



**OFFICE OF THE ATTORNEY  
GENERAL**

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**COMPTROLLER OF PUBLIC ACCOUNTS  
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## Franchise Tax

### **3 Beall Brothers 3, Inc. v. Rylander, et al.** Cause #GN002755

Franchise Tax; Refund Filed: 09/15/00 Period: 1993 Amount: \$265,995	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the franchise tax was applied retroactively to deny Plaintiff a business loss carry forward. Whether the officer and director compensation add-back is unconstitutional.

Status: Answer filed.

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

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

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

Franchise Tax; Refund Filed: 07/15/99 Period: 1992-1995 Amount: \$109,612.26	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the Comptroller incorrectly calculated apportioned gross receipts by applying the throw-back 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*.

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**American General Corp. v. Rylander, et al.** Cause #GN003178

Franchise Tax; Protest Filed: 10/31/00 Period: 1994-1998 Amount: \$2,131,754.78	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether intercorporate receipts should be excluded from gross receipts. Whether certain obligations were debts. Whether the Comptroller's application of the debt deduction statute violates equal protection. Whether an indirect tax on post-retirement benefits violates ERISA and the supremacy doctrine. Whether interest should be waived. Whether the assessment violates equal taxation, equal protection, due process, commerce clause, the Tax Code, the Administrative Code, was in excess of statutory authority, was made through unlawful procedure, and was arbitrary and capricious.

Status: Answer filed.

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**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.

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**Bandag Licensing Corp. v. Sharp, et al.** Cause #98-06931  
#03-99-00427-CV

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. Court requested Response; filed 08/24/00. Court requested briefing on the merits. Petitioners' brief filed. Respondent's brief and Petitioners' reply briefs filed.

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**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 throw-back rule to apportion gross receipts under the pre-amended statute. Whether the throw-back rule violates the commerce clause. Whether the rule as applied is unconstitutionally retroactive and violates due process.

Status: Answer filed. See *Comptroller v. Fisher Controls International, Inc.*

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**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.

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**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.

Status: Non-jury trial set for 06/11/01.

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**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.

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**Fisher Controls International, Inc. v. Sharp, et al.** Cause #98-08893  
#03-00-00183-CV

Franchise Tax; Protest Filed: 08/11/98 Period: 1992-1993 Amount: \$1,209,209	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 the phrase "is not subject to taxation" means the same thing in the earned surplus throw-back statute as it does in the taxable capital throw-back 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' and Appellee's briefs filed. Argued before the Third Court of Appeals 10/18/00.

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**General Motors Corp. v. Sharp, et al.** Cause #97-12350  
#03-00-00247-CV

Franchise Tax; Refund Filed: 10/31/97 Period: 1991-1994 Amount: \$18,788,858	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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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. Third Court of Appeals reaffirmed *Caterpillar* in a 12/07/00 opinion that is not to be published.

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**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. Hearing on Motion for Summary Judgment set for 12/11/00. Hearing passed. Motion to be reset.

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**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: Agreed motion to retain on suspense docket filed. See *Upjohn v. Comptroller, S.W. 3d (Tex. App. Austin, pet. filed)*.

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**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: Agreed motion to retain on suspense docket filed. See *Upjohn v. Comptroller, S.W. 3d (Tex. App. Austin, pet. filed)*.

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**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:

Cecilia Gonzalez

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 *Nabisco* and *Upjohn*.

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**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:

Blake Hawthorne

Plaintiff's Counsel:

Jess M. Irwin, III  
Steven D. Moore  
Jackson & Walker  
Austin

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

Status: Discovery in progress.

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**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.

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**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:  Plaintiff's Counsel:	Christine Monzingo  Fred O. Marcus Horwood, Marcus & Braun Chicago  David E. Cowling Jones, Day, Reavis & Pogue Austin
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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.

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***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.

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***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.

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

Franchise Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 11/12/99	Plaintiff's Counsel:	Kim E. Brightwell
Period: 1999		Garry M. Miles
Amount: \$34,100,000		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: Mediation scheduled for 01/12/01.

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

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

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

Status: Agreed motion to retain on suspense docket pending *Palais Royal & 3 Beall Brothers 3, Inc. v. Comptroller*.

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

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

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**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 Period: 1986-1987 Amount: \$355,619	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether acquisition debt incurred by an acquiring corporation must be pushed down to the acquired corporation.

Status: Inactive.

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**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:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether Comptroller properly interpreted throw-back rule for purposes of gross receipts apportionment factor.

Status: Inactive pending *Comptroller v. Fisher Controls, Inc.*, which was argued 10/18/00 to the Third Court of Appeals.

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**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
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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, S.W. 3d (Tex. App. Austin 2000, pet. filed)*.

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**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
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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: Agreed Motion to Retain on suspense docket pending. See *Upjohn v. Comptroller, S.W. 3d (Tex. App. Austin 2000, pet. filed)*.

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

Franchise Tax; Refund  
Filed: 05/19/99  
Period: 1994 & 1995  
Amount: \$324,051 &  
\$90,910

Asst. AAG Assigned:

Cecilia Gonzalez

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*.

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

Franchise Tax; Protest  
Filed: 04/01/96  
Period: 1992-1993 (3  
Beall)  
1992-1995 (Palais)  
Amount: \$700,974

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Mark W. Eidman  
Ray Langenberg  
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. Whether the additional tax is unconstitutional under equal taxation provisions. Whether the officer-director add-back statute is unconstitutional under equal taxation provisions. Whether the implementation of the earned surplus tax component violated due process.

Status: Cross-motions for summary judgment set for hearing on 01/17/01.

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**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:

Gene Storie

Plaintiff's Counsel:

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.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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' earned surplus gross receipts. Whether the throw-back 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.

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**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:

Christine Monzingo

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: See *H.J. Heinz v. Comptroller, et al, supra.*

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**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:

Christine Monzingo

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: See *H.J. Heinz v. Comptroller, et al, supra.*

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**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:

Cecilia Gonzalez

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*.

