

LITIGATION ROSTER  
SALES AND USE TAX

MARCH 2018

**Sales and Use Tax  
LITIGATION ROSTER  
MARCH 2018**

**NEW CASES**

**Case Name**

**Case Number**

BARRETT, JAMES (Complaint for Unfair Business Practices  
Act et al.)

ECU09960

**CLOSED CASES**

**Case Name**

**Case Number**

PASSERI, MICAELA

B271821

Please refer to the Case roster for more detail regarding new and closed Cases

**Sales and Use Tax**  
**LITIGATION ROSTER**  
**MARCH 2018**

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**ARECHIGA, ANASTACIO MARTIN RUIZ v. California Department of Tax and Fee Administration and Department of Motor Vehicles**  
San Francisco County Superior Court: CGC 17-560674  
Filed – 08/8/2017

*Plaintiff's Counsel*

J. David Nick  
Russell Goodrow

*BOE's Counsel*

Jane O'Donnell

*BOE Attorney*

Crystal Yu

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Issue(s): This litigation arises out of the Plaintiff's allegations that Defendants California Department of Tax and Fee Administration (CDTFA) and Department of Motor Vehicles (DMV) violated Plaintiff's State and Federal due process rights in suspending his driver's license without a hearing under [Business and Professions Code section 494.5](#), and that CDTFA has no authority to impose sales tax on Plaintiff's sale of marijuana prior to November 9, 2016.

Audit/Tax Period: None  
Amount: Unspecified

Status: On August 11, 2017, Plaintiff filed his Complaint for Damages and Injunctive and Declaratory Relief in the Superior Court of California, County of San Francisco. The initial complaint named the State Board of Equalization (BOE) as Defendant. On September 11, 2017, plaintiff filed its first amended complaint replacing the BOE as Defendant with the California Department of Tax and Fee Administration (CDTFA) as Defendant. On November 6, 2017, the CDTFA filed a Demurrer to plaintiff's complaint. Hearing is set for December 19, 2017. On December 19, 2017, the Superior Court of California, County of San Francisco, issued an order affirming its tentative ruling sustaining the CDTFA's demurrer as to all four causes of action in plaintiff's first amended complaint without leave to amend. All of plaintiff's claims were based on the alleged unlawful imposition of sales taxes by CDTFA on sales of marijuana that the CDTFA attributed to plaintiff, Mr. Arechiga. The court noted that pursuant to Article XIII, section 32 of the California Constitution and Revenue and Taxation Code 6931 and 6932 and case

law construing those provisions, plaintiff may not challenge the imposition of an alleged illegal sales tax on him in court until he has exhausted his administrative remedies by paying the alleged illegal sales tax and pursuing an administrative claim for a refund. The court found that since plaintiff had not alleged, nor was there a reasonable possibility that he would be able to allege, compliance with the exhaustion requirement, all of his claims failed as a matter of law. With respect to plaintiff's second cause of action for violation of 42 USC 1983, the court held that this failed for the additional reason that a section 1983 claim against a state agency may not be brought in state court. And finally, with respect to plaintiff's claims seeking relief from the alleged illegal inclusion of his name on the list of the largest delinquent taxpayers, including suspension of his driver's license, the court concluded that these claims are moot since judicially noticeable documents show that plaintiff was no longer on the list and he was able to reinstate his driver's license for a nominal fee. On January 17, 2018, a Notice of Entry of Judgment was entered and served on January 19, 2018. Plaintiff has until March 20, 2018, to file a Notice of Appeal. Plaintiff had until March 20, 2018 to appeal the judgment in favor of CDTFA and failed to file an appeal. Therefore, this case will be closed.

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**BARRETT, JAMES G. v. California Department of Alcohol Beverage Control, et al.**

Imperial County Superior Court: ECU08527

Los Angeles County Superior Court: BS155263

Second District Court of Appeal: B276619

Filed – 03/05/15

Plaintiff's Counsel

Pro Se

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

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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 of Appeal granted the BOE an additional extension to August 9, 2017, to file its Respondent's Brief. On August 1, 2017, the Court of Appeal granted the Motion by Respondents California Department of Alcoholic Beverage Control and its director (collectively, ABC) to dismiss the appeal (as to ABC and its director only). On August 17, 2017, the DOJ moved to substitute the California Department of Tax and Fee Administration (CDTFA) for the BOE as a Defendant in this action. On August 29, 2017, the Court of Appeal stayed further briefing on the appeal pending transmittal of a document by the superior court that was omitted from the record on appeal. On September 15, 2017, the Augmented/Supplemental Record was filed. The court set a deadline for Appellant's Reply Brief for October 15, 2017. On October 10, 2017, Appellant filed a Reply Brief. The case is now fully briefed, and awaits scheduling of Oral Argument.

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**BARRETT, JAMES G. v. Selnek-Is Tem-Al Corp; State Board Of Equalization; David Gau; California Tax And Fee Administration; David Botelho; California Department Of Alcoholic Beverage Control; Jacob Appelsmith; California Office Of The State Controller; Betty Yee;**

Imperial County Superior Court: ECU09960  
Filed – 09/11/17

Plaintiff's Counsel

Pro Se

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

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Issue(s): Plaintiff contends that the CDTFA is not performing its statutory and mandatory duties in enforcing the Sales & Use Tax Law against certain tribal retailers, including defendant Selnek-is Tem-al Corp., a tribal retailer operating a gas station and convenience store in Imperial County. Plaintiff alleges that a non-tribal retailer, Salton Sea Venture, which operated a convenience store/gas station in the same area (up through January 2017) and paid its taxes due under the law, has been damaged as a result. Plaintiff alleges that he is suing in the capacity of an "absolute assignee" of the rights held by Salton Sea.

Audit/Tax Period: None

Amount: Unspecified

Status: On February 26, 2018, defendant Alcoholic Beverage Control filed a motion to transfer venue, scheduled for hearing on March 27, 2018. On March 16, 2018, defendant Selnek-is Tem-al Corporation filed a motion to quash, scheduled for hearing on April 17, 2018. On March 21, 2018, CDTFA filed a motion to transfer venue of the case to Sacramento. Hearing on CDTFA's motion is set for April 17, 2018, to be heard concurrently with defendant Selnek-is Tem-al's motion to quash. On March 23, 2018, at an ex parte hearing, defendant California Department of Alcoholic Beverage Control requested that the court continue the hearing date on its motion to transfer venue from March 27, 2018, to April 17, 2018, to be heard concurrently with CDTFA and defendant Selnek-is Tem-al's motions. Rather than continuing the hearing date, the court granted ABC's motion to transfer venue, transferring venue to Sacramento County.

