



**OFFICE OF THE ATTORNEY
GENERAL**

TAXATION DIVISION

**COMPTROLLER OF PUBLIC ACCOUNTS
CASE LIST AND SUMMARY OF ISSUES**

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Table of Contents

Table of Cases	ix
Franchise Tax	1
Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller	1
AirBorn, Inc. v. Rylander, et al.	1
Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc., Restland Funeral Home; Singing Hills Funeral Homes, Inc., Laurel Land Funeral Home of Fort Worth, Inc., Blue Bonnet Hills Funeral Home, Inc., and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al.	2
Bandag Licensing Corp. v. Sharp, et al.	2
Beef Products, Inc. v. Rylander, et al.	2
Dana Corp. v. Sharp, et al.	3
Delco Electronics Corp. v. Sharp, et al.	3
El Paso Electric Co. v. Sharp, et al.	4
Fisher Controls International, Inc. v. Sharp, et al.	4
General Motors Corp. v. Sharp, et al.	4
Gulf Publishing Co. v. Sharp, et al.	5
H.J. Heinz Co., Inc. v. Sharp, et al.	5
H.J. Heinz Co., Inc. v. Sharp, et al.	6
H.J. Heinz Co. v. Rylander, et al.	6
Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al.	7
House of Lloyd, Inc. v. Sharp, et al.	7
House of Lloyd, Inc. v. Sharp, et al.	8
Houston Industries, Inc. v. Sharp, et al.	8
Jiffy Lube International, Inc. v. Rylander, et al.	9
Kerrville Telephone Co., The v. Rylander, et al.	9
Kraft Foods, Inc. v. Rylander, et al.	9
LTV Steel Co., Inc. v. Sharp, et al.	10
Lyondell Chemical Worldwide, Inc., formerly known as Arco Chemical Co. v. Rylander, et al.	10
May Department Stores Co., The v. Sharp, et al.	11
MCorp v. Sharp, et al.	11
Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al.	11
Nevada Asset Management Corp. v. Rylander, et al.	12
North Star Steel Texas, Inc. v. Sharp, et al.	12
Ore-Ida Foods, Inc. v. Sharp, et al.	12
Ore-Ida Foods, Inc. v. Sharp, et al.	13

Ore-Ida Foods, Inc. v. Rylander, et al.	14
Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.	14
Peter Scalamandre & Sons, Inc. et al. v. Sharp, et al.	14
Pfizer, Inc. v. Rylander, et al.	15
Phillips Petroleum Co. v. Sharp, et al.	15
Phillips Petroleum Co. v. Sharp, et al.	16
Portion Pac, Inc. v. Sharp, et al.	16
Portion Pac, Inc. v. Sharp, et al.	17
Portion Pac, Inc. v. Rylander, et al.	17
Reliant Energy Gas Transmission Co, formerly known as Noram Gas Transmission Co. v. Rylander, et al.	18
Richland Development Corp. v. Rylander, et al.	18
Richland Development Corp. v. Comptroller, et al.	18
Saudi Refining, Inc. v. Rylander, et al.	19
Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al.	19
Sergeant Enterprises, Inc. v. Sharp, et al.	20
Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al.	20
Southern Union Co. v. Sharp, et al.	20
Southern Union Co. v. Sharp, et al.	21
Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp	21
Southwestern Bell Telephone Co. v. Sharp, et al.	22
Southwestern Gas Pipeline, Inc., Mitchell Energy Corp. & and The Woodlands Commercial Properties Co., L.P. v. Rylander, et al.	22
Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.	22
SRI Receivables, Inc. v. Rylander, et al.	23
Star-Kist Foods, Inc. v. Sharp, et al.	23
Star-Kist Foods, Inc. v. Sharp, et al.	24
Star-Kist Foods, Inc. v. Rylander, et al.	24
Tesoro Petroleum Corp. v. Sharp, et al.	25
Texaco Refining & Marketing (East), Inc. v. Rylander, et al.	25
Texas Aromatics, Inc. v. Sharp, et al.	25
Union Pacific Resources Co. v. Sharp, et al.	26
United Beverage Co. v. Rylander, et al.	26
Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al.	27
Upjohn Co., The v. Sharp, et al.	27
Weight Watchers Food Co. v. Sharp, et al.	27
Weight Watchers Gourmet Food Co. v. Rylander, et al.	28
Westcott Communications, Inc., Law Enforcement Television Network, Inc., Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al.	29
Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al. . . .	29
Xerox Credit Corp. v. Rylander, et al.	29

Sales Tax	31
Abbassinezhad, Akbar v. Rylander, et al.	31
Alexopolous, Dimitrios P. v. Rylander, et al.	31
Alpine Industries, Inc. v. Sharp, et al.	31
American Oil Change Corp. v. Rylander, et al.	32
American Standard, Inc. v. Sharp, et al.	32
American Telephone & Telegraph Co. v. Sharp, et al.	33
Aramis Services, Inc. v. Sharp, et al.	33
Aramis Services, Inc. v. Rylander, et al.	33
Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al.	34
Bell Bottom Foundation Co. v. Rylander, et al.	34
BHC Co. v. Sharp, et al.	35
B.I. Moyle Associates, Inc. v. Rylander, et al.	35
Big Tex Air Conditioning, Inc. v. Bullock, et al.	35
Brighton Builders, Inc. v. Sharp, et al.	36
Cafeteria Operators, L.P. v. Rylander, et al.	36
Central Power & Light Co. v. Sharp, et al.	36
Chevron Chemical Co. v. Rylander, et al.	37
Church & Dwight Co., Inc. v. Rylander, et al.	37
Clinique Services, Inc. v. Sharp, et al.	38
Clinique Services, Inc. v. Rylander, et al.	38
Coastal Refining & Marketing, Inc. v. Sharp, et al.	38
Commercial Janitorial Services, Inc. v. Sharp, et al.	39
Computer Systems of America, Inc. v. Sharp, et al.	39
Denmon's H2 Safety Services, Inc. v. Sharp	40
El Paso Silverton Construction Co., Inc. v. Sharp, et al.	40
Estee Lauder Services, Inc. v. Sharp, et al.	40
Estee Lauder Services, Inc. v. Sharp, et al.	41
Etan Industries, Inc. v. Sharp, et al.	41
F.C. Felhaber & Co., Inc. v. Sharp, et al.	41
Fiesta Texas Theme Park, Ltd. v. Sharp, et al.	42
Garza, Lawrence v. Sharp, et al.	42
Gateway Homes, Inc. v. Sharp, et al.	43
GATX Terminals Corp. v. Sharp, et al.	43
GATX Terminals Corp. v. Sharp, et al.	43
Graybar Electric Co., Inc. v. Sharp, et al.	44
Grocers Supply Co., Inc. v. Sharp, et al.	44
Grocers Supply Co., Inc. v. Sharp, et al.	44
H.J. Wilson Co., Inc. v. Sharp, et al.	45
Heritage Numismatic Auctions, Inc. & Heritage Capital Corp. v. Rylander, et al.	45
Herndon Marine Products, Inc. v. Sharp, et al.	46
Hoffer Furniture Rental, Inc. v. Sharp	46

Holzem, Inc. v. Sharp, et al.	46
House of Lloyd, Inc. v. Rylander, et al.	47
Impaco, Inc. v. Rylander, et al.	47
Interpak Terminals, Inc. v. Sharp, et al.	48
Irv-Tex Coin Laundries, Inc. v. Sharp, et al.	48
Jett Racing and Sales, Inc. v. Sharp, et al.	48
John Hancock Mutual Life Insurance Co., The v. Rylander, et al.	49
Kroger Co., The v. Sharp, et al.	49
Kunz Construction Co., Inc. v. Sharp, et al.	49
L. D. Brinkman & Co., Inc. v. Sharp, et al.	50
Lake Charles Yamaha, Inc. v. Sharp	50
Lake Charles Yamaha, Inc. v. Morales, et al.	50
Lake Charles Yamaha, Inc. v. Morales, et al.	51
Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al.	51
Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al.	51
Lee Construction and Maintenance Co. v. Rylander, et al.	52
Leyendecker Construction, Inc. v. Sharp, et al.	52
Local Neon Co., Inc. v. Rylander, et al.	53
Lopez-Gloria Construction Services, Inc. v. Sharp, et al.	53
Macias, David Ronald v. Sharp	53
Mazanec Construction Co., Inc. v. Sharp, et al.	54
Medaphis Physicians Services Corp. v. Sharp, et al.	54
Miller, Jerry W. Sr. v. Rylander, et al.	55
National Business Furniture, Inc. v. Sharp, et al.	55
Neiman Marcus Group, Inc. v. Sharp, et al.	55
North American Intelcom, Inc., et al. v. Sharp, et al.	56
North Texas Asset Management, Inc. v. Sharp, et al.	56
Norwood Homes, Inc. v. Sharp, et al.	57
Ontario Investments, Inc. v. Sharp, et al.	57
Paragon Communications v. Sharp, et al.	57
Perry Homes, A Joint Venture v. Sharp, et al.	58
Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al.	58
Petrolite Corp. v. Sharp, et al.	58
Phelan Co., The v. Sharp, et al.	59
Praxair, Inc. v. Sharp, et al.	59
Praxair, Inc. v. Sharp, et al.	60
Prodigy Services Co. v. Rylander, et al.	60
R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al.	60
Ryder Truck Rental, Inc. v. Sharp, et al.	61
Samedan Oil Corp. v. Sharp, et al.	61
Sam Houston Race Park, Ltd. v. Rylander, et al.	62
Schmitz Industries, Inc. v. Sharp	62
Schoenborn & Doll Enterprises, Inc. v. Rylander, et al.	62
Sears Roebuck & Co. v. Rylander, et al.	63

Service Merchandise Co., Inc. v. Sharp, et al.	63
Sharyland Water Supply Corp. v. Rylander, et al.	64
Southwest Pay Telephone Corp., Successor in Interest to Southwest Pay Telephone Systems, Inc. v. Sharp, et al.	64
Spaw-Glass, Inc. and Spaw Glass Construction Co. v. Rylander, et al.	64
Sprint International Communications, Inc. v. Sharp, et al.	65
Steamatic of Austin, Inc., et al. v. Sharp, et al.	65
Summit Photographix, Inc. v. Rylander, et al.	66
Sung Ju Choi d/b/a Sam Young Trading Co. v. Sharp	66
TCCT Real Estate, Inc. v. Rylander, et al.	67
TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al.	67
Tennessee Gas Pipeline Co. v. Sharp, et al.	68
Texas Gulf, Inc. v. Bullock, et al.	68
Transcontinental Gas Pipeline Corp. v. Rylander, et al.	68
Union Carbide Chemicals & Plastics Co., Inc. v. Sharp, et al.	69
Union Carbide Corp. v. Rylander, et al.	69
Unit 82 Joint Venture v. Rylander, et al.	70
United Services Automobile Association v. Sharp, et al.	70
U.S. On-Line Cable v. Rylander, et al.	71
Wal-Mart Stores, Inc. v. Sharp, et al.	71
Waller Hotel Group, Inc. v. Sharp, et al.	71
West Texas Pizza, Limited Partnership v. Sharp, et al.	72
Westar Hotels, Inc. v. Sharp, et al.	72
Wiking Demolition Corp. v. the State of Texas, the Cities of San Antonio and Houston, Texas, the Transit Authority of San Antonio, Texas, John Cornyn, and Carole Keeton Rylander	72
Young's Beer Barn, Inc. v. Sharp	73
Insurance Tax	75
All American Life Insurance Co., et al. v. Sharp, et al.	75
All American Life Insurance Co. v. Sharp, et al.	75
Allianz Underwriters Insurance Co. v. Rylander, et al.	76
Allmerica Financial Life Insurance Co. and Annuity Co. v. Rylander, et al.	76
American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al.	77
American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al.	77
Dow Chemical Co. v. Rylander, et al.	77
Federal Home Life Insurance Co. v. Rylander, et al.	78
First Colony Life Insurance Co. v. Rylander, et al.	78
GE Life and Annuity Assurance Co., fka Life Insurance Co. of Virginia v. Rylander, et al.	78
General Electric Capital Assurance Co. v. Rylander, et al.	79
Great Northern Insured Annuity Corp. v. Rylander, et al.	79

Harvest Life Insurance Co., The v. Rylander, et al.	79
Heritage Life Insurance Co. v. Rylander, et al.	80
IDS Life Insurance Co. v. Rylander, et al.	80
Liberty National Life Insurance Co. v. Martha Whitehead, et al.	80
Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.	81
Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.	81
Principal Life Insurance Co. v. Rylander, et al.	82
Redland Insurance Co. v. State of Texas, et al.	82
Security National Insurance Co. v. Rylander, et al.	82
Southwestern Life Insurance Co. v. Philip Barnes, et al.	83
Southwestern Life Insurance Co. v. Georgia Flint, et al.	83
Southwestern Life Insurance Co. v. Sharp, et al.	83
Southwestern Life Insurance Co. v. Rylander, et al.	84
State Farm Life Insurance Co. v. Cornyn, Rylander, et al.	84
Texas Workers' Compensation Insurance Facility v. Comptroller	85
Texas Workers' Compensation Insurance Facility v. Comptroller, et al.	85
Union Fidelity Life Insurance Co. v. Rylander, et al.	85
United American Insurance Co. v. Rylander, et al.	86
Universe Life Insurance Co. v. State of Texas	86
Warranty Underwriters Insurance Co. v. Rylander, et al.	87
Controlled Substances Tax	89
Martinez, Jesus Manuel v. Sharp, et al.	89
Popp, Robert K. v. Sharp	89
Rubrecht, Henry Fred v. Bullock, et al.	89
Sanchez, Joseph I. & Zyle Glass & Anthony Montoya . Rylander, et al.	90
Smith, Kelli Deann v. Sharp	90
Sternberg, Bruce Lee v. Sharp, et al.	90
Other Taxes	93
AT&T Corp. and AT&T Communications of the Southwest, Inc. v. Sharp, et al.	93
Caldwell, Marcie v. Rylander	93
Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Texas Comptroller	94
Celadon Trucking Services, Inc. v. Sharp, et al.	94
Chevron USA, Inc. v. Sharp, et al.	95
Chrysler Financial Co., L.L.C. v. Rylander, et al.	95
Davis, Mary v. Sharp, et al.	96
El Paso Natural Gas Co. v. Sharp	96
Marathon Oil Co. v. Rylander, et al.	96
McCarty-Hull Cigar Co. v. Sharp, et al.	97
McCarty-Hull Cigar Co. v. Rylander, et al.	97
McLane Company, Inc. v. Rylander, et al.	98
P.W. Jones Oil Co., Inc. v. Sharp, et al.	98

Preston Motors by George L. Preston, Owner v. Sharp, et al.	98
Thurman, Kay G. and Merlene G. Stroud v. Sharp	99
Travis Co., et al. v. Lot 1, Baker Dale Addn.	99
Vallado, Jan Clopton, Independent Executor of Estate of Marion Wallace Clopton, Jr. v. Sharp, et al.	99
Closed Cases	101
3 Beall Brothers 3, Inc. v. Sharp, et al.	101
American & Foreign Insurance Co., Royal Indemnity Co., Royal Insurance Co. of America and Safeguard Insurance Co. v. TDI; Jose Montemayor, Cmsr.; Cornyn; Rylander; CPA; and Texas Public Finance Authority . .	101
Brown, William A. d/b/a Nortex Investigative Services v. Sharp, et al.	102
Capital Guidance Associates IV v. Sharp, et al.	102
Chevron USA, Inc. v. Sharp, et al.	102
Cinco Hermanos, Inc. v. Sharp, et al.	103
Consigned Sales Distributors, Inc. v. Sharp, et al.	103
Dallas SMSA Partnership v. Sharp, et al.	104
Fleming Foods of Texas, Inc. v. Sharp, et al.	104
Gant, Jesse A., Estate of v. Comptroller, et al.	105
Haber Fabrics Corp. v. Sharp, et al.	105
Houston Industries Building, Inc. v. Rylander, et al.	106
Kandi Sue, Inc. v. Sharp, et al.	106
Kerrville ISD v. Comptroller	107
Lake Worth ISD, et al. v. Texas Comptroller of Public Accounts	107
Landgraf, Larry A. dba Landgraf & Co., Inc. v. Rylander, et al.	107
Laney, James M. v. Sharp, et al.	108
Lucky Lady Oil Co. v. Rylander, et al.	108
Nabisco, Inc. and Planters/Lifesavers v. Sharp, et al.	108
Oliveira, Leonel v. Rylander, et al.	109
Reflectone Training Systems, Inc. v. Bullock, et al.	109
Salih, John Douglas v. Sharp, et al.	110
San Antonio SMSA\ Limited Partnership v. Sharp, et al.	110
Southwest Oil Co. of San Antonio, Inc. v. Bullock, et al.	110
Southwest Subrogation Services, Inc. v. Sharp, et al.	111
Southwestern Explosives, Inc. v. Bullock, et al.	111
Steen, Steven G. v. State of Texas, Secretary of State	111
Union Pacific Resources Co. v. Sharp, et al.	112
West Texas Gas, Inc. v. Sharp, et al.	112
Whitesboro ISD, et al. v. Texas Comptroller of Public Accounts	112
Index	115

Table of Cases

3 Beall Brothers 3, Inc. v. Sharp, et al.	101
Abbassinezhad, Akbar v. Rylander, et al.	31
Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller	1
AirBorn, Inc. v. Rylander, et al.	1
Alexopolous, Dimitrios P. v. Rylander, et al.	31
All American Life Insurance Co., et al. v. Sharp, et al.	75
All American Life Insurance Co. v. Sharp, et al.	75
Allianz Underwriters Insurance Co. v. Rylander, et al.	76
Allmerica Financial Life Insurance Co. and Annuity Co. v. Rylander, et al.	76
Alpine Industries, Inc. v. Sharp, et al.	31
American & Foreign Insurance Co., Royal Indemnity Co., Royal Insurance Co. of America and Safeguard Insurance Co. v. TDI; Jose Montemayor, Cmsr.; Cornyn; Rylander; CPA; and Texas Public Finance Authority	101
American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al.	77
American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al.	77
American Oil Change Corp. v. Rylander, et al.	32
American Standard, Inc. v. Sharp, et al.	32
American Telephone & Telegraph Co. v. Sharp, et al.	33
Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc., Restland Funeral Home; Singing Hills Funeral Homes, Inc., Laurel Land Funeral Home of Fort Worth, Inc., Blue Bonnet Hills Funeral Home, Inc., and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al.	2
Aramis Services, Inc. v. Rylander, et al.	33
Aramis Services, Inc. v. Sharp, et al.	33
AT&T Corp. and AT&T Communications of the Southwest, Inc. v. Sharp, et al.	93
B.I. Moyle Associates, Inc. v. Rylander, et al.	35
Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al.	34
Bandag Licensing Corp. v. Sharp, et al.	2
Beef Products, Inc. v. Rylander, et al.	2
Bell Bottom Foundation Co. v. Rylander, et al.	34
BHC Co. v. Sharp, et al.	35
Big Tex Air Conditioning, Inc. v. Bullock, et al.	35
Brighton Builders, Inc. v. Sharp, et al.	36
Brown, William A. d/b/a Nortex Investigative Services v. Sharp, et al.	102
Cafeteria Operators, L.P. v. Rylander, et al.	36
Caldwell, Marcie v. Rylander	93
Capital Guidance Associates IV v. Sharp, et al.	102
Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Texas Comptroller	94

Celadon Trucking Services, Inc. v. Sharp, et al.	94
Central Power & Light Co. v. Sharp, et al.	36
Chevron Chemical Co. v. Rylander, et al.	37
Chevron USA, Inc. v. Sharp, et al.	102
Chevron USA, Inc. v. Sharp, et al.	95
Chrysler Financial Co., L.L.C. v. Rylander, et al.	95
Church & Dwight Co., Inc. v. Rylander, et al.	37
Cinco Hermanos, Inc. v. Sharp, et al.	103
Clinique Services, Inc. v. Rylander, et al.	38
Clinique Services, Inc. v. Sharp, et al.	38
Coastal Refining & Marketing, Inc. v. Sharp, et al.	38
Commercial Janitorial Services, Inc. v. Sharp, et al.	39
Computer Systems of America, Inc. v. Sharp, et al.	39
Consigned Sales Distributors, Inc. v. Sharp, et al.	103
Dallas SMSA Partnership v. Sharp, et al.	104
Dana Corp. v. Sharp, et al.	3
Davis, Mary v. Sharp, et al.	96
Delco Electronics Corp. v. Sharp, et al.	3
Denmon's H2 Safety Services, Inc. v. Sharp	40
Dow Chemical Co. v. Rylander, et al.	77
El Paso Electric Co. v. Sharp, et al.	4
El Paso Natural Gas Co. v. Sharp	96
El Paso Silverton Construction Co., Inc. v. Sharp, et al.	40
Estee Lauder Services, Inc. v. Sharp, et al.	40
Estee Lauder Services, Inc. v. Sharp, et al.	41
Etan Industries, Inc. v. Sharp, et al.	41
F.C. Felhaber & Co., Inc. v. Sharp, et al.	41
Federal Home Life Insurance Co. v. Rylander, et al.	78
Fiesta Texas Theme Park, Ltd. v. Sharp, et al.	42
First Colony Life Insurance Co. v. Rylander, et al.	78
Fisher Controls International, Inc. v. Sharp, et al.	4
Fleming Foods of Texas, Inc. v. Sharp, et al.	104
Gant, Jesse A., Estate of v. Comptroller, et al.	105
Garza, Lawrence v. Sharp, et al.	42
Gateway Homes, Inc. v. Sharp, et al.	43
GATX Terminals Corp. v. Sharp, et al.	43
GATX Terminals Corp. v. Sharp, et al.	43
GE Life and Annuity Assurance Co., fka Life Insurance Co. of Virginia v. Rylander, et al.	78
General Electric Capital Assurance Co. v. Rylander, et al.	79
General Motors Corp. v. Sharp, et al.	4
Graybar Electric Co., Inc. v. Sharp, et al.	44
Great Northern Insured Annuity Corp. v. Rylander, et al.	79
Grocers Supply Co., Inc. v. Sharp, et al.	44
Grocers Supply Co., Inc. v. Sharp, et al.	44