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**Randall's Food & Drugs, Inc. v. Rylander, et al.** Cause #GN003174

Franchise Tax; Protest &  
Refund  
Filed: 10/31/00  
Period: 1994-1997  
Amount: \$4,006,942.39

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Jasper G. Taylor, III  
Jay M. Chadha  
Fulbright & Jaworski  
Houston

Issue: Whether the Comptroller's Rule 3.555(g)(3), which denies a carry forward of business losses of a merged corporation by the surviving corporation, is an unconstitutional retroactive law or a violation of Texas and Delaware statutes on mergers. Whether compensation of officers and directors should have been added back to Plaintiff's income and whether doing so violates constitutional equal taxation requirements. Whether some receipts were incorrectly treated as Texas receipts Whether surplus calculation by the Comptroller should have excluded increases from push-down accounting. Whether failure to waive penalties and interest was arbitrary. Whether the audit has calculation errors. Whether the Comptroller's determination and decision violate equal protection, due process, and other constitutional provisions.

Status: Answer filed.

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**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:	Jim Cloudt  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.

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**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.

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**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. Whether post-retirement benefits should be deducted from surplus.

Status: First amended petition filed. Discovery in progress.

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***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: Preparing discovery.

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***Schlumberger Technology Corp. v. Rylander, et al.*** Cause #GN002484

Franchise Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 08/23/00	Plaintiff's Counsel:	Gerard A. Desrochers
Period: 1991		Baker Botts
Amount: \$35,537		Houston

Issue: Whether Plaintiff's wage reserve accounts are debt for purposes of the franchise tax. Whether §171.109 is unconstitutional on its face and as applied on grounds of equal protection, equal taxation and due process. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

Franchise Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 12/31/96	Plaintiff's Counsel:	Mark W. Eidman
Period: 1995		Ray Langenberg
Amount: \$42,968		Scott, Douglass & McConnico Austin

Issue: Whether a business loss carry-forward 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.

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***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: Inactive.

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***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: Mediation ordered by 01/31/01.

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**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: Mediation ordered by 01/31/01.

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**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. Summary judgment set for 12/14/00. Judgment granted for Plaintiff 12/14/00.

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**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.*

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

Franchise Tax; Protest Filed: 09/28/98 Period: 1992-1995 Amount: \$311,235	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: See *H.J. Heinz v. Comptroller, et al, supra.*

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***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: See *H.J. Heinz v. Comptroller, et al, supra.*

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**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*.

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

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

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

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

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

Franchise Tax; Protest and Declaratory Judgment Filed: 06/23/94 Period: 02/01/90- 12/31/91 Amount: \$146,092	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  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 violated the federal commerce clause nexus and fair relation tests.

Status: Preparing motion for summary judgment.

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***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*.

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**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 Period: 01/01/98- 07/31/94 Amount: \$613,229	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ira Lipstet Mary E. Haught Jenkins & Gilchrist Austin
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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: Cross-motions for summary judgment set for hearing on 04/16/01.

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**Upjohn Co., The v. Sharp, et al.** Cause #98-03809  
#03-00-00055-CV

Franchise Tax; Protest Filed: 04/10/98 Period: 1991-1994 Amount: \$1,391,740	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ira A. Lipstet Jenkins & Gilchrist Austin
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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: Judgment for Defendants on 12/29/99. Court of Appeals affirmed trial court's judgment. Petition for review filed 12/04/00. Waiver of response filed 12/29/00.

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**U.S. Home Corp. v. Rylander, et al.** Cause #GN003082

Franchise Tax; Refund Filed: 10/20/00	Asst. AAG Assigned:	Christopher Jackson
Period: 1992 and 1993 Amount: \$46,607.88	Plaintiff's Counsel:	D. Steven Henry Gregory A. Harwell Robert M. Reed, Jr. Gardere & Wynne Dallas

Issue: Whether Plaintiff is entitled to write down or write off the value of its investment in bankrupt subsidiaries.

Status: Answer filed.

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**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: See *H.J. Heinz v. Comptroller, et al, supra*.

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**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*.

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

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

Franchise Tax; Protest Filed: 01/23/98 Period: 1990-1993 Amount: \$38,482 \$473,678	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether intercompany payable account obligations should have been excluded from debt for purposes of calculating franchise tax.

Status: Discovery in progress. Trial set for 06/11/01.

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

Franchise Tax; Protest

Filed: 05/28/99

Period: 1992-1999

Amount: \$2,290,821.39

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

James F. Martens

Gilbert J. Bernal, Jr.

Stahl, Martens & Bernal

Austin

Issue: Whether transfers of accounts receivables were sales or pledges for federal income and franchise tax apportionment purposes. 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: Trial set for 12/10/01.

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## 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: Whether the amounts subjected to sales tax in audit were taxable receipts or loan monies. Also, asserting individual liability against Comptroller and Attorney General.

Status: Answer filed.

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### ***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.

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

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

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

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

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

Sales Tax; Refund Filed: 10/13/92 Period: 01/01/90- 12/31/90 Amount: \$17,486	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  Judy M. Cunningham Attorney at Law Austin
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Issue: Whether conveyor belts are exempt machinery and equipment; unequal taxation; long-standing policy.

Status: Answer filed. Settlement discussions in progress.

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

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

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

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

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

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

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***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: Discovery in progress.

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***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.

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**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	Plaintiff's Counsel:	Richard Flint Pearson & Price Corpus Christi
Amount: \$114,532		

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.

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**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	Plaintiff's Counsel:	G. Stewart Whitehead Winstead, Sechrest & Minick Austin
Amount: \$51,711.94		

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

Status: Preparing motion for summary judgment.

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**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	Plaintiff's Counsel:	John W. Berkel Houston
Amount: \$181,397		

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

Status: Some discovery done. Inactive.

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**Border Steel Rolling Mills, Inc. and Border Steel, Inc., as Successor in Interest to Border Steel Rollings Mills, Inc. v. Rylander, et al.** Cause #GN002671

Sales Tax; Refund Filed: 09/08/00 Period: 06/01/91- 08/31/95 Amount: \$76,281.34	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  Ray Bonilla Ray, Wood, Fine & Bonilla Austin
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Issue: Whether Plaintiff's rail-mounted cranes, related repair parts and labor are exempt from sales and use tax as rolling stock. Whether the Comptroller fully implemented an administrative agreement on taxation of other equipment and parts qualifying for the manufacturing exemption.

