2017, the BOE filed its request for oral argument. On February 24, 2017, the parties presented oral argument on the matter before the Second District Court of Appeal. Appellants filed a Petition for Rehearing on March 30, 2017. On April 10, 2017, the Court of Appeal issued an order modifying its earlier opinion, and denying Plaintiff's Petition for Rehearing. The Court's modified opinion continues to affirm the trial court's prior ruling in favor of the BOE. On April 24, 2017, Plaintiffs/Appellants filed a Petition for Review. A response, if one is to be filed, is due May 15, 2017. BOE filed a response to plaintiffs/appellant's Petition for Review on May 15, 2017. On June 14, 2017, the Supreme Court granted plaintiffs'/appellants' Petition for Review.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: Rite Aid v. The California State Board of Equalization
Los Angeles County Superior Court: BC325272
Filed – 01/24/06

Plaintiff's Counsel

Douglas C. Rawles - ReedSmith LLP

BOE's Counsel

Nhan Vu

BOE Attorney

Wendy Vierra

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 was 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. On February 24, 2015, following oral argument, the trial court granted the demurrers of BOE and the corporate defendants without leave to amend. Judgment in favor of defendants was entered on April 15, 2015.

Appeal: Plaintiffs filed their Notice of Appeal on June 11, 2015. On June 30, 2015, the Superior Court issued Notices of Default to plaintiff for failure to designate the record on appeal. Plaintiffs subsequently designated the record on appeal. The deadline for the court reporter to deliver transcripts of the four hearings to the Court of Appeal was October 9, 2015. The court was to set a briefing schedule after that date. The parties moved to consolidate the appeals. The Court ordered that the appeals be consolidated on October 8, 2015. The Second District Court of Appeal, Division 8, ordered that the appeals be consolidated on October 8, 2015 (Case Nos. B265011 and B265029). On December 14, 2015, the Second District Court of Appeal issued an order setting the due date for plaintiff's opening brief as January 13, 2016. The respondents' briefs were due February 12, 2016. Appellants failed to file their opening brief on time. As a result, on February 22, 2016, the court issued a notice that if the brief was not on file within 15 days after the date of this notice, or good cause shown for relief from default, the appeal would be dismissed. The opening brief was due on or before March 8, 2016. Appellant filed a request for extension of time to file his Appellant's Opening Brief on March 9, 2016, which was denied by the Court of Appeal. Appellant served his Opening Brief, Appendix, and a Motion to File Overlength Brief on March 9, 2016. On April 22, 2016, the parties stipulated to extending Respondents' time to file their Respondents' Briefs. On July 13, 2016, the BOE filed its Respondent's Brief in the Second District Court of Appeal. On September 12, 2016, plaintiffs / appellants filed their Reply Brief. Briefing is now complete. On November 17, 2016, the Second District Court of Appeal transferred the matter from Division Eight to Division Two due to a recusal of the

majority of the Justices in Division Eight. On December 14, 2016, the Court of Appeal scheduled the hearing in this matter for January 26, 2017. On December 16, 2016, the Court of Appeal granted the BOE's request to continue the hearing date in this matter due to a conflict with the January 26th date. On February 24, 2017, the parties presented oral argument on the matter before the Second District Court of Appeal. Appellants filed a Petition for Rehearing on March 30, 2017. On April 10, 2017, the Court of Appeal issued an order modifying its earlier opinion, and denying Plaintiff's Petition for Rehearing. The Court's modified opinion continues to affirm the trial court's prior ruling in favor of the BOE. On April 24, 2017, Plaintiffs/Appellants filed a Petition for Review. A response, if one is to be filed, is due May 15, 2017. BOE filed a response to plaintiffs/appellant's Petition for Review on May 15, 2017. On June 14, 2017, the Supreme Court granted plaintiffs'/appellants' Petition for Review.

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 County Superior Court: 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

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 was 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. On February 24, 2015, following oral argument, the trial court granted the demurrers of BOE and the corporate defendants without leave to amend. Judgment in favor of defendants was entered on April 15, 2015. Defendant Walmart served Notice of Entry of Judgment on April 16, 2015. Plaintiff's deadline to file a Notice of appeal is June 15, 2015.