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**BEKKERMAN, ALINA; BRANDON GRIFFITH; JENNY LEE; and CHARLES LISSER  
v. California Department of Tax and Fee Administration, et al.**

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

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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. On July 25, 2017, Plaintiffs filed a Motion to consolidate this action with its class refund action (Sacramento County Superior Court, Case No. 34-2016-80002287). Hearing on Plaintiffs' Motion to consolidate is set for August 18, 2017. On July 28, 2017, pursuant to the Petitioners' *ex parte* request, the Court vacated its prior Order on February 17, 2017, setting the briefing and hearing dates on the merits. The Court reserved January 12, 2018, as the new hearing date, but did not set any new briefing dates at this time. On August 7, 2017, the State Defendants (CDTFA and State of California) opposed the Motion to consolidate. On August 11, 2017, Plaintiffs filed their Reply Brief in support of their Motion to consolidate. On August 18, 2017, the Court held Oral Argument on the Motion to consolidate. That same date, the Court issued a Minute Order denying Plaintiffs' Motion to consolidate in light of its ruling sustaining the CDTFA's Demurrer to Plaintiffs' class action complaint in Plaintiffs' related Class Action litigation. On August 25, 2017, the presiding justice signed the Order substituting the CDTFA for the Board of Equalization. On February 23, 2018, the Court granted Plaintiffs' motion for leave to file a first amended complaint seeking to add "class allegations, a full scope of remedies arising from the invalidity of [Regulation 1585], and procedural claims under the California Administrative Procedure Act," over CDTFA's objections.

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**BEKKERMAN, ALINA; BRANDON GRIFFITH; JENNY LEE; and CHARLES LISSER  
v. California Department of Tax and Fee Administration, 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

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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 retailers 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 31, 2017, the federal district Court granted the BOE and Plaintiffs' separate Motions to remand the action back to state Court and Order the matter remanded back to Sacramento County Superior Court. The parties stipulated that BOE could file its Response in the state Court action by May 15, 2017, which was subsequently extended to June 9, 2017. BOE filed a Demurrer on June 9, 2017 to Plaintiffs' First Amended

Complaint. A hearing on BOE's Demurrer is scheduled for August 18, 2017. On July 7, 2017, Plaintiffs filed a Second Amended Complaint; as a result, the Demurrer to the First Amended Complaint is moot. On July 25, 2017, the California Department of Tax & Fee Administration ("CDTFA") filed a Demurrer to Plaintiffs' Second Amended Complaint. On this same day, Plaintiffs filed a Motion to consolidate this action with its related action, challenging the validity of Regulation 1585. The hearing on both matters is set for August 18, 2017. On August 18, 2017, the trial Court sustained CDTFA's Demurrer to Plaintiffs' class action complaint without leave to amend and denied Plaintiffs' Motion to consolidate the class action for refund with Plaintiffs' related action challenging the validity of Regulation 1585. The Court found a class refund action was premature since Regulation 1585 has not been invalidated or otherwise retroactively revoked. In light of its ruling on the Demurrer, the Court denied Plaintiffs' Motion to consolidate their two actions. The Court also granted CDTFA's unopposed request to substitute in as the proper Defendant in this sales and use tax action, in place of the Board of Equalization. The CDTFA will submit a Proposed Order to the Court consistent with the Court's rulings. On August 25, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE. On September 22, 2017, plaintiffs filed a Notice of Appeal from the judgment and "from any other orders, rulings, decisions, and proceedings of any kind that are in any respect adverse to Plaintiffs and Petitioners - to the maximum extent permitted by law." On November 9, 2017, the Court of Appeal granted CDTFA's Motion to Correct the caption to be California Department of Tax and Fee Administration instead of Board of Equalization et al.

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**BRISBANE, CITY OF v. California Department of Tax and Fee Administration, et al.**

San Francisco County Superior Court: CPF-09-509232

First District Court of Appeal: A137185

Filed – 04/21/09

Plaintiff's Counsel

Charles Coleman - Holland & Knight, LP

BOE's Counsel

Karen Yiu

BOE Attorney

John Waid

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Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Brisbane as being subject to use tax is valid.

Audit/Tax Period: 2001 - Present

Amount: Unspecified

Status: Trial Court: The parties stipulated and filed a Motion to assign the *City of Alameda v. BOE*; *City of Brisbane v. BOE*; and the *City of South San Francisco v. BOE* to a single judge for all purposes. Trial began on October 17, 2011, and further trial proceedings were continued to November 1, 2011. The Court accepted Petitioners' argument and judgment was entered on September 18, 2012. BOE filed its Notice of Appeal on November 16, 2012.

Court of Appeal: On August 19, 2013, counsels for Appellants City of El Segundo and Cities of Alameda, et al., filed certificates of interested entities. In a letter to the Court, the City of El Segundo joined the combined Respondents' Brief and Appellants' Opening Brief of the Cities and did not file its own. On November 15, 2013, the parties' stipulated request to consolidate appeals was granted and the appeals were ordered consolidated for all purposes. BOE filed its Reply Brief on December 3, 2013, in its own appeal, and a Cross-Respondent's Brief in the Petitioner's Cross-Appeal. The Intervenor's Reply Briefs were filed on December 19, 2013. On March 18, 2014 BOE filed Appellant's Opening Brief. On March 21, 2014, Appellant's Brief on the merits was filed with the Court of Appeal. On or about May 12, 2014, the parties agreed Petitioners would have until June 17, 2014 to file Respondents' Briefs on the attorneys' fees issue. On July 17, 2014, the Respondents' Brief was filed. BOE's Reply Brief was filed on September 21, 2014. Oral Argument was set for October 21, 2014. On September 15, 2014 the Court vacated the Oral Argument. The letter Brief

ordered by the Court was filed on January 7, 2015. On January 20, 2015, BOE filed its Reply Brief. 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 November 20, 2015; Reply Brief due January 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. By stipulation, the Appellant's Opening Brief is now due August 11, 2017, and the Respondent's Brief is due November 13, 2017. On August 1, 2017, the DOJ moved to substitute the California Department of Tax and Fee Administration (CDTFA) for the BOE as a Defendant in this action. On August 18, 2017, Appellant City of Brisbane filed its Opening Brief in the Court of Appeal. On August 28, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE. On November 17, 2017, the CDTFA filed its Respondent's Brief. On December 5, 2017, the Respondent's Brief was filed by Intervener and Respondent, City of Alhambra. On December 7, 2017, the City of Brisbane filed its Appellant's Reply Brief. The case is now fully briefed and awaits scheduling of Oral Argument. On January 16, 2018, the Department filed its Request for Oral Argument. Brisbane previously filed its Request on January 12, 2018.

