



**OFFICE OF THE ATTORNEY  
GENERAL**

**TAXATION DIVISION**

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

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## Franchise Tax

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

AG Case #001354026

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

AG Case #99-1189192

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  
AG Case #001375419

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  
AG Case #99-1227646

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  
AG Case #98-985094

Franchise Tax; Protest  
Filed: 06/29/98  
Period: 1990-1993  
Amount: \$274,831

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

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

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. Petition denied 01/11/01. Petitioners' motion for rehearing denied.

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**Beef Products, Inc. v. Rylander, et al.** Cause #99-01193  
AG Case #99-1112061

Franchise Tax; Protest  
Filed: 02/01/99  
Period: 1992 and 1993  
Amount: \$331,040.60

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Tom Tourtellotte  
Tourtellotte & Kennon  
Austin

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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**Central Telephone Co. of Texas and United Telephone Co. of Texas v. Rylander, et al.** Cause #GN100332  
AG Case #011409646

Franchise Tax; Protest &  
Refund

Filed: 02/01/01  
Period: 1988-1994  
Amount: \$300,772.95  
\$204,616.25

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

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

Issue: Whether inclusion of access charges in Texas' gross receipts violates Comptroller rules on franchise tax treatment of interstate telephone receipts. Whether inclusion of the charges violates equal protection.

Status: Answer filed.

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**Chevron Chemical Co. v. Rylander, et al.** Cause #GN100963  
AG Case #011431293

Franchise Tax; Refund  
Filed: 03/30/01  
Period: 1987-1993  
Amount: \$

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Issue: Whether inclusion of unfunded post-retirement benefits (OPEBs) in franchise tax surplus violates ERISA. Whether Comptroller violated equal protection by allowing some to deduct OPEBs. Whether OPEBs are debt and whether their treatment in Section 171.109 is discriminatory.

Status: Answer filed.

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**Continental Tire North America, Inc. v. Rylander, et al.** Cause #GN100506  
AG Case #011416286

Franchise Tax; Refund Filed: 02/15/01 Period: 1992-1995 Amount: \$250,000.00	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 post retirement benefits are debt for the franchise tax and whether ERISA preempts the inclusion of those benefits in the tax base.

Status: Answer filed.

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**Dana Corp. v. Sharp, et al.** Cause #96-03598  
AG Case #96-494234

Franchise Tax; Protest Filed: 3/28/96 Period: 1988-1991 Amount: \$804,971	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas
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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  
AG Case #97-843052

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

AG Case #96-547384

Franchise Tax; Refund

Filed: 06/09/96

Period: 1988-1989

Amount: \$36,289

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

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

AG Case #98-1020621

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

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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**Fort James Operating Co., Inc. v. Rylander, et al.** Cause #GN100498  
AG Case #011417888

Franchise Tax; Refund Filed: 02/15/01 Period: 1991 Amount: \$55,009.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  L.G. Skip Smith Clark, Thomas & Winters Austin
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Issue: Whether ERISA preempts the franchise tax so that post-retirement benefits must be excluded from the tax base.

Status: Answer filed.

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**General Motors Corp. v. Sharp, et al.** Cause #97-12350  
#03-00-00247-CV  
AG Case #97-843800

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. Plaintiff filed a petition for review 02/22/01. The Comptroller filed a waiver of response.

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**H.J. Heinz Co., Inc. v. Sharp, et al.** Cause #98-10929  
AG Case #98-1052103

Franchise Tax; Protest  
Filed: 09/28/98  
Period: 1992-1995  
Amount: \$534,056

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: Retained on suspense docket. 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  
AG Case #98-1079312

Franchise Tax; Protest  
Filed: 11/12/98  
Period: 1992-1995  
Amount: \$29,244

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: Retained on suspense docket. 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  
AG Case #99-1168451

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  
AG Case #97-706290

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: Inactive.

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**Holt Rinehart & Winston, Inc., Drake Beam Morin, Inc., Harcourt Professional Education Group, Inc., The Psychological Corp. v. Rylander, et al.** Cause #GN100985  
AG Case #011433455

Franchise Tax; Protest &  
Declaratory Judgment  
Filed: 04/03/01  
Period: 1992-1994  
Amount: \$512,387.46

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

Steven D. Moore  
Jackson Walker LLP  
Austin

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

Status: Answer filed.

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**House of Lloyd, Inc. v. Sharp, et al.** Cause #95-06985  
AG Case #95-300365

Franchise Tax; Refund  
Filed: 06/05/95  
Period: 1989-1991  
Amount: \$19,825

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Fred O. Marcus  
Horwood, Marcus & Braun  
Chicago

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: Hearing on cross-motions for summary judgment postponed.

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**House of Lloyd, Inc. v. Sharp, et al.** Cause #95-06986  
AG Case #95-300338

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Fred O. Marcus  
Horwood, Marcus & Braun  
Chicago

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

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

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

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**James River II, Inc. v. Rylander, et al.** Cause #GN100497  
AG Case #011416278

Franchise Tax; Refund  
Filed: 02/15/01  
Period: Initial and 1990-  
1991  
Amount: \$71,159.00

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Issue: Whether ERISA preempts the franchise tax so that post-retirement benefits must be excluded from the tax base.