Appeal: Plaintiffs filed their Notice of Appeal on June 11, 2015. On June 30, 2015, the Superior Court issued Notices of Default to plaintiff for failure to designate the record on appeal. Plaintiffs subsequently designated the record on appeal. The deadline for the court reporter to deliver transcripts of the four hearings to the Court of Appeal was October 9, 2015. The court was to set a briefing schedule after that date. The parties moved to consolidate the appeals. The Court ordered that the appeals be consolidated on October 8, 2015. The Second District Court of Appeal, Division 8, ordered that the appeals be consolidated on October 8, 2015 (Case Nos. B265011 and B265029). On December 14, 2015, the Second District Court of Appeal issued an order setting the due date for plaintiff's opening brief as January 13, 2016. The respondents' briefs were due February 12, 2016. Appellants failed to file their opening brief on time. As a result, on February 22, 2016, the court issued a notice that if the brief was not on file within 15 days after the date of this notice, or good cause shown for relief from default, the appeal would be dismissed. The opening brief was due on or before March 8, 2016. Appellant filed a request for extension of time to file his Appellant's Opening Brief on March 9, 2016, which was denied by the Court of Appeal. Appellant served his Opening Brief, Appendix, and a Motion to File Overlength Brief on March 9, 2016. On April 22, 2016, the parties stipulated to extending Respondents' time to file their Respondents' Briefs. On July 13, 2016, the BOE filed its Respondent's Brief. On September 12, 2016, plaintiffs / appellants filed

their Reply Brief. Briefing is now complete. On November 17, 2016, the Second District Court of Appeal transferred the matter from Division Eight to Division Two due to a recusal of the majority of the Justices in Division Eight. On December 14, 2016, the Court of Appeal scheduled the hearing in this matter for January 26, 2017. On December 16, 2016, the Court of Appeal granted the BOE's request to continue the hearing date in this matter due to a conflict with the January 26th date. On February 24, 2017, the parties presented oral argument on the matter before the Second District Court of Appeal. Appellants filed a Petition for Rehearing on March 30, 2017. On April 10, 2017, the Court of Appeal issued an order modifying its earlier opinion, and denying Plaintiff's Petition for Rehearing. The Court's modified opinion continues to affirm the trial court's prior ruling in favor of the BOE. On April 24, 2017, Plaintiffs/Appellants filed a Petition for Review. A response, if one is to be filed, is due May 15, 2017. BOE filed a response to plaintiffs/appellant's Petition for Review on May 15, 2017. On June 14, 2017, the Supreme Court granted plaintiffs'/appellants' Petition for Review.

McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.
Cross-Complaint: Walgreen Co. v. The California State Board of Equalization
Los Angeles County Superior Court: BC325272
Filed – 02/24/06

Plaintiff's Counsel
Douglas C. Rawles - ReedSmith LLP

BOE's Counsel
Nhan Vu

BOE Attorney
Wendy Vierra

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 was 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. On February 24, 2015, following oral argument, the trial court granted the demurrers of BOE and the corporate defendants without leave to amend. Judgment in favor of defendants was entered on April 15, 2015.

Appeal: Plaintiffs filed their Notice of Appeal on June 11, 2015. On June 30, 2015, the Superior Court issued Notices of Default to plaintiff for failure to designate the record on appeal. Plaintiffs subsequently designated the record on appeal. The deadline for the court reporter to deliver transcripts of the four hearings to the Court of Appeal was October 9, 2015. The court was to set a briefing schedule after that date. The parties moved to consolidate the appeals. The Court ordered that the appeals be consolidated on October 8, 2015. The Second District Court of Appeal, Division 8, ordered that the appeals be consolidated on October 8, 2015 (Case Nos. B265011 and B265029). On December 14, 2015, the Second District Court of Appeal issued an order setting the due date for plaintiff's opening brief as January 13, 2016. The respondents' briefs were due February 12, 2016. Appellants failed to file their opening brief on time. As a result, on February 22, 2016, the court issued a notice that if the brief was not on file within 15 days after the date of this notice, or good cause shown for relief from default, the appeal would be dismissed. The opening brief was due on or before March 8, 2016. Appellant filed a request for extension of time to file his Appellant's Opening Brief on March 9, 2016, which was denied by the Court of Appeal. Appellant served his Opening Brief, Appendix, and a Motion to File Overlength Brief on March 9, 2016. On April 22, 2016, the parties stipulated to extending Respondents' time to file their Respondents' Briefs. On July 13, 2016, the BOE