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**CARTER, TORRIE GIDGET and CARTER, MICHAEL ANTHONY v. California Board of Equalization, et al.**

Butte County Superior Court: 164455

Filed – 06/05/2015

*Plaintiff's Counsel*

Pro Se

*BOE's Counsel*

Jill Bowers

*BOE Attorney*

John Waid

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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: As of July 31, 2017, Plaintiffs have not served a copy of the summons and complaint on either BOE or CDTFA, and BOE has never appeared in the matter. CDTFA will not appear in the matter until it is properly served with a copy of the Summons and Complaint.

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**CYPRESS, CITY OF, et al. v. The California Director of Finance, 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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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. Hearing was continued to October 16, 2016.

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**DINUBA, CITY OF, et al. v. The California Director of Finance, 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

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

Audit/Tax Period: None

Amount: Unspecified

Status: BOE filed its Answer on July 11, 2013.



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**DISIMONE, NICOLLE, v. California Department of Tax and Fee Administration, 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

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Issue(s): Plaintiffs allege that the imposition of tax on the sale of tampons and certain feminine hygiene products is unconstitutional. Plaintiffs assert 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. At the July 18, 2017 Case Management Conference, the Court entered the following Scheduling Order: The parties' Cross-Motions for Summary Judgment are due September 22, 2017. Opposition Briefs are due October 13, 2017; Reply Briefs are due November 3, 2017. The hearing on the Cross-Motions for Summary Judgment will be held on November 13, 2017 at 2:00PM. On September 5, 2017, the court granted the substitution of CDTFA for BOE. On September 22, 2017, CDTFA and plaintiffs filed their Cross-Motions for Summary Judgment. A hearing is set on the Cross-Motions for November 13, 2017. On October 13, 2017, the CDTFA filed the Opposition to Plaintiffs' Motion for Summary Judgment or in the alternative, Summary Adjudication. In their moving papers, plaintiffs claim that the imposition of state sales tax on feminine hygiene products discriminates on the basis of sex, and thus violates the Due Process Clause of the California Constitution and the Equal Protection Clauses of the state and federal constitutions. Plaintiffs argue that feminine hygiene products should be classified as "medicine" under Revenue and Taxation Code section (section) 6369, and the sales of these products should be exempt from sales tax. In its opposition, CDTFA contends that the governing statutes, sections 6051 and 6369, and Regulation 1591, do not violate the Due Process and Equal Protection Clauses because they are gender neutral and any classification provided for thereunder is supported by rational reasons. CDTFA further contends that plaintiffs are barred from bringing this action due to their failure to exhaust the administrative remedies available to them because they were required to first present the issue of taxability of sales of feminine hygiene products to the CDTFA and did not do so. On November 13, 2017, the Hearing was continued to January 11, 2018. On January 11, 2018, the Court heard oral argument on the parties' cross-motions for judgment. Following oral argument, the court issued a Minute Order on January 11, 2018, granting CDTFA's Motion for Summary Judgment and denying plaintiffs' motion. On January 29, 2018, the Court entered judgment in favor of the CDTFA. A Notice of Entry of Judgment was filed on February 15, 2018. Plaintiff has until April 16, 2018 to file a Notice of Appeal.

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**EL CERRITO REDEVELOPMENT AGENCY SUCCESSOR AGENCY, et al. v. The California Director of Finance, 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

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Issue(s): The Court should enjoin Finance from: (1) demanding that the Successor Agency remit \$1,981,989.00 to the Contra Costa County Auditor-Controller for the purposes of distributing the funds to affected taxing entities pursuant to California Health & Safety Code Section 34179.5, as added by Assembly Bill 1484 ([AB 1484](#)), and (2) directing Petitioners to reverse the \$1,981,989.00 in tax increment payments, \$10,168,319.00 in property conveyances and a payment of \$400,243.00 in bond proceeds by the El Cerrito Redevelopment Agency. Petitioners also request an Order that the self-help provisions of [AB 1484](#) are unconstitutional.

Audit/Tax Period: None

Amount: Unspecified

Status: On December 2, 2013, the DOJ, attorney for State Respondents, filed notice of representation of the BOE in lieu of Response to complaint. State Respondents filed their Answer to amended petition for writ of mandate and complaint for declaratory relief on the same date. On December 10, 2013, Real Party in Interest, Alameda-Contra Costa Transit District, filed its Response and Answer to amended petition for writ of mandate and complaint for declaratory relief. The State Respondents' opposition was filed on April 30, 2014. The Reply Brief was due on May 15, 2014. The hearing was scheduled for May 30, 2014. At the May 30, 2014 hearing, the judge requested Supplement Briefs, 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.

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**FONTANA, CITY OF, et al. v. California Department of Tax and Fee Administration, et al.**

Alameda County Superior Court: RG14721676

First District Court of Appeal: A147642

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

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Issue(s): The litigation arises out of Petitioners' contentions that the Board is improperly allocating local sales tax derived from retail sales made by MedCal Sales, LLC, and allocated to the City of Ontario and/or the Ontario Redevelopment Agency for the tax period January 1, 2006, to present.

Audit/Tax Period: January 1, 2006, to present

Amount: Unspecified

Status: On April 23, 2014, the BOE was served a Summons, Notice of Case Management Conference and Order, 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 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 was held on July 18, 2017. On August 28, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE. On September 12, 2017, the Court of Appeal decided in favor of the CDTFA, and denied petitioner cities' Petition for Writ of Mandate.