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 10/15/97 Period: 10/01/92- 09/30/95 Amount: \$195,368	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Langenberg Scott Douglass & McConnico Austin
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Issue: Whether certain real property services, such as landscaping and construction site cleanup, are taxable.

Status: Discovery near completion.

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**Broadcast Satellite International, Inc. v. Rylander, et al.** Cause #GN002895

Sales Tax; Declaratory Judgment Filed: 10/02/00 Period: 01/01/91- 12/31/97 Amount: \$250,840.25	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  William E. Bailey Dallas
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Issue: Whether Plaintiff's broadcast services are non-taxable information services under §151.0038(a). Whether Plaintiff's services are not taxable telecommunications services under §151.0103(l) or data processing under §151.0035. Whether the sale or use of Plaintiff's services occurred out-of-state. Whether Plaintiff's experts demonstrated that Plaintiff is exempt under federal law. Plaintiff also asserts limitations as to part of the liability and seeks declaratory and injunctive relief.

Status: Temporary injunction hearing held 11/29/00.

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**C & T Stone Co. v. Rylander, et al.** Cause #GN002428

Sales Tax; Protest Filed: 08/18/00 Period: 04/01/94- 12/31/97 Amount: \$207,454.40	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  William T. Peckham Austin
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Issue: Whether Plaintiff owes sales tax on its sales of limestone to third parties under §151.311(a). Whether Plaintiff detrimentally relied on advice from the Comptroller's Office. Whether exemption certificates covered some sales that were assessed tax. Whether Plaintiff is entitled to the manufacturing exemption under §151.318(g). Whether penalty and interest should be waived.

Status: Answer filed.

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

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

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**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	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin
Amount: \$32,788		

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

Status: Discovery in progress.

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**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	Plaintiff's Counsel:	Robert C. Alden Phillip L. Sampson, Jr. Bracewell & Patterson Austin
Amount: \$64,868.50		

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.

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**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	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas
Amount: \$519,192		

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.

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

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

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

Sales Tax; Protest Filed: 04/03/98 Period: 01/01/89- 06/30/89 07/01/89-12/31/91 Amount: \$1,635,965	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Jasper G. Taylor, III Fulbright & Jaworski Houston  Joe W. Cox Coastal States Management Corp. Houston
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Issue: Whether certain work performed by Plaintiff is new construction under a lump sum contract and thus not taxable.

Status: Discovery in progress.

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***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

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.

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***D&D Recycling, Inc. v. Rylander, et al.*** Cause #GN002278

Sales Tax; Declaratory  
Judgment  
Filed: 08/09/00  
Period: 1993-1996  
Amount: \$38,141.72

Asst. AAG Assigned:  
Plaintiff's Counsel:

Scott Simmons  
Curtis J. Osterloh  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether Plaintiff's sort line (conveyor belt) is exempt manufacturing equipment. Plaintiff also seeks attorneys' fees.

Status: Settlement discussion in progress.

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

Sales Tax; Refund  
Filed: 09/09/98  
Period: 07/01/92-  
01/31/96  
Amount: \$67,366

Asst. AAG Assigned:  
Plaintiff's Counsel:

Jim Cloudt  
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.

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***E. de la Garza, Inc. v. Rylander, et al.*** Cause #GN003589

Sales Tax; Protest Filed: 12/15/00	Asst. AAG Assigned:	Scott Simmons
Period: 01/01/93- 12/31/96	Plaintiff's Counsel:	Rudy de la Garza Brownsville
Amount: \$83,138.14		

Issue: Whether sales of grocery bags and sacks are not taxable when sold to grocery stores who have provided a blanket sale for resale certificate. Plaintiff also complains of audit calculation errors.

Status: Answer filed.

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***East Rio Hondo Water Supply Corp. v. Rylander, et al.*** Cause #GN002807

Sales Tax; Refund Filed: 09/22/00	Asst. AAG Assigned:	Nicole Galwardi
Period: 07/01/94- 12/31/94	Plaintiff's Counsel:	Timothy M. Trickey The Trickey Law Firm Austin
Amount: \$13,691.00		

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: Mediation requested.

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***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	Plaintiff's Counsel:	Judy M. Cunningham Attorney at Law Austin
Amount: \$6,762		

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: Settled.

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

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

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

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

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

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

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***F M Express Food Mart, Inc., and Fouad Hanna Mekkessi v. Rylander, et al.***  
Cause #GN002724

Sales Tax; Injunction Filed: 09/15/00 Period: 12/01/90- 11/30/97 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Percy L. "Wayne" Isgitt Houston
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Issue: Whether Comptroller's "estimated audit" is invalid. Whether Plaintiffs are entitled to an injunction of collection and of cancellation of their sales tax permits. Whether Tax Code §§112.051, 112.052, 112.101 and 112.108 are unconstitutional violations of the open courts provision. Plaintiffs seek a re-audit and a refund of money paid under protest in excess of the re-audited amount.

Status: Discovery in progress.

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

Sales Tax; Refund Filed: 03/05/98 Period: 10/01/90- 04/30/93 Amount: \$328,829	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  Jasper G. Taylor, III Fulbright & Jaworski Houston
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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. Plaintiff filed unopposed motion to retain and will consolidate case with pending administrative matters when they are concluded.

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***Galleria Limited v. Rylander, et al.*** Cause #GN002277

Sales Tax; Refund & Declaratory Judgment Filed: 08/09/00 Period: 1993-1994 Amount: \$349,084.33	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Gerard A. Desrochers Baker Botts Houston
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Issue: Whether correction of original construction defects is new construction or real property repair and remodeling. Whether Comptroller Rule 3.357 conflicts with legislative intent. Whether the Comptroller's application of the statute and rule violate due process and equal protection. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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**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	Plaintiff's Counsel:	Stephen P. Dillon Lindeman & Dillon Houston
Amount: \$83,910		

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.

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

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

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.

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**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. Trial scheduled for 03/01/01.

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

Sales Tax; Protest Filed: 12/02/98	Asst. AAG Assigned:	Jim Cloudt
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: Trial scheduled for 03/01/01.

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**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: Settlement pending.

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

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

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

Sales Tax; Refund Filed: 12/09/97 Period: 03/01/89- 09/30/97 Amount: \$18,508	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether certain pallets were tax exempt as packaging used in the manufacturing process.