filed its Respondent's Brief. On September 12, 2016, plaintiffs / appellants filed their Reply Brief. Briefing is now complete. On November 17, 2016, the Second District Court of Appeal transferred the matter from Division Eight to Division Two due to a recusal of the majority of the Justices in Division Eight. On December 14, 2016, the Court of Appeal scheduled the hearing in this matter for January 26, 2017. On December 16, 2016, the Court of Appeal granted the BOE's request to continue the hearing date in this matter due to a conflict with the January 26th date. On February 24, 2017, the parties presented oral argument on the matter before the Second District Court of Appeal. Appellants filed a Petition for Rehearing on March 30, 2017. On April 10, 2017, the Court of Appeal issued an order modifying its earlier opinion, and denying Plaintiff's Petition for Rehearing. The Court's modified opinion continues to affirm the trial court's prior ruling in favor of the BOE. On April 24, 2017, Plaintiffs/Appellants filed a Petition for Review. A response, if one is to be filed, is due May 15, 2017. BOE filed a response to plaintiffs/appellant's Petition for Review on May 15, 2017. On June 14, 2017, the Supreme Court granted plaintiffs'/appellants' Petition for Review.

MCI COMMUNICATIONS SERVICES, INC. a Delaware corporation authorized to do business in California v. California State Board of Equalization
San Diego County Superior Court: 37-2015-000392-12-CU-MC-CTL
Filed -12/03/15

Plaintiff's Counsel

Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

Issue(s): Whether [Revenue and Taxation Code section 6016.5](#) excludes such items as completed telephone cables, conduit, and poles from the definition of "tangible personal property."

Audit/Tax Period: None

Amount: Unspecified

Status: On December 21, 2015, plaintiff filed a Notice of Errata, attaching to the Verified Complaint Exhibit "A", which had been omitted from plaintiff's complaint filed on November 23, 2015. On December 23, 2015, plaintiff granted BOE an

extension to January 19, 2016, to file a response to plaintiff's complaint. On January 19, 2016, the BOE filed its Answer in this case. It also filed Notices of Related Case in both Los Angeles and San Diego County Superior Courts on January 15, 2016. On January 29, 2016, the judge issued an order recusing himself from hearing this case. Thus, the case was to be reassigned to another judge. The Case Management Conference of April 29, 2016, was vacated. On February 9, 2016, the Los Angeles Superior Court issued an order relating the MCI and Verizon Services cases. The parties were ordered to meet and confer regarding joint discovery orders and coordination and file a status report within 30 days. Status conference on both cases was set for March 14, 2016. This order results only in an assignment of both cases to the same judge. The two actions otherwise remain separate actions. On February 22, 2016, the court issued its order reassigning the case. The Case Management Conference was re-set for October 7, 2016. On July 1, 2016, the BOE granted plaintiff an extension until July 15, 2016, to file a potential motion to compel discovery. No motion to compel discovery was filed. On September 1, 2016, the BOE filed its motion for judgment on the pleadings. At the parties' October 7, 2016, Case Management Conference, the court set the trial in this matter for January 20, 2017. The court issued a Notice of Status Conference for December 2, 2016. On November 1, 2016, the court issued a notice of hearing setting a status conference in the matter for December 2, 2016. At the parties' December 2, 2016 status conference, the court took the trial off calendar and set the hearing on the BOE's motion for judgment on the pleadings for March 10, 2017, to be heard concurrently with BOE's demurrers in the related cases brought by Verizon Business Purchasing, Verizon Business Network Services, and GTE Communication Systems. On March 10, 2017, the court granted the BOE's demurrer motion for judgment on the pleadings but with leave to amend. The amended complaint is due March 17, 2017. Anticipating another demurrer, the court set the hearing for May 5, 2017. On March 17, 2017, Plaintiff filed its First Amended Complaint. On April 12, 2017, BOE filed its demurrer to MCI's First Amended Complaint. On April 24, 2017, Plaintiff filed an opposition to BOE's demurrer. On April 28, 2017, BOE filed a reply brief in support of its demurrer. A hearing on the BOE's demurrer is scheduled for May 5, 2017. On May 5, 2017, following oral argument by the parties, the court sustained BOE's demurrer without leave to amend. MCI filed its Notice of Appeal on June 7, 2017, and its Notice of Designation of Record on Appeal on June 16, 2017.