Gulf Publishing Co. v. Sharp, et al.	5
H.J. Heinz Co. v. Rylander, et al.	6
H.J. Heinz Co., Inc. v. Sharp, et al.	5
H.J. Heinz Co., Inc. v. Sharp, et al.	6
H.J. Wilson Co., Inc. v. Sharp, et al.	45
Haber Fabrics Corp. v. Sharp, et al.	105
Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al.	7
Harvest Life Insurance Co., The v. Rylander, et al.	79
Heritage Life Insurance Co. v. Rylander, et al.	80
Heritage Numismatic Auctions, Inc. & Heritage Capital Corp. v. Rylander, et al.	45
Herndon Marine Products, Inc. v. Sharp, et al.	46
Hoffer Furniture Rental, Inc. v. Sharp	46
Holzem, Inc. v. Sharp, et al.	46
House of Lloyd, Inc. v. Rylander, et al.	47
House of Lloyd, Inc. v. Sharp, et al.	8
House of Lloyd, Inc. v. Sharp, et al.	7
Houston Industries Building, Inc. v. Rylander, et al.	106
Houston Industries, Inc. v. Sharp, et al.	8
IDS Life Insurance Co. v. Rylander, et al.	80
Impaco, Inc. v. Rylander, et al.	47
Interpak Terminals, Inc. v. Sharp, et al.	48
Irv-Tex Coin Laundries, Inc. v. Sharp, et al.	48
Jett Racing and Sales, Inc. v. Sharp, et al.	48
Jiffy Lube International, Inc. v. Rylander, et al.	9
John Hancock Mutual Life Insurance Co., The v. Rylander, et al.	49
Kandi Sue, Inc. v. Sharp, et al.	106
Kerrville ISD v. Comptroller	107
Kerrville Telephone Co., The v. Rylander, et al.	9
Kraft Foods, Inc. v. Rylander, et al.	9
Kroger Co., The v. Sharp, et al.	49
Kunz Construction Co., Inc. v. Sharp, et al.	49
L. D. Brinkman & Co., Inc. v. Sharp, et al.	50
Lake Charles Yamaha, Inc. v. Sharp	50
Lake Charles Yamaha, Inc. v. Morales, et al.	51
Lake Charles Yamaha, Inc. v. Morales, et al.	50
Lake Worth ISD, et al. v. Texas Comptroller of Public Accounts	107
Landgraf, Larry A. dba Landgraf & Co., Inc. v. Rylander, et al.	107
Laney, James M. v. Sharp, et al.	108
Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al.	51
Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al.	51
Lee Construction and Maintenance Co. v. Rylander, et al.	52
Leyendecker Construction, Inc. v. Sharp, et al.	52
Liberty National Life Insurance Co. v. Martha Whitehead, et al.	80

Local Neon Co., Inc. v. Rylander, et al.	53
Lopez-Gloria Construction Services, Inc. v. Sharp, et al.	53
LTV Steel Co., Inc. v. Sharp, et al.	10
Lucky Lady Oil Co. v. Rylander, et al.	108
Lyondell Chemical Worldwide, Inc., formerly known as Arco Chemical Co. v. Rylander, et al.	10
Macias, David Ronald v. Sharp	53
Marathon Oil Co. v. Rylander, et al.	96
Martinez, Jesus Manuel v. Sharp, et al.	89
May Department Stores Co., The v. Sharp, et al.	11
Mazanec Construction Co., Inc. v. Sharp, et al.	54
McCarty-Hull Cigar Co. v. Rylander, et al.	97
McCarty-Hull Cigar Co. v. Sharp, et al.	97
McLane Company, Inc. v. Rylander, et al.	98
MCorp v. Sharp, et al.	11
Medaphis Physicians Services Corp. v. Sharp, et al.	54
Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.	81
Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.	81
Miller, Jerry W. Sr. v. Rylander, et al.	55
Nabisco, Inc. and Planters/Lifesavers v. Sharp, et al.	108
National Business Furniture, Inc. v. Sharp, et al.	55
Neiman Marcus Group, Inc. v. Sharp, et al.	55
Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al.	11
Nevada Asset Management Corp. v. Rylander, et al.	12
North American Intelcom, Inc., et al. v. Sharp, et al.	56
North Star Steel Texas, Inc. v. Sharp, et al.	12
North Texas Asset Management, Inc. v. Sharp, et al.	56
Norwood Homes, Inc. v. Sharp, et al.	57
Oliveira, Leonel v. Rylander, et al.	109
Ontario Investments, Inc. v. Sharp, et al.	57
Ore-Ida Foods, Inc. v. Rylander, et al.	14
Ore-Ida Foods, Inc. v. Sharp, et al.	13
Ore-Ida Foods, Inc. v. Sharp, et al.	12
P.W. Jones Oil Co., Inc. v. Sharp, et al.	98
Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.	14
Paragon Communications v. Sharp, et al.	57
Perry Homes, A Joint Venture v. Sharp, et al.	58
Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al.	58
Peter Scalmandre & Sons, Inc. et al. v. Sharp, et al.	14
Petrolite Corp. v. Sharp, et al.	58
Pfizer, Inc. v. Rylander, et al.	15
Phelan Co., The v. Sharp, et al.	59
Phillips Petroleum Co. v. Sharp, et al.	16

Phillips Petroleum Co. v. Sharp, et al.	15
Popp, Robert K. v. Sharp	89
Portion Pac, Inc. v. Sharp, et al.	17
Portion Pac, Inc. v. Sharp, et al.	16
Portion Pac, Inc. v. Rylander, et al.	17
Praxair, Inc. v. Sharp, et al.	60
Praxair, Inc. v. Sharp, et al.	59
Preston Motors by George L. Preston, Owner v. Sharp, et al.	98
Principal Life Insurance Co. v. Rylander, et al.	82
Prodigy Services Co. v. Rylander, et al.	60
R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al.	60
Redland Insurance Co. v. State of Texas, et al.	82
Reflectone Training Systems, Inc. v. Bullock, et al.	109
Reliant Energy Gas Transmission Co, formerly known as Noram Gas Transmission Co. v. Rylander, et al.	18
Richland Development Corp. v. Rylander, et al.	18
Richland Development Corp. v. Comptroller, et al.	18
Rubrecht, Henry Fred v. Bullock, et al.	89
Ryder Truck Rental, Inc. v. Sharp, et al.	61
Salih, John Douglas v. Sharp, et al.	110
Sam Houston Race Park, Ltd. v. Rylander, et al.	62
Samedan Oil Corp. v. Sharp, et al.	61
San Antonio SMSA\ Limited Partnership v. Sharp, et al.	110
Sanchez, Joseph I. & Zyle Glass & Anthony Montoya . Rylander, et al.	90
Saudi Refining, Inc. v. Rylander, et al.	19
Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al.	19
Schmitz Industries, Inc. v. Sharp	62
Schoenborn & Doll Enterprises, Inc. v. Rylander, et al.	62
Sears Roebuck & Co. v. Rylander, et al.	63
Security National Insurance Co. v. Rylander, et al.	82
Sergeant Enterprises, Inc. v. Sharp, et al.	20
Service Merchandise Co., Inc. v. Sharp, et al.	63
Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al.	20
Sharyland Water Supply Corp. v. Rylander, et al.	64
Smith, Kelli Deann v. Sharp	90
Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp	21
Southern Union Co. v. Sharp, et al.	20
Southern Union Co. v. Sharp, et al.	21
Southwest Oil Co. of San Antonio, Inc. v. Bullock, et al.	110
Southwest Pay Telephone Corp., Successor in Interest to Southwest Pay Telephone Systems, Inc. v. Sharp, et al.	64
Southwest Subrogation Services, Inc. v. Sharp, et al.	111
Southwestern Bell Telephone Co. v. Sharp, et al.	22

Southwestern Explosives, Inc. v. Bullock, et al.	111
Southwestern Gas Pipeline, Inc., Mitchell Energy Corp. & and The Woodlands Commercial Properties Co., L.P. v. Rylander, et al.	22
Southwestern Life Insurance Co. v. Rylander, et al.	84
Southwestern Life Insurance Co. v. Sharp, et al.	83
Southwestern Life Insurance Co. v. Georgia Flint, et al.	83
Southwestern Life Insurance Co. v. Philip Barnes, et al.	83
Spaw-Glass, Inc. and Spaw Glass Construction Co. v. Rylander, et al.	64
Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.	22
Sprint International Communications, Inc. v. Sharp, et al.	65
SRI Receivables, Inc. v. Rylander, et al.	23
Star-Kist Foods, Inc. v. Rylander, et al.	24
Star-Kist Foods, Inc. v. Sharp, et al.	24
Star-Kist Foods, Inc. v. Sharp, et al.	23
State Farm Life Insurance Co. v. Cornyn, Rylander, et al.	84
Steamatic of Austin, Inc., et al. v. Sharp, et al.	65
Steen, Steven G. v. State of Texas, Secretary of State	111
Sternberg, Bruce Lee v. Sharp, et al.	90
Summit Photographix, Inc. v. Rylander, et al.	66
Sung Ju Choi d/b/a Sam Young Trading Co. v. Sharp	66
TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al.	67
TCCT Real Estate, Inc. v. Rylander, et al.	67
Tennessee Gas Pipeline Co. v. Sharp, et al.	68
Tesoro Petroleum Corp. v. Sharp, et al.	25
Texaco Refining & Marketing (East), Inc. v. Rylander, et al.	25
Texas Aromatics, Inc. v. Sharp, et al.	25
Texas Gulf, Inc. v. Bullock, et al.	68
Texas Workers' Compensation Insurance Facility v. Comptroller	85
Texas Workers' Compensation Insurance Facility v. Comptroller, et al.	85
Thurman, Kay G. and Merlene G. Stroud v. Sharp	99
Transcontinental Gas Pipeline Corp. v. Rylander, et al.	68
Travis Co., et al. v. Lot 1, Baker Dale Addn.	99
U.S. On-Line Cable v. Rylander, et al.	71
Union Carbide Chemicals & Plastics Co., Inc. v. Sharp, et al.	69
Union Carbide Corp. v. Rylander, et al.	69
Union Fidelity Life Insurance Co. v. Rylander, et al.	85
Union Pacific Resources Co. v. Sharp, et al.	112
Union Pacific Resources Co. v. Sharp, et al.	26
Unit 82 Joint Venture v. Rylander, et al.	70
United American Insurance Co. v. Rylander, et al.	86
United Beverage Co. v. Rylander, et al.	26
United Services Automobile Association v. Sharp, et al.	70
Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al.	27

Universe Life Insurance Co. v. State of Texas	86
Upjohn Co., The v. Sharp, et al.	27
Vallado, Jan Clopton, Independent Executor of Estate of Marion Wallace Clopton, Jr. v. Sharp, et al.	99
Wal-Mart Stores, Inc. v. Sharp, et al.	71
Waller Hotel Group, Inc. v. Sharp, et al.	71
Warranty Underwriters Insurance Co. v. Rylander, et al.	87
Weight Watchers Food Co. v. Sharp, et al.	27
Weight Watchers Gourmet Food Co. v. Rylander, et al.	28
West Texas Gas, Inc. v. Sharp, et al.	112
West Texas Pizza, Limited Partnership v. Sharp, et al.	72
Westar Hotels, Inc. v. Sharp, et al.	72
Westcott Communications, Inc., Law Enforcement Television Network, Inc., Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al.	29
Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al.	29
Whitesboro ISD, et al. v. Texas Comptroller of Public Accounts	112
Wiking Demolition Corp. v. the State of Texas, the Cities of San Antonio and Houston, Texas, the Transit Authority of San Antonio, Texas, John Cornyn, and Carole Keeton Rylander	72
Xerox Credit Corp. v. Rylander, et al.	29
Young's Beer Barn, Inc. v. Sharp	73

Franchise Tax

Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller Cause #98-08575

Franchise Tax; Refund Filed: 08/05/98	Asst. AAG Assigned:	Christopher Jackson
Period: 1993-1996 Amount: \$77,428	Plaintiff's Counsel:	Philip P. Sudan, Jr. Mark F. Elvig Ryan & Sudan Houston

Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: On hold pending outcome of *Shaklee* and *May Department Stores*.

AirBorn, Inc. v. Rylander, et al. Cause #99-08165

Franchise Tax; Refund Filed: 07/15/99	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1995 Amount: \$109,612.26	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether the Comptroller incorrectly calculated apportioned gross receipts by applying the throwback rule to receipts from states where Plaintiff was subject to tax. Whether application of the rule violates the commerce clause. Whether Plaintiff's right to do business was unconstitutionally taken by retroactively shortening its privilege period in the 1991 amendments to the franchise tax.

Status: Answer filed. See *Comptroller v. Fisher Controls* and *General Dynamics v. Sharp*.

Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc., Restland Funeral Home; Singing Hills Funeral Homes, Inc., Laurel Land Funeral Home of Fort Worth, Inc., Blue Bonnet Hills Funeral Home, Inc., and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al. Cause #99-12183

Franchise Tax; Refund Filed: 10/18/99 Period: 1993-1996 Amount: \$407,212.91 \$107,861.97	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Michael Rubenstein Locke, Liddell & Sapp Houston
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Issue: Whether income earned on Plaintiff's trust accounts for prepaid funeral services gives rise to Texas gross receipts.

Status: Answer filed.

Bandag Licensing Corp. v. Sharp, et al. Cause #98-06931

Franchise Tax; Protest Filed: 06/29/98 Period: 1990-1993 Amount: \$274,831	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff has nexus with Texas for franchise tax purposes because it holds a certificate of authority.

Status: Judgment for plaintiff. Appeal in progress. Oral argument had on 02/02/00. Third Court of Appeals affirms in all respects. Petition for review filed.

Beef Products, Inc. v. Rylander, et al. Cause #99-01193

Franchise Tax; Protest Filed: 02/01/99 Period: 1992 and 1993 Amount: \$331,040.60	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether the Comptroller properly applied the throwback rule to apportion gross receipts under the pre-amended statute. Whether the throwback rule violates the commerce clause. Whether the rule as applied is unconstitutionally retroactive and violates due process.

Status: Answer filed. See *Fisher Controls International, Inc. v. Sharp, et al.*

Dana Corp. v. Sharp, et al. Cause #96-03598

Franchise Tax; Protest Filed: 3/28/96	Asst. AAG Assigned:	Jim Cloudt
Period: 1988-1991 Amount: \$804,971	Plaintiff's Counsel:	David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas

Issue: Whether certain reserve accounts, including post-retirement benefits, are debt for franchise tax purposes. Whether Tax Code §171.109 (j)(1) is preempted by ERISA.

Status: Answer filed.

Delco Electronics Corp. v. Sharp, et al. Cause #97-12045

Franchise Tax; Refund Filed: 10/22/97	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1995 Amount: \$536,478	Plaintiff's Counsel:	L.G. "Skip" Smith Clark, Thomas & Winters Austin

Issue: Whether interest, rental and royalty income earned by Plaintiff should not be included in income because it was derived from discrete business enterprises that served an investment, rather than an operational function, and the activities producing the income were not part of the unitary business conducted by Plaintiff in Texas. Whether amounts due under fixed term operating leases were debt for franchise tax purposes.

Status: Inactive.

El Paso Electric Co. v. Sharp, et al. Cause #96-07178

Franchise Tax; Refund Filed: 06/09/96	Asst. AAG Assigned:	Jim Cloudt
Period: 1988-1989 Amount: \$36,289	Plaintiff's Counsel:	David H. Gilliland Clark, Thomas & Winters Austin

Issue: Whether unfunded pension liability is a debt that should be deducted from taxable surplus.

Status: All other issues settled 12/04/98. Discovery in progress.

Fisher Controls International, Inc. v. Sharp, et al. Cause #98-08893

Franchise Tax; Protest Filed: 08/11/98	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1993 Amount: \$1,209,209	Plaintiff's Counsel:	Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin

Issue: Whether the phrase "is not subject to taxation" means the same thing in the earned surplus throwback statute as it does in the taxable capital throwback statute; whether the "throw-back" statute is constitutional; whether the Comptroller retroactively applied an amendment .

Status: Non-jury trial held 12/13/99. Judgment for Plaintiff 12/21/99 on the statutory construction issue. Constitutional issue was not reached. Notice of Appeal filed 03/20/00. Appellants' brief filed.

General Motors Corp. v. Sharp, et al. Cause #97-12350

Franchise Tax; Refund Filed: 10/31/97	Asst. AAG Assigned:	Christine Monzingo
Period: 1991-1994 Amount: \$18,788,858	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

Issue: Whether post-retirement benefits, if included in surplus by the Comptroller, violate the preemption provision of ERISA? Operating lease obligations--Whether amounts due under fixed term leases are excludable from surplus as debt.

Status: Plaintiff challenges the decision in *Sharp v. Caterpillar*, 932 S.W. 2d 230 (Tex. App. - Austin 1996, writ denied). Summary judgment granted for Comptroller 03/23/00. Appellants' brief due 07/28/00.

Gulf Publishing Co. v. Sharp, et al. Cause #98-04208

Franchise Tax; Refund Filed: 04/22/98 Period: 1992-1995 Amount: \$218,713	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Ray Bonilla Ray Wood Fine & Bonilla Austin
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Issue: Whether all of Gulf Publishing Company's magazine advertising revenue should be allocated to Texas receipts or should be allocated according to location of subscriber.

Status: Discovery in progress.

H.J. Heinz Co., Inc. v. Sharp, et al. Cause #98-10929

Franchise Tax; Protest Filed: 09/28/98 Period: 1992-1995 Amount: \$534,056	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed. See *Upjohn v. Comptroller and Nabisco*, 992 S.W.2d 678 (Tex. App.- Austin 1999, petition den.).

H.J. Heinz Co., Inc. v. Sharp, et al. Cause #98-12746

Franchise Tax; Protest Filed: 11/12/98 Period: 1992-1995 Amount: \$29,244	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§ 151.314(a), 171.104, and 171.103(1).

Status: Answer filed. See *Upjohn v. Comptroller* and *Nabisco v. Comptroller*.

H.J. Heinz Co. v. Rylander, et al. Cause #99-05828

Franchise Tax; Refund Filed: 05/19/99 Period: 1994 & 1995 Amount: \$384,530 & \$381,167	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez L.G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether gross receipts for food shipped from out-of-state to Texas storage and distribution centers should be included in the franchise tax formula. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Nabisco* and *Upjohn*.

Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al. Cause #97-03795

Franchise Tax; Protest and Declaratory Judgment Filed: 03/28/97 Period: 1987-1990 1989-1991 1988-1991 Amount: \$243,469 (total of all)	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jess M. Irwin, III Steven D. Moore Jackson & Walker Austin
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Issue: Whether intercompany payable account obligations should have been excluded from debt for purposes of calculating franchise tax. Attorneys fees.

Status: Discovery in progress.

House of Lloyd, Inc. v. Sharp, et al. Cause #95-06985

Franchise Tax; Refund Filed: 06/05/95 Period: 1989-1991 Amount: \$19,825	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Fred O. Marcus Horwood, Marcus & Braun Chicago David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether the Texas franchise tax is a tax imposed on or measured by net income for purposes of Public Law 86-272; if so, Plaintiff contends that it is not subject to the Texas franchise tax. Whether Plaintiff is doing business in Texas. Whether post-retirement benefits should be included in taxable surplus.

Status: Hearing on cross-motions for summary judgment postponed.

House of Lloyd, Inc. v. Sharp, et al. Cause #95-06986

Franchise Tax; Refund
Filed: 06/05/95
Period: 1992
Amount: \$106,136

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Fred O. Marcus
Horwood, Marcus &
Braun
Chicago

David E. Cowling
Jones, Day, Reavis &
Pogue
Austin

Issue: Whether the Texas franchise tax is a tax imposed on or measured by net income for purposes of Public Law 86-272; if so, Plaintiff contends that it is not subject to the Texas franchise tax. Whether Plaintiff is doing business in Texas. Whether post-retirement benefits should be included in taxable surplus.

Status: Hearing on cross-motions for summary judgment postponed.

Houston Industries, Inc. v. Sharp, et al. Cause #98-11344

Franchise Tax; Refund
Filed: 10/08/98
Period: 01/01/93-10/08/93
Amount: \$1,676,116

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Gerard A. Desrochers
Baker & Botts
Houston

Issue: Plaintiff challenges franchise "additional" tax imposed on a company that merged into Plaintiff and ceased to exist, on the grounds that the tax discriminates under state and federal equal taxation provisions.

Status: Inactive. See *Rylander v. 3 Beall Brothers 3, Inc.*, 2 S.W.3d 562 (Tex. App. - Austin 1999, petition den.)

Jiffy Lube International, Inc. v. Rylander, et al. Cause #99-12043

Franchise Tax; Refund Filed: 10/13/99 Period: 1992 Amount: \$34,768.59	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Gerard A. Desrochers Baker & Botts Houston
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Issue: Whether the Comptroller's assessment of additional franchise tax is untimely and void. Alternatively, whether Plaintiff's post retirement benefits should be considered wages under Section 171.109(j)(1) whether disparate treatment of contingent assets such as Plaintiff's net negative deferred income tax liability is unconstitutional, and whether a portion of the assessed interest should have been waived.

Status: Discovery in progress.

Kerrville Telephone Co., The v. Rylander, et al. Cause #GN00058

Franchise Tax; Protest & Refund Filed: 01/05/00 Period: 1992-1995 Amount: \$48,437.57	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne C. Morris Davis McGinnis, Lochridge & Kilgore Austin
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Issue: Whether receipts from access and billing charges to inter-exchange carriers and from subscriber line charges are Texas gross receipts. Whether the Comptroller failed to follow Rule 3.357 (e)(39), thereby denying due process to Plaintiff.

Status: Answer filed.

Kraft Foods, Inc. v. Rylander, et al. Cause #99-05522

Franchise Tax; Protest & Declaratory Judgment Filed: 05/12/99 Period: 1994 Amount: \$1,257,944.51	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether imposition of the additional tax after Plaintiff's merger violates the commerce clause, due process, equal protection or equal taxation. Whether Plaintiff may recover attorneys' fees.