The Court of Appeal concluded that the BOE's determination that local sales tax which had been remitted to the City of Fontana and the City of Lathrop should be reallocated to the City of Ontario was supported by substantial evidence. On September 27, 2017, Respondents and cross-appellants City of Fontana, City of Lathrop, and City of San Bernardino, filed a petition for rehearing. No opposition to the petition can be filed unless the court asks for it. On October 12, 2017, the Court of Appeal granted Respondents and Cross Appellants', City of Fontana, City of Lathrop, and City of San Bernardino, petition for rehearing. On October 26, 2017, CDTFA filed an answer to Respondents and Cross-Appellants', City of Fontana, City of Lathrop, and City of San Bernardino, petition for rehearing, at the Court of Appeal's request. On November 28, 2017, the Court of Appeal issued an opinion in favor of the CDTFA, and denied Petitioner Cities' Petition for Writ of Mandate. On January 4, 2018, Petitioner Cities of Fontana, Lathrop and San Bernardino filed a Petition for Review by the Supreme Court of the Court of Appeal, First Appellate District Division Two, decision in favor of CDTFA and the named city-defendants in this Bradley-Burns Uniform Local Sales and Use Tax Law case filed November 28, 2017. On January 16, 2018, DOJ sent the Court a letter informing them that CDTFA would not be filing an Answer to Fontana's Petition. On January 24, 2018, the City of Ontario filed an Answer to the Petition. On February 15, 2018, the City of Livermore filed an Amicus Curiae Letter in Support of Plaintiffs and Appellants' Petition for Review with the California Supreme Court. On March 2, 2018, the California Supreme Court issued an order extending the time to grant or deny review to and including April 4, 2018. On March 14, 2018, the California Supreme Court denied the City of Fontana's Petition for Review.

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**GMRI, INC. v. California Department of Tax and Fee Administration**

Sacramento County Superior Court: 34-2013-001145890

Third District Court of Appeal: C081471

Filed – 06/3/13

*Plaintiff's Counsel*

Eric J. Coffill - Morrison & Foerster LLP

*BOE's Counsel*

Debbie J. Vorous

*BOE Attorney*

John Waid

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Issue(s): Plaintiff alleges that the tips that taxpayers added to their restaurant bills do not qualify as “mandatory” within the meaning of [Regulation 1603\(g\)](#). Mandatory tips are not part of the gross receipts received by the taxpayers for their sales of meals.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE filed its Response on November 7, 2013. On April 23, 2014, the Case was reassigned to DAG Debbie J. Vorous. On December 5, 2014, the Court set the trial date in this matter for October 5, 2015. The Court scheduled a mandatory settlement conference for August 25, 2015. 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. This Case is fully briefed. On August 31, 2017, the DOJ moved to substitute the California Department of Tax and Fee Administration (CDTFA) for the BOE as a Defendant in this action. On September 27, 2017, the Third District Court of Appeal granted the State Board of Equalization's motion to substitute the California Department of Tax & Fee Administration for itself as a party. Oral argument is scheduled for November 14, 2017. On October 11, 2017, the Court of Appeal continued the hearing to December 18, 2017. On November 2, 2017, the Court continued Oral Argument in this case to February 20, 2018. Oral Argument was held on February 20, 2018, and the matter submitted for the appellate court's consideration. On March 9, 2018, the Court of Appeal affirmed summary judgment in the Department's favor. The decision is certified for publication.



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**GOLETA, CITY OF, et al. v. The California Director of Finance, 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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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. On October 24, 2017, Appellant's Reply Brief was filed.

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**GTE COMMUNICATION SYSTEMS CORPORATION v. California Department of Tax and Fee Administration**

San Diego County Superior Court: 37-2016-00021928-CU-MC-CTL

Fourth District Court of Appeal, Division One: D072491

Filed – 6/29/2016

Plaintiff's Counsel

Carly A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

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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 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. On October 18, 2017, the State Board of Equalization's September 26, 2017, Motion to Substitute the California Department of Tax and Fee Administration in as the Respondent on this Appeal was granted. (Gov. Code section 15570.24, subd. (b).)

On January 3, 2018, Appellant's Opening Brief was filed. CDTFA's Respondent's Brief is due April 3, 2018.

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**HUNTINGTON BEACH, CITY OF, et al. v. The California Director of Finance, et al.**  
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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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 in 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 the 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.

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**JAB MARINE SERVICES, LLC v. California Department of Tax and Fee Administration,  
Successor-in-interest to State Board of Equalization**

San Diego County Superior Court: 37-2017-00028061-CU-MC-CTL

Filed – 08/22/2017

*Plaintiff's Counsel*

L'estrage Wright & Ergastolo

William Dysart

*BOE's Counsel*

Jane O'Donnell

*BOE Attorney*

Crystal Yu

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Issue(s): Plaintiff's claim for exemption was denied and Use Tax was imposed in the amount of \$34,310.92, plus interest, in the amount of 1,629.75 for a total of \$35,940.67. Plaintiff seeks judgment against defendant for the sum of \$44,947.70, or such larger amount as provided by law.

Audit/Tax Period: None

Amount: \$44,947.70

Status: On September 11, 2017, plaintiff served the Summons and Amended Complaint on California Department of Tax and Fee Administration in this new action for refund of use taxes. On October 11, 2017, CDTFA filed an Answer to the Complaint.

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**KING CITY, CITY OF, et al. v. The California Director of Finance, 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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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. 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. At Plaintiffs' request, the clerk entered the dismissal on March 20, 2018.

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**KINTNER, JEREMY DANIEL v. CA. BOARD OF EQUALIZATION AND CA.  
DEPARTMENT OF TAX AND FEE ADMINISTRATION**

Los Angeles County Superior Court: BC684614

Filed: 12/8/2017

*Plaintiff's Counsel*

Mark Bernsley, A PROF. CORP.

*BOE's Counsel*

Nhan T. Vu

*BOE Attorney*

Kiren Chohan

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Issue(s): The Board voted 5 to 0 to predetermine the petition. Plaintiff challenges what he asserts to be a CDTFA policy of assessing and collecting from officers and shareholders of controlling closely held corporations, the amount of sales taxes collected from customers if and for any period during which the corporation's powers were suspended by the Franchise Tax Board for failure to pay franchise taxes. In addition, Plaintiff challenges the validity of CDTFA [Regulation 1702.6](#) ("Regulation"), and alleges a denial of due process. In general, plaintiff seeks the determination and declaration that (1) the Policy is invalid and cannot be implemented as it is preempted by [Revenue and Taxation Code section 6829](#) and the Regulation; (2) the Regulation is unconstitutional and invalid and (3) plaintiff was denied due process because SBE did not consider the illegality of the Regulation during the administrative appeal, and therefore, the assessment against plaintiff for the tax liability is illegal, unconstitutional, and void. As to the underlying basis for this litigation: Plaintiff asserts that on or about May 28, 2009, the corporate powers of HK Architectural Supply, Inc. (HK Inc.), a California Corporation, were suspended. Then, on or about February 22, 2012, the Department issued a Notice of Determination against plaintiff asserting and assessing plaintiff for sales tax liability incurred by HK Inc. Plaintiff alleges that all administrative appeals and remedies in opposition to this liability have been exhausted. CDTFA denies plaintiff's allegations.