MENDOTA DESIGNATED LOCAL AUTHORITY v. CA Director of Finance, Ana Matosantos, et al.

Sacramento County Superior Court: 34-2012-80001353
Filed –12/23/12

Plaintiff's Counsel

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

BOE's Counsel

Jeff Rich

BOE Attorney

John Waid

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.

MERCED DESIGNATED LOCAL AUTHORITY v. CA Director of Finance, Ana Matosantos, et al.

Sacramento County Superior Court: 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

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.

MONTEBELLO, CITY OF, et al. v. Ana Matosantos, et al.

Sacramento County Superior Court: 34-2013-80001703

Filed –12/05/13

Plaintiff's Counsel

Glassman, Arnold M., Alvarez-Glasman & Colvin

BOE's Counsel

BOE Attorney

John Waid

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. Hearing on the remanded case is set for June 19, 2015. On July 17, 2015, the Court approved the parties' stipulation to remand the case back to the Department of Finance to allow petitioners to submit additional documents. The parties were to meet and confer as to a time frame. The trial court approved the parties' stipulation as to Department of Finance (DOF) review on October 28, 2015. The review was due April 12, 2016.

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

Sacramento County Superior Court: 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

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 BOE filed its answer to Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. There has been no recent activity in this case.

MORSCHAUSER, WILLIAM G., dba FRIAR TUCK'S BAR and GRILLE v. Board of Equalization

Los Angeles County Superior Court: BC602509

Filed -11/25/2015

Plaintiff's Counsel

Dennis N. Brager, Howard Rosenblatt

BOE's Counsel

Charles Tsai

BOE Attorney

Kiren Chohan

Issue(s): Plaintiff contests the denial of his claim for refund to a Notice of Determination for tax deficiency after an audit.

Audit/Tax Period: None

Amount: Unspecified

Status: On April 28, 2016, the plaintiff agreed to give the BOE an extension to respond, until May 16, 2016. On May 13, 2016, the BOE filed a Motion to Strike certain paragraphs in plaintiff's complaint on the grounds he had not exhausted his administrative remedies. Hearing on the BOE's Motion was set for July 27, 2016. The Case Management Conference originally scheduled for April 21, 2016, was continued by the court to June 15, 2016. The BOE filed a Motion to Strike portions of the complaint on June 15, 2016. At the July 27, 2016, Case Management Conference, the parties stipulated to granting the Motion to Strike. On August 26, 2016, the BOE filed its Answer and Cross-Complaint for recovery of unpaid interest and penalties. The trial is scheduled for June 28, 2017. At the April 21, 2017, Status Conference, the court continued the trial to September 20, 2017. The Mandatory Settlement Conference is scheduled for June 7, 2017, and both parties were required to file Settlement Statements with the court by May 31, 2017. BOE filed Confidential and Non-confidential Settlement Statements on May 31, 2017. Discovery is in Progress.

NOVATO, CITY OF, et al. v. Ana Matosantos, et al.
Sacramento County Superior Court: 34-2013-80001496
Filed -5/22/13

Plaintiff's Counsel

Dan Slater - Rutan & Tucker

BOE's Counsel

Alexandra R. Gordon

BOE Attorney

John Waid

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. This case came on for hearing on March 25, 2016. The court entered a judgment denying Novato's request for writ on May 13, 2016. Novato filed a Notice of Appeal on May 26, 2016. The case was not selected for mediation. Novato filed its opening Appellant's brief on March 21, 2017. Pursuant to a stipulation between the parties, DOF's respondents' brief is due June 19, 2017. On June 13, 2017, the court granted Finance's request for extension to file its Respondent's Brief in the City of Novato appeal. The new deadline is July 19, 2017.

ONTARIO, CITY OF, et al. v. Ana J. Matosantos, et al.
Sacramento County Superior Court: 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

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. The appeal in the

case has been fully briefed but no oral argument has been scheduled.

**ORTHO MATTRESS, INC., A CA CORP. v. BEDDING PROS, LLC dba US-MATTRESS,
A MICHIGAN LIMITED LIABILITY CO.; MATTRESS USA, INC. dba US-MATTRESS,
A MICHIGAN CORP; AND DOES 1 THROUGH 25, INCLUSIVE. AND CALIFORNIA
STATE BOARD OF EQUALIZATION, NOMINAL DEFENDANT**

Los Angeles County Superior Court: BC665853

Filed – 06/21/17

Plaintiff's Counsel

Gordon & Rees LLP - Mariam, Craig J. & Hawley, James E.