Status: Answer filed. See *Rylander v. 3 Beall Brothers 3, Inc.*

LTV Steel Co., Inc. v. Sharp, et al. Cause #97-02822

Franchise Tax; Refund Filed: 03/07/97	Asst. AAG Assigned:	Christine Monzingo
Period: 1988-1991 Amount: \$337,869	Plaintiff's Counsel:	Michael V. Powell Kathleen Galloway Locke Purnell Rain Harrell Dallas

Issue: Whether a liability payable to the Pension Benefit Guaranty Corp. pursuant to ERISA is a debt for franchise tax purposes. Whether §171.109 (a) of the Tax Code is preempted by ERISA.

Status: Discovery in progress.

Lyondell Chemical Worldwide, Inc., formerly known as Arco Chemical Co. v. Rylander, et al. Cause #99-13283

Franchise Tax; Protest & Declaratory Judgment Filed: 11/12/99	Asst. AAG Assigned:	Christine Monzingo
Period: 1999 Amount: \$34,100,000	Plaintiff's Counsel:	Kim E. Brightwell Garry M. Miles Wade Anderson Vinson & Elkins Austin

Issue: Whether Rule 3.557 is invalid because it required Plaintiff to apportion its gross receipts as a sale of all of its assets to a new parent corporation when the new parent purchased Plaintiff's stock in a transaction under I.R.C. §338. Whether requiring Plaintiff to treat the transaction as an actual sale violates equal protection, equal taxation and due process.

Status: Answer filed.

May Department Stores Co., The v. Sharp, et al. Cause #98-06899

Franchise Tax; Refund Filed: 06/26/98	Asst. AAG Assigned:	Christine Monzingo
Period: 1991-1995 Amount: \$207,375	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: Inactive.

MCorp v. Sharp, et al. Cause #93-11603

Franchise Tax; Refund Filed: 09/28/93	Asst. AAG Assigned:	Christopher Jackson
Period: 1985 & 1986 Amount: \$489,667	Plaintiff's Counsel:	Cynthia M. Ohlenforst Jill B. Scott Hughes & Luce Dallas & Austin

Issue: Whether Plaintiff may deduct from its surplus the pre-acquisition earnings of certain acquired subsidiaries.

Status: Answer filed. Inactive. Plaintiff in bankruptcy.

Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al. Cause #95-15698

Franchise Tax; Protest Filed: 12/21/95	Asst. AAG Assigned:	Christine Monzingo
Period: 1986-1987 Amount: \$355,619	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether acquisition debt incurred by an acquiring corporation must be pushed down to the acquired corporation.

Status: Inactive.

Nevada Asset Management Corp. v. Rylander, et al. Cause #99-13471

Franchise Tax; Protest
Filed: 11/18/99
Period: 1996 - 1998
Amount: \$382,215.81

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

Glen A. Rosenbaum
James D. Penny
Wade Anderson
Tobey D. Blanton
Nancy L. Prosser
Vinson & Elkins
Houston & Austin

Issue: Whether Rule 3.549, applying a 15.78% apportionment factor to receipts from GNMA securities, is invalid under the Commerce Clause. Whether the rule violates equal protection, equal taxation and due process. Whether the Comptroller lacks statutory authority to impose the 15.78% factor. Alternatively, whether calculation of the tax is correct even if the rule validly applies.

Status: Answer filed. Summary judgment hearing set 09/19/00.

North Star Steel Texas, Inc. v. Sharp, et al. Cause #98-12019

Franchise Tax; Refund
Filed: 10/23/98
Period: 1992-1995
Amount: \$725,830

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

James F. Martens
Gilbert J. Bernal, Jr.
Stahl, Martens & Bernal
Austin

Issue: Whether Comptroller properly interpreted throwback rule for purposes of gross receipts apportionment factor.

Status: Discovery in progress.

Ore-Ida Foods, Inc. v. Sharp, et al. Cause #98-10928

Franchise Tax; Protest
Filed: 09/28/98
Period: 1992-1995
Amount: \$744,167

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L. G. "Skip" Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed. See *Upjohn v. Comptroller and Nabisco, Inc. & Planters/Lifesavers v. Comptroller*.

Ore-Ida Foods, Inc. v. Sharp, et al. Cause #98-12747

Franchise Tax; Protest
Filed: 11/12/98
Period: 1992-1994
Amount: \$14,050

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

L. G. "Skip" Smith
Clark, Thomas & Winters
Austin

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§ 151.314(a), 171.104, and 171.103(1).

Status: Answer filed. See *Upjohn v. Comptroller and Nabisco, Inc. & Planters/Lifesavers v. Comptroller*.

Ore-Ida Foods, Inc. v. Rylander, et al. Cause #99-05827

Franchise Tax; Refund Filed: 05/19/99	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 1994 & 1995 Amount: \$324,051 & \$90,910	Plaintiff's Counsel:	L.G. "Skip" Smith Clark, Thomas & Winters Austin
		Marilyn A. Wethekam Horwood Marcus & Berk Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*.

Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. Cause #96-03719

Franchise Tax; Protest Filed: 04/01/96	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1993 (3 Beall) 1992-1995 (Palais) Amount: \$700,974	Plaintiff's Counsel:	Mark W. Eidman Scott, Douglass & McConnico Austin

Issue: Whether the 1991 Franchise Tax Statute is unconstitutionally retroactive as applied to the 1992 report year of a fiscal year taxpayer.

Status: Cross-motions for summary judgment set for hearing on 11/16/00.

Peter Scalamandre & Sons, Inc. et al. v. Sharp, et al. Cause #95-01183

Franchise Tax; Protest
Filed: 01/31/95
Period: 06/92-12/94
Amount: \$2,465

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

Susan E. Potts
Brown & Potts
Dallas

Mark Gibbons
Olson, Gibbons, Sartain,
Nicoud, Birne & Sussman
Dallas

Issue: Whether Plaintiff is exempt from franchise tax as a "corporation engaged solely in the business of recycling sludge" per §171.085 of the Tax Code.

Status: Inactive.

Pfizer, Inc. v. Rylander, et al. Cause #GN001781

Franchise Tax; Protest
Filed: 06/20/00
Period: 1994-1996
Amount: \$309,078

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman
Scott, Douglass &
McConnico
Austin

Issue: Whether franchise tax is due on income from sale of stock in former non-unitary subsidiary corporation. Whether receipts from sales of drugs shipped from outside Texas should be included in Texas' gross receipts. Whether the throwback rule applies to Michigan sales. Whether tax on income earned before the effective date of the earned surplus component is unconstitutional. Whether all penalty and interest should be waived.

Status: Answer filed.

Phillips Petroleum Co. v. Sharp, et al. Cause #92-11027

Franchise Tax; Refund
Filed: 07/30/92
Period: 1988 - 1989
Amount: \$1,161,407

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

L. G. "Skip" Smith
Clark, Thomas & Winters
Austin

Issue: Write-down v. write-off of investment in subsidiaries and exclusion of loss from surplus.

Status: Settlement pending.

Phillips Petroleum Co. v. Sharp, et al. Cause #98-10495

Franchise Tax; Refund Filed: 09/17/98 Period: 1991-1992 Amount: \$324,568	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Write-down v. write-off of investment in subsidiaries and exclusion of loss from surplus.

Status: Agreed judgment.

Portion Pac, Inc. v. Sharp, et al. Cause #98-10930

Franchise Tax; Protest Filed: 09/28/98 Period: 1992-1995 Amount: \$192,869	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed. Should be resolved as for *Upjohn*. See *Upjohn v. Comptroller* and *Nabisco, Inc. & Planters/Lifesavers v. Comptroller*.

Portion Pac, Inc. v. Sharp, et al. Cause #98-12748

Franchise Tax; Protest Filed: 11/12/98 Period: 1992-1995 Amount: \$9,192	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed. See *Upjohn v. Comptroller* and *Nabisco, Inc. & Planters/Lifesavers v. Comptroller*.

Portion Pac, Inc. v. Rylander, et al. Cause #99-05826

Franchise Tax; Refund Filed: 05/19/99 Period: 1994 & 1995 Amount: \$1,625 & \$13,750	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed.

**Reliant Energy Gas Transmission Co, formerly known as Noram Gas
Transmission Co. v. Rylander, et al.** Cause #99-08127

Franchise Tax; Refund Filed: 07/15/99 Period: 1996 Amount: \$163,758.10	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson L.G. "Skip" Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether a business loss carry-forward of a merged corporation may be used to reduce the surviving corporation's franchise tax.

Status: Answer filed.

Richland Development Corp. v. Rylander, et al. Cause #99-12042

Franchise Tax; Refund Filed: 10/13/99 Period: 1992 Amount: \$236,218.26	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Gerard A. Desrochers Baker & Botts Houston
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Issue: Whether the Comptroller's assessment of additional franchise tax is untimely and void. Alternatively, whether Plaintiff's post retirement benefits should be considered wages under Section 171.109 (j)(1), whether disparate treatment of contingent assets such as Plaintiff's net negative deferred income tax liability is unconstitutional, and whether a portion of the assessed interest should have been waived.

Status: Answer filed.

Richland Development Corp. v. Comptroller, et al. Cause #96-09117

Franchise Tax; Protest Declaratory Judgment Filed: 08/01/96 Period: 1989-1991 Amount: \$1,031,003	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Gerard A. Desrochers Baker & Botts Houston
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Issue: Whether reimbursements to a subsidiary for services procured by the sub for the parent from third parties should be included in gross receipts. The reimbursements include wages, rent, and supplies, in addition to actual payments to third parties. Also, whether post-retirement benefits should be included in surplus.

Status: Inactive.

Saudi Refining, Inc. v. Rylander, et al. Cause #99-04227

Franchise Tax; Refund & Protest	Asst. AAG Assigned:	Christopher Jackson
Filed: 04/09/99	Plaintiff's Counsel:	Ira A. Lipstet
Period: 1994-1995		Therese L. Surprenant
Amount: \$502,834.84 & \$190,000.58		Jenkins & Gilchrist Austin

Issue: Whether Plaintiff may take franchise tax credit as a joint venture partner for equipment sales taxes paid by the joint venture.

Status: Answer filed.

Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al. Cause #99-10444

Franchise Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 09/08/99	Plaintiff's Counsel:	Gerard A. Desrochers
Period: 01/01/93-12/31/93		Baker & Botts
Amount: \$345,393		Houston

Issue: Whether the additional tax was owed by a corporation that merged out of existence. Whether imposition of the additional tax on the non-surviving corporation of a merger violated due process, equal protection or the commerce clause. Alternatively, whether the income from the sale of intangibles was properly attributed to Texas. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Sergeant Enterprises, Inc. v. Sharp, et al. Cause #96-15475

Franchise Tax; Refund Filed: 12/31/96 Period: 1995 Amount: \$42,968	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether a business loss carryforward can be transferred to another corporation by way of merger and whether Rule 3.555 prohibiting such a transfer is applicable to audit periods before the effective date of the rule.

Status: Discovery in progress.

Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al. Cause #96-06767

Franchise Tax; Refund Filed: 6/10/96 Period: 1992-1993 Amount: \$10,261	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David E. Cowling Charlotte Noel Jones, Day, Reavis & Pogue Dallas
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Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: Hearing on cross-motions for summary judgment postponed.

Southern Union Co. v. Sharp, et al. Cause #95-00677

Franchise Tax; Refund Filed: 01/18/95 Period: 1988-1990 Amount: \$573,449	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas
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Issue: Whether a company may retroactively change from 30 to 20 year service lives and from 15% to zero salvage value in computing depreciation.

Status: ADR to be scheduled in August, 2000.

Southern Union Co. v. Sharp, et al. Cause #97-01622

Franchise Tax; Protest Filed: 02/11/97 Period: 1991-1993 Amount: \$217,183	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas
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Issue: Whether Plaintiff should be allowed to depreciate its "distribution plant assets" over a less than thirty-year life with zero salvage value. Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated?

Status: ADR to be scheduled in August, 2000.

Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp Cause #96-11071

Franchise Tax; Protest Filed: 09/13/96 Period: 1990-1993 Amount: \$779,952 (Southern Pacific) \$171,733 (St. Louis)	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether push-down accounting may be used.

Status: Discovery in progress.

Southwestern Bell Telephone Co. v. Sharp, et al. Cause #98-06783

Franchise Tax; Refund Filed: 06/24/98 Period: 1991-1994 Amount: \$1,300,000	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether officer and director compensation should be added back to earned surplus before calculating franchise tax. Whether the franchise tax statute requires that depreciation be calculated based on the IRS Code of 1986 in effect for calendar year 1990. OPEB deductibility.

Status: Inactive.

Southwestern Gas Pipeline, Inc., Mitchell Energy Corp. & and The Woodlands Commercial Properties Co., L.P. v. Rylander, et al. Cause #99-14209

Franchise Tax; Refund Filed: 12/06/99 Period: 1993-1998 Amount: \$13,150,923.27	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether imposition of the additional tax after mergers of the Plaintiff corporations and other corporations violates constitutional guarantees of equal and uniform taxation or equal protection and due process under the Texas and United States Constitutions.

Status: See *3 Beall Brothers 3, Inc. v. Sharp, et al.*

Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. Cause #98-01348

Franchise Tax; Refund Filed: 02/06/98 Period: 1993 Amount: \$250,488	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the 1993 franchise tax on earned surplus is a retroactive tax as applied to fiscal year taxpayers.

Status: Bankruptcy stay in effect. See *General Dynamics v. Sharp* and *3 Beall Brothers 3, Inc. v. Comptroller, et al.*

SRI Receivables, Inc. v. Rylander, et al. Cause #99-09553

Franchise Tax; Refund Filed: 08/17/99	Asst. AAG Assigned:	Christine Monzingo
Period: 02/01/93-11/26/94 Amount: \$241,583.22	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether assessment of the additional tax under Tax Code §171.0011 violates the Commerce Clause, equal and uniform taxation, or equal protection under the federal and state constitutions when Plaintiff withdrew from the State on 11/26/94 and was taxed on its earned income from 02/01/93 through 11/26/94.

Status: Cross-motions for summary judgment set for hearing on 11/16/00. See *3 Beall Brothers 3, Inc. v. Sharp, et al.*

Star-Kist Foods, Inc. v. Sharp, et al. Cause #98-10931

Franchise Tax; Protest Filed: 09/28/98	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1995 Amount: \$311,235	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed. See *Upjohn v. Comptroller* and *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

Star-Kist Foods, Inc. v. Sharp, et al. Cause #98-12749

Franchise Tax; Protest Filed: 11/12/98 Period: 1992-1995 Amount: \$18,789	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed. See *Upjohn v. Comptroller and Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

Star-Kist Foods, Inc. v. Rylander, et al. Cause #99-05825

Franchise Tax; Refund Filed: 05/19/99 Period: 1994 Amount: \$689	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez L.G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
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Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*.

Tesoro Petroleum Corp. v. Sharp, et al. Cause #95-05170-A

Franchise Tax; Refund Filed: 04/27/95	Asst. AAG Assigned:	Christopher Jackson
Period: 1982-1986, & 1987	Plaintiff's Counsel:	Mark W. Eidman Scott, Douglass & McConnico Austin
Amount: \$805,943		

Issue: Whether post-retirement medical benefits should be excluded from surplus for franchise tax purposes. Whether the statute of limitations has run on the 1982-1986 reports.

Status: Post-retirement issue severed and docketed as Cause No. 95-05170-A. Waiting disposition of *General Motors*. Remaining issues settled.

Texaco Refining & Marketing (East), Inc. v. Rylander, et al. Cause #99-14555

Franchise Tax; Refund Filed: 12/15/99	Asst. AAG Assigned:	Christopher Jackson
Period: 1994	Plaintiff's Counsel:	David H. Gilliland L.G. (Skip) Smith Clark, Thomas & Winters Austin
Amount: \$1,028,616.15		

Issue: Whether Plaintiff is entitled to a franchise tax credit for sales tax on manufacturing equipment purchased by a joint venture that it co-owned.

Status: Answer filed.

Texas Aromatics, Inc. v. Sharp, et al. Cause #94-07680

Franchise Tax; Protest and Declaratory Judgment Filed: 06/23/94	Asst. AAG Assigned:	Christopher Jackson
Period: 02/01/90-12/31/91	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
Amount: \$146,092		

Issue: Plaintiff challenges franchise "additional" tax imposed after Plaintiff merged out of existence, on the grounds that the tax discriminates without a rational basis between fiscal and calendar-year taxpayers, under state and federal equal taxation provisions, and violated the federal commerce clause nexus and fair relation tests.

Status: Preparing Motion for Summary Judgment.

Union Pacific Resources Co. v. Sharp, et al. Cause #95-02334

Franchise Tax; Refund Filed: 02/24/95 Period: 1988-1991 Amount: \$1,432,851	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether various liabilities should be deducted from surplus as debt, including post-retirement benefits, long-term lease obligations, long-term contractual commitments, and liabilities from ongoing litigation. Also, whether the Tax Code is preempted by ERISA.

Status: Answer filed. Pending outcome of *General Motors*.

United Beverage Co. v. Rylander, et al. Cause #99-02370

Franchise Tax; Protest Filed: 03/01/99 Period: 01/01/98-12/31/98 Amount: \$1,077,434	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Glen A. Rosenbaum James D. Penny Tobey D. Blanton Wade Anderson Vinson & Elkins Houston
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Issue: Whether the additional tax under 171.0011 is an unconstitutional violation of the commerce clause, due process, due course of law, equal protection, equal taxation and is an unconstitutional retroactive income tax.

Status: Answer filed. See *3 Beall Brothers 3, Inc. v. Sharp, et al.*

Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al. Cause #98-01956

Franchise Tax; Protest Filed: 02/23/98	Asst. AAG Assigned:	Christine Monzingo
Period: 01/01/98-07/31/94 Amount: \$613,229	Plaintiff's Counsel:	Ira Lipstet Mary E. Haught Jenkins & Gilchrist Austin

Issue: Whether the "Additional Tax" in §171.0011 is illegal income tax because franchise tax can be imposed only on the privilege of doing business in Texas. Whether the Additional Tax violates other constitutional provisions. Whether a gain on the sale of one Plaintiff's stock from it's parent to another company was improperly included in taxable earned surplus for the purpose of calculating the Additional Tax. Whether Rule 3.557(e)(10) is beyond the scope of §171.110 and therefore exceeds the Comptroller's authority. Whether Rule 3.557 is unconstitutional.

Status: Inactive. See *3 Beall Brothers 3, Inc. v. Sharp, et al.*

Upjohn Co., The v. Sharp, et al. Cause #98-03809

Franchise Tax; Protest Filed: 04/10/98	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 1991-1994 Amount: \$1,391,740	Plaintiff's Counsel:	Ira A. Lipstet Jenkins & Gilchrist Austin

Issue: Whether the exclusion from Texas receipts of receipts from the sale of health care supplies found in §171.104 is restricted to the calculation of taxable capital or whether it extends to the calculation of tax on earned surplus.

Status: Discovery in progress. Hearing on Cross Motions for Summary Judgment held 11/23/99. Judgment for Defendants on 12/29/99. Appeal in progress.

Weight Watchers Food Co. v. Sharp, et al. Cause #98-10927

Franchise Tax; Protest Filed: 09/28/98	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1995 Amount: \$122,677	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin
		Marilyn A. Wethekam Horwood Marcus & Berk Chicago

Issue: Whether Plaintiffs are entitled to a deduction from earned surplus gross receipts of receipts from sales of food shipped from outside Texas to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: Answer filed. See *Upjohn v. Comptroller and Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

Weight Watchers Gourmet Food Co. v. Rylander, et al. Cause #99-05829

Franchise Tax; Refund Filed: 05/19/99	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 1994 Amount: \$62,417	Plaintiff's Counsel:	L.G. "Skip" Smith Clark, Thomas & Winters Austin
		Marilyn A. Wethekam Horwood Marcus & Berk Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether gross receipts for food shipped from out-of-state to Texas storage and distribution centers should be included in the franchise tax formula. Whether inclusion of receipts from food products in tax formula violates due process, equal protection or equal taxation or the Texas Constitution's prohibition of tax on farm products.

Status: Answer filed. Should be resolved as for *Upjohn*.

**Westcott Communications, Inc., Law Enforcement Television Network, Inc.,
Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al.** Cause #98-14049

Franchise Tax; Protest Filed: 12/17/98	Asst. AAG Assigned:	Blake Hawthorne
Period: 01/01/92-12/31/94 Amount: \$1,182,242.67	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Steve Wingard Scott, Douglass & McConnico Austin

Issue: Whether apportionment of satellite service gross receipts to Texas violates the commerce, due process or equal protection clauses of the Constitution or the Tax Code and Comptroller rules apportioning receipts to the state where a service is performed. Alternatively, whether interest should be waived.

Status: Discovery in progress.

Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al.
Cause #98-00942

Franchise Tax; Protest Filed: 01/23/98	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 1990-1993 Amount: \$38,482 \$473,678	Plaintiff's Counsel:	Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin

Issue: Whether intercompany payable account obligations should have been excluded from debt for purposes of calculating franchise tax.

Status: Discovery in progress.

Xerox Credit Corp. v. Rylander, et al. Cause #99-06232

Franchise Tax; Protest Filed: 05/28/99	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1999 Amount: \$2,290,821.39	Plaintiff's Counsel:	James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin

Issue: Whether inter-company receivables were improperly allocated to Texas contrary to the “location of payor” rule. Whether the receivables should have been treated as a loan. Whether non-Texas capital gains were improperly offset by capital losses inconsistently with apportionment provisions of the franchise tax. Whether taxpayer had constitutional nexus with Texas. Whether taxpayer was denied equal protection. Whether interest and penalty should be waived. Taxpayer also seeks declaratory judgment and attorneys’ fees.

Status: Answer filed.

Sales Tax

Abbassinezhad, Akbar v. Rylander, et al. Cause #99-03696

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 03/29/99	Plaintiff's Counsel:	Max J. Luther, III
Period: 01/01/93-09/30/96		Max J. Luther, III, P.C. & Associates
Amount: \$50,061.22		Corpus Christi

Issue:

Status: Answer filed.