Status: Answer filed.

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**Jiffy Lube International, Inc. v. Rylander, et al.** Cause #99-12043  
AG Case #99-1226747

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: Inactive.

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**Kerrville Telephone Co., The v. Rylander, et al.** Cause #GN00058  
AG Case #001258219

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: Inactive.

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**Lyondell Chemical Worldwide, Inc., f/k/a Arco Chemical Co. v. Rylander, et al.**  
Cause #99-13283  
AG Case #99-1238130

Franchise Tax; Protest &  
Declaratory Judgment  
Filed: 11/12/99  
Period: 1999  
Amount: \$34,100,000

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Kim E. Brightwell  
Garry M. Miles  
Wade Anderson  
Vinson & Elkins  
Austin

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

Status: Settled.

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

AG Case #98-983559

Franchise Tax; Refund  
Filed: 06/26/98  
Period: 1991-1995  
Amount: \$207,375

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

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

Status: Retained on suspense docket. See *Palais Royal & 3 Beall Brothers 3, Inc. v. Comptroller*.

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

AG Case #93-354695

Franchise Tax; Refund  
Filed: 09/28/93  
Period: 1985 & 1986  
Amount: \$489,667

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Cynthia M. Ohlenforst  
Jill B. Scott  
Hughes & Luce  
Dallas & Austin

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

Status: Answer filed. Inactive. Plaintiff in bankruptcy. Requesting dismissal.

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**Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al.** Cause #95-15698  
AG Case #96-437029

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  
AG Case #98-1071152

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  
AG Case #98-1052897

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

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: Retained on suspense docket. 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  
AG Case #98-1079320

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

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 storage and distribution facilities and subsequently sold to Texas purchasers. See Tax Code §§ 151.314(a), 171.104, and 171.103(1).

Status: Retained on suspense docket. 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  
AG Case #99-1168535

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  
AG Case #96-495867

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

Status: Trial court granted Plaintiffs' motion for summary judgment on the due process, retroactivity, and equal tax issues, and granted the State's Motion for Summary Judgment on the officer-director compensation add-back issue. Judgment signed 01/29/01. Motion for rehearing filed 04/15/01.

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**Peter Scalamandre & Sons, Inc., et al. v. Sharp, et al.** Cause #95-01183  
AG Case #95-220184

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, Birme & 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  
AG Case #001323641

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  
AG Case #98-1052129

Franchise Tax; Protest  
Filed: 09/28/98  
Period: 1992-1995  
Amount: \$192,869

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christine Monzingo  
  
L.G. Skip Smith  
Clark, Thomas & Winters  
Austin  
  
Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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  
AG Case #98-1079510

Franchise Tax; Protest  
Filed: 11/12/98  
Period: 1992-1995  
Amount: \$9,192

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christine Monzingo  
  
L.G. Skip Smith  
Clark, Thomas & Winters  
Austin  
  
Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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  
AG Case #99-1168600

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

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

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**Randall's Food & Drugs, Inc. v. Rylander, et al.** Cause #GN003174  
AG Case #001375450

Franchise Tax; Protest & Refund Filed: 10/31/00 Period: 1994-1997 Amount: \$4,006,942.39	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Jasper G. Taylor, III Jay M. Chadha Fulbright & Jaworski Houston
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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., f/k/a Noram Gas Transmission Co. v. Rylander, et al.** Cause #99-08127  
AG Case #99-1187675

Franchise Tax; Refund Filed: 07/15/99	Asst. AAG Assigned:	Jim Cloudt
Period: 1996 Amount: \$163,758.10	Plaintiff's Counsel:	L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin

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  
AG Case #99-1227638

Franchise Tax; Refund Filed: 10/13/99	Asst. AAG Assigned:	Blake Hawthorne
Period: 1992 Amount: \$236,218.26	Plaintiff's Counsel:	Gerard A. Desrochers Baker Botts Houston

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  
AG Case #96-573461

Franchise Tax; Protest and Declaratory Judgment Filed: 08/01/96	Asst. AAG Assigned:	Christine Monzingo
Period: 1989-1991 Amount: \$1,031,003	Plaintiff's Counsel:	Gerard A. Desrochers Baker Botts Houston

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  
AG Case #99-1155755

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  
AG Case #001348614

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  
AG Case #97-652613

Franchise Tax; Refund Filed: 12/31/96 Period: 1995 Amount: \$42,968	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether a business loss 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  
AG Case #96-537466

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  
AG Case #95-214930

Franchise Tax; Refund Filed: 01/18/95 Period: 1988-1990 Amount: \$573,449	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Scott, Douglass & McConnico Austin
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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: Settled.

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

AG Case #97-678873

Franchise Tax; Protest Filed: 02/11/97 Period: 1991-1993 Amount: \$217,183	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Scott, Douglass & McConnico Austin
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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: Settled.

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***Southern Union Co. v. Rylander, et al.*