BOE's Counsel

Laura Robbins

BOE Attorney

Kiren Chohan

Issue(s): This litigation arises out of plaintiff's contention that defendant Bedding Pros, LLC dba US-Mattress and defendant Mattress-USA, Inc. dba US-Mattress have engaged in unfair business practices, among other things, and should be required to collect use tax for other sales made to California consumers. The Board is named as a nominal defendant in this action.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE's Response is due August 8, 2017.

PASSERI, MICHAELA, an individual v. THE STATE OF CALIFORNIA, Does 1 through 10

Orange County Superior Court: 30-205-00774767

Filed – 4/29/2015

Plaintiff's Counsel

Pro Per

BOE's Counsel

Charles Tsai

BOE Attorney

Wendy Vierra

Issue(s): Plaintiff alleges she was improperly assessed sales and use taxes in connection with sales made by Maison St. Marie.

Audit/Tax Period: None

Amount: Unspecified

Status: On July 27, 2015, the Orange County Superior Court transferred the case to the Los Angeles County Superior Court. On August 18, 2015, the Los Angeles Superior Court served the parties a Notice of Incoming Transfer, acknowledging the filing of this action in its court that same date. The State filed its demurrer on August 31, 2015. The hearing is set for October 15, 2015. On September 24, 2015, Plaintiffs filed their opposition to the State's demurrer. On October 7, 2015, the BOE filed its Reply Brief in support of its Demurrer to Plaintiff's First Amended Complaint. On October 15, 2015, the trial court sustained the BOE's Demurrer with leave to amend as to plaintiff's action for declaratory relief. On October 26, 2015, plaintiff filed a Second Amended Complaint. On November 30, 2015, the BOE filed a Demurrer to Plaintiff's Second Amended Complaint. The Order and Judgment in favor of the BOE was signed on February 17, 2016. On February 26, 2016, the BOE served the Notice of Entry of Order and Judgment.

Plaintiff, on her own behalf, filed a Notice of Appeal on April 26, 2016. On May 19, 2016, BOE filed its Notice Designating Record on Appeal. On November 8,

2016, the record on appeal was filed with the appellate court. Plaintiff filed a request for an extension to file her Appellant's Opening Brief by February 10, 2017. Appellant's Opening Brief was served and filed on February 10, 2017. Opposition to Appellant's motion for judicial notice is due February 27, 2017. The Court of Appeal granted the BOE's request for an extension to file its Reply Brief. The BOE's new deadline to file its Reply Brief is May 12, 2017. BOE filed its Respondent's Brief on May 16, 2017.

REDWOOD CITY, CITY OF v. State of California
Sacramento County Superior Court: 34-2012-80001447
Filed – 03/22/13

Plaintiff's Counsel

Iris Yang - Best & Krieger, LLP

BOE's Counsel

Jonathan Eisenberg

BOE Attorney

John Waid

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. The BOE is not participating in the appeal. The case has been fully briefed. The parties are waiting for the Court of Appeal to set a date for oral argument.

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

Sacramento County Superior Court: 34-2013-80001528

Filed – 6/14/2013

Plaintiff's Counsel

Holly O. Whatley - Colantuono & Levin, PC

BOE's Counsel

Michael Glenn Witmer

BOE Attorney

John Waid

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. On October 2, 2014, the Court issued a Minute Order asking the parties to stay this case, in light of the fact that the Petitioners' challenges raised arguments that the Court had considered and rejected in several other cases, most of which are presently on appeal. Counsel for the parties agreed that the action be stayed pending resolution of the issues by the Third District Court of Appeal. The hearing was therefore taken off calendar and the action stayed pending further order of the Court.

TORRANCE, CITY OF v. Michael Cohen, et al.
Sacramento County Superior Court: 34-2015-80002102
Filed – 7/21/2014

Plaintiffs' Counsel
Dan Slater, Rutan & Tucker

BOE's Counsel
Paul Stein

BOE Attorney
John Waid

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: BOE filed its answer on August 20, 2015. On January 26, 2016, the parties
stipulated to a briefing schedule and set a hearing date of July 1, 2016. By
Stipulation, hearing on the merits continued to April 21, 2017. On June 2, 2017,
the parties stipulated to another extension. The hearing will now be held on
October 20, 2017.