Alexopolous, Dimitrios P. v. Rylander, et al. Cause #99-08096

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 07/14/99	Plaintiff's Counsel:	Stephen W. Sather
Period: 07/01/88-03/31/95		Naman, Howell, Smith & Lee
Amount: \$134,455.65		Austin

Issue: Issue is whether the Comptroller incorrectly calculated Plaintiff's gross taxable sales by using too low a factor for Plaintiff's personal consumption, improperly comparing Plaintiff's operations to other fast-food outlets, failing to consider that higher subsequent sales were due to population increases, determining that Plaintiff kept inadequate records when Plaintiff had lost them in a fire, and failing to consider the results of an IRS audit. Whether penalty and interest should be waived.

Status: Discovery in progress.

Alpine Industries, Inc. v. Sharp, et al. Cause #98-12998

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 11/20/98	Plaintiff's Counsel:	Stephen D. Good
Period: 1994-1998		Gregory A. Harwell
Amount: \$31,128.62		Gardere & Wynne Dallas

Issue: Whether Alpine may be regarded as a seller for direct sales made in Texas by independent dealers and whether holding Alpine liable for sales tax violates the commerce clause, due process or equal protection.

Status: Discovery in progress.

American Oil Change Corp. v. Rylander, et al. Cause #99-06374

Sales Tax; Protest Filed: 06/03/99	Asst. AAG Assigned:	Christopher Jackson
Period: 1992-1993 Amount: \$467,142.31	Plaintiff's Counsel:	Gerard A. Desrochers Baker & Botts Houston

Issue: Whether materials are provided by Plaintiff to its customers in the course of its motor vehicle repairs under lump sum contracts, requiring Plaintiff to pay tax on the cost of materials. If Plaintiff's contracts are lump sum, whether Plaintiff is entitled to credit for tax collected from its customers and remitted to the Comptroller. Whether software services are taxable when the seller of the services contributes rather than sells the software itself. Whether software services are exempt under §151.346 as sales between affiliated entities of previously exempt services. Whether interest should have been waived. Whether any of the above issues result in a denial of equal protection, equal and uniform taxation or due process under the federal and state constitutions.

Status: Answer filed.

American Standard, Inc. v. Sharp, et al. Cause #92-14483

Sales Tax; Refund Filed: 10/13/92	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 01/01/90-12/31/90 Amount: \$17,486	Plaintiff's Counsel:	Judy M. Cunningham Attorney at Law Austin

Issue: Whether conveyor belts are exempt machinery and equipment; unequal taxation; long-standing policy.

Status: Answer filed. Settlement discussions in progress.

American Telephone & Telegraph Co. v. Sharp, et al. Cause #98-06401

Sales Tax; Protest Filed: 06/15/98	Asst. AAG Assigned:	Jim Cloudt
Period: 01/01/84-12/31/89 Amount: \$8,024,506	Plaintiff's Counsel:	Jasper G. Taylor, III Fulbright & Jaworski Houston

Issue: Whether the Comptroller's Office met its burden of proof with respect to the items assessed tax in Exams 9, 10, 12, 13, and 17. Whether Plaintiff's private line services are taxable telecommunications services and, if so, whether they were not subject to tax before 04/01/88.

Status: Answer filed.

Aramis Services, Inc. v. Sharp, et al. Cause #98-03527

Sales Tax; Protest Filed: 04/03/98	Asst. AAG Assigned:	Christopher Jackson
Period: 04/01/90-03/31/94 Amount: \$291,196	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement discussions in progress.

Aramis Services, Inc. v. Rylander, et al. Cause #0000384

Sales Tax; Protest Filed: 02/11/00	Asst. AAG Assigned:	Christopher Jackson
Period: 04/01/94-12/31/97 Amount: \$281,676.36	Plaintiff's Counsel:	David E. Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived.

Status: Settlement discussions in progress.

Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al. Cause #95-02389

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 2/27/95	Plaintiff's Counsel:	Alvin L. Thomas, II
Period: 04/01/88-06/30/92		Littler, Mendleson & Fastiff
Amount: \$63,588		Houston

Issue: Whether sales tax is due on maid services provided by maids placed by Plaintiff's service but acting as independent contractors. Also, whether Plaintiff relied, to her detriment, on advice from the Comptroller's office.

Status: Inactive.

Bell Bottom Foundation Co. v. Rylander, et al. Cause #99-01092

Sales Tax; Protest	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 01/29/99	Plaintiff's Counsel:	Timothy M. Trickey
Period: 01/01/91-12/31/94		The Trickey Law Firm
Amount: \$81,571.73		Austin

Issue: Whether taxpayer's sub-contract was a separated contract since the general contractor's construction contract was separated.

Status: Answer filed.

BHC Co. v. Sharp, et al. Cause #95-13037

Sales Tax; Protest Filed: 10/13/95	Asst. AAG Assigned:	Blake Hawthorne
Period: 05/01/90-04/30/94 Amount: \$114,532	Plaintiff's Counsel:	Richard Flint Pearson & Price Corpus Christi

Issue: Plaintiff contends that it is providing a single, integrated service, the management and operation of a manufacturing facility, which service is not taxable. Plaintiff contests the Comptroller's assessment of tax on maintenance charges, which Plaintiff considers to be one component of an "integrated non-taxable service."

Status: Discovery in progress.

B.I. Moyle Associates, Inc. v. Rylander, et al. Cause #99-00907

Sales Tax; Protest Filed: 01/26/99	Asst. AAG Assigned:	Christopher Jackson
Period: 04/01/91-03/31/95 Amount: \$51,711.94	Plaintiff's Counsel:	G. Stewart Whitehead Winstead, Sechrest & Minick Austin

Issue: Whether taxpayer has substantial nexus with Texas to support imposition of sales and use taxes on its software licensed to Texas residents.

Status: Discovery in progress. Preparing Motion for Summary Judgment.

Big Tex Air Conditioning, Inc. v. Bullock, et al. Cause #486,321

Sales Tax; Protest Filed: 6/26/90	Asst. AAG Assigned:	Steve Rodriguez
Period: 04/01/85-07/31/88 Amount: \$181,397	Plaintiff's Counsel:	John W. Berkel Houston

Issue: Detrimental reliance and various allegations of unconstitutional enforcement; statute of limitations.

Status: Some discovery done. Inactive.

Brighton Builders, Inc. v. Sharp, et al. Cause #97-11830

Sales Tax; Protest Filed: 10/15/97	Asst. AAG Assigned:	Christopher Jackson
Period: 10/01/92-09/30/95 Amount: \$195,368	Plaintiff's Counsel:	Ray Langenberg Scott Douglass & McConnico Austin

Issue: Whether certain real property services, such as landscaping and construction site cleanup, are taxable.

Status: Discovery near completion.

Cafeteria Operators, L.P. v. Rylander, et al. Cause #99-14363

Sales Tax; Refund Filed: 12/09/99	Asst. AAG Assigned:	Blake Hawthorne
Period: 04/01/91-10/31/94 Amount: \$117,868.69	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether Plaintiff's use of gas and electricity is exempt as processing. Whether Plaintiff's food products are prepared or stored for immediate consumption, thus eliminating the exemption. Whether taxation of Plaintiff's purchases of gas and electricity violates equal protection and lacks a rational basis.

Status: Discovery in progress.

Central Power & Light Co. v. Sharp, et al. Cause #96-11455

Sales Tax; Refund Filed: 09/20/96	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 07/01/86-12/31/89 Amount: \$32,788	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

Issue: Whether utility pole replacement services are non-taxable maintenance or taxable repair labor.

Status: Discovery in progress.

Chevron Chemical Co. v. Rylander, et al. Cause #99-06650

Sales Tax; Refund Filed: 06/09/99	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 12/31/88-06/30/92 Amount: \$624,887.13	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin

Issue: Whether installation of Plaintiff's extruder was non-taxable new construction. Whether any taxable modification of real property was less than 5% of the total charge. Alternatively, whether demolition and construction management services were non-taxable unrelated services. Whether security services were non-taxable property management services. Whether services performed by Brown & Root and Industrial Technicians qualified as non-taxable employee services.

Status: Discovery in progress. Settled.

Church & Dwight Co., Inc. v. Rylander, et al. Cause #GN000525

Sales Tax; Refund Filed: 01/12/00	Asst. AAG Assigned:	Blake Hawthorne
Period: 10/01/90-12/31/93 Amount: \$64,868.50	Plaintiff's Counsel:	Robert C. Alden Phillip L. Sampson, Jr. Bracewell & Patterson Austin

Issue: Whether Plaintiff owes use tax on promotional materials shipped from out-of-state. Whether the Comptroller's imposition of use tax is invalid because Plaintiff made no use of the materials in Texas. Whether Rule 3.346(b)(3)(A) is invalid. Whether the tax violates the Commerce and Due Process Clauses of the United States Constitution.

Status: Answer filed.

Clinique Services, Inc. v. Sharp, et al. Cause #98-03533

Sales Tax; Protest Filed: 04/03/98	Asst. AAG Assigned:	Christopher Jackson
Period: 04/01/90-03/31/94 Amount: \$519,192	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement discussions in progress.

Clinique Services, Inc. v. Rylander, et al. Cause #GN000376

Sales Tax; Protest Filed: 02/11/00	Asst. AAG Assigned:	Christopher Jackson
Period: 04/01/94-03/31/98 Amount: \$650,361.82	Plaintiff's Counsel:	David E. Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived.

Status: Settlement discussions in progress.

Coastal Refining & Marketing, Inc. v. Sharp, et al. Cause #98-03540

Sales Tax; Protest Filed: 04/03/98	Asst. AAG Assigned:	Blake Hawthorne
Period: 01/01/89-06/30/89 07/01/89-12/31/91 Amount: \$1,635,965	Plaintiff's Counsel:	Jasper G. Taylor, III Fulbright & Jaworski Houston
		Joe W. Cox Coastal States Management Corp. Houston

Issue: Whether certain work performed by Plaintiff is new construction under a lump sum contract and thus not taxable.

Status: Discovery in progress.

Commercial Janitorial Services, Inc. v. Sharp, et al. Cause #95-03259

Sales Tax; Declaratory Judgment and Injunction Filed: 3/17/95 Period: 10/89 - 06/93 Amount: \$115,160	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Samuel Downing McDaniel Attorney at Law Austin Sam Passman Passman & Jones Dallas
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Issue: Whether fraud penalty should have been assessed. Whether the Comptroller should be enjoined from collecting the tax while this suit is pending.

Status: Discovery in progress.

Computer Systems of America, Inc. v. Sharp, et al. Cause #96-15311

Sales Tax; Protest Filed: 12/23/96 Period: 12/01/87-10/31/92 Amount: \$51,956	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark Hopkins Attorney at Law Austin, Texas
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Issue: Whether penalty and interest should have been waived by the Comptroller on the audit liability.

Status: Discovery in progress. Trial set for 05/01/00. Motion for Continuance to be filed.
Settled.

Denmon's H2 Safety Services, Inc. v. Sharp Cause #98-10165

Sales Tax; Refund Filed: 09/09/98	Asst. AAG Assigned:	Jim Cloudt
Period: 07/01/92-01/31/96 Amount: \$67,366	Plaintiff's Counsel:	Judy M. Cunningham Attorney at Law Austin

Issue: Whether tax is due on a charge for training employees and providing safety supervisors in hydrogen sulfide safety at well sites, where Plaintiff also rented equipment.

Status: Discovery in progress.

El Paso Silverton Construction Co., Inc. v. Sharp, et al. Cause #97-00547

Sales Tax; Refund Filed: 01/15/97	Asst. AAG Assigned:	Steve Rodriguez
Period: 01/01/92-06/30/93 Amount: \$6,762	Plaintiff's Counsel:	Judy M. Cunningham Attorney at Law Austin

Issue: Whether §151.311 of the Tax Code, as it existed during the audit period, discriminated against the federal government because it did not exempt purchases of contractors improving federal property while it did exempt purchases by contractors improving state property.

Status: Settlement pending.

Estee Lauder Services, Inc. v. Sharp, et al. Cause #98-03525

Sales Tax; Protest Filed: 04/03/98	Asst. AAG Assigned:	Christopher Jackson
Period: 01/01/89-09/30/92 Amount: \$472,225	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement discussions in progress.

Estee Lauder Services, Inc. v. Sharp, et al. Cause #98-03524

Sales Tax; Protest Filed: 04/03/98	Asst. AAG Assigned:	Christopher Jackson
Period: 10/01/98-03/31/96 Amount: \$748,773	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement discussions in progress.

Etan Industries, Inc. v. Sharp, et al. Cause #98-13227

Sales Tax; Protest Filed: 11/25/98	Asst. AAG Assigned:	Christopher Jackson
Period: 09/01/92-01/31/96 Amount: \$456,156.99	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin

Issue: Whether debt collection services purchased by Etan in connection with its debt collection services for its clients are exempt as a sale for resale of taxable services.

Status: Discovery completed. Preparing Motion for Summary Judgment. Summary Judgment set for 08/17/00.

F.C. Felhaber & Co., Inc. v. Sharp, et al. Cause #97-05061

Sales Tax; Declaratory Judgment Filed: 04/28/97	Asst. AAG Assigned:	Christopher Jackson
Period: Not stated Amount: \$0.00	Plaintiff's Counsel:	Louis S. Zimmerman Fulbright & Jaworski Austin

Issue: Plaintiff's Texas Custom Broker's License was suspended 120 days. Whether Plaintiff must actually observe exported goods cross the border. Whether the Comptroller's investigation of Plaintiff in connection with Plaintiff's customs broker license was *ultra vires* because a non-employee was used. Whether Plaintiff's constitutional rights were violated.

Status: Answer filed. On hold, pending outcome of *Macias v. Sharp*.

Fiesta Texas Theme Park, Ltd. v. Sharp, et al. Cause #98-02407

Sales Tax; Refund Filed: 03/05/98	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 10/01/90-04/30/93 Amount: \$328,829	Plaintiff's Counsel:	Jasper G. Taylor, III Fulbright & Jaworski Houston

Issue: Whether prizes awarded by Plaintiff to successful contestants of coin-operated as well as non-coin operated games are purchased for resale. Whether sales tax constitutes double taxation on machines on which occupation tax is paid and on non-coin games, admission to which is taxed. Advertising and sewing services are not taxable.

Status: Discovery in progress.

Garza, Lawrence v. Sharp, et al. Cause #98-07607

Sales Tax; Protest Filed: 07/17/98	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 01/01/93-09/30/95 Amount: \$83,910	Plaintiff's Counsel:	Stephen P. Dillon Lindeman & Dillon Houston

Issue: Whether the Comptroller used the proper sampling procedure and whether Plaintiff was correctly notified of the procedure to be used.

Status: Discovery in progress. Trial set for 05/08/00. Passed by agreement.

Gateway Homes, Inc. v. Sharp, et al. Cause #98-14225

Sales Tax; Protest Filed: 12/22/98	Asst. AAG Assigned:	Steve Rodriguez
Period: 01/01/91-09/30/95 Amount: \$133,146.26	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Paige Arnette Scott, Douglass & McConnico Austin

Issue: Whether various service activities such as landscaping, cleaning and waste removal are taxable real property services. Whether any tax due is owed by independent contractor service providers under a tax-included contract. Whether tax was assessed on non-taxable new construction. Whether the assessment violates equal protection and whether interest should be waived.

Status: Answer filed.

GATX Terminals Corp. v. Sharp, et al. Cause #96-10815

Sales Tax; Refund Filed: 09/06/96	Asst. AAG Assigned:	Jim Cloudt
Period: Not Stated Amount: \$698,491	Plaintiff's Counsel:	Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Various real property issues, including: whether repainting operations were repair and remodeling or periodic maintenance; whether the statute of limitations ran on a refund claim, where the statute had run on the vendor; whether work on a metering system was remodeling or new construction; whether Plaintiff is entitled to a refund of city taxes paid to Houston.

Status: Discovery in progress.

GATX Terminals Corp. v. Sharp, et al. Cause #98-13414

Sales Tax; Protest Filed: 12/02/98	Asst. AAG Assigned:	Steve Rodriguez
Period: 09/01/92-06/30/96 Amount: \$125,330.40	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether certain activities are taxable real property repair and remodeling or non-taxable maintenance and, alternatively, whether penalty and interest should be waived.

Status: Answer filed.

Graybar Electric Co., Inc. v. Sharp, et al. Cause #97-01795

Sales Tax; Protest Filed: 02/13/97	Asst. AAG Assigned:	Scott Simmons
Period: 01/01/88-12/31/91 Amount: \$107,667	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether the sample audit resulted in a correct assessment.

Status: Discovery in progress. Motion to Retain granted. Trial set for 12/12/00.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #97-07564

Sales Tax; Protest Filed: 06/30/97	Asst. AAG Assigned:	Jim Cloudt
Period: 03/01/89-09/30/92 Amount: \$32,765	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin

Issue: Whether certain resale certificates were accepted in good faith. Whether certain pallets were tax exempt as packaging used in the manufacturing process.

Status: Discovery in progress. Settled.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #97-13659

Sales Tax; Refund Filed: 12/09/97	Asst. AAG Assigned:	Jim Cloudt
Period: 03/01/89-09/30/97	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin
Amount: \$18,508		

Issue: Whether certain pallets were tax exempt as packaging used in the manufacturing process.

Status: Discovery in progress. Settled.

H.J. Wilson Co., Inc. v. Sharp, et al. Cause #98-11574

Sales Tax; Protest Filed: 10/13/98	Asst. AAG Assigned:	Christopher Jackson
Period: 07/01/90-12/31/93	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas
Amount: \$1,076,019		

Issue: Whether the purchase of sales catalogs printed out of state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

Status: Answer filed. On hold. Plaintiff filed bankruptcy in Tennessee 03/25/99.

Heritage Numismatic Auctions, Inc. & Heritage Capital Corp. v. Rylander, et al.
Cause #99-06186

Sales Tax; Refund Filed: 05/27/99	Asst. AAG Assigned:	Scott Simmons
Period: 1993-1995 10/92-03/96	Plaintiff's Counsel:	Brett B. Flagg Brett B. Flagg & Associates Dallas
Amount: \$41,549.31 \$80,179.86		

Issue: Whether inter-company transactions were taxable sale. Whether some audit items were not taxable data processing services. Whether data processing services were exempt inter-company transactions.

Status: Answer and Plea to the Jurisdiction filed. Plea to Jurisdiction dropped. Plaintiff filed amended petition to include audit from later period. Negotiations in progress.

Herndon Marine Products, Inc. v. Sharp, et al. Cause #91-14786

Sales Tax; Refund Filed: 10/18/91	Asst. AAG Assigned:	Jim Cloudt
Period: 01/01/87 - 03/31/90	Plaintiff's Counsel:	John D. Bell Wood, Boykin & Wolter Corpus Christi
Amount: \$62,465		

Issue: Whether predominant use of electricity from Plaintiff's meter is exempt. Whether burden of proof in administrative hearing should be clear and convincing evidence or preponderance of the evidence.

Status: Special Exceptions and Answer filed.

Hoffer Furniture Rental, Inc. v. Sharp Cause #95-15906

Sales Tax; Declaratory Judgment Filed: 12/29/95	Asst. AAG Assigned:	Blake Hawthorne
Period: 01/01/89-10/31/92	Plaintiff's Counsel:	L. Don Knight Meyer, Knight & Williams Houston
Amount: \$110,665		

Issue: Whether Plaintiff's sales of insurance contracts (to cover damage to furniture it sells or leases) are taxable.

Status: Discovery in progress.

Holzem, Inc. v. Sharp, et al. Cause #96-01041

Sales Tax; Declaratory Judgment Filed: 01/26/96	Asst. AAG Assigned:	Jim Cloudt
Period: 07/01/88-03/31/92	Plaintiff's Counsel:	Leland C. De La Garza De La Garza & Clark Dallas
Amount: \$229,930		

Issue: Whether Plaintiff's activities during the audit period constituted new construction or taxable repair and remodeling. Whether Plaintiff must pre-pay the tax.

Status: Plaintiff's motion to be excused from prepaying tax granted 07/23/96. Discovery in progress. Hearing on Defendants' plea to the jurisdiction denied. State has filed counterclaim.

House of Lloyd, Inc. v. Rylander, et al. Cause #GN000111

Sales Tax; Protest &
Refund

Filed: 01/21/00

Period: 06/01/92-12/31/96

Amount: \$597,281.67

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Marilyn A. Wethekam
Horwood Marcus & Berk
Chartered
Chicago, Illinois

L.G. (Skip) Smith
Clark, Thomas & Winters
Austin

Issue: Whether Plaintiff owes use tax on direct sales items, hostess free goods and demonstrator kits. Whether Plaintiff owes tax for under- collection of local sales tax. Whether the Comptroller's sample was flawed because it failed to consider over-collections of tax. Whether penalty should be waived.

Status: Answer filed.

Impaco, Inc. v. Rylander, et al. Cause #GN001570

Sales Tax; Declaratory
Judgment

Filed: 05/31/00

Period: 07/01/88-03/31/94

Amount: \$345,124.47

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Mark Foster
Foster & Malish
Austin

Issue: Whether Plaintiff's sales of rebuilt engines are exempt as sales for resale. Whether 60-day provision barred consideration of resale certificates. Whether some of the assessment is barred by the statute of limitations. Whether the assessment should be reduced because of insolvency. Whether the tax assessment violates the commerce clause, due process, equal protection or equal taxation. Plaintiff seeks attorneys' fees.

Status: Answer filed.

Interpak Terminals, Inc. v. Sharp, et al. Cause #95-15213

Sales Tax; Protest Filed: 12/07/95	Asst. AAG Assigned:	Scott Simmons
Period: 04/01/89-06/19/95 Amount: \$14,125	Plaintiff's Counsel:	Paul Price Tom Wheat Pearson & Price Corpus Christi

Issue: Whether Plaintiff is entitled to the exemption for wrapping and packaging materials it uses to package plastic pellets sent to it by the manufacturer of the pellets.

Status: Discovery in progress.

Irv-Tex Coin Laundries, Inc. v. Sharp, et al. Cause #93-01350

Sales Tax; Protest Filed: 02/04/93	Asst. AAG Assigned:	Nicole Galwardi
Period: 01/88-10/91 Amount: \$25,931	Plaintiff's Counsel:	Jimmy L. Heisz & W. Wade Porter Haynes & Boone Dallas and Austin

Issue: Taxability of buffer pads, wax, polish, etc. when sold to body shops and new car dealers by way of a separated contract.