Status: Discovery in progress. Settled.

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

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

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

Sales Tax; Refund Filed: 05/27/99 Period: 1993-1995 10/92-03/96 Amount: \$41,549.31 \$80,179.86	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  Brett B. Flagg Brett B. Flagg & Associates Dallas
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Issue: Whether intercompany transactions were taxable sale. Whether some audit items were not taxable data processing services. Whether data processing services were exempt intercompany transactions.

Status: Negotiations in progress.

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

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

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**Hines Interests Limited Partnership v. Rylander, et al.** Cause #GN003245

Sales Tax; Protest & Refund Filed: 11/08/00 Period: 07/01/92- 02/28/94 Amount: \$129,677.60	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Gerard A. Desrochers Baker Botts Houston
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Issue: Whether correction of original construction defects is new construction or real property repair and remodeling. Whether Comptroller Rule 3.357 conflicts with legislative intent. Whether the Comptroller's application of the statute and rule violate due process and equal protection. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

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

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 pre-paying tax granted 07/23/96. Discovery in progress. Hearing on Defendants' plea to the jurisdiction denied. State has filed counterclaim.

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

Sales Tax; Protest & Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 01/21/00	Plaintiff's Counsel:	Marilyn A. Wethekam
Period: 06/01/92-12/31/96		Horwood Marcus & Berk
Amount: \$597,281.67		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.

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

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 05/31/00	Plaintiff's Counsel:	Mark Foster
Period: 07/01/88-03/31/94		Foster & Malish
Amount: \$345,124.47		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: Discovery in progress.

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

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

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

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

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

Status: Discovery in progress.

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**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.

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**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.

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**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 non-profit, public hospital owned by the federal government is exempt under §151.311 even if it is excluded from the definition of non-profit hospital in the Health and Safety Code.

Status: Settled.

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

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

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***LabOne, Inc. v. Rylander, et al.*** Cause #GN002190

Sales Tax; Protest & Declaratory Judgment Filed: 08/02/00 Period: 1991-1997 Amount: \$520,983.95	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  James F. Martens Kirk R. Lyda Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff has nexus in Texas for tax on performance of lab tests in Kansas. Whether Plaintiff's activities are taxable insurance services in Texas. Whether Plaintiff's services and sales of supplies are exempt by rule and statute. Whether tax on Plaintiff violates due process and equal taxation. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

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

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

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**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, Singletary & Pohorelsky
Amount: \$150,214		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.

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

Sales Tax; Protest; Declaratory Judgment	Asst. AAG Assigned:	Scott Simmons
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. Amended petition filed.

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

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

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**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.

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**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. Court set on dismissal docket. Motion to retain filed.

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**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: Discovery in progress.

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**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.

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**Macias, David Ronald v. Sharp** Cause #96-07543  
#03-98-00513-CV

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 06/28/96	Plaintiff's Counsel:	Mark N. Osborn
Period: Not stated		Kemp, Smith, Duncan & Hammond
Amount: \$		El Paso

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. Brief filed 12/11/00. Oral argument scheduled 01/24/01.

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

Sales Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 06/14/96	Plaintiff's Counsel:	Judy M. Cunningham
Period: 04/01/90-12/31/93		Attorney at Law
Amount: \$9,571		Austin

Issue: Whether construction at a hospital owned by the federal government is exempt.

Status: Settlement pending.

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

Sales Tax; Protest and Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 09/16/94	Plaintiff's Counsel:	Gary Miles
Period: 05/01/94-06/30/94		Sherri Alexander
Amount: \$17,063		Johnson & Wortley
		Dallas

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.

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**Melek Corp. v. Rylander** Cause #GN002146

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 07/28/00	Plaintiff's Counsel:	Mitzi T. Shannon
Period: 1998		Kemp Smith, P.C.
Amount: \$		El Paso

Issue: Plaintiff contests the suspension of its Texas Customs Broker License and disagrees with the Comptroller's policy on goods being exported.

Status: Answer filed.

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

Sales Tax; Protest	Asst. AAG Assigned:	Scott Simmons
Filed: 01/18/00	Plaintiff's Counsel:	Stephen D. Skinner
Period: 01/01/94-06/30/97		Stephen D. Skinner & Associates
Amount: \$33,745.00		Dallas

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.

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**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.

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

Sales Tax; Protest, Refund & Declaratory Judgment 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.

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**North Alamo Water Supply Corp. v. Rylander, et al.** Cause #GN002424

Sales Tax; Refund Filed: 08/16/00 Period: 04/94-07/00 Amount: \$160,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Nicole Galwardi  Timothy M. Trickey The Trickey Law Firm Austin
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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: Mediation requested.

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**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.

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**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.

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

Sales Tax; Refund Filed: 05/28/98 Period: 10/01/92- 06/30/96 Amount: \$77,887.44	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  John W. Mahoney Williams, Birnberg & Andersen Houston
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Issue: Whether certain cleaning services are taxable as real property services or are part of new construction of real property.

Status: Discovery in progress.

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

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

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

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

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

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

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

Sales Tax; Protest and Refund Filed: 09/27/91 Period: 04/01/84 - 03/31/88 Amount: \$432,105	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Resale certificates; taxable maintenance services; taxability of various chemicals and other tangible personal property used in oil well services.

Status: Inactive.

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**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.

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

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 04/01/97	Plaintiff's Counsel:	Gerard A. Desrochers
Period: 01/01/90- 12/31/90		Baker Botts
Amount: \$57,815		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: See Cause No. 95-00690, *Praxair, Inc. v. Sharp, et al.*

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***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.

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

Sales Tax; Protest  
Filed: 03/05/99  
Period: 01/01/93-  
06/30/96  
Amount: \$206,971.88

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christopher Jackson  
  
Gilbert J. Bernal, Jr.  
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.

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***R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al.*** Cause #91-4893 #03-91-00390CV

Sales Tax; Declaratory  
Judgment  
Filed: 04/08/91  
Period: 10/01/80 -  
11/02/84  
Amount: \$None (Plaintiff  
was assessed \$67,836 tax  
but did not pay)

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Gene Storie  
  
Mark How  
Short, How, Frels &  
Tredoux  
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.