Audit/Tax Period: January 1, 2008 through December 31, 2010

Amount: Unspecified

Status: On January 23, 2018, the CDTFA's Answer was filed and served.

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**LAKWOOD, CITY OF, et al. v. The California Director of Finance, 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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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.

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**LEVITZ, ALAN v. California Department of Tax and Fee Administration**

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

W. Gregory Day

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Issue(s): This is an action for refund of taxes, interest and penalties 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. 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. On October 17, 2017, the Court granted the Order substituting the California Department of Tax and Fee Administration (CDTFA) as the Defendant. On November 17, 2017, Plaintiff served discovery on CDTFA through electronic service. The service was considered invalid and the parties stipulated to extend the discovery response deadline to January 19, 2018. On January 19, 2018, Plaintiff agreed to extend the Discovery Response deadline to February 17, 2018. On February 14, 2018, plaintiff agreed to extend the deadline for CDTFA's Discovery Response to March 1, 2018. On February 21, 2018, the parties agreed to a continuance of the trial date in the matter from June 11, 2018, to March 22, 2019. On February 28, 2018, plaintiff agreed to final extension of the deadline for CDTFA's Discovery Response to March 23, 2018. On March 22, 2018, the Court ordered the trial date in this matter continued to March 11, 2019. CDTFA served its responses to Plaintiff's written discovery requests on March 23, 2018.



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**LITTLEJOHN, LARRY v. Costco Wholesale Corp., et al.**

San Francisco County Superior Court: CGC-13-531835

First District Court of Appeal: A144440

Filed – 8/06/2014

*Plaintiff's Counsel*

Daniel Berko - Law Office of Daniel Berko

*BOE's Counsel*

Nhan Vu

*BOE Attorney*

Wendy Vierra

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Issue(s): Plaintiff seeks a refund of sales tax reimbursement on behalf of himself and a class of others paid on purchases of Ensure related products to Costco and other retailers from May 31, 2009 to the present. Plaintiff contends that Costco and other retailers improperly charged sales tax reimbursement on certain Ensure products when such products were considered food products not subject to sales tax under California's Sales and Use Tax law, including [Regulation 1602](#). Plaintiff also alleges breach of contract and various tort claims against Costco and Abbott Laboratories.

Audit/Tax Period: May 31, 2009 to the present

Amount: Unspecified

Status: Demurrers were filed on November 4, 2014. The Case Management Conference was held November 7, 2014. Oppositions to the pending Demurrers were due November 21, 2014, and replies were due December 9, 2014. The hearing on the Demurrers was set for December 17, 2014. On December 9, 2014, BOE filed its Reply Brief to Plaintiff's Opposition to BOE's Demurrer to the Second Amended Complaint. On December 17, 2014, the Court heard Oral Argument on BOE's Demurrer to Plaintiff's Second Amended Complaint. The Court issued a written opinion following Oral Argument in which the Court sustained BOE's Demurrer with leave to amend. Plaintiff filed his Third Amended Complaint on December 26, 2014. On January 12, 2015, BOE filed its Demurrer to Plaintiff's Third Amended Complaint, and on January 14, 2015, its Opposition to Plaintiff's Motion to Compel Costco to File a Refund Application with the BOE. BOE's Demurrer and Plaintiff's Motion to Compel 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. On August 3, 2017, the DOJ moved to substitute the California Department of Tax and Fee Administration (CDTFA) for the BOE as a Defendant in this action. On August 25, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE as a defendant in this action.

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**LOS BANOS DESIGNATED LOCAL AUTHORITY v. The California Director of Finance, 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

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

Audit/Tax Period: None

Amount: Unspecified

Status: Some of the real parties in interest have answered the petitions. However, BOE, as a remedial defendant, has an open extension of time to respond to the petitions.

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**MAINSTREET ENTERPRISES v. California Department of Tax and Fee Administration**

Los Angeles County Superior Court: BC648293

Filed – 01/26/2017

Plaintiff's Counsel

BOE's Counsel

Anthony Sgherzi

Matthew Heyn

BOE Attorney

Crystal Yu

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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. On July 27, 2017, CDTFA filed a Demurrer and Motion to Strike Portions of Plaintiffs' First Amended Complaint (the Second Amended Complaint was refiled as the First Amended Complaint per Court Order), Requests for Judicial Notice, and an application for change of Case title to substitute CDTFA for BOE. On August 24, 2017, CDTFA filed replies to Plaintiffs' oppositions to CDTFA's Demurrer and Motion to strike. The hearing on CDTFA's Demurrer and Motion to strike is scheduled for August 30, 2017. On August 30, 2017, the Court rescheduled the hearing on CDTFA's Demurrer and Motion to strike for September 13, 2017. On August 31, 2017 Plaintiffs served form interrogatories and request for production of documents, CDTFA's Response is due on October 2, 2017. On September 13, 2017, following Oral Argument, the court sustained the CDTFA's Demurrer to Plaintiffs' second cause of action for damages under Revenue and Taxation Code section 7099, on the grounds that plaintiffs' action was untimely. The court denied CDTFA's Demurrer as to the portion of the first cause of action relating to the first audit

period; the court ruled it was an issue of fact as to whether this action was untimely. At the conclusion of the September 13th hearing, the court agreed to the substitution of CDTFA for BOE, and indicated it would sign the formal substitution Order. On September 29, 2017, Plaintiffs filed a Second Amended Complaint per court order and a Petition for Relief from claim requirement under Government Code section 946.6. On October 10, 2017, the Court entered an Order substituting the CDTFA for the BOE in this case. On October 30, 2017, the CDTFA filed a Demurrer to plaintiffs' complaint and a Motion to Strike portions of the Complaint. On November 17, 2017, the CDTFA filed its opposition to plaintiffs' Petition for Relief from Claim Requirement. Hearings on CDTFA's demurrer and Motion to Strike, and also plaintiffs' Petition for Relief from Claim Requirements are set for January 17, 2018. On January 22, 2018, Oral Argument on CDTFA's Demurrer and Motion to Strike was held, and the Superior Court took the matter under submission. On January 24, 2018, the Court denied Defendants' Demurrer and Motion to Strike portions of the Second Amended Complaint, and granted Plaintiffs' Petition for Relief from claim requirement. The Court ordered Defendants to file an Answer to the Second Amended Complaint within 10 days. On February 2, 2018, Defendants filed an answer in response to the court's order. On March 26, 2018, CDTFA filed an Amended Answer to Plaintiffs' Second Amended Complaint.