Status: Inactive.

Jett Racing and Sales, Inc. v. Sharp, et al. Cause #96-04721

Sales Tax; Declaratory Judgment Filed: 04/25/96	Asst. AAG Assigned:	Jim Cloudt
Period: 05/01/88-02/29/92 Amount: \$105,491	Plaintiff's Counsel:	Judy M. Cunningham James D. Blume Dallas

Issue: Whether the purchase of an airplane was exempt as a sale for resale.

Status: Discovery in progress.

John Hancock Mutual Life Insurance Co., The v. Rylander, et al. Cause #GN001612

Sales Tax; Refund Filed: 06/05/00 Period: 01/01/94-12/31/98 Amount: \$345,377.95	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne James D. Blume Jennifer S. Stoddard Blume & Stoddard Dallas
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Issue: Whether an insurance company is exempt from sales taxes on its use of electricity on the grounds that Tex. Ins. Code Art. 4.11, Section 9 prohibits them.

Status: Answer filed.

Kroger Co., The v. Sharp, et al. Cause #98-05641

Sales Tax; Refund Filed: 05/28/98 Period: 01/01/90-12/31/93 Amount: \$314,704	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the refuse from Plaintiff's meat and produce departments, floral shops, delicatessens, fast food restaurants, and bakeries qualifies as industrial solid waste under § 151.0048 and Rule 3.356, making its removal exempt from sales tax. Whether the labor to paint Plaintiff's dairy and warehouse facilities is tax exempt maintenance. Whether "pan glazing" is exempt as tangible personal property used or consumed during the manufacture of Kroger baked goods.

Status: Discovery in progress.

Kunz Construction Co., Inc. v. Sharp, et al. Cause #96-10758

Sales Tax; Protest Filed: 09/05/96 Period: 01/01/89-12/31/92 Amount: \$5,915	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Judy Cunningham Attorney at Law Austin
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Issue: Whether a nonprofit, public hospital owned by the federal government is exempt under §151.311 even if it is excluded from the definition of nonprofit hospital in the Health and Safety Code.

Status: Settlement pending.

L. D. Brinkman & Co., Inc. v. Sharp, et al. Cause #95-06286

Sales Tax; Protest Filed: 05/18/95	Asst. AAG Assigned:	Steve Rodriguez
Period: 07/01/90-02/28/94 Amount: \$226,413	Plaintiff's Counsel:	Charles L. Perry Arter & Hadden Dallas

Issue: Plaintiff contends that inventory samples should not have been taxed because they were ultimately sold and tax was collected. Also, whether cardboard rolls and plastic wrapping are exempt under the manufacturing exemption.

Status: Summary Judgment pending.

Lake Charles Yamaha, Inc. v. Sharp Cause #97-05737

Sales Tax; Declaratory Judgment Filed: 05/13/97	Asst. AAG Assigned:	Gene Storie
Period: 04/01/91-03/31/95 Amount: \$150,214	Plaintiff's Counsel:	Russell J. Stutes, Jr. Scofield, Gerard, Veron, Singletary & Pohorelsky Lake Charles, Louisiana

Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks.

Status: Plaintiff's discovery responses overdue. On dismissal docket.

Lake Charles Yamaha, Inc. v. Morales, et al. Cause #95-08672

Sales Tax; Declaratory Judgment Filed: 11/13/95	Asst. AAG Assigned:	Gene Storie
Period: 04/01/91-03/31/95 Amount: \$150,214	Plaintiff's Counsel:	Russell J. Stutes, Jr. Scofield, Gerard, Veron, Singletary & Pohorelsky Lake Charles, Louisiana

Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks. Plaintiff asks for a declaratory judgment and damages/attorneys fees under 42 USC §§1983 and 1988.

Status: Will be dismissed or non-suited pursuant to Lake Charles Music suit.

Lake Charles Yamaha, Inc. v. Morales, et al. Cause #95-3802

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 07/11/95	Plaintiff's Counsel:	Russell J. Stutes, Jr.
Period: 04/01/91-03/31/95		Scofield, Gerard, Veron,
Amount: \$150,214		Singletary & Pohorelsky
		Lake Charles, Louisiana

Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks. Plaintiff asks for a declaratory judgment and damages/attorneys fees under 42 USC §§1983 and 1988.

Status: Will be dismissed or nonsuited pursuant to Lake Charles Music suit.

Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al. Cause #98-11834

Sales Tax; Protest; Declaratory Judgment	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 10/20/98	Plaintiff's Counsel:	John Christian
Period: 08/1-30/98		Vinson & Elkins
Amount: \$2,054		Austin

Issue: Whether sales tax is due on the portion of country club membership fees designated as "capital improvement fees" and "gratuities."

Status: Plea to the jurisdiction; plea in abatement and Original Answer filed 11/16/98.

Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al. Cause #91-17399

Sales Tax; Protest	Asst. AAG Assigned:	Steve Rodriguez
Filed: 12/13/91	Plaintiff's Counsel:	Robert C. Cox
Period: 10/01/87 - 06/30/90		Dallas
Amount: \$22,326		

Issue: Whether Comptroller could tax an arbitrary percentage of ingredients in complimentary mixed drinks and whether ingredients are exempt because they are taxed elsewhere. Is tax due on repairs to parking lot? Whether purchase of items from Ramada Inn is exempt as entire operating assets of a business or identifiable segment.

Status: Answer filed.

Lee Construction and Maintenance Co. v. Rylander, et al. Cause #99-01091

Sales Tax; Protest Filed: 01/29/99 Period: 01/01/92-12/31/95 Amount: \$31,830.47	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Various issues, including credits for bad debts, tax paid, tax on new construction and tax paid in Louisiana, resale exemptions and waiver of penalty and interest.

Status: Discovery in progress.

Leyendecker Construction, Inc. v. Sharp, et al. Cause #98-08076

Sales Tax; Protest Declaratory Judgment Injunction Filed: 07/27/98 Period: 08/01/91-04/30/95 Amount: \$215,486.14	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Donato D. Ramos Baldemar Garcia, Jr. Person, Whitworth, Ramos, Borchers & Morales Laredo
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Issue: Whether Plaintiff is responsible for sales tax it says it paid to its subcontractors and then collected from its customers as reimbursement. Related evidence issues.

Status: Defendant's Plea to the Jurisdiction and Original Answer filed 08/24/98.

Local Neon Co., Inc. v. Rylander, et al. Cause #99-15042

Sales Tax; Protest & Declaratory Judgment Filed: 12/31/99 Period: Amount: \$34,390.24	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne James D. Blume Jennifer S. Stoddard Blume & Stoddard Dallas Judy M. Cunningham Austin
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Issue: Whether Plaintiff was doing business in Texas by delivering and installing its signs that were sold under contract negotiated outside of Texas. Whether Plaintiff is entitled to declaratory judgment and attorneys' fees.

Status: Answer filed.

Lopez-Gloria Construction Services, Inc. v. Sharp, et al. Cause #96-07811

Sales Tax; Declaratory Judgment Filed: 07/05/96 Period: 01/01/89-12/31/92 Amount: \$791,171	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson No attorney of record.
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Issue: Plaintiff doesn't owe the tax, and if it does, the Comptroller abused its discretion in not settling under Tax Code §111.102.

Status: Answer filed. On hold. Plaintiff apparently out of business and is pro se.

Macias, David Ronald v. Sharp Cause #96-07543

Sales Tax; Declaratory Judgment Filed: 06/28/96 Period: Not stated Amount: \$	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Mark N. Osborn Kemp, Smith, Duncan & Hammond El Paso
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Issue: Plaintiff contests the suspension of his Texas Customs Broker License and disagrees with the Comptroller's policy that brokers must actually see goods being exported before affixing their stamps.

Status: State's motion for summary judgment heard 06/10/98. Court ruled for State, upholding license suspension and finding standard of review to be substantial evidence. Notice of appeal filed. Oral Argument occurred 03/24/99. Third Court of Appeals reversed substantial evidence determination and remanded for further proceedings. Partial Summary Judgment on Macias' license suspension 02/06/00. Summary Judgment in Comptroller's favor obtained on licensee's suspension. Suspension period set at 90 days. Preparing for second appeal.

Mazanec Construction Co., Inc. v. Sharp, et al. Cause #96-06955

Sales Tax; Refund Filed: 06/14/96 Period: 04/01/90-12/31/93 Amount: \$9,571	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Judy M. Cunningham Attorney at Law Austin
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Issue: Whether construction at a hospital owned by the federal government is exempt.

Status: Settlement pending.

Medaphis Physicians Services Corp. v. Sharp, et al. Cause #94-11610

Sales Tax; Protest and Declaratory Judgment Filed: 09/16/94 Period: 05/01/94-06/30/94 Amount: \$17,063	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Gary Miles Sherri Alexander Johnson & Wortley Dallas
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Issue: Whether Plaintiff's services are taxable (1) insurance services, (2) debt collection services, or (3) data processing services, and whether Rules 3.330, 3.354, and 3.355 exceed the Comptroller's rule making authority.

Status: On hold pending conclusion of the audit.

Miller, Jerry W. Sr. v. Rylander, et al. Cause #GN000035

Sales Tax; Protest Filed: 01/18/00 Period: 01/01/94-06/30/97 Amount: \$33,745.00	Asst. AAG Assigned: Plaintiff's Counsel:	Scott Simmons Stephen D. Skinner Stephen D. Skinner & Associates Dallas
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Issue: Whether Plaintiff owes tax on mowing services sold to contractors, home builders and developers engaged in new construction of residential properties. Whether Comptroller misapplied Rule 3.356(a)(5) to Plaintiff's business. Whether Plaintiff was denied due process, and whether Plaintiff should pay penalty and interest. Plaintiff also asserts that the burden of proof is on the Comptroller to show that his business was taxable.

Status: Discovery in progress.

National Business Furniture, Inc. v. Sharp, et al. Cause #98-03927

Sales Tax; Protest & Declaratory Judgment Filed: 04/15/98 Period: 01/01/93-07/31/95 Amount: \$68,398	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether promotional materials printed out of state and delivered into Texas are subject to use tax.

Status: Answer filed.

Neiman Marcus Group, Inc. v. Sharp, et al. Cause #93-10279-A

Sales Tax; Protest and Refund Filed: 08/26/93 Period: 01/01/87-03/31/90 Amount: \$1,046,465	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson David E. Cowling Charles Herring Jones, Day, Reavis & Pogue Dallas
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Issue: Plaintiff's customers buy gifts from Plaintiff outside Texas and have the gifts delivered by common carrier to Texas "donees." Should the Comptroller have assessed use tax on these "gift sends" ? Second issue: whether tax is due on certain remodeling services. Plaintiff asks for attorneys fees under 42 USC §§1983 and 1988.

Status: Agreed judgment signed 03/11/96 on the gift send issue. An agreed order for severance was signed on 03/11/96 on the sales tax issues on remodeling services and attorneys' fees. Cause renumbered 93-10279-A. State filed a plea to jurisdiction on attorneys' fees on 10/06/93.

North American Intelcom, Inc., et al. v. Sharp, et al. Cause #97-05318

Sales Tax; Refund Filed: 05/02/97 Period: 04/01/91-05/31/95 Amount: \$2,029,180	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether care, custody, and control of Plaintiff's public telephone equipment passed to their customers, so that Plaintiff could buy the equipment tax free for resale.

Status: Discovery in progress.

North Texas Asset Management, Inc. v. Sharp, et al. Cause #94-08603

Sales Tax; Declaratory Judgment Filed: 7/14/94 Period: 05/02/91-12/31/91 Amount: \$24,307	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons Judy M. Cunningham Attorney at Law Austin
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Issue: Whether a sale of a business approved by the SBA (which held a lien and received the proceeds) is tantamount to a foreclosure sale so that no successor liability should attach.

Status: Answer filed; inactive. Parties are involved in informal discussions to resolve or eliminate issues currently in controversy.

Norwood Homes, Inc. v. Sharp, et al. Cause #98-05637

Sales Tax; Refund Filed: 05/28/98	Asst. AAG Assigned:	Blake Hawthorne
Period: 10/01/92-06/30/96 Amount: \$77,887.44	Plaintiff's Counsel:	John W. Mahoney Williams, Birnberg & Andersen Houston

Issue: Whether certain cleaning services are taxable as real property services or are part of new construction of real property.

Status: Discovery in progress.

Ontario Investments, Inc. v. Sharp, et al. Cause #98-10956

Sales Tax; Protest Filed: 09/29/98	Asst. AAG Assigned:	Blake Hawthorne
Period: 08/01/89-04/30/92 Amount: \$24,142	Plaintiff's Counsel:	Samuel E. Long Moseley & Standerfer Dallas

Issue: Whether sales tax on equipment leases should have been accelerated when the leases were pledged as collateral.

Status: Discovery in progress.

Paragon Communications v. Sharp, et al. Cause #97-10995

Sales Tax; Protest Filed: 09/25/97	Asst. AAG Assigned:	Jim Cloudt
Period: 02/01/87-08/31/90 Amount: \$393,497	Plaintiff's Counsel:	Curtis J. Osterloh Scott, Douglass & McConnico Austin

Issue: Whether municipal franchise fees paid by Plaintiff and passed on to its customers should be included in taxable cable services. Whether certain services, labor to lay new lines, purchased by Plaintiff were taxable repair and remodeling or were exempt new construction.

Status: Discovery in progress.

Perry Homes, A Joint Venture v. Sharp, et al. Cause #98-14226

Sales Tax; Protest Filed: 12/22/98	Asst. AAG Assigned:	Steve Rodriguez
Period: 10/01/91-09/30/93 Amount: \$550,978.17	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Paige Arnette Scott, Douglass & McConnico Austin

Issue: Whether various service activities such as landscaping, cleaning and waste removal are taxable real property services. Whether any tax due is owed by independent contractor service providers under a tax- included contract. Whether tax was assessed on non-taxable new construction. Whether the assessment violates equal protection and whether interest should be waived.

Status: Answer filed.

Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al. Cause #96-11750

Sales Tax; Protest Filed: 09/27/96	Asst. AAG Assigned:	Steve Rodriguez
Period: 08/01/89-06/30/92 Amount: \$155,404	Plaintiff's Counsel:	Richard L. Rothfelder Craig Estlinbaum Kirkendall, Isgur & Rothfelder Houston

Issue: Whether prizes obtained by collecting tickets from amusement machines in a restaurant are “purchased” by the customer as part of the price of the food.

Status: Discovery in progress.

Petrolite Corp. v. Sharp, et al. Cause #91-13885

Sales Tax; Protest and Refund Filed: 09/27/91	Asst. AAG Assigned:	Blake Hawthorne
Period: 04/01/84 - 03/31/88 Amount: \$432,105	Plaintiff's Counsel:	David H. Gilliland Clark, Thomas & Winters Austin

Issue: Resale certificates; taxable maintenance services; taxability of various chemicals and other tangible personal property used in oil well services.

Status: Inactive.

Phelan Co., The v. Sharp, et al. Cause #98-00504

Sales Tax; Protest & Declaratory Judgment Filed: 01/15/98 Period: 1988-1992 Amount: \$60,587	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Rick Harrison Harrison & Rial Austin Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether the sample audit resulted in an incorrect assessment because it did not represent actual business conditions. Whether the audit was conducted in accordance with generally recognized sampling techniques.

Status: Judgment for Plaintiff. Pending on attorneys' fee claim.

Praxair, Inc. v. Sharp, et al. Cause #97-03919 (consolidated with Cause No. 95-00690)

Sales Tax; Refund & Declaratory Judgment Filed: 04/01/97 Period: 01/01/90-12/31/90 Amount: \$57,815	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Gerard A. Desrochers Baker & Botts Houston
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Issue: Whether the Comptroller erroneously denied Plaintiff's claim for refund of tax paid on manufacturing equipment, alleging that Plaintiff was not engaged in actual manufacturing.

Status: See Cause No. 95-00690

Praxair, Inc. v. Sharp, et al. Cause #95-00690

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 01/18/95	Plaintiff's Counsel:	Gerard A. Desrochers
Period: 1990		Baker & Botts
Amount: \$74,608		Houston

Issue: Whether the Comptroller erroneously denied Plaintiff's claim for refund of tax paid on manufacturing equipment, alleging that Plaintiff was not engaged in actual manufacturing.

Status: Discovery in progress. Stipulation of facts in progress.

Prodigy Services Co. v. Rylander, et al. Cause #99-02693

Sales Tax; Protest	Asst. AAG Assigned:	Christopher Jackson
Filed: 03/05/99		
Period: 01/01/93-06/30/96	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Amount: \$206,971.88		Stahl, Martens & Bernal Austin
		Martin I. Eisenstein Brann & Isaacson Lewiston, Maine

Issue: Whether use tax is owed on catalogs mailed from out of state. Whether imposition of use tax violates the commerce clause, equal protection and equal taxation. Whether taxpayer may recover attorneys' fees under the Uniform Declaratory Judgments Act.

Status: Answer filed.

R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al. Cause #91-4893

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 04/08/91	Plaintiff's Counsel:	Mark How
Period: 10/01/80 - 11/02/84		Short, How, Frels & Tredoux
Amount: \$None (Plaintiff was assessed \$67,836 tax but did not pay)		Dallas

Issue: Whether a taxpayer can be required to pay the disputed tax before filing suit in district court. Constitutionality of §112.108 under Texas Constitution Open Courts provision.

Status: District Court granted State's Plea to the Jurisdiction. State won appeal. Supreme Court reversed and remanded on 04/27/94. State's Motion for Rehearing denied. Inactive.

Ryder Truck Rental, Inc. v. Sharp, et al. Cause #96-14241

Sales Tax; Protest Filed: 11/22/96	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 07/01/89-09/30/92 Amount: \$270,217	Plaintiff's Counsel:	Paul O. Price Richard E. Flint The Kleberg Law Firm Corpus Christi

Issue: Whether electricity purchases are exempt from sales tax because the electricity is used for processing.

Status: Discovery in progress. On hold pending appeal of *Haber Fabrics*. Settlement discussions in progress.

Samedan Oil Corp. v. Sharp, et al. Cause #98-14105

Sales Tax; Protest Filed: 12/18/98	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 01/01/90-12/31/93 Amount: \$19,652.35	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin

Issue: Whether information concerning oil and gas lease ownership and marketing are taxable information services. If so, whether the services were sold or used in Texas. Whether interest and penalty should be waived.

Status: Discovery in progress.

Sam Houston Race Park, Ltd. v. Rylander, et al. Cause #GN001096

Sales Tax; Refund Filed: 04/13/00	Asst. AAG Assigned:	Blake Hawthorne
Period: 10/01/93-04/30/95 Amount: \$43,025.00	Plaintiff's Counsel:	L.G. "Skip" Smith David H. Gilliland Clark, Thomas & Winters Austin

Issue: Whether Plaintiff's purchase of "totalizator" services, which provide betting information to accompany live pari-mutuel and simulcasts of pari-mutuel races, is not taxable as a data processing service. Whether totalizator services, if they are taxable, are exempt for resale as an integral part of Plaintiff's taxable amusement service.

Status: Answer filed.

Schmitz Industries, Inc. v. Sharp Cause #95-15485

Sales Tax; Protest Filed: 12/15/95	Asst. AAG Assigned:	Steve Rodriguez
Period: 04/01/89-12/31/92 Amount: \$4,418	Plaintiff's Counsel:	Charles E. Klein Attorney at Law Dallas

Issue: Plaintiff alleges that the audit assessment is wrong because some of the transactions in the sample period are not representative of Plaintiff's business, and some transactions include tax exempt molds, dies and patterns with a useful life of six months or less.

Status: Answer filed.

Schoenborn & Doll Enterprises, Inc. v. Rylander, et al. Cause #99-07605

Sales Tax; Protest & Declaratory Judgment Filed: 07/01/99	Asst. AAG Assigned:	Blake Hawthorne
Period: 07/01/95-05/31/97 Amount: \$140,936.92	Plaintiff's Counsel:	Kevin W. Morse Blazier, Christensen & Bigelow Austin

Issue: Whether the portion of Plaintiff's gym membership fee allocated to aerobic training is included in Plaintiff's taxable amusement services. Whether the Comptroller improperly disregarded the rule addressing non-taxable aerobic and tanning services under the amusement services tax. Whether the Comptroller should have applied its detrimental reliance policy.

Status: Negotiation of stipulated facts in progress. Parties to file cross-motions for summary judgment.

Sears Roebuck & Co. v. Rylander, et al. Cause #99-04138

Sales Tax; Refund Filed: 04/08/99	Asst. AAG Assigned:	Jim Cloudt
Period: 10/01/88-12/31/91 Amount: \$1,792,421.59	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether use tax is owed on catalogs printed and shipped from out-of-state. Whether any taxable use was made or any consideration received by plaintiff. Whether "distribution" is a taxable use and whether the Comptroller's rule identifying it as such is valid. Whether imposition of the tax violates the due process, commerce, or equal protection clauses. Alternatively, whether calculation of the tax as on the correct cost basis, whether tax should not be collected because the catalogs are "books," and whether penalty should be waived.

Status: Answer filed.

Service Merchandise Co., Inc. v. Sharp, et al. Cause #98-11572

Sales Tax; Protest Filed: 10/13/98	Asst. AAG Assigned:	Christopher Jackson
Period: 01/01/92-12/31/93 Amount: \$413,569	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas

Issue: Whether the purchase of sales catalogs printed out of state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

Status: Answer filed. On hold. Plaintiff filed bankruptcy in Tennessee on 03/25/99.

Sharyland Water Supply Corp. v. Rylander, et al. Cause #9910283

Sales Tax; Refund Filed: 09/03/99	Asst. AAG Assigned:	Nicole Galwardi
Period: Amount: \$	Plaintiff's Counsel:	Timothy M. Trickey The Trickey Law Firm Austin

Issue: Whether Plaintiff is entitled to an exemption for electricity and equipment used to pressurize water for sale under the exemptions for equipment used in manufacturing and electricity used in processing.