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***RAI Credit Corp. v. Rylander, et al.*** Cause #GN003556

Sales Tax; Refund &  
Declaratory Judgment  
Filed: 12/12/00  
Period: 01/01/89-  
12/31/93  
Amount: \$297,616.32

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Jim Cloudt  
  
David Cowling  
Gregory E. Perry  
Jones, Day, Reavis &  
Pogue  
Dallas

Issue: Whether Plaintiff lacks nexus for collection of use tax on accounts receivable that were factored to it. Whether Plaintiff is a “seller” or “retailer” engaged in business in Texas. Whether Plaintiff is liable under §111.016 as a person who received tax. Whether imposition of tax denies equal protection. Plaintiff also seeks declaratory relief and attorneys’ fees.

Status: Answer filed.

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**Roadway Express, Inc. v. Rylander, et al.** Cause #GN002831

Sales Tax; Protest & Declaratory Judgment Filed: 09/25/00 Period: 04/01/88- 05/31/92 Amount: \$713,686.05 \$206,053.87	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas
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Issue: Whether various equipment used by the Plaintiff with its trucks is exempt from use tax as tangible personal property sold to a common carrier for use outside the state. Alternatively, whether the equipment had been taxed as vehicle components under the interstate motor carrier tax and could not be taxed as “accessories.” Alternatively, whether taxing 100% of the value of the equipment violates the Commerce Clause because of a lack of substantial nexus and of fair apportionment. Whether all tax was paid on Plaintiff’s repair and remodeling contracts and capital assets. Plaintiff also seeks declaratory relief and attorneys’ fees.

Status: Answer filed.

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

Sales Tax; Protest Filed: 12/18/98 Period: 01/01/90- 12/31/93 Amount: \$19,652.35	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin
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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. Change of counsel sent. Negotiations in progress. Preparing for motion for summary judgment.

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

Sales Tax; Refund Filed: 04/13/00 Period: 10/01/93- 04/30/95 Amount: \$43,025.00	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 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.

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

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

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

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

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

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

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**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	Plaintiff's Counsel:	David E. Cowling Jones, Day, Reavis & Pogue Dallas
Amount: \$413,569		

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.

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**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.

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**Sledd, Charles Bruce** Cause #00-1180

Sales Tax; Writ of Mandamus Filed: 11/15/00	Asst. AAG Assigned:	Gene Storie
Period: 07/04/99 & 02/18/00	Plaintiff's Counsel:	Charles Bruce Sledd Pro Se Houston
Amount: \$11.54		

Issue: Whether tax is payable on extended warranty contracts sold with electrical appliances. Whether taxable sales price must be reduced by a rebate amount. Whether charging tax on those amounts is fraud.

Status: Notice of counsel filed. Court denies mandamus.

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

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

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

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**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.

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**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.

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**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.

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

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

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

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

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

Sales Tax; Refund  
Filed: 08/25/98  
Period: 01/01/94-  
04/03/96  
Amount: \$85,430

Asst. AAG Assigned:

Cecilia Gonzalez

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. Unopposed motion to retain filed. Plaintiff will propose stipulations.

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

Sales Tax; Refund  
Filed: 06/05/90  
Period: 01/01/85 -  
06/30/88  
Amount: \$294,000

Asst. AAG Assigned:

Cecilia Gonzalez

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.

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**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.

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***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.

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**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	Plaintiff's Counsel:	H. Christopher Mott Krafsur Gordon Mott Davis & Woody El Paso
Amount: \$44,519.03		

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

Status: Discovery in progress.

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

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

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: Settlement pending.

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**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	Plaintiff's Counsel:	James F. Martens Stahl, Martens & Bernal Austin
Amount: \$115,958.69		

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.

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**USA Waste Services of Houston, Inc. v. Rylander, et al.** Cause #GN003453

Sales Tax; Protest Filed: 12/01/00 Period: 01/01/94- 03/31/97 Amount: \$14,016.28	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether steam cleaning done for Plaintiff's customers by a third party is a sale for resale as an integral part of Plaintiff's taxable waste removal services.

Status: Answer filed.

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

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

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

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

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

Sales Tax; Refund  
Filed: 05/23/97  
Period: 11/01/90-  
07/31/94  
Amount: \$73,827

Asst. AAG Assigned:

Steve Rodriguez

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.

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

Sales Tax; Injunction  
Filed: 11/17/94  
Period: 06/01/89-  
07/31/92  
Amount: \$144,608

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

Kenneth Thomas  
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.

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## Insurance Tax

**All American Life Insurance Co., et al. v. Sharp, et al.** Cause #98-00195  
#03-00-427-CV

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  Barry K. Bishop Clark, Thomas & Winters Austin  Dudley D. McCalla Heath, Davis & McCalla Austin  Jay A. Thompson Thompson, Coe, Cousins & Irons 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. Appellants' brief filed 09/29/00. Appellees' brief due 12/01/00. Oral argument scheduled 01/24/01.

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**All American Life Insurance Co. v. Sharp, et al.** Cause #98-07917 (Consolidated with Cause #98-00195, *All American Life Insurance Co., et al. v. Sharp, et al.*)

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, *All American Life Insurance Co., et al. v. Sharp, et al.*

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**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: Discovery in progress.

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**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.*

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

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

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**American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al.** Cause #98-13996  
(Consolidated with Cause #98-00195, *All American Life Insurance Co., et al. v. Sharp, et al.*)

Maintenance & Gross Premium Tax; Refund Filed: 12/16/98 Period: 01/01/91- 12/31/94 Amount: \$204,695.81	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Dudley D. McCalla Heath, Davis & McCalla Austin
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Issue: Whether "internal rollovers" of existing life insurance policies result in gross premiums subject to tax.

Status: Consolidated with Cause #98-00195, *All American Life Insurance Co., et al. v. Sharp, et al.*

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**American International Specialty Lines Insurance Co. v. Rylander, et al.** Cause #GN002666

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 09/08/00 Period: 1995 Amount: \$362,975.97	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Anthony Icenogle Joseph C. Boggins DeLeon & Boggins Austin
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Issue: Whether an authorized surplus lines insurer is required to pay unauthorized insurance tax when the Comptroller is unable to verify payment of tax by the agent. Whether the Comptroller wrongfully relied on another hearings decision as precedent. Plaintiff also seeks injunctive and declaratory relief and attorneys' fees.

Status: Discovery in progress.

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**Dow Chemical Co. v. Rylander, et al.** Cause #99-05725  
#03-00-354-CV

Independently Procured Insurance Tax; Protest Filed: 05/17/99 Period: 1991-1997 Amount: \$427,148.80	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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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. Dow's brief filed. Comptroller's brief filed. Argued 11/15/00.

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**Dow Chemical Co., The v. Rylander, et al.** Cause #GN002457

Independently Procured Insurance Tax; Protest Filed: 08/22/00 Period: 1998 & 1999 Amount: \$61,711.06	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether statute levying tax on independently procured insurance is unconstitutional under the *Todd Shipyards* case.

Status: Answer filed.

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

Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/26/99 Period: 1998 Amount: \$9,328.01	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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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

Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/26/99 Period: 1998 Amount: \$192,371.48	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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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

Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/26/99 Period: 1998 Amount: \$59,574.64	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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$46,658.03		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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$8,459.31		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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$26,640.79		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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$10,987.86		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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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**IDS Life Insurance Co. v. Rylander, et al.** Cause #99-13368 (*Consolidated with Cause #98-00195, All American Life Insurance Co., et al. v. Sharp, et al.*)

Insurance Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 11/16/99		
Period:	Plaintiff's Counsel:	Jay A. Thompson
Amount: \$234,383.82		Clark, Thomas & Winters
\$2,039.79		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 Cause #98-00195, *All American Life Insurance Co, et al. v. Sharp, et al.*

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

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 07/15/93	Plaintiff's Counsel:	Ron Eudy
Period: 1990-1992		Sneed, Vine & Perry
Amount: \$54,511		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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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**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.

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**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.

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

Retaliatory Tax; Refund & Declaratory Judgment 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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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**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.

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**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.

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**Southwestern Life Insurance Co. v. Philip Barnes, et al.** Cause #91-4800  
#00-99-00719-CV

Gross Premium Tax; Protest Filed: 04-05-91 Period: 1990 Amount: \$231,114	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 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: Issue resolved against taxpayer in *Southwestern Life Insurance Co. v. Georgia Flint, et al.*

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

Gross Premium Maintenance Tax; Protest Filed: 10/22/98 Period: 01/01/92- 12/31/95 Amount: \$392,737	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  L. G. "Skip" Smith 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. Will be determined as for *All American Life Insurance Co, et al. v. Sharp, et al.*

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**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.

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

Gross Premium Tax; Protest, Refund & Declaratory Judgment 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.

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**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.

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**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. Amended motion for summary judgment filed.

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

Retaliatory Tax; Protest & Declaratory Judgment 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: Settlement discussions in progress. Mediation scheduled 01/17-18/01.

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

Gross Premium Tax; Protest & Declaratory Judgment 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.

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***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.

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***Universe Life Insurance Co., The v. Cornyn, et al.*** Cause #GN002605

Insurance Premium Tax Tax; Refund Filed: 09/01/00 Period: 1993 1994 Amount: \$87,288.51 \$426,620.38	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Larry Parks Long, Burner, Parks, McClellan & Delargy 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: Answer filed.

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**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.

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## 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.

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***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.

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## Other Taxes

### **Buffalo ISD v. Comptroller** Cause #GV001433

Property Tax; Administrative Appeal & Injunction Filed: 06/23/00 Period: 1999 Amount: \$Not Stated	Asst. AAG Assigned:  Plaintiff's Counsel:	Nicole Galwardi  Roy L. Armstrong Robert L. Meyers McCreary, Veselka, Bragg & Allen Austin
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Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties.

Status: Answer filed.

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### **Burleson ISD v. Comptroller** Cause #GN002130

Property Tax; Administrative Appeal Filed: 07/27/00 Period: Amount: \$Not Stated	Asst. AAG Assigned:  Plaintiff's Counsel:	Nicole Galwardi  Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott Houston
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Issue: Whether the Comptroller acted arbitrarily and did not satisfy the burden of proof in the administrative process.

Status: Answer filed.

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### **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. County Association Amicus brief filed.

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**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.

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**Centerville ISD v. Comptroller** Cause #GV001431

Property Tax; Administrative Appeal & Injunction	Asst. AAG Assigned:	Nicole Galwardi
Filed: 06/23/00	Plaintiff's Counsel:	Roy L. Armstrong
Period: 1999		Robert L. Meyers
Amount: \$Not Stated		McCreary, Veselka, Bragg & Allen
		Austin/Waco

Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties.

Status: Answer filed.

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

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

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

Status: Discussions in progress.

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***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 Period: 10/01/90- 11/30/96 Amount: \$3,405,494.49	Plaintiff's Counsel:	Mark W. Eidman Scott, Douglass & McConnico Austin  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.

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**Cockrill, Charles T. v. Comptroller of Public Accounts, et al.** Cause #CJ-00-308

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 10/12/00	Plaintiff's Counsel:	Douglas L. Jackson
Period:		Vance T. Nye
Amount: \$99,425.50		Gungoll, Jackson, Collins, Box & Devoll Enid, Oklahoma

Issue: Whether the Comptroller asserts any interest in art works that were sold by a taxpayer subject to a tax lien.

Status: Comptroller disclaims interest.

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**Deweyville ISD v. Rylander** Cause #GV001637

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Nicole Galwardi
Filed: 07/14/00	Plaintiff's Counsel:	John H. Wofford
Period: 1999		Law Office of John H. Wofford
Amount: \$Not Stated		Austin

Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties. Whether the Comptroller failed to acknowledge local economic conditions, to timely provide a "clerical errors" report, and to accept additional information.

Status: Answer filed.

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**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.

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**Fort Davis ISD v. Comptroller** Cause #GV001764

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Nicole Galwardi
Filed: 07/28/00	Plaintiff's Counsel:	James R. Evans, Jr.
Period: 1999		Linebarger Heard Goggan
Amount: \$Not Stated		Blair Graham Pena & Sampson
		Austin

Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties. Whether the Comptroller failed to acknowledge local economic conditions, to timely provide a "clerical errors" report, and to accept additional information.

Status: Answer filed.

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**Hernandez, Juan Luis v. Rylander, et al.** Cause #C-294-00-G

Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Tax; Declaratory Judgment	Plaintiff's Counsel:	Kelly K. McKinnis
Filed: 10/03/00		McAllen
Period: 12/22/92		
Amount: \$24,451.35		
\$33,252.57		

Issue: Whether drug tax liens were mistakenly filed on Plaintiff.

Status: Answer filed.

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**MFC Finance Company of Texas v. Rylander, et al.** Cause #GN002653

Motor Vehicle Sales Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 09/07/00	Plaintiff's Counsel:	Mark W. Eidman
Period: 01/01/96- 12/31/98		Ray Langenberg
Amount: \$5,533,079.80		Scott, Douglass & McConnico Austin

Issue: Whether Plaintiff is entitled to tax credit and refund as provided under the sales tax bad debt statute for motor vehicle taxes on installment sales where the purchaser defaulted. Whether the refusal to allow a refund violates equal taxation because there is no rational basis to treat installment sellers of vehicles differently than vehicle renters and other retailers.

Status: Answer filed.

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**MFN Financial Corp. v. Rylander, et al.** Cause #GN002650

Motor Vehicle Sales Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 09/07/00	Plaintiff's Counsel:	Mark W. Eidman
Period: 01/01/96- 12/31/98		Ray Langenberg
Amount: \$5,533,079.80		Scott, Douglass & McConnico

Issue: Whether Plaintiff is entitled to tax credit and refund as provided under the sales tax bad debt statute for motor vehicle taxes on installment sales where the purchaser defaulted. Whether the refusal to allow a refund violates equal taxation because there is no rational basis to treat installment sellers of vehicles differently than vehicle renters and other retailers.

Status: Answer filed.

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

Gas/Oil Production Tax Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
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: Discovery in progress.

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**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	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin
Amount: \$33,582.58		

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.

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**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	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin
Amount: \$40,404.49		

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.

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***New Crew Quarters 2, Inc. v. Rylander, et al.*** Cause #GN002606

Mixed Beverage Gross Receipts Tax; Declaratory Judgment Filed: 09/01/00 Period: 09/01/93-02/28/97 Amount: \$216,325.07	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico
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Issue: Whether audit incorrectly assessed mixed beverage tax by failing to consider changes in inventory and periods of business closures. Whether 50% fraud penalty was incorrectly assessed where some of the Plaintiff's books and records were destroyed by fire. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***Oakwood ISD v. Comptroller*** Cause #GV001432

Property Tax; Administrative Appeal & Injunction Filed: 06/23/00 Period: 1999 Amount: \$Not Stated	Asst. AAG Assigned:  Plaintiff's Counsel:	Nicole Galwardi  Roy L. Armstrong Robert L. Meyers McCreary, Veselka, Bragg & Allen
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Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties.

Status: Answer filed.

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

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

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

Motor Vehicle Tax; Protest Filed: 08/26/91 Period: 12/01/86 - 09/30/89 Amount: \$21,796	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  George L. Preston Paris
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Issue: Whether motor vehicle tax should fall on dealer/seller rather than the purchaser under §152.044. Related constitutional issues.

Status: Inactive.

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**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. Settlement negotiations in progress.

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**Union Standard Insurance Co. v. Rylander, et al.** Cause #GN003565

Insurance Premium Tax Tax; Protest Filed: 12/13/00 Period: 01/01/93- 12/31/96 Amount: \$216,572.39	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Jim Shawn Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether “cash fund investments” are Texas investments under the property and casualty insurance premium tax in effect during the audit period. Whether the property and casualty insurance premium tax should be interpreted like the life insurance premium tax. Whether Plaintiff is entitled to detrimental reliance relief because its qualified investment was not challenged by the Department of Insurance. Alternatively, whether Plaintiff should recover interest because of delay by the Comptroller in reaching a decision.

Status: Answer filed.

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***Valentine ISD v. Comptroller*** Cause #GV001763

Property Tax;  
Administrative Appeal  
Filed: 07/28/00  
Period: 1999  
Amount: \$Not Stated

Asst. AAG Assigned:

Plaintiff's Counsel:

Nicole Galwardi

James R. Evans, Jr.  
Linebarger Heard Goggan  
Blair Graham Pena &  
Sampson  
Austin

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties. Whether the Comptroller failed to consider local modifiers, sales, and market information.

Status: Answer filed.

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## 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, pet. den.)*

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### **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.

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**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. Petition denied 09/14/00. Motion for rehearing filed. Response to motion for rehearing filed 11/21/00. Motion for rehearing denied 12/07/00.

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**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.

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**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.

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

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

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

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

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

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

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

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

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

Sales Tax; Protest Filed: 12/23/96	Asst. AAG Assigned:	Steve Rodriguez
Period: 12/01/87- 10/31/92	Plaintiff's Counsel:	Mark Hopkins Attorney at Law Austin, Texas
Amount: \$51,956		

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.

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

Franchise Tax; Refund Filed: 06/05/95	Asst. AAG Assigned:	Christine Monzingo
Period: 1989-1992	Plaintiff's Counsel:	Fred O. Marcus Horwood, Marcus & Braun Chicago, Illinois
Amount: \$723		David E. Cowling Jones, Day, Reavis & Pogue Dallas

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.

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

Sales Tax; Refund Filed: 08/22/97	Asst. AAG Assigned:	Steve Rodriguez
Period: 01/89-08/31/92	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
Amount: \$99,349		

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.

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

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

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

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

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**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.

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**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.

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**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.

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

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

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

Status: Dismissed for want of prosecution 12/19/00.

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

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 10/08/98	Plaintiff's Counsel:	Gerard A. Desrochers
Period: 01/01/93-10/08/93		Baker Botts
Amount: \$1,676,116		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: Motion for summary judgment set for hearing on 11/16/00. Plaintiff non-suited. See *Rylander v. 3 Beall Brothers 3, Inc., 2 S.W.3d 562 (Tex. App. - Austin 1999, pet. den.)*

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

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

Status: Settled in accordance with *Associated Technics*.

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

Sales Tax; Protest Filed: 02/04/93 Period: 01/88-10/91 Amount: \$25,931	Asst. AAG Assigned:  Plaintiff's Counsel:	Nicole Galwardi  Jimmy L. Heisz & W. Wade Porter Haynes & Boone Dallas and Austin
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Issue: Taxability of buffer pads, wax, polish, etc. when sold to body shops and new car dealers by way of a separated contract.

Status: Dismissed.

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

Sales Tax; Protest Filed: 11/8/94 Period: 10/01/91- 12/31/91 Amount: \$7,757	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark Blakemore Royston, Razor, Vickery & Williams Brownsville
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Issue: Whether the purchase of a shrimp trawler was exempt from tax as an occasional sale (identifiable segment of the business).

Status: Non-suited.

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**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 Shelburne J. Veselka McCreary, Veselka, Bragg & Allen Austin
Period: 1997		
Amount: \$Not stated		

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.

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

Franchise Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 05/12/99	Plaintiff's Counsel:	Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin
Period: 1994		
Amount: \$1,257,944.51		

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: Non-suited.

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

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

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. Dismissed 07/25/00.

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**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
Amount: \$Not stated		Austin

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.

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**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		
Period:	Plaintiff's Counsel:	Larry A. Landgraf, Pro Se
Amount: \$		

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

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

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

Sales Tax; Declaratory Judgment & Refund	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 07/25/97	Plaintiff's Counsel:	Howard V. Rose
Period: 10/01/89- 07/31/93		Brown McCarroll & Oaks Hartline
Amount: \$91,744		Austin

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.

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

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

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***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.

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

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

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

Franchise Tax; Protest & Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 07/21/97	Plaintiff's Counsel:	Donald L. Stuart Drenner & Stuart Austin
Period: 1989-1991		
Amount: \$2,155,572		
\$51,416		
\$1,009,239		Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin

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, pet. den.).

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

Franchise Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 11/18/99	Plaintiff's Counsel:	Glen A. Rosenbaum James D. Penny Wade Anderson Tobey D. Blanton Nancy L. Prosser Vinson & Elkins Houston & Austin
Period: 1996 - 1998		
Amount: \$382,215.81		

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. Settled.

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***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.

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

Sales Tax; Protest Filed: 09/29/98 Period: 08/01/89- 04/30/92 Amount: \$24,142	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Samuel E. Long Moseley & Standerfer Dallas
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Issue: Whether sales tax on equipment leases should have been accelerated when the leases were pledged as collateral.

Status: Agreed judgment entered 12/11/00.

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

Status: Case settled.

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**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.

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**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: Agreed judgment entered 12/19/00.

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**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.

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**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. Judgment entered.

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

Sales Tax; Protest Filed: 11/22/96 Period: 07/01/89- 09/30/92 Amount: \$270,217	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Paul O. Price Richard E. Flint The Kleberg Law Firm Corpus Christi
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Issue: Whether electricity purchases are exempt from sales tax because the electricity is used for processing.

Status: Judgment.

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**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.

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

Sales Tax; Refund Filed: 10/15/97 Period: 01/01/89- 08/31/92 Amount: \$217,898	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: See *Dallas SMSA*.

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

Franchise Tax; Refund & Declaratory Judgment Filed: 09/08/99 Period: 01/01/93- 12/31/93 Amount: \$345,393	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Gerard A. Desrochers Baker Botts Houston
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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: Motion for summary judgment set for hearing on 11/16/00. Plaintiff non-suited.

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**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: Dismissed for want of prosecution 12/19/00.

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

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

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

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

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

Franchise Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 09/04/87	Plaintiff's Counsel:	David E. Cowling
Period: 01/01/81 - 12/31/84		Jones, Day, Reavis & Pogue
Amount: \$40,324		Dallas

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.

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

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 06/24/98	Plaintiff's Counsel:	Mark W. Eidman
Period: 1991-1994		Ray Langenberg
Amount: \$1,300,000		Scott, Douglass & McConnico
		Austin

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: Settled. Plaintiff's Notice of Non-Suit filed 10/23/00.

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***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	Asst. AAG Assigned:	Christine Monzingo
Period: 1993-1998 Amount: \$13,150,923.27	Plaintiff's Counsel:	Jasper G. Taylor, III Fulbright & Jaworski Houston

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: Non-suited.

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

Gross Premium Tax; Protest Filed: 05-28-92	Asst. AAG Assigned:	Blake Hawthorne
Period: 1990 Amount: \$183,719	Plaintiff's Counsel:	L. G. "Skip" Smith David H. Gilliland 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. Petition for review filed in Supreme Court 08/25/00. Supreme Court denied petition for review 10/25/00.

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

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

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**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.

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**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.

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**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: Dismissed for want of prosecution 12/19/00.

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**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. Dismissed 07/26/00.

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

Status: Non-suited.

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

Natural Gas Production Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 10/16/95	Plaintiff's Counsel:	Mark W. Eidman
Period: 11/82-12/85		Ray Langenberg
Amount: \$110,962		Scott, Douglas & McConnico

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.

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

Franchise Tax; Protest	Asst. AAG Assigned:	Christine Monzingo
Filed: 03/01/99		
Period: 01/01/98- 12/31/98	Plaintiff's Counsel:	Glen A. Rosenbaum
Amount: \$1,077,434		James D. Penny
		Tobey D. Blanton
		Wade Anderson
		Vinson & Elkins
		Houston

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: Motion for summary judgment hearing set for 11/16/00. Plaintiff non-suited.

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

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

Issue: Whether penalty should be waived.

Status: Settled.

**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	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin
Amount: \$18,268		

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: Dismissal with prejudice.

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**West Texas Gas, Inc. v. Sharp, et al.** Cause #93-01245

Franchise Tax; Protest Filed: 02/02/93	Asst. AAG Assigned:	Christopher Jackson
Period: 1988 - 1990	Plaintiff's Counsel:	Jasper G. Taylor, III Robert F. Corrigan, Jr. Fulbright & Jaworski Houston
Amount: \$111,761		

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.

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**Whitesboro ISD, et al. v. Texas Comptroller of Public Accounts** Cause #97-09046

Property Tax; Substantial Evidence Review Filed: 08/08/97	Asst. AAG Assigned:	Christine Monzingo
Period: 1996	Plaintiff's Counsel:	E. Jeannie Navarro Attorney at Law Austin
Amount: \$Not stated		

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.

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***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  
Period: 1991  
Amount: \$64,395.69

Asst. AAG Assigned:

Scott Simmons

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: Case dismissed.

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