**VERIZON BUSINESS NETWORK SERVICES, INC. a Delaware corporation authorized
to do business in California v. California State Board of Equalization**
San Diego County Superior Court: 37-2016-0001941-CU-MC-CTL
Filed –6/29/2016

Plaintiff's Counsel
Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel
Jane O'Donnell

BOE Attorney
Wendy Vierra

Issue(s): Whether taxpayer overpaid sales tax and/or use tax on purchases of completed telephone cables, conduit and poles that it purchased from third party vendors and affiliates. Whether [Revenue and Taxation Code section 6016.5](#) excludes such items as completed telephone cables, conduit, and poles from the definition of “tangible personal property.”

Audit/Tax Period: None
Amount: January 1, 2003 – December 31, 2005

Status: On August 15, 2016, BOE filed its demurrer to the complaint. Plaintiff filed its brief in opposition on October 17, 2016. On October 21, 2016, BOE filed its reply. Hearing on the BOE's demurrer was scheduled for October 28, 2016. On October 28, 2016, the court transferred the matter to courtroom C-61, to have the matter heard by the Hon. John Meyer. The court instructed the BOE to obtain a new hearing date for its demurrer from Judge Meyer. On November 1, 2016, the court issued a notice of hearing setting a status conference in the matter for December 2, 2016. At the parties' December 2, 2016 status conference, the court set the date for the hearing on the BOE's demurrer for March 10, 2017. On March 10, 2017, the court granted the BOE's demurrer but with leave to amend. The amended complaint is due March 17, 2017. Anticipating another demurrer, the court set the hearing for May 5, 2017. On March 17, 2017, Plaintiff filed its First Amended Complaint. On April 12, 2017, BOE filed its demurrer to Verizon Business Network's First Amended Complaint. On April 24, 2017, Plaintiff filed an opposition to BOE's demurrer. On April 28, 2017, BOE filed a reply brief in support of its demurrer. A hearing on the BOE's demurrer is scheduled for May 5, 2017. On May 5, 2017, following oral argument by the parties, the court sustained BOE's demurrer without leave to amend. Verizon Business Network filed its Notice of Appeal on June 7, 2017, and its Notice of Designation of Record on Appeal on June 16, 2017.

VERIZON BUSINESS PURCHASING LLC v. California State Board of Equalization

San Diego County Superior Court: 37-2016-00021936-CU-MC-CTL

Filed –06/29/16

Plaintiff's Counsel

Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

Issue(s): Whether [Revenue and Taxation Code section 6016.5](#) excludes such items as completed telephone cables, conduit, and poles from the definition of “tangible personal property.”

Audit/Tax Period: October 1, 2008 – December 31, 2011

Amount: Unspecified

Status: On August 15, 2016, BOE filed its demurrer to the complaint. On November 1, 2016, the court issued a notice of hearing setting a status conference in the matter for December 2, 2016. At the parties' December 2, 2016 status conference, the court set the date for the hearing on the BOE's demurrer for March 10, 2016. On February 27, 2017, plaintiff filed its brief in opposition to the BOE's demurrer. On March 10, 2017, the court granted the BOE's demurrer but with leave to amend. The amended complaint is due March 17, 2017. Anticipating another demurrer, the court set the hearing for May 5, 2017. On March 17, 2017, Plaintiff filed its First Amended Complaint. On April 12, 2017, BOE filed its demurrer to Verizon Business Purchasing's First Amended Complaint. On April 24, 2017, Plaintiff filed an opposition to BOE's demurrer. On April 28, 2017, BOE filed a reply brief in support of its demurrer. A hearing on the BOE's demurrer is scheduled for May 5, 2017. On May 5, 2017, following oral argument by the parties, the court sustained BOE's demurrer without leave to amend. Verizon Business Purchasing filed its Notice of Appeal on June 7, 2017, and its Notice of Designation of Record on Appeal on June 16, 2017.