Status: Answer filed.

Southwest Pay Telephone Corp., Successor in Interest to Southwest Pay Telephone Systems, Inc. v. Sharp, et al. Cause #97-00684

Sales Tax; Refund Filed: 01/17/97	Asst. AAG Assigned:	Blake Hawthorne
Period: 03/01/91-12/31/94 Amount: \$117,600	Plaintiff's Counsel:	Mary S. Dietz Fulbright & Jaworski Houston

Issue: Whether Plaintiff transferred "care, custody, and control" of telephone equipment to the customers of its public telephone service such that it could buy the equipment tax-free per Rule 3.344 (e).

Status: Discovery in progress.

Spaw-Glass, Inc. and Spaw Glass Construction Co. v. Rylander, et al. Cause #99-06716

Sales Tax; Protest & Refund Filed: 06/11/99	Asst. AAG Assigned:	Scott Simmons
Period: 04/01/93-03/31/96 10/01/93-06/30/96 Amount: \$134,067.87 \$34,469.19	Plaintiff's Counsel:	Jasper G. Taylor, III C. Rhett Shaver Fulbright & Jaworski Houston

Issue: Whether Plaintiff is not subject to sales tax because it was a lump sum contractor on the transactions at issue. Whether penalty and interest should be waived.

Status: Negotiations in progress.

Sprint International Communications, Inc. v. Sharp, et al. Cause #96-14298

Sales Tax; Refund Filed: 11/22/96 Period: 02/01/86-01/31/90 Amount: \$1,269,474	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Wallace M. Smith Donald L. Stuart R. Kemp Kasling Drenner & Stuart Austin
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Issue: Whether networking services are taxable as telecommunications services.

Status: Answer filed.

Steamatic of Austin, Inc., et al. v. Sharp, et al. Cause #97-02651

Sales Tax; Protest Filed: 03/05/97 Period: 04/01/91-04/30/94 Amount: \$166,148	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Plaintiff contends that an amendment to §151.350 of the Tax Code did not narrow the existing exemption, but if it did, it was not effective until the Comptroller amended the corresponding Rule, 3.357. Issue is tax on labor to restore property damaged in a disaster area.

Status: Judgment for plaintiff.

Summit Photographix, Inc. v. Rylander, et al. Cause #GN001808

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 06/23/00	Plaintiff's Counsel:	Mark D. Hopkins Fields & Hopkins Austin
Period: 01/01/94-12/31/96		
Amount: \$6,532,000.00		
		Hilary Thomas Kondos & Kondos Law Offices Richardson

Issue: Whether Plaintiff is a direct sales company and may be regarded as a retailer for sales made by independent retailers of business start-up kits. Whether the Comptroller's rule defining direct sales organizations violates due process. Whether §151.024 was applied retroactively. Whether the items at issue are not taxable tangible personal property. Whether the Comptroller erred in basing the assessment on the suggested retail price of all issued items. Whether penalty and interest should be waived. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Sung Ju Choi d/b/a Sam Young Trading Co. v. Sharp Cause #95-14940

Sales Tax; Injunction	Asst. AAG Assigned:	Steve Rodriguez
Filed: 11/30/95	Plaintiff's Counsel:	Kenneth Thomas Attorney at Law Dallas
Period: 01/01/88-12/31/91		
Amount: \$54,068		

Issue: Whether certain resale certificates should have been accepted by the Comptroller during the audit. Whether an injunction to suspend all collection activity should be granted.

Status: Discovery in progress.

TCCT Real Estate, Inc. v. Rylander, et al. Cause #99-11647

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Declaratory Judgment		
Filed: 10/06/99	Plaintiff's Counsel:	David Cowling
Period: 10/01/91-03/31/93		Robert Lochridge
Amount: \$146,484.05		Jones, Day, Reavis & Pogue Dallas

Issue: Whether Plaintiff sold electricity for commercial use when it obtained electrical service under a management agreement for another company which used the electricity in manufacturing or processing. Whether the exemption for electricity used in manufacturing requires the purchaser of electricity to be the user. Whether Plaintiff can be held as a seller of electricity in violation of the TPURA. Whether Plaintiff's right to equal and uniform taxation has been violated. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al. Cause #99-11648

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Declaratory Judgment		
Filed: 10/05/99	Plaintiff's Counsel:	David Cowling
Period: 07/01/89-12/31/91		Robert Lochridge
Amount: \$479,719.44		Jones, Day, Reavis & Pogue Dallas

Issue: Whether Plaintiff sold electricity for commercial use when it obtained electrical service under a management agreement for another company which used the electricity in manufacturing or processing. Whether the exemption for electricity used in manufacturing requires the purchaser of electricity to be the user. Whether Plaintiff can be held as a seller of electricity in violation of the TPURA. Whether Plaintiff's right to equal and uniform taxation has been violated. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

Tennessee Gas Pipeline Co. v. Sharp, et al. Cause #98-09521

Sales Tax; Refund Filed: 08/25/98	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 01/01/94-04/03/96 Amount: \$85,430	Plaintiff's Counsel:	Ron Patterson Kliwer, Breen, Garaton, Patterson & Malone, Inc. Austin
		Michael R. Garatoni Guaranty Center San Antonio

Issue: Plaintiff contends that because it operates a common-carrier pipeline and is a certificated or licensed carrier of property it may avoid sales tax on repair, remodeling, and maintenance services purchased in connection with the maintenance and repair of aircraft Plaintiff owns and uses in operating its common-carrier pipeline.

Status: Discovery in progress.

Texas Gulf, Inc. v. Bullock, et al. Cause #485,228

Sales Tax; Refund Filed: 06/05/90	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 01/01/85 - 06/30/88 Amount: \$294,000	Plaintiff's Counsel:	Ira A. Lipstet Jenkins & Gilchrist Austin

Issue: Are pipes exempt as manufacturing equipment or taxable as intra plant transportation?

Status: State's Plea to the Jurisdiction denied. Settlement negotiations in progress.

Transcontinental Gas Pipeline Corp. v. Rylander, et al. Cause #99-06997

Sales Tax; Protest
Filed: 06/17/99
Period: 03/93-05/95
Amount: \$112,684.43

Asst. AAG Assigned:
Plaintiff's Counsel:

Cecilia Gonzalez

Ron Patterson
Kliwer, Breen, Garatoni,
Patterson & Malone
Austin

Michael R. Garatoni
Kliwer, Breen, Garatoni,
Patterson & Malone
San Antonio

Issue: Whether Plaintiff, a common carrier gas pipeline operator, may claim a sales and use tax exemption on its purchase of an airplane. Whether airplane repair and replacement parts are exempt.

Status: Answer filed.

Union Carbide Chemicals & Plastics Co., Inc. v. Sharp, et al. Cause #93-05809

Sales Tax; Protest
Filed: 05/18/93
Period: 01/01/85 -
12/31/88
Amount: \$419,382

Asst. AAG Assigned:
Plaintiff's Counsel:

Blake Hawthorne

L. G. "Skip" Smith
Clark, Thomas & Winters
Austin

Issue: Whether a contract is exempt as a prior contract.

Status: Discovery in progress.

Union Carbide Corp. v. Rylander, et al. Cause #GN000580

Sales Tax; Protest
Filed: 01/13/00
Period: 01/01/89-12/31/92
Amount: \$575,857.40

Asst. AAG Assigned:
Plaintiff's Counsel:

Steve Rodriguez

Mark W. Eidman
Ray Langenberg
Curtis Osterloh
Scott, Douglass &
McConnico
Austin

Issue: Whether Plaintiff is entitled to an exemption on labor charges for installing floating roofs on tanks at its chemical plant because: (1) the roofs are exempt pollution control equipment, (2) the labor was for non-taxable new construction, or (3) the labor was for remodeling of tangible personal property.

Status: Answer filed.

Unit 82 Joint Venture v. Rylander, et al. Cause #GN001888

Sales Tax; Protest Filed: 07/03/00	Asst. AAG Assigned:	Scott Simmons
Period: 07/01/93-12/31/96 Amount: \$44,519.03	Plaintiff's Counsel:	H. Christopher Mott Krafsur Gordon Mott Davis & Woody El Paso

Issue: Whether Plaintiff's initial finish-out work is non-taxable new construction.

Status: Answer filed.

United Services Automobile Association v. Sharp, et al. Cause #97-02927

Sales Tax; Refund Filed: 03/10/97	Asst. AAG Assigned:	Steve Rodriguez
Period: 02/01/91-07/31/94 Amount: \$656,667	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether certain professional and leak detection services are taxable. Whether tax is due on material printed out-of-state and mailed directly to Texas customers.

Status: Discovery in progress.

U.S. On-Line Cable v. Rylander, et al. Cause #99-09021

Sales Tax; Refund Filed: 08/05/99	Asst. AAG Assigned:	Scott Simmons
Period: 10/01/94-07/31/98 Amount: \$115,958.69	Plaintiff's Counsel:	James F. Martens Stahl, Martens & Bernal Austin

Issue: Whether Plaintiff is entitled to a sale for resale exemption on cable equipment it purchases from out-of-state vendors and users to provide cable service to apartment dwellers.

Status: Settlement negotiations in progress.

Wal-Mart Stores, Inc. v. Sharp, et al. Cause #94-12948

Sales Tax; Refund Filed: 10/14/94	Asst. AAG Assigned:	Jim Cloudt
Period: 08/87-07/90; 01/88-12/91; 01/88-12/92 Amount: \$18,268	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin

Issue: Plaintiff attacks the Comptroller's change in policy with regard to prior contracts. The issue is whether two-party contracts are eligible for the exemption, as opposed to three-party contracts, only.

Status: Discovery in progress.

Waller Hotel Group, Inc. v. Sharp, et al. Cause #98-03990

Sales Tax; Refund Filed: 04/16/98	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 03/01/91-08/31/94 Amount: \$51,614	Plaintiff's Counsel:	Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
		Mark Cohen Attorney at Law Austin

Issue: Whether purchases of gas and electricity at Plaintiff's hotel were exempt as residential use, based on a utility study conducted by Plaintiff's expert.

Status: Discovery in progress.

West Texas Pizza, Limited Partnership v. Sharp, et al. Cause #96-11751

Sales Tax; Protest Filed: 09/27/96	Asst. AAG Assigned:	Steve Rodriguez
Period: 06/01/88-06/30/92 Amount: \$35,247	Plaintiff's Counsel:	Richard L. Rothfelder Milissa M. Magee Kirkendall, Isgur & Rothfelder Houston

Issue: Whether prizes obtained by collecting tickets from amusement machines in a restaurant are “purchased” by the customer as part of the price of the food.

Status: Discovery in progress.

Westar Hotels, Inc. v. Sharp, et al. Cause #97-06182

Sales Tax; Refund Filed: 05/23/97	Asst. AAG Assigned:	Steve Rodriguez
Period: 11/01/90-07/31/94 Amount: \$73,827	Plaintiff's Counsel:	Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin

Issue: Whether Plaintiff owes tax on electricity used in its hotels.

Status: Answer filed.

Wiking Demolition Corp. v. the State of Texas, the Cities of San Antonio and Houston, Texas, the Transit Authority of San Antonio, Texas, John Cornyn, and Carole Keeton Rylander Cause #GN000266

Sales Tax; Declaratory Judgment Filed: 02/02/00	Asst. AAG Assigned:	Scott Simmons
Period: 1991 Amount: \$64,395.69	Plaintiff's Counsel:	Timothy M. Trickey The Trickey Law Firm Austin

Issue: Whether summary collection procedures may be used after judgment for sales tax liability has been taken in a collection suit. Whether the exercise of summary collection procedures after a judgment has been taken violates constitutional separation of powers.

Status: Discovery in progress.

Young's Beer Barn, Inc. v. Sharp Cause #94-14347

Sales Tax; Injunction	Asst. AAG Assigned:	Steve Rodriguez
Filed: 11/17/94		
Period: 06/01/89-07/31/92	Plaintiff's Counsel:	Kenneth Thomas
Amount: \$144,608		Dallas

Issue: Plaintiff states, "The Comptroller erred in its audit of the plaintiff by including bank transactions in the taxable sales of the plaintiff for the period... ." Plaintiff also asks for an injunction against collection action.

Status: Discovery answered by Plaintiff.

Insurance Tax

All American Life Insurance Co., et al. v. Sharp, et al. Cause #98-00195

Insurance Premium & Insurance Maintenance Tax; Protest Filed: 01/07/98 Period: 1991-1994 Amount: \$276,151 (Premium) \$4,804 (Maintenance)	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Jay A. Thompson Clark, Thomas & Winters Austin Dudley D. McCalla Heath, Davis & McCalla Austin
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Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Trial set 01/18/00. Judgment for State signed 03/22/00. Plaintiff's filed request for findings of fact and conclusions of law 04/06/00. Plaintiffs filed notice of appeal.

All American Life Insurance Co. v. Sharp, et al. Cause #98-07917

Gross Premium Tax; Protest Filed: 07/24/98 Period: 1994-1996 Amount: \$29,169	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Dudley D. McCalla Heath, Davis & McCalla Austin
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Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Consolidated with Cause #98-00195.

Allianz Underwriters Insurance Co. v. Rylander, et al. Cause #GN000663

Insurance Premium Tax; Protest, Injunction & Declaratory Judgment Filed: 03/02/00 Period: 01/01/90-12/31/95 Amount: \$365,506.54	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Stephen L. Phillips Brian C. Newby Julie K. Lane Cantey & Hanger, Roan & Autrey Austin
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Issue: Whether Plaintiff, an eligible surplus lines insurer, owes tax for unauthorized insurance. Whether tax should have been collected from the surplus lines agent or from the insured. Whether the Comptroller's assessment is contrary to the McCarran-Ferguson Act and constitutional due process. Whether the Comptroller has authority to assess taxes due before 09/01/93. Whether the Comptroller's rule on penalty and interest is arbitrary and capricious. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Allmerica Financial Life Insurance Co. and Annuity Co. v. Rylander, et al. Cause #GN001378

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 05/10/00 Period: 1992-1995 Amount: \$190,352.89 \$43,715.28	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Steven D. Moore Jackson Walker L.L.P. Austin
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Issue: Whether premium taxes are owed on internal rollover transactions. Plaintiff also seeks declaratory judgment under the UDJA and APA and attorneys' fees.

Status: Answer filed. Should be resolved as for *All American Life Insurance, et al. v. Sharp, et al.*

American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al. Cause #396,975

Gross Premium Tax; Protest	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/08/86	Plaintiff's Counsel:	Fred B. Werkenthin
Period: 1985-1988		Jackson & Walker
Amount: \$1,745,569		Austin

Issue: Whether Tex. Ins. Code art. 4.10 unconstitutionally discriminates against foreign property and casualty companies by basing the premium tax rate on their percentage of Texas investments (equal protection). (Pleadings refer to art. 4.10, but protest letters refer to arts. 4.11 and 21.46.) Also seeks recovery and attorneys' fees pursuant to 42 U.S.C. §1983.

Status: Inactive.

American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al. Cause #98-13996

Maintenance & Gross Premium Tax; Refund	Asst. AAG Assigned:	Gene Storie
Filed: 12/16/98	Plaintiff's Counsel:	Dudley D. McCalla
Period: 01/01/91-12/31/94		Heath, Davis & McCalla
Amount: \$204,695.81		Austin

Issue: Whether "internal rollovers" of existing life insurance policies result in gross premiums subject to tax.

Status: Consolidated with Cause #98-00195.

Dow Chemical Co. v. Rylander, et al. Cause #99-05725

Independently Procured Insurance Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 05/17/99	Plaintiff's Counsel:	Mark W. Eidman
Period: 1991-1997		Ray Langenberg
Amount: \$427,148.80		Scott, Douglass & McConnico
		Austin

Issue: Whether statute levying tax on independently procured insurance is unconstitutional under the *Todd Shipyards* case.

Status: Plaintiff's summary judgment motion filed. State's Motion for Summary Judgment granted 04/06/00. Plaintiff filed notice of appeal.

Federal Home Life Insurance Co. v. Rylander, et al. Cause #99-06142

Retaliatory Tax; Protest Filed: 05/26/99	Asst. AAG Assigned:	Steve Rodriguez
Period: 1998	Plaintiff's Counsel:	Ron K. Eudy
Amount: \$9,328.01		Sneed, Vine & Perry Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

First Colony Life Insurance Co. v. Rylander, et al. Cause #99-06143

Retaliatory Tax; Protest Filed: 05/26/99	Asst. AAG Assigned:	Steve Rodriguez
Period: 1998	Plaintiff's Counsel:	Ron K. Eudy
Amount: \$192,371.48		Sneed, Vine & Perry Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

GE Life and Annuity Assurance Co., fka Life Insurance Co. of Virginia v. Rylander, et al. Cause #99-06145

Retaliatory Tax; Protest Filed: 05/26/99	Asst. AAG Assigned:	Steve Rodriguez
Period: 1998	Plaintiff's Counsel:	Ron K. Eudy
Amount: \$59,574.64		Sneed, Vine & Perry Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

General Electric Capital Assurance Co. v. Rylander, et al. Cause #99-06144

Retaliatory Tax; Protest Filed: 05/26/99	Asst. AAG Assigned:	Steve Rodriguez
Period: 1998	Plaintiff's Counsel:	Ron K. Eudy Sneed, Vine & Perry Austin
Amount: \$46,658.03		

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Great Northern Insured Annuity Corp. v. Rylander, et al. Cause #99-06146

Retaliatory Tax; Protest Filed: 05/26/99	Asst. AAG Assigned:	Steve Rodriguez
Period: 1998	Plaintiff's Counsel:	Ron K. Eudy Sneed, Vine & Perry Austin
Amount: \$8,459.31		

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Harvest Life Insurance Co., The v. Rylander, et al. Cause #99-06147

Retaliatory Tax; Protest Filed: 05/26/99	Asst. AAG Assigned:	Steve Rodriguez
Period: 1998	Plaintiff's Counsel:	Ron K. Eudy Sneed, Vine & Perry Austin
Amount: \$26,640.79		

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Heritage Life Insurance Co. v. Rylander, et al. Cause #99-06148

Retaliatory Tax; Protest Filed: 05/26/99	Asst. AAG Assigned:	Steve Rodriguez
Period: 1998	Plaintiff's Counsel:	Ron K. Eudy
Amount: \$10,987.86		Sneed, Vine & Perry Austin

Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

IDS Life Insurance Co. v. Rylander, et al. Cause #99-13368

Insurance Tax; Protest Filed: 11/16/99	Asst. AAG Assigned:	Gene Storie
Period:	Plaintiff's Counsel:	Jay A. Thompson
Amount: \$234,383.82 \$2,039.79		Clark, Thomas & Winters Austin

Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Consolidated with All American Life Insurance, et al.

Liberty National Life Insurance Co. v. Martha Whitehead, et al. Cause #93-08432

Retaliatory Tax; Protest Filed: 07/15/93	Asst. AAG Assigned:	Steve Rodriguez
Period: 1990-1992	Plaintiff's Counsel:	Ron Eudy
Amount: \$54,511		Sneed, Vine & Perry Austin

Issue: Whether art. 21.46 retaliatory tax has been properly applied to Plaintiff's tax rates in Texas and Alabama, and whether the tax violates equal taxation and equal protection. (Also Plaintiff seeks recovery under the Declaratory Judgments Act and 42 U.S.C. §1983 including attorneys' fees.)

Status: Conference with opposing counsel held.

Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. Cause #484,745

Gross Premium Tax; Protest Filed: 05-24-90 Period: 1985-1986 1989-1992 Amount: \$1,848,606	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Mary K. Wolf Austin
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Issue: Whether insurance taxes are owed by insurance companies on dividends applied to paid-up additions and renewal premiums.

Status: 9th Amended Petition filed. Settlement discussed, and partial settlement agreed to.

Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. Cause #484,796

Maintenance Tax; Protest Filed: 05-23-90 Period: 1989-1991 Amount: \$1,616,497	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Fred B. Werkenthin Jackson & Walker Austin
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Issue: Whether Tex. Ins. Code art. 21.07-6 is preempted by ERISA.

Status: One Plaintiff has submitted documentation supporting a refund. Case will be concluded in accordance with *NGS v. Barnes*, 998 F.2d 296 (5th Cir. 1993). Severance and final judgment entered for Metropolitan. Awaiting documentation for other Plaintiffs.

Principal Life Insurance Co. v. Rylander, et al. Cause #99-06141

Retaliatory Tax; Refund Filed: 05/26/99 Period: 1998 Amount: \$256,577.79	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Redland Insurance Co. v. State of Texas, et al. Cause #91-15487

Gross Premium Tax; Protest Filed: 11-05-91 Period: 1991 Amount: \$157,098	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie W. Hollis Webb, Jr. Harding, Bass, Fargason & Booth Lubbock
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Issue: Whether premium tax is preempted for crop insurance guaranteed by federal Department of Agriculture.

Status: Inactive. (Same issue was decided against Kansas in recent 10th Circuit case.)
Requesting non-suit from Plaintiff.

Security National Insurance Co. v. Rylander, et al. Cause #GN001503

Insurance Premium Tax; Protest Filed: 05/23/00 Period: 1995-1998 Amount: \$1,226,220.50	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Jay A. Thompson Barry Bishop Clark, Thomas & Winters Austin
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Issue: Whether daily negative bank account balances should be adjusted to \$0 to compute the proper percentage of Texas investments for gross premiums tax.

Status: Answer filed.

Southwestern Life Insurance Co. v. Philip Barnes, et al. Cause #91-4800

Gross Premium Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 04-05-91	Plaintiff's Counsel:	L. G. "Skip" Smith
Period: 1990		David H. Gilliland
Amount: \$231,114		Clark, Thomas & Winters Austin

Issue: Whether an insurance taxpayer may take a credit for examination and valuation fees paid to Texas in one year against a later year's insurance taxes.

Status: Inactive.

Southwestern Life Insurance Co. v. Georgia Flint, et al. Cause #92-07547

Gross Premium Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 05-28-92	Plaintiff's Counsel:	L. G. "Skip" Smith
Period: 1990		David H. Gilliland
Amount: \$183,719		Clark, Thomas & Winters Austin

Issue: Whether an insurance taxpayer may take a credit for examination and valuation fees paid to Texas in one year against a later year's insurance taxes.