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

Los Angeles County Superior Court: BC325272

Second Appellate District: B265011 and B265029

California Supreme Court: S241471

Filed – 02/24/06

Plaintiffs' 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

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Issue(s): Whether sales tax reimbursement were properly collected from Plaintiffs on their purchases of glucose test strips and skin puncture lancets from Defendant retailers, or were the sales of these items 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 Briefs were 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 Over length 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'/Appellants' Petition for Review on May 15, 2017. On June 14, 2017, the Supreme Court granted Plaintiffs'/Appellants' Petition for Review. On August 14, 2017, Petitioners' Opening Brief was filed. On August 15, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE. On September 8, 2017, CDTFA requested an extension of time to file its answer brief to October 13, 2017. On September 12, 2017, the California Supreme Court extended CDTFA's time to file its Answer Brief to October 13, 2017. On October 11, 2017, the Supreme Court granted the CDTFA's Request for an Extension of Time to file the Answer Brief to November 13, 2017. On November 13, 2017, the Supreme Court granted CDTFA's request to file its Answer Brief to December 13, 2017. On December 13, 2017, the CDTFA filed its Answer Brief and a Motion for Judicial Notice. The other named Defendants and Respondents also filed their Answer Briefs on December 13, 2017. The Supreme Court granted Petitioners' request to file their Reply Brief on February 1, 2018. On February 1, 2018, the Supreme Court granted Petitioner's request extended the filing deadline for Petitioner's Reply Brief to and including March 2, 2018. On March 2, 2018, Appellants filed an application requesting permission to file an oversized Reply Brief on the merits. On March 14, 2018, Appellants filed a Reply Brief on the merits.



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**MCI COMMUNICATIONS SERVICES, INC. v. California Department of Tax and Fee Administration**

San Diego County Superior Court: 37-2015-000392-12-CU-MC-CTL

Fourth District Court of Appeal, Division One: D072402

Filed -12/03/15

Plaintiff's Counsel

Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

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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, 2106, 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. On September 25, 2017, the California Department of Tax and Fee Administration (CDTFA) was substituted for the Board of Equalization. On November 20, 2017, the Appellant's Opening Brief and Appendix were filed. On February 16, 2018, CDTFA filed its Respondent's Brief. Appellant's Reply Brief was filed on March 5, 2018. The case is now fully briefed and awaits scheduling of oral argument.

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**MENDOTA DESIGNATED LOCAL AUTHORITY v. The California Director of Finance,  
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

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

Audit/Tax Period: None

Amount: Unspecified

Status: Some of the real parties in interest have answered the petitions. However, BOE, as  
a remedial defendant, has an open extension of time to respond to the petitions.

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**MERCED DESIGNATED LOCAL AUTHORITY v. The California Director of Finance, 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

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

Audit/Tax Period: None

Amount: Unspecified

Status: Some of the real parties in interest have answered the petitions. However, BOE, as a remedial defendant, has an open extension of time to respond to the petitions.

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**MONTEBELLO, CITY OF, et al. v. The California Director of Finance, 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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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.

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**MONTEREY PARK, CITY OF, et al. v. California 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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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.

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**MORSCHAUSER I**

**MORSCHAUSER, WILLIAM G. dba FRIAR TUCK'S BAR AND GRILLE v. California  
Department of Tax and Fee Administration**

Los Angeles County Superior Court: BC602509  
Filed -11/25/2015

Plaintiff's Counsel

Dennis N. Brager, Richard G. Stack

BOE's Counsel

Charles Tsai

BOE Attorney

Kiren Chohan

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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. On August 8, 2017, the DOJ moved to substitute the California Department of Tax and Fee Administration (CDTFA) for the BOE as a Defendant in this action. On August 29, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE. On September 26, 2017, the judge dismissed the complaint without prejudice and the trial date of October 3, 2017 was taken off calendar. On October 11, 2017, Plaintiff filed a Motion for Reconsideration in response to the Order granting CDTFA's Motion. The Motion for Reconsideration is set for hearing on February 26, 2018. Any

Opposition is due before February 13, 2018. The case is still dismissed. Plaintiff state in his Motion for Reconsideration that he will file a Motion to Vacate the Dismissal Order, but Plaintiff has yet to file the Motion to Vacate. On November 22, 2017, the Plaintiff filed a Motion to Vacate Dismissal of the Complaint. Hearing is set for January 4, 2018. On December 20, 2017, CDTFA filed an Opposition to Plaintiff's Motion to Vacate the Dismissal. On December 26, 2017, Plaintiff filed a Reply to CDTFA's Opposition to Plaintiff's Motion to Vacate the Dismissal. On January 4, 2018, the County of Los Angeles Superior Court granted Plaintiff's Motion to Vacate the Dismissal of its complaint. On February 9, 2018, the CDTFA filed an opposition to Plaintiff's Motion for Reconsideration of Order Granting Defendant's Motion in Limine to Exclude Expert Testimony and Opinions of Ian Foster or any other Expert Witness. At the February 26, 2018 hearing on Plaintiff's Motion for Reconsideration of the Court's ruling on CDTFA's Motion in Limine to Exclude Expert Testimony, the court ordered further briefing on the issue and continued the hearing on the motion to April 2, 2018. The briefing schedule is as follows: Plaintiff's Brief is due March 9, 2018; CDTFA's Opposition is due March 19, 2018; Plaintiff's Reply Brief is due March 26, 2018. The Court set the trial date for January 23, 2019, and the final status conference for January 10, 2019. Plaintiff filed supplemental briefing in support of its Motion for Reconsideration of Order Granting Defendant's Motion in Limine to Exclude Expert Testimony. CDTFA filed its opposition on March 19, 2018. Plaintiff filed its reply on March 26, 2018. On March 27, 2018, the court issued a tentative ruling in favor of CDTFA granting CDTFA's Motion in Limine to Exclude Plaintiff's Expert Testimony.