VERIZON CALIFORNIA INC. v. California State Board of Equalization

Sacramento County Superior Court: 34-2016-00196022-CU-MC-GDS

Filed – 06/15/2016

Plaintiff's Counsel

Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

Issue(s): Whether taxpayer overpaid sales tax and/or use taxes on purchases of completed telephone cables, conduit, and poles that it purchased from third party vendors and affiliates. Whether [Revenue and Taxation Code section 6016.5](#) excludes such items from the definition of “tangible personal property”.

Audit/Tax Period: July 1, 2000-December 1, 2011

Amount: \$19,613.34

Status: On August 15, 2016, BOE filed its demurrer to the complaint. On September 9, 2016, BOE filed a reply in support of its demurrer. The hearing on the BOE's demurrer set for September 16, 2016, was continued on the court's own motion to October 21. The hearing on the demurrer was rescheduled for October 31, 2016. On October 31, 2016, on the Court's own motion, the BOE's demurrer to Verizon California, Inc.'s First Amended Complaint was continued to December 2, 2016, on the grounds that the declaration in support of the meet and confer efforts does not comply with Code of Civil Procedure section [430.41](#). After the tentative ruling posted, counsel for Plaintiff filed a Peremptory Challenge pursuant to Code of Civil Procedure section [170.6](#) as to Judge David I. Brown. Judge Cadei having previously disqualified himself pursuant to Code of Civil Procedure section [170.1](#), the case was ordered transferred to the Presiding Judge for assignment. On November 15, 2016, the court continued the hearing on the BOE's Demurrer while it considered whether the Demurrer was stayed by Plaintiff's filing of a Motion to Transfer Venue. The court requested the parties provide briefing on the

issue of the stay. On November 17, 2016, Plaintiff filed a request to withdraw its Motion to Transfer Venue. The court reset the hearing on BOE's Demurrer to December 7, 2016. On December 9, 2016, the court sustained the BOE's demurrer with leave to amend. On December 21, 2016, plaintiff filed a second amended complaint. The BOE's response is due on January 19, 2017. On January 19, 2017, the BOE filed its demurrer to plaintiff's second amended complaint. A hearing on the demurrer is set for February 22, 2017. On February 14, 2017, the BOE filed a reply in support of its demurrer. On February 21, 2017, the court rescheduled the hearing on the BOE's demurrer, set for February 22, 2017, to March 14, 2017. On March 13, 2017, the court issued a tentative ruling in favor of the BOE, sustaining the BOE's demurrer to plaintiff's Second Amended Complaint. On March 24, 2017, the court entered an order affirming its tentative ruling in favor of the BOE. The judgment of dismissal as to the BOE was filed on April 20, 2017. Plaintiff filed its notice of appeal on April 21, 2017.

VERIZON SERVICES CORP. v. California State Board of Equalization

Los Angeles County Superior Court: BC602156

Filed – 12/01/2015

Plaintiffs' Counsel

Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Ron Ito

BOE Attorney

Wendy Vierra

Issue(s): Whether [Revenue and Taxation Code section 6016.5](#) excludes such items as completed telephone cables, conduit, and poles from the definition of "tangible personal property."

Audit/Tax Period: None

Amount: Not Specified

Status: On December 21, 2015, plaintiff filed a Notice of Errata, attaching to the Verified Complaint Exhibit "A", which had been omitted from plaintiff's complaint filed on November 23, 2015. On December 23, 2015, plaintiff granted BOE an extension to January 19, 2016, to file a response to plaintiff's complaint. On January 15, 2016, the BOE filed its answer. On February 9, 2016, the Los Angeles Superior Court issued an order relating the MCI and Verizon Services cases. The parties were ordered to meet and confer regarding joint discovery

orders and coordination, and file a status report within 30 days. The status conference on both cases was set for March 14, 2016. This order resulted only in an assignment of both cases to the same judge. The two actions otherwise remain separate actions. On February 22, 2016, the court issued its order reassigning the case. The Case Management Conference was re-set for October 7, 2016. The Joint Case Management Conference Statement was filed on February 26, 2016. The court held a case management conference on March 14, 2016. At the conference, the court amended its prior order relating this case with the MCI refund action and related the cases for discovery purposes only. The court set the next case management conference for October 11, 2016. On June 30, 2016, the BOE granted plaintiff an extension until July 15, 2016, to file a potential motion to compel discovery. Plaintiff has not filed a motion to compel discovery.

On August 12, 2016, plaintiff filed a Notice of Motion of Summary Judgment. Due to a scheduling conflict, Plaintiff requested a continuance of the October 25th hearing date. The BOE agreed and continued the hearing on its Motion for Judgment on the Pleadings to November 16, 2016. On September 22, 2016, the BOE filed its Motion for Judgment on the Pleadings. Hearing is set for October 25, 2016. On November 8, 2016, the BOE filed its reply brief in support of its motion for judgement on the pleadings. On November 16, 2016, the court issued a tentative ruling granting the BOE's motion for judgement on the pleadings without leave to amend. The court continued the hearing on the matter to November 30, 2016. The court continued the November 30th hearing on the BOE's Motion for Judgment on the pleadings to January 4, 2017. On January 4, 2017, the court granted the BOE's motion for judgment on the pleadings. The BOE filed a proposed judgment on dismissal on January 11, 2017. On February 3, 2017, the court issued an order granting judgment in favor of the BOE following its earlier order granting the BOE's motion for judgment on the pleadings. On February 22, 2017, the BOE served its Notice of Entry of Judgment in favor of the BOE. Plaintiff's deadline to appeal the judgment is April 24, 2017. Plaintiff filed a Notice of Appeal on April 19, 2017.

WOOSLEY, CHARLES PATRICK v. State Board of Equalization

California Court of Appeal, Second Appellate District: B113661

Los Angeles County Superior Court: CA000499

Filed – 06/20/78

Plaintiff's Counsel

James M. Gansinger - Gansinger, Hinshaw

BOE's Counsel

Diane Spencer-Shaw

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: \$1492.00

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 on 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 date was to 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. The State's oppositions were filed on May 27, 2015. The hearing was set for July 16, 2015; a new judge was assigned. Gansinger and Woosley filed their replies to the State's oppositions to the fee petitions on June 24, 2015. Hearing scheduled for July 16, 2015 was continued on the Court's own motion to September 22, 2015.

Appeal: Concerning the pre-2006 attorney's fees decision now on appeal, on September 2, 2015, Appellant Woosley filed a notice of omissions concerning addition records. Based on this filing, the Appellate court ordered the case briefing stayed pending filing of the supplemental records. Appellant's brief will be due 30 days from the date of the filing of the supplemental record. Hearing on post-2005 attorney's fees began on September 22, 2015, but was continued to November 4, 2015, with initial issue to be determined being whether plaintiffs' counsels are prevailing parties. The hearing on the post-2006 attorneys' fees was taken under submission as of November 20, 2015. Concerning the pending appeal on the pre-2006 attorneys' fees, Gansinger made a motion to augment the record on appeal to include documents that he failed to designate. The motion was granted. On December 2, 2015, Gansinger filed a second appellate motion to augment the record concerning records misplaced by the Superior Court clerk. The briefing was not to commence until the Court of Appeal stated that the record was complete. On February 11, 2016, the trial court issued an order awarding approximately \$805,000 total to the various plaintiffs' firms in additional attorneys' fees, and \$5750 in costs. On June 2, 2016, the BOE filed a notice of appeal regarding the attorneys' fees decision. On June 24, 2016 Woosley filed a cross-appeal. The June 30, 2016 deadline to file briefs was extended to July 27, 2016. Oral arguments on the pre-2006 fees appeal will take place February 7, 2017. Defendant's brief on the post-2006 fees appeal is due on February 7, 2017. Oral argument on the pre-2006 fees appeal took place February 7, 2017. Appellate decision on the pre-2006 fees is to be issued by May 1, 2017. Defendant's brief on the post-2006 fees appeal was filed February 7, 2017. On April 24, 2017, the Appellate Court issued a decision on the pre-2006 attorney's fees. The Appellate Court upheld the trial court's finding on most issues, but did remand the case back to the trial court for further proceedings, to allow the Busetti law firm representatives to submit additional evidence, and to adjust the Gansinger firm's lodestar figure as to work expended on the pre-1985 fee application. All other trial court findings were upheld. On June 5, 2017, plaintiff Woosley filed an appeal with the California Supreme Court concerning the pre-2006 attorney's fee awards.

**Sales and Use Tax
CLOSED CASES
LITIGATION ROSTER
JUNE 2017**

Case Name

Court/Case Number

SAN BERNARDINO, CITY OF v. John Chiang, State
Controller

6:12-BK-28006-MJ

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