Status: Third Court of Appeals affirmed summary judgment granted for defendants.

Southwestern Life Insurance Co. v. Sharp, et al. Cause #98-11945

Gross Premium Maintenance Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 10/22/98	Plaintiff's Counsel:	L. G. "Skip" Smith
Period: 01/01/92-12/31/95		Clark, Thomas & Winters
Amount: \$392,737		Austin

Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Answer filed. Will be determined as for All American Life Insurance.

Southwestern Life Insurance Co. v. Rylander, et al. Cause #GN000875

Gross Premium Maintenance Tax; Protest & Refund Filed: 03/24/00 Period: 01/01/96-12/31/98 Amount: \$\$384,446.75	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne L. G. "Skip" Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Answer filed.

State Farm Life Insurance Co. v. Cornyn, Rylander, et al. Cause #99-07980

Gross Premium Tax; Protest & Refund Filed: 07/13/99 Period: 1990 1992 1994 Amount: \$1,027,067.59 \$395,949.71 \$294,607.28	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Michael W. Jones Thompson, Coe, Cousins & Irons Austin
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Issue: Whether Plaintiff's debt instruments are mortgage loans or corporate bonds or other obligations for purposes of its Texas investments allocation. Whether Plaintiff's interests in limited partnerships qualified as real estate investments. Whether allocation of quarterly U.S. bond holdings was proper. Whether calculation of bank balances was proper. Alternatively, whether penalty should be waived. Plaintiff seeks attorneys' fees.

Status: Answer filed.

Texas Workers' Compensation Insurance Facility v. Comptroller Cause #96-07940

Maintenance Tax; Declaratory Judgment Filed: 07/09/96 Period: 1992-1995 Amount: \$Not Stated	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Frank Stenger-Castro Fred Lewis Texas Workers' Compensation Insurance Facility Austin
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Issue: Plaintiff seeks a ruling that Rule 3.804(d) concerning a maintenance tax surcharge is invalid.

Status: Inactive. Court set on dismissal docket.

Texas Workers' Compensation Insurance Facility v. Comptroller, et al. Cause #97-03602

Maintenance Tax; Refund Filed: 03/25/97 Period: 1992-1995 Amount: \$23,623,585	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Larry Parks Long, Burner, Parks & Sealey Austin
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Issue: Whether the Facility may recover from the State the maintenance tax surcharge which it reimbursed to insurers.

Status: Motion for summary judgment set 08/17/99. Passed. Motions for Summary Judgment to be reset.

Union Fidelity Life Insurance Co. v. Rylander, et al. Cause #99-06149

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$147,554.42	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

United American Insurance Co. v. Rylander, et al. Cause #99-06836

Gross Premium Tax; Protest Filed: 06/15/99 Period: 1990-1996 Amount: \$1,262,878.98 \$7,487.00	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Sam R. Perry Sneed, Vine & Perry Austin
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Issue: Whether Plaintiff's investment in a limited partnership which held Texas mineral interests qualifies as a Texas investment for purposes of reducing Plaintiff's gross premiums tax rate. Whether investments in limited partnerships should be treated the same as investments in corporations. Whether Plaintiff was denied equal protection under the federal or state constitutions. Plaintiff also asks for attorneys' fees.

Status: Answer filed.

Universe Life Insurance Co. v. State of Texas Cause #97-05106

Insurance Tax; Protest Filed: 04/29/97 Period: 1993 Amount: \$56,958	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Larry Parks Long, Burner, Parks & Sealey Austin
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Issue: Whether plaintiff should be given credit against tax due for examination fees paid to the state in connection with a market conduct examination report ordered by the Texas Department of Insurance. Plaintiff also asks for penalty and interest waiver.

Status: Cross-motions for Summary Judgment heard 11/12/97. Summary Judgment granted for Plaintiff. State has appealed. Case submitted without oral argument 07/06/98. Affirmed in part, reversed and remanded in part 03/11/99. State's Motion for Rehearing denied. Petition for Review filed 06/01/99. Briefs on merits requested by Court. State's brief filed 10/18/99. Petition denied. Case remanded to trial court.

Warranty Underwriters Insurance Co. v. Rylander, et al. Cause #99-12271

Insurance Tax; Protest &
Declaratory Judgment

Filed: 10/20/99

Period: 1993-1997

1993-1997

Amount: \$416,462.73

\$214,893.74

Asst. AAG Assigned:

Plaintiff's Counsel:

Cecilia Gonzalez

Nanette K. Beard

Raymond E. White

Daniel Micciche

Akin, Gump, Strauss,

Hauer & Feld

Austin

Issue: Whether the Comptroller improperly included amounts not received by Plaintiff in Plaintiff's gross premiums tax base. Whether any maintenance tax is payable on Plaintiff's business of home warranty insurance. Whether the Comptroller is bound by the prior actions and determinations of the Texas Department of Insurance. Whether the assessments of tax violate due process and equal taxation. Whether penalty and interest should have been waived.

Status: Informal discovery in progress.

Controlled Substances Tax

Martinez, Jesus Manuel v. Sharp, et al. Cause #95-06432

Controlled Substances Tax; Declaratory Judgment Filed: 05/22/95 Period: 09/03/93 Amount: \$723,957	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Carlos Eduardo Cardenas Law Offices of Joseph Abraham, Jr. El Paso
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Issue: Whether the Controlled Substances Tax Act is unconstitutional on various grounds.

Status: Inactive.

Popp, Robert K. v. Sharp Cause #95-13808

Controlled Substances Tax; Filed: 11/03/95 Period: 1992 Amount: \$12,793	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Paul J. Goeke Attorney at Law San Antonio
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Issue: Plaintiff urges that “the evidence was insufficient as a matter of law to support the judgment.” Plaintiff also asserts that the assessment of the drug tax violates the double jeopardy provisions of the Fifth Amendment.

Status: Inactive.

Rubrecht, Henry Fred v. Bullock, et al. Cause #486,655

Controlled Substances Tax; Protest Filed: 06/29/90 Period: N/A Amount: \$17,169	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Edwin M. Sigel Dallas
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Issue: Is the Controlled Substances Tax Act unconstitutional?

Status: Plaintiff is deceased. Heirs filed suggestion of death. Plaintiff's summary judgment pending.

Sanchez, Joseph I. & Zyle Glass & Anthony Montoya . Rylander, et al. Cause #GN000444

Controlled Substances Tax; Declaratory Judgment Filed: 02/15/00 Period: 1992 1992 1993 Amount: \$35,843.28 \$47,670 \$42,000	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Tom Moran Schneider & McKinney Houston
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Issue: Whether tax liens and tax assessments should be declared void as a violation of double jeopardy.

Status: Answer filed.

Smith, Kelli Deann v. Sharp Cause #95-15061

Controlled Substances Tax; Declaratory Judgment Filed: 12/04/95 Period: 01/27/93 Amount: \$17,222	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Craig A. Stokes Oppenheimer, Blend, Harrison & Tate San Antonio
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Issue: Plaintiff asserts that Chapter 159 of the Texas Tax Code is unconstitutional because it does not require proof of a tax liability beyond a reasonable doubt.

Status: Answer filed.

Sternberg, Bruce Lee v. Sharp, et al. Cause #92-14924

Controlled Substances Tax; Protest & Declaratory Judgment Filed: 10-23-92 Period: 05/24/90 Amount: \$5,253	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Charles O. Grigson Austin
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Issue: Constitutionality of Controlled Substances Tax Act.

Status: Some discovery completed. Inactive.

Other Taxes

AT&T Corp. and AT&T Communications of the Southwest, Inc. v. Sharp, et al.

Cause #97-02005

Misc. Gross Receipts & PUC Gross Receipts Tax; Refund Filed: 02/19/97 Period: 10/01/79-06/30/88 Amount: \$34,401,333 (gross receipts) \$7,990,267 (PUC assessments)	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether taxpayers similarly situated to AT&T were not required to pay gross receipts tax and PUC assessments, as AT&T was, resulting in discrimination against Plaintiff under the equal and uniform taxation clause of the Texas Constitution and the equal protection clause of the U.S. Constitution.

Status: Hearing on State's objections to discovery held 06/25/97. Objections upheld. Trial held 01/05/98. Court ruled for State 01/09/98. Plaintiff filed notice of appeal. Plaintiff's brief was due 10/26/98. Appellee's brief filed 11/24/98; Appellant's Reply was due 01/14/99. Oral argument held 03/4/99. Judgment for State affirmed 08/26/99. Petition for review filed. Response filed. Petitioner's brief filed 02/25/00. Respondents' brief filed 03/16/00. Petitioner's reply filed 03/31/00.

Caldwell, Marcie v. Rylander Cause #99-13088

Declaratory Judgment Tax; Declaratory Judgment Filed: 11/08/99 Period: 1992-Present Amount: \$	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Joe K. Crews Diane S. Jacobs Ivy, Crews & Elliott Austin
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Issue: Whether county court fees collected from persons who are convicted of any criminal offense are constitutional. Plaintiff seeks class action declaratory and injunctive relief to prevent Comptroller from collecting fees. Plaintiff also seeks attorneys' fees.

Status: Plea to Jurisdiction denied 01/06/00. Preparing Interlocutory Appeal. Oral argument set 04/26/00. Trial court decision holding jurisdiction affirmed. Plaintiff waived all rights to refund of court costs. Preparing for Summary Judgment.

Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Texas Comptroller
Cause #96-08010

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 07/11/96	Plaintiff's Counsel:	Robert Mott
Period: 1994		Joseph Longoria
Amount: \$Not stated		Perdue, Brandon, Fielder, Collins & Mott
		Houston

Issue: Various issues concerning the validity of the Comptroller's property value study.

Status: Answer and Special Exception filed. Inactive. Settlement reached with Canyon ISD. Only La Porte ISD is now pending. LaPorte ISD has made a settlement offer. Discovery in progress.

Celadon Trucking Services, Inc. v. Sharp, et al. Cause #97-00827

Interstate Motor Carrier Sales Tax; Protest	Asst. AAG Assigned:	Jim Cloudt
Filed: 01/22/97	Plaintiff's Counsel:	Mark W. Eidman
Period: 02/88-02/92		Ray Langenberg
Amount: \$1,151,784		Scott, Douglass & McConnico
		Austin

Issue: Whether the residual value of leased vehicles should be deducted from the lease price that is taxed, when the vehicles are sold back to the lessors at the end of the lease. Whether the tax is fairly apportioned given the amount of business Plaintiff conducts in Mexico.

Status: Discovery in progress. Settled.

Chevron USA, Inc. v. Sharp, et al. Cause #96-06931

Natural Gas Production Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 06/13/96	Plaintiff's Counsel:	Mark W. Eidman
Period: 08/18/90		Ray Langenberg
Amount: \$157,463		Scott, Douglass & McConnico Austin

Issue: Whether tax should have been assessed on Order 94 payments.

Status: Discussions in progress.

Chrysler Financial Co., L.L.C. v. Rylander, et al. Cause #99-13243

Motor Vehicle Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 11/12/99	Plaintiff's Counsel:	Mark W. Eidman
Period: 10/01/90-11/30/96		Scott, Douglass & McConnico Austin
Amount: \$3,405,494.49		David E .Otero Akerman, Senterfitt & Eidson Florida

Issue: Whether Plaintiff, as assignee of installment contracts with Chrysler dealers, is entitled to a refund under the bad debt credit provision in the sales tax for taxes on motor vehicles that were not paid by defaulting vehicle purchasers. Whether there is any rational basis to distinguish between vehicle sales and other sales or between vehicle rental receipts and vehicle sales receipts for purposes of bad debt relief.

Status: Answer filed.

Davis, Mary v. Sharp, et al. Cause #97-09703

Motor Vehicle Tax; Refund	Asst. AAG Assigned:	Christopher Jackson
Filed: 08/22/97	Plaintiff's Counsel:	David H. Gilliland
Period: 1994		Clark, Thomas & Winters
Amount: \$1,300		Austin

Issue: Whether Plaintiff is entitled to an exemption from motor vehicle tax under §152.086, which includes an exemption for motor vehicles modified by or for the transportation of an orthopedically handicapped person.

Status: Discovery near completion. Preparing Summary Judgment.

El Paso Natural Gas Co. v. Sharp Cause #91-6309

Gas Production Tax; Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/06/91	Plaintiff's Counsel:	Alfred H. Ebert, Jr.
Period: 01/01/87 - 12/31/87		Andrews & Kurth
Amount: \$10,337,786		Houston

Issue: Whether Comptroller should have granted Plaintiff a hearing on penalty waiver and related issues.

Status: State's Plea in Abatement granted pending outcome of administrative hearing on audit liability. Negotiations pending.

Marathon Oil Co. v. Rylander, et al. Cause #GN000328

Gas/Oil Production Tax Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloutd
Filed: 01/10/00	Plaintiff's Counsel:	Hak K. Dickenson
Period: 1994-1997		Marathon Oil Co.
Amount: \$1,363,482.60		Houston

Issue: Whether the market value of oil for the production tax must be reduced by Plaintiff's marketing and processing costs. Whether taxing oil and gas production differently violates equal protection and uniform taxation. Whether the Comptroller's policy on allowable deductions is arbitrary and denies due process. Whether the Comptroller's policy is invalid because it was not adopted as a rule.

Status: Answer filed. Discovery in progress.

McCarty-Hull Cigar Co. v. Sharp, et al. Cause #98-14217

Protest Tax; Refund Filed: 12/22/98	Asst. AAG Assigned:	Scott Simmons
Period: 09/01/93-06/30/96 Amount: \$33,582.58	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin

Issue: Whether tax base for cigar and tobacco tax was properly calculated for inventory bought for reduced prices or on a "two-for-one" basis.

Status: Discovery in progress.

McCarty-Hull Cigar Co. v. Rylander, et al. Cause #99-01996

Protest Tax; Refund Filed: 02/19/99	Asst. AAG Assigned:	Scott Simmons
Period: 09/01/93-06/30/96 Amount: \$40,404.49	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin

Issue: Whether promotional allowances or two-for-one sales were "ongoing" or "uniform price" transactions rather than trade discount, special discount or deal for purposes of determining the manufacturer's list price.

Status: Defendant's First Amended Original Answer and Plea to Jurisdiction filed. Discovery in progress.

McLane Company, Inc. v. Rylander, et al. Cause #99-00979

Protest Tax; Refund Filed: 01/27/99	Asst. AAG Assigned:	Jim Cloudt
Period: 01/01/90-01/31/96 Amount: \$26,500,000	Plaintiff's Counsel:	Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin

Issue: Whether taxes on tobacco products are based on the list price of products sold by a manufacturer only to its affiliated distributor or on the price paid by a Texas distributor to the affiliated distributor. Whether tax based on the distributor's price violates the commerce clause or equal protection. Whether departmental construction was followed and whether refunds must be made to consumers before distributor may receive refund.

Status: Discovery in progress. Trial set for 11/13/00. Cross motions for summary judgment will be heard before the trial. Settled.

P.W. Jones Oil Co., Inc. v. Sharp, et al. Cause #96-02941

Diesel Fuel Tax; Injunction Filed: 03/12/96	Asst. AAG Assigned:	Steve Rodriguez
Period: 1989-1993 Amount: \$176,959	Plaintiff's Counsel:	John A. Leonard Russell & Leonard Wichita Falls

Issue: Whether Plaintiff can rebut the presumption that the sale of diesel fuel is taxable. Plaintiff also asks for an injunction to stop collection action.

Status: Inactive.

Preston Motors by George L. Preston, Owner v. Sharp, et al. Cause #91-11987

Motor Vehicle Tax; Protest Filed: 08/26/91	Asst. AAG Assigned:	Jim Cloudt
Period: 12/01/86 - 09/30/89 Amount: \$21,796	Plaintiff's Counsel:	George L. Preston Paris

Issue: Whether motor vehicle tax should fall on dealer/seller rather than the purchaser under §152.044. Related constitutional issues.

Status: Inactive.

Thurman, Kay G. and Merlene G. Stroud v. Sharp Cause #97-06891

Inheritance Tax; Injunction Filed: 06/11/97 Period: DOD 11/14/82 Amount: \$279,420.77 plus interest	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Robert W. Swanson Von Kreisler & Swanson Austin
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Issue: Whether beneficiaries of an estate owe the balance of inheritance tax not paid by the estate. Statute of Limitations question.

Status: On dismissal docket.

Travis Co., et al. v. Lot 1, Baker Dale Addn. Cause #X99-01147

Property Tax; Ad Valorem Filed: 08/04/99 Period: 1994-1998 Amount: \$112,123.6	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons Carol V.M. Garcia Assistant Travis County Attorney Austin
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Issue: Whether properties in which the University of Texas System owns an interest may be foreclosed for payment of property taxes.

Status: Discovery in progress.

Vallado, Jan Clopton, Independent Executor of Estate of Marion Wallace Clopton, Jr. v. Sharp, et al. Cause #97-04810

Inheritance Tax; Protest Filed: 04/22/97 Period: DOD 08/30/94 Amount: \$1,937	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Kenneth B. Kramer Attorney at Law Wichita Falls
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Issue: Whether penalty should be waived.

Status: Answer filed. Settlement discussions in progress. On dismissal docket.

Closed Cases

3 Beall Brothers 3, Inc. v. Sharp, et al. Cause #97-05710

Franchise Tax; Refund Filed: 05/12/97 Period: 1993 Amount: \$732,559	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Plaintiff challenges franchise "additional" tax imposed after Plaintiff merged out of existence, on the grounds that the tax discriminates without a rational basis between fiscal and calendar-year taxpayers, under state and federal equal taxation provisions, and violates the federal commerce clause nexus and fair relation tests.

Status: Judgment for Plaintiff on 06/25/98. Judgment reversed and rendered by the Third Court of Appeals. Texas Supreme Court denied Plaintiff's petition for review on 03/23/00. Motion for rehearing due 04/07/00. *See Rylander v. 3 Beall Brothers 3, Inc., 2 S.W.3d 562 (Tex. App.-Austin 1999, petition den.)*

American & Foreign Insurance Co., Royal Indemnity Co., Royal Insurance Co. of America and Safeguard Insurance Co. v. TDI; Jose Montemayor, Cmsr.; Cornyn; Rylander; CPA; and Texas Public Finance Authority Cause #99-06208

Maintenance Tax; Refund & Declaratory Judgment Filed: 05/27/99 Period: 1998 1998 1998 1998 Amount: \$2,036.27 \$17,389.16 \$43,339.45 \$32.41	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Stephen L. Phillips Julie K. Lane Roan & Autrey Austin
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Issue: Whether the workers' compensation maintenance tax surcharge should be calculated on premiums actually written or premiums including deductible amounts.

Status: Non-suited.

Brown, William A. d/b/a Nortex Investigative Services v. Sharp, et al. Cause #96-06158

Sales Tax; Declaratory Judgment & Injunction Filed: 05/29/96 Period: 01/01/90-12/31/93 Amount: \$30,992	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons Gary L. Waite Attorney at Law Paris
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Issue: Whether Plaintiff is liable for sales tax on its security services. Whether Plaintiff relied to its detriment on erroneous advice from the Comptroller.

Status: Answer and plea to the jurisdiction filed. Discovery in progress. Motion for Summary Judgment heard and granted 02/25/00; signed 02/28/00.

Capital Guidance Associates IV v. Sharp, et al. Cause #97-06501

Sales Tax; Protest Filed: 06/03/97 Period: 07/01/90-03/31/94 Amount: \$39,882	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Claim for refund under prior contract exemption and Rule 3.319, as it was in effect until 1992. Whether the Comptroller could pass a rule contrary to Rule 3.319 and apply it retroactively. Issue involves exemption for two-party vs. three-party contracts and a policy change.

Status: Dismissed.

Chevron USA, Inc. v. Sharp, et al. Cause #97-05867

Motor Fuels Tax; Refund Filed: 05/15/97	Asst. AAG Assigned:	Gene Storie
Period: 04/01/90-03/31/94 Amount: \$316,460	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Plaintiff is a petroleum refiner and a diesel fuel bonded supplier. The Comptroller denied refund claims because they were barred by the one-year statute of limitations in §153.224. Plaintiff contends that the statute of limitations in §111.104 (c) is applicable; that an agreement to extend the statute of limitations applied to Plaintiff's refund request; that the one-year statute does not apply because the refund claim is not made pursuant to Chapter 153 (Motor Fuels Tax); that the Comptroller's guidelines apply the four-year statute in circumstances similar to Plaintiff's; and that, in the alternative, the one-year statute is unconstitutional. There is also a detrimental reliance claim.

Status: Agreed Judgment.

Cinco Hermanos, Inc. v. Sharp, et al. Cause #97-13533

Sales Tax; Protest Filed: 12/04/97	Asst. AAG Assigned:	Christopher Jackson
Period: Not stated Amount: \$70,153	Plaintiff's Counsel:	Timothy M. Trickey The Trickey Law Firm Austin

Issue: Whether export certificates accepted by a seller that are dated before or more than 30 days after the purchase in question are invalid on their face or merely raise a presumption of non-export.

Status: Answer filed. Settlement reached. Judgment.

Consigned Sales Distributors, Inc. v. Sharp, et al. Cause #95-06984

Franchise Tax; Refund Filed: 06/05/95 Period: 1989-1992 Amount: \$723	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Fred O. Marcus Horwood, Marcus & Braun Chicago, Illinois David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether the Texas franchise tax is a tax imposed on or measured by net income for purposes of Public Law 86-272; if so, Plaintiff contends that it is not subject to the Texas franchise tax. Whether Plaintiff is doing business in Texas. Whether post-retirement benefits should be included in taxable surplus.

Status: Dismissed for want of prosecution on 03/13/00.

Dallas SMSA Partnership v. Sharp, et al. Cause #97-09713

Sales Tax; Refund Filed: 08/22/97 Period: 01/89-08/31/92 Amount: \$99,349	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether engineering services were part of the sales price of tangible personal property sold to Plaintiff.

Status: Summary Judgment for Plaintiff signed 01/20/99. Appellate briefs filed. Oral argument held 10/27/99. Court of Appeals rendered decision for taxpayers 01/06/00. New final decision rendered 02/03/00.