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**MORSCHAUSER II**

**MORSCHAUSER, WILLIAM G dba FRIAR TUCK'S BAR AND GRILLE v. California  
Department of Tax and Fee Administration**

Los Angeles County Superior Court: BC677289  
Filed -12/22/2017

Plaintiff's Counsel

Dennis N. Brager, Richard G. Stack

BOE's Counsel

Charles Tsai

BOE Attorney

Kiren Chohan

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Issue(s): Plaintiff states the same facts, makes the same allegations, and raises the same issues and causes of action as set forth in Morschauser I that Plaintiff filed on November 25, 2015. Plaintiff filed this complaint because Morschauser I had been dismissed without prejudice on September 26, 2017. See Morschauser I.

Audit/Tax Period: 1/1/97-12/31/99; 10/1/00-6/30/01; 7/1/01-12/31/03

Amount: Unspecified

Status: On January 22, 2018, CDTFA filed a Demurrer to Plaintiff's Second Refund Action and a Motion to Strike the complaint on the grounds that the second action was time-barred by Revenue and Taxation Code Section 6933 and further that there is another action pending between the same parties on the same causes of action. The hearing on CDTFA's Demurrer and Motion to Strike is set for February 23, 2018. On January 31, 2018, pursuant to the parties' stipulation, the hearing date was continued to April 25, 2018. A Case Management Conference is scheduled for March 19, 2018. The hearing on the Demurrer and Motion to Strike was rescheduled for April 25, 2018. At the March 19, 2018 status conference, the court set the following deadlines: the Conference-Post Mediation is October 18, 2018; Final Status Conference is January 10, 2019; and Court Trial is January 23, 2019. On March 27, 2018, CDTFA renoticed its Demurrer and Motion to Strike plaintiff's complaint. Hearing is scheduled for April 25, 2018.

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**NOVATO, CITY OF, et al. v. The California Director of Finance, 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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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 Appellants' Opening 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. On August 17, 2017, the Department of Finance filed its Respondent's Brief. On September 6, 2017, Appellant filed its Reply Brief. The case is now fully briefed, and awaits scheduling of Oral Argument.

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**ONTARIO, CITY OF, et al. v. The California Director of Finance, 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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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 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 argument has been set. On January 25, 2018, oral argument was scheduled for March 20, 2018. On February 9, 2018, the Court of Appeal granted Appellants' request to continue oral argument to March 26, 2018. On February 13, 2018, the Court continued Oral Argument to April 23, 2018.

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**ORTHO MATTRESS, INC. v. Bedding Pros, LLC, et al.**

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

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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: On July 28, 2017, a notice of reassignment and removal was filed notifying parties that this matter was removed by Defendants Bedding Pros, LLC and Mattress USA, Inc. to United States District Court for the Central District of California. Plaintiff intends to seek remand of the matter back to the State Court. On August 3, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE. On August 7, 2017, Plaintiff filed a Motion to remand the Case back to the Los Angeles County Superior Court. The hearing on this Motion is set for September 14, 2017. On August 18, 2017, Defendants Mattress USA and Bedding Pros filed a Motion to dismiss the federal Court action, which is scheduled to be heard on September 18, 2017. On August 28, 2017, Plaintiff filed an opposition to Defendants' Motion to Dismiss, evidentiary objections, and request for judicial notice and exhibits. On August 31, 2017, Plaintiff filed a Reply Brief in support of its Motion to Remand the matter to Los Angeles Superior Court based on the amount in controversy. On September 14, 2017, the U.S. District Court for the Central District of California denied Plaintiff's motion to remand the case back to superior court based on the court's determination that the amount in controversy was met. The hearing for Defendants' motion to dismiss initially set for September 18, 2017, and the hearing on CDTFA's motion to dismiss, initially set for September 28, 2017, were both taken off calendar. CDTFA's motion to remand will be heard on September 28, 2017. The court indicated that if CDTFA's Motion to Remand is denied, then both motions to

dismiss will be re-calendared. On September 29, 2017, the Court granted CDTFA's Motion to Remand the case back to Los Angeles County Superior Court. On October 24, 2017, the Los Angeles County Superior Court issued a Notice of Receipt of Remand. On November 17, 2017, the CDTFA filed its Demurrer to plaintiff's complaint or, in the alternative, Request for Stay. On November 22, 2017, the corporate defendants filed a Motion to Quash Service and a Demurrer of their own. Hearings on all actions set for February 6, 2018. Status conference set for December 7, 2017. At the Case Management Conference (CMC) held on December 7, 2017, the Court continued the CMC to February 6, 2018, which is the hearing date set for CDTFA's demurrer. On January 29, 2018, the Court continued CDTFA's Demurrer and Bedding Pros/Mattress USA's Motion to Quash from February 6, 2018 to February 7, 2018, so that they will be heard concurrently with the Bedding Pros/Mattress USA Demurrer. On February 9, 2018, the hearing on CDTFA's Demurrer to plaintiff's complaint and defendants' Demurrer and Motion to Quash was moved to February 16, 2018. On February 16, 2018, the court adopted its tentative ruling as to CDTFA, with the court sustaining CDTFA's demurrer without leave to amend. CDTFA was named as a Nominal Defendant in this action. As to the primary Defendants, Bedding Pros LLC DBA US Mattress, et al., the tentative was to allow jurisdictional discovery related to the motion to quash for lack of subject matter jurisdiction. The Court did not reach the primary Defendants' demurrer, which is on the same grounds as CDTFA's, in addition to raising other arguments. At the hearing, counsel for the primary Defendants withdrew the motion to quash. The Court ordered the primary Defendants and Plaintiff to submit additional briefing within ten days on the issues raised in CDTFA's demurrer; the court indicated that it will consider this additional briefing before issuing a ruling. On February 24, 2018, Defendants filed a supplemental brief and a request for judicial notice to support the Defendants' demurrer. On February 24, 2018, Plaintiff filed a supplemental brief in opposition of Defendants' demurrer. The Court entered judgment in favor of the CDTFA on March 26, 2018.

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**REDWOOD CITY, CITY OF v. The 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

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Issue(s): Dispute is over certain provisions of Assembly Bill 1484 [AB 1484](#) (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 Brief 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.

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**SAN JOSE CANNABIS BUYER COLLECTIVE, LLC. v. California Department of Tax and Fee Administration**

Sacramento County Superior Court: 34-2017-80002729

Filed – 11/06/2017

Plaintiff's Counsel

Law Office of Lerman, Editte D.

BOE's Counsel

Mike Sapoznikow

BOE Attorney

Kiren Chohan

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Issue(s):       Petitioner contends: Petitioner seeks declaratory relief to set aside CDTFA's decision denying its claim for refund related to the 2009-2010 tax year.