Fleming Foods of Texas, Inc. v. Sharp, et al. Cause #94-14234
Appellate Cause No. 03-96-00477-CV

Sales Tax; Protest Filed: 11/14/94 Period: 07/01/85-06/30/89 Amount: \$353,874	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez J. Scott Morris Attorney at Law Austin
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Issue: Whether both the taxpayer and its vendor must timely waive the statute of limitations in order to have it kept open for the taxpayer to claim a refund of, or credit for, sales tax paid to the vendor. Also, Plaintiff contends the Comptroller did not initially enforce a new rule concerning tax on janitorial services and that tax voluntarily paid by the taxpayer should be refunded.

Status: Judgment for State signed 05/03/96. Appealed and argued before Court of Appeals. Affirmed 08/28/97. Taxpayer's Motion for Rehearing overruled. Writ (Petition for Review) denied 02/26/98. Motion for rehearing of denial of writ (petition) filed 03/13/98. Granted 09/98. Set for submission 11/18/98. Judgment for Plaintiff. Motion for Rehearing filed. Supreme Court rendered new decision for taxpayers.

Gant, Jesse A., Estate of v. Comptroller, et al. Cause #96-07733

Inheritance Tax; Declaratory Judgment Filed: 07/03/96 Period: 07/24/92 Amount: \$Not stated	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Peter K. Munson Munson, Munson, Pierce & Cardwell Sherman
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Issue: Whether penalty should be waived.

Status: Dismissed 11/04/99.

Haber Fabrics Corp. v. Sharp, et al. Cause #96-11802

Sales Tax; Protest Filed: 09/30/96 Period: 01/01/90-11/30/93 Amount: \$84,984	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Robert M. Nicoud, Jr. Robert E. Birne Olson Gibbons Sartain Nicoud Birne Sussman & Gueck Dallas
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Issue: Whether wrapping and packaging and purchases of natural gas and electricity were exempt as being used in manufacturing.

Status: Bench Trial heard 01/20/99. Court granted exemptions for packaging, wrapping and electricity, but not natural gas. Defendants' Motion for New Trial is pending. Findings of Fact and Conclusions of Law filed by the Court 03/15/99. Defendant filed Notice of Appeal 05/10/99. Appellant's brief filed 07/08/99. Appellee's brief filed 08/08/99. Reply filed 08/26/99. Oral argument held 12/01/99. Decision for taxpayer affirmed.

Houston Industries Building, Inc. v. Rylander, et al. Cause #99-04219

Sales Tax; Refund Filed: 04/09/99	Asst. AAG Assigned:	Steve Rodriguez
Period: 10/01/93-03/31/96 Amount: \$960,867.93	Plaintiff's Counsel:	L.G. "Skip" Smith David H. Gilliland Clark, Thomas & Winters Austin

Issue: Whether removal of asbestos is an exempt service.

Status: Settled in accordance with *Associated Technics*.

Kandi Sue, Inc. v. Sharp, et al. Cause #94-14073

Sales Tax; Protest Filed: 11/8/94	Asst. AAG Assigned:	Blake Hawthorne
Period: 10/01/91-12/31/91 Amount: \$7,757	Plaintiff's Counsel:	Mark Blakemore Royston, Razor, Vickery & Williams Brownsville

Issue: Whether the purchase of a shrimp trawler was exempt from tax as an occasional sale (identifiable segment of the business).

Status: Non-suited.

Kerrville ISD v. Comptroller Cause #98-08168

Property Tax; Substantial Evidence Review	Asst. AAG Assigned:	Gene Storie
Filed: 07/28/98	Plaintiff's Counsel:	Roy L. Armstrong
Period: 1997		Shelburne J. Veselka
Amount: \$Not stated		McCreary, Veselka, Bragg & Allen Austin

Issue: Whether the Comptroller's property value study was incorrect in that the Comptroller failed to use samples of properties selected through generally accepted sampling techniques and failed to perform the value study according to generally accepted standard valuation, statistical compilation and analysis techniques.

Status: Settlement discussions in progress. Settlement reached. Final Judgment signed.

Lake Worth ISD, et al. v. Texas Comptroller of Public Accounts Cause #97-08882

Property Tax; Substantial Evidence Review	Asst. AAG Assigned:	Christine Monzingo
Filed: 08/05/97	Plaintiff's Counsel:	Russell R. Graham
Period: 1996		Calame, Linebarger, Graham & Pena Austin
Amount: \$Not stated		

Issue: Whether the Comptroller's property value study is incorrect in that it misstates the market value of the subject property and causes the estimate of market value for Category F to exceed the actual market value of the School District's 1996 tax base, depriving it of state aid to which it is legally entitled.

Status: Non-suited.

Landgraf, Larry A. dba Landgraf & Co., Inc. v. Rylander, et al. Cause #99-00186

Sales Tax; Injunction	Asst. AAG Assigned:	Blake Hawthorne
Filed: 06/30/99	Plaintiff's Counsel:	Larry A. Landgraf, Pro Se
Period:		
Amount: \$		

Issue: Whether the Comptroller and the State have engaged in grand larceny, conspiracy, invasion of privacy, etc. in collecting sales tax and cancelling Plaintiff's sales tax permit.

Status: Defendant's Plea to the Jurisdiction granted 04/03/00. Case dismissed with prejudice.

Laney, James M. v. Sharp, et al. Cause #97-08525

Sales Tax; Declaratory Judgment & Refund Filed: 07/25/97 Period: 10/01/89-07/31/93 Amount: \$91,744	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Howard V. Rose Brown McCarroll & Oaks Hartline Austin
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Issue: Whether the Comptroller complied with the law governing sample audits. Whether the agreement extending the statute of limitations was timely signed.

Status: Judgment for Defendants.

Lucky Lady Oil Co. v. Rylander, et al. Cause #99-01731

Sales Tax; Protest Filed: 02/12/99 Period: 06/01/88-12/31/91 Amount: \$402,951.08	Asst. AAG Assigned: Plaintiff's Counsel:	Jim Cloudt Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether taxpayer's liability for diesel fuels tax was properly computed. Whether the Comptroller should waive penalty and interest.

Status: Discovery in progress. Trial set for 02/22/00. Settled.

Nabisco, Inc. and Planters/Lifesavers v. Sharp, et al. Cause #03-98-00399-CV

Franchise Tax; Protest & Refund Filed: 07/21/97 Period: 1989-1991 Amount: \$2,155,572 \$51,416 \$1,009,239	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Donald L. Stuart Drenner & Stuart Austin Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiffs are entitled to a deduction from gross receipts of receipts from sales of food shipped from outside Texas to Texas storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§151.314(a), 171.104, and 171.103(1).

Status: See *Nabisco v. Rylander*, 992 S.W.2d 678 (Tex. App. - Austin 1999, petition den.).

Oliveira, Leonel v. Rylander, et al. Cause #99-14679

Controlled Substances Tax; Declaratory Judgment Filed: 12/20/99 Period: 11/22/94 Amount: \$503,433.87	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Horacio Pena, Jr. Law Office of Horacio Pena, Jr. Mission
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Issue: Whether Plaintiff may remove controlled substances tax lien on grounds of double jeopardy when Plaintiff has previously been convicted for possession of the same controlled substances by a federal district court.

Status: Answer filed. Plaintiff has agreed to non-suit.

Reflectone Training Systems, Inc. v. Bullock, et al. Cause #492,137

Sales Tax; Protest Filed: 10/11/90 Period: 01/01/87 - 12/31/88 Amount: \$85,419	Asst. AAG Assigned: Plaintiff's Counsel:	Nicole Galwardi Forrest Smith Arter & Hadden Dallas
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Issue: Taxability of lease payments reimbursed by U.S. Navy. Resale certificates and government exemption.

Status: Dismissed.

Salih, John Douglas v. Sharp, et al. Cause #96-04153

Controlled Substances Tax; Declaratory Judgment & Injunction Filed: 04/11/96 Period: 09/95 Amount: \$304,110	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Charles O. Grigson Attorney at Law Austin
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Issue: Whether the Controlled Substances Tax Act is unconstitutional on various grounds.

Status: Motion to Retain and Objection to Motion to Retain filed. Waiting for court's order.
Dismissed for want of prosecution.

San Antonio SMSA\ Limited Partnership v. Sharp, et al. Cause #97-11831

Sales Tax; Refund Filed: 10/15/97	Asst. AAG Assigned:	Steve Rodriguez
Period: 01/01/89-08/31/92 Amount: \$217,898	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether engineering services were part of the sales price of tangible personal property sold to Plaintiff.

Status: See *Dallas SMSA*.

Southwest Oil Co. of San Antonio, Inc. v. Bullock, et al. Cause #470,110

Diesel Fuel Tax; Protest Filed: 08/10/89	Asst. AAG Assigned:	Blake Hawthorne
Period: 11/01/83-12/31/85 Amount: \$61,750	Plaintiff's Counsel:	Donald H. Grissom Law Offices of Donald H. Grissom Austin

Issue: Acceptable methods to rebut the presumption that once a taxable sale of diesel fuel is made, all future sales are to be taxable as well.

Status: Inactive.

Southwest Subrogation Services, Inc. v. Sharp, et al. Cause #98-09148

Sales Tax; Declaratory Judgment Filed: 08/17/98	Asst. AAG Assigned:	Blake Hawthorne
Period: 10/01/87-09/30/92 Amount: \$483,778	Plaintiff's Counsel:	Gregory E. Perry Attorney at Law Austin

Issue: Whether Plaintiff's services are taxable as debt collection or related services. Whether fraud penalty should have been assessed. Whether Plaintiff is required to prepay the tax before receiving judicial review of the tax assessment. Whether certain tax statutes are constitutional. Whether interest should be waived.

Status: Plaintiff filed for bankruptcy on 10/01/98. Federal stay is in effect. Sales tax now being paid under confirmed Chapter 11 plan.

Southwestern Explosives, Inc. v. Bullock, et al. Cause #426,164

Franchise Tax; Protest Filed: 09/04/87 Period: 01/01/81 - 12/31/84 Amount: \$40,324	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Must a dividend be declared to be deductible from surplus? Is Rule 3.405 unconstitutional?

Status: Motion to dismiss for want of prosecution pending. Non-suit to be filed.

Steen, Steven G. v. State of Texas, Secretary of State Cause #48-179724-99

Controlled Substances Tax; Declaratory Judgment Filed: 08/12/99 Period: 03/26/92 Amount: \$15,430.34	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne David L. Pritchard Fort Worth
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Issue: Whether the Comptroller's drug tax lien should be declared void or satisfied. Plaintiff also seeks attorney's fees.

Status: Plaintiff filed Motion to Non-Suit. Motion to Non-Suit granted.

Union Pacific Resources Co. v. Sharp, et al. Cause #95-13139

Natural Gas Production Tax; Refund Filed: 10/16/95 Period: 11/82-12/85 Amount: \$110,962	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglas & McConnico
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Issue: Plaintiff requests that monies in escrow with the Comptroller's Office be applied to an audit liability.

Status: Discovery in progress. Settlement negotiations ongoing. Agreed judgment signed.

West Texas Gas, Inc. v. Sharp, et al. Cause #93-01245

Franchise Tax; Protest Filed: 02/02/93 Period: 1988 - 1990 Amount: \$111,761	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Jasper G. Taylor, III Robert F. Corrigan, Jr. Fulbright & Jaworski Houston
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Issue: Whether the difference between an advance to the sole shareholder and the amount of a promissory note could be deducted from surplus as a reduction in stockholder's equity. In the alternative, was it a write-off of a permanent decline in value of an asset or a write-down?

Status: Judgment.

Whitesboro ISD, et al. v. Texas Comptroller of Public Accounts Cause #97-09046

Property Tax; Substantial Evidence Review Filed: 08/08/97 Period: 1996 Amount: \$Not stated	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo E. Jeannie Navarro Attorney at Law Austin
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Issue: Whether the Comptroller's property value study is incorrect in that it exceeds the market value of the subject property and causes the estimate of market value for various categories to exceed the actual market value of the School Districts' 1996 tax base, depriving it of state aid to which it is legally entitled. Plaintiffs also assert that the burden of proof is on the State to prove that Plaintiffs' valuations are incorrect.

Status: Cross-Motions for Summary Judgment heard on 06/25/98. Final Judgment for Comptroller signed 12/09/99. Not appealed.

Index

- Additional tax
 - franchise tax imposed after merger, 8, 10, 26, 101
 - imposed after merger, 22
 - merger, 19
 - nexus, 26
 - Rule 3.557, 27
- Administrative hearing, 96
- Advertising receipts
 - allocation for franchise tax, 5
- Aircraft
 - maintenance, repair & remodeling, 68
 - repair & replacement parts, 69
 - sale for resale, 48
- Allocation
 - advertising receipts, 5
- Amusement tax
 - coin operated machines and non-coin operated games, 42
 - Fitness & aerobic training services, 63
- Apportionment
 - residual value of leased vehicles, 94
- Asbestos
 - removal, 106
- Attorneys' fees, 77
- Automotive items, resale, 48
- Business loss carryforward
 - merger, 18, 20
- Cable services
 - municipal franchise fees, 57
- Catalogs
 - nexus, 63
 - nexus, taxable use, 45
 - use tax--printed out of state, 63
- Coin operated machines and non-coin operated games
 - amusement tax v. sales tax, 42
- Collection of Tax
 - summary collection procedures, 72
- Commercial and Industrial Real Property
 - market value estimate, 107
- Construction
 - 1984 amendment to Tex. Tax Code § 151.311, 40
 - government facility, 54
- Construction contract
 - lump sum or separated contract, 34
- Contract
 - lump sum or separated contract, 39, 65
- Conveyor belts
 - manufacturing exemption, 32
- Country Club fees
 - sales tax, 51
- County Court Fees
 - punishment, 94
- Customs Broker License
 - export of goods, 42, 54
- Data processing, 54
 - intercompany transactions, 45
 - sale for resale, 62
- Debt
 - deduction from surplus, 26
 - depreciation methods, 21
 - intercompany transactions, 7, 29
 - liability to Pension Benefit Guaranty Corporation under ERISA, 10
 - operating lease obligations, 5
 - post-retirement benefits, 3, 8, 19, 21, 25, 26
- Debt collection services, 54, 111
- Depreciation
 - service lives, 21
- Depreciation methods
 - 1986 IRS Code applicable to 1990, 22
- Detrimental reliance, 35, 103
- Diesel fuel
 - penalty, 108
 - rebuttable presumption, 110
- Direct Sales
 - Definition and application, 66
 - taxable use, sampling, 47
- Dividends
 - declared, 111
- Doing Business
 - taxability, 7, 8, 104
- Double Jeopardy, 89, 110
 - burden of proof, 90
 - deferred adjudication, 90
 - federal conviction, 109
- Electricity
 - insurer exemption, 49
 - processing, 36, 61, 64, 67
 - use in hotels, 72
- Engineering services
 - part of sale of tangible personal property, 104, 110
- Equal protection, 77
- ERISA
 - liability to Pension Benefit Guaranty Corporation under ERISA, 10
 - post-retirement benefits, 3, 5, 21
- Export of goods
 - customs broker license, 54
 - validity of export certificates, 103
- Franchise fees, municipal

- cable services, 57
- Fraud
 - penalty, 39
- Games
 - amusement tax v. sales tax, 42
- Gas and electricity purchases
 - manufacturing exemption, 106
 - residential use, 71
- Government facility
 - construction, 54
- Gross Premiums
 - internal rollover, 75, 76, 83, 84
 - paid-up additions, 81
 - renewal premiums, 81
 - workers compensation, 85
- Gross receipts
 - apportionment of GNMA securities' interest, 12
 - apportionment of satellite service receipts, 29
 - constitutionality, 93
 - deduction for food shipped in from out of state, 5, 6, 13, 14, 16, 17, 23, 24, 28, 109
 - intercompany transactions, 30
 - interstate telephone charges, 9
 - nexus, 30
 - reimbursement for services, 19
 - Sale of stock in non-unitary business, 15
 - section 338 sale, 10
 - throwback rule, 1, 3
- Gross Taxable Sales
 - collection of tax, 73
 - Inadequate Records, 31
- Health care supplies
 - exclusion from franchise tax receipts, 27
- Independent contractors
 - maid service, 34
- Insurance services, 54
- Internal rollover
 - gross premiums, 75, 80
 - insurance gross premiums tax, 75, 77, 80
- Intracorporeal transportation
 - manufacturing exemption, 68
- Inventory samples
 - sale for resale, 50
- Janitorial services, 105
 - new construction, 57
- Joint venture
 - Sales tax credits, 19, 25
- Lease
 - pledge of collateral/acceleration of sales tax, 57
 - reimbursement by U.S. Navy, 109
- Lien, 112
- Limitations
 - contingent assets, 9, 18
- Lump Sum Motor Vehicle Repairs
 - Software Services, 32
- Maid services
 - real property services, 34
- Maintenance
 - aircraft owned by certificated carrier (pipeline), 68
 - utility poles, 36
 - workers compensation, 101
- Maintenance charges
 - manufacturing facility, 35
- Manufacturing exemption, 59, 60
 - "pan glazing", 49
 - conveyor belts, 32
 - gas and electricity, 106
 - intracorporeal transportation, 68
 - packaging, 48, 50, 106
 - pipe, 68
- Manufacturing facility
 - management and operation, 35
- Market Value of Oil
 - processing and marketing costs, 97
- Mixed drinks
 - complimentary, sales tax, 52
- Motor Vehicle Exemptions
 - orthopedically handicapped, 96
- Motor Vehicle Seller
 - liability for tax, 99
- Motor vehicle tax
 - bad debt collection, 95
- New construction
 - janitorial services, 57
 - lump sum or separated contract, 39
 - real property repair and remodeling, 57
 - tax credits, 52
- Nexus
 - catalogs printed out of state, 60, 63
 - Certificate of authority, 2
 - delivering goods, 50, 51
 - delivery and installation of goods, 53
 - licensed software, 35
 - McCarran-Ferguson Act, 78
 - nexus, 32
- Nexus, taxable use
 - catalogs printed out of state, 45
 - promotional materials, 33, 38, 40
- Occasional sales, 52
 - shrimp trawler, 106
- Officer and director compensation
 - add-back to surplus, 1, 11, 20, 22
- Oil well services, 59
- Open Courts
 - prepayment of tax, 46, 61
- Operating lease obligations
 - debt, 3, 5
- Packaging
 - manufacturing exemption, 44, 45, 48, 50, 106
- Parking lot

- repairs, 52
- Penalty
 - fraud, 39, 111
 - waiver, 39, 96, 100
- Pension Benefit Guaranty Corporation , 10
- Pipe
 - manufacturing exemption, 68
- Post-retirement benefits
 - debt, 3, 8, 21, 25, 104
 - ERISA, 3, 5
 - taxability, 7
- Pre-acquisition earnings
 - deduction from surplus, 11
- Predominant use
 - electricity, 46
- Premiums
 - home warranty insurance, 87
- Prepayment of tax, 111
 - Open Courts, 46, 61
- Printing
 - out-of-state printer, 70
- Prior contract exemption, 69, 71, 102
- Prizes
 - amusement tax v. sales tax, 42
 - cost of taxable, 58, 72
- Producer's Gross Receipts
 - Order 94 payments, 95
 - prepayment of tax, 112
- Promotional Materials
 - nexus, taxable use, 33, 37, 38, 40
 - ownership of, 34, 38
 - use tax, 41
- Proof
 - burden in administrative hearing, 46
 - burden in property tax case, 113
- Public Law 86-272
 - taxability, 7, 8, 104
- Public telephone service
 - transfer of care, custody, and control of equipment, 64
- Push-down accounting, 11, 21
- Real Property Repair and Remodeling, 36
 - collection of tax, 108
 - finish-out work, 70
 - maintenance, new construction, 43
 - new construction, 46, 57
 - new construction, pollution control, 70
 - property management services, 37
 - vs. maintenance, 36
- Real property service
 - industrial solid waste, 49
 - landscaping, 55
 - landscaping, waste removal, 36, 43, 58
 - property damaged in disaster area, 65
 - taxable price, 43
- Real property service,
 - maid service, 34
- Recycling, sludge
 - exempt corporation, 15
- Remodeling
 - aircraft owned by certificated carrier (pipeline), 68
- Rental of equipment
 - inclusion of related services in taxable price, 40
- Repair
 - parking lot, 52
- Residential Property
 - sampling method, 107
- Retaliatory Basis, 81
 - similar insurance company, 78, 79, 80, 82, 83, 86
- Retroactivity of tax
 - earned surplus, 14, 23
- Rule making
 - authority of Comptroller, 54
- Sale for resale
 - airplane, 48
 - collection of tax, 66
 - debt collection services, 41
 - engines, 47
 - telecommunications equipment, 71
 - U.S. Government, 109
- Sales price
 - insurance contracts on sold goods, 46
- Sample audits
 - compliance with procedures, 42, 108
- Sampling technique
 - validity, 42, 44, 59, 62
- Statute of limitations, 25, 99
 - motor fuels tax; one-year statute, 103
 - tax paid to vendors, 43, 105
 - waiver, 105
- Stockholder equity, 112
- Successor liability, 56
- Tax Foreclosure
 - State University, 99
- Taxable Value
 - market value estimate, 113
 - presumption, 94
- Telecommunication services
 - networking services, 65
- Telecommunications equipment
 - sale for resale, 71
 - transfer of care, custody, and control of equipment, 56
- Telecommunications services
 - private line services, 33
- Texas franchise tax receipts
 - health care supplies, 27
- Texas investments, 77
 - bank balances, 82
 - Bond & Cash Investments, 84

- debt, 84
 - Limited Partnership Holdings, 86
 - Partnership, 84
- Third Party Administration
 - ERISA, 81
- Throwback rule, 12
- tobacco
 - tax base, 98
 - taxable price, 97
- U.S. Government
 - sale for resale, 109
- Unauthorized Insurance
 - determination of status, 76
- Use tax
 - promotional materials, 41
 - shipping from out of state, 55
- Waste removal
 - industrial solid waste vs. garbage, 49
- Write-off
 - of assets, deductible from surplus, 16, 112