CDTFA position: Taxpayer's claim for refund was properly denied. Also, taxpayer should have brought a refund action and not a petition for writ of mandate when challenging CDTFA's denial of a claim for refund.

Audit/Tax Period: 2009/2010

Amount: Unspecified

Status:        On January 22, 2018, CDTFA filed a demurrer to petitioner's petition on the basis that (1) a refund action is the exclusive means by which a taxpayer may seek a tax refund, and the Petition for Writ of Mandate is improper; (2) petitioner failed to exhaust its administrative remedies for the period at issue; and (3) petitioner has not yet paid its taxes in full and, therefore, may not pursue a refund action.

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**VERIZON BUSINESS NETWORK SERVICES, INC. v. California Department of Tax and Fee Administration**

San Diego County Superior Court: 37-2016-0001941-CU-MC-CTL

Fourth District Court of Appeal, Division One: D072427

Filed –6/29/2016

Plaintiff's Counsel

Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

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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: 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. On September 28, 2017, the Court of Appeal extended the deadline for Plaintiff to file its Opening Brief to December



11, 2017. On October 17, 2017, the State Board of Equalization's Motion to Substitute the California Department of Tax and Fee Administration in its place as the respondent in this Action was granted. On December 8, 2017, Plaintiff filed its Opening Brief. CDTFAs Respondent's Brief filed March 22, 2018. Appellant's Reply Brief filed March 27, 2018. Case fully briefed.

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**VERIZON BUSINESS PURCHASING LLC v. California Department of Tax and Fee Administration**

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

Fourth District Court of Appeal, Division One: D072527

Filed -06/29/16

Plaintiff's Counsel

Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

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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. On October 17, 2017, the Board of Equalization's Motion to Substitute the California Department of Tax and Fee Administration in its place as the respondent in this action was granted. On December 21, 2017, Plaintiff filed its Opening Brief. CDTFA's Reply Brief is due March 21, 2018. CDTFA's Respondent's Brief filed March 22, 2018. Appellant's Reply Brief filed March 27, 2018. Case fully briefed.

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**VERIZON CALIFORNIA INC. v. California Department of Tax and Fee Administration**

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

Third District Court of Appeal: C084551

Filed – 06/15/2016

Plaintiff's Counsel

Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

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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: 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. On August 4, 2017, pursuant to the Plaintiff's request, the Court of Appeal granted an extension for Plaintiff/Appellant Verizon California to file its Opening Brief to October 16, 2017. On September 27, 2017, the Third District Court of Appeal granted the State Board of Equalization's Motion to Substitute the California Department of Tax & Fee Administration for itself as a party. On October 16, 2017, plaintiff filed its Opening Brief on Appeal. On January 16, 2018, CDTFEA filed its Respondent's Brief. Plaintiff and Appellant, Verizon California, filed its Reply Brief on January 31, 2018. Case fully briefed.

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**VERIZON SERVICES CORP. v. California Department of Tax and Fee Administration**

Los Angeles County Superior Court: BC602156

Second District Court of Appeal: B282170

Filed – 12/01/2015

Plaintiffs' Counsel

Carley A. Roberts, Sutherland Asbill & Brennan

BOE's Counsel

Ron Ito

BOE Attorney

Wendy Vierra

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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. On August 23, 2017, Plaintiff/Appellant filed a stipulated request for an extension to November 13, 2017, to file its Appellant's Opening Brief. On August 29, 2017, the appeals court granted CDTFA's motion to be substituted for the BOE. The Appeal has been assigned to Division 8. On November 13, 2017, the Appellant's Opening Brief was filed. CDTFA's Reply Brief is due February 13, 2018. CDTFA's Respondent's Brief filed February 13, 2018. Appellant's Reply Brief filed March 5, 2018. Case fully briefed.

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**WOOSLEY, CHARLES PATRICK v. The State of California**

Los Angeles County Superior Court: CA000499

Second District Court of Appeal: B113661

Filed – 06/20/78

*Plaintiff's Counsel*

James M. Gansinger - Gansinger, Hinshaw

*BOE's Counsel*

Diane Spencer-Shaw

*BOE Attorney*

Sharon Brady Silva

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Issue(s): Whether the taxpayer is entitled to a refund of the vehicle license fee ([Revenue and Taxation Code sections 10753 and 10758](#)) and use tax imposed.

Audit/Tax Period: None

Amount: \$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. Remittitur issued on July 5, 2017, partially remanding to the trial Court for a consideration of additional attorney fees. Nothing has been scheduled yet with respect to the remand. On August 4, 2017 and August 17, 2017, Plaintiffs Busetti and Woosley, respectively, each filed motions in the trial Court for attorneys' fees related to time spent on the last appeal. On August 17, 2017, plaintiff Woosley filed a petition for fees covering January 2015 onwards. The matter was heard on December 11, 2017. On December 11, 2017, the Court issued a Ruling denying Woosley's request for fees. The AGO served the December 11, 2017 Ruling on the Parties on January 4, 2018. On August 21, 2017, the State of California filed a Reply Brief regarding the post-2006 Appeal. Oral Argument regarding the post 2006 Fees Appeal took place on October 30, 2017. On November 3, 2017, the Appellate Court issued an unpublished decision concerning the AGO's appeal of the post-2014 "fees on fees" awarded by the trial court and Woosley's cross-appeal concerning the same decision. The appellate decision upheld the trial court decision, finding that the trial court did not abuse its discretion by not reducing the "fees on fees" award for lack of success, and that the award of fees to Woosley was appropriate. The hearing for Busetti's August 4, 2017 petition for appellate attorney's fees was held on December 7, 2017. The Court ordered fees as on January 2, 2018; order served on January 8, 2018. On December 21, 2017, Gansinger and counsel for Busetti filed a joint motion for attorney's fees and to reopen the prior attorney fee matter, concerning matters the appellate court ordered to be addressed on remand. On February 2, 2018, Gansinger and counsel for Busetti filed a joint motion for "final" attorney's fees covering February 2015 onwards. The December 21, 2017 petition was originally scheduled to be heard on January 24, 2018, but was consolidated to be heard with the February 2, 2018 petition on March 26, 2018.

**Sales and Use Tax  
LITIGATION ROSTER  
MARCH 2018**

**CLOSED CASES**

**Case Name**

**Case Number**

PASSERI, MICAELA

B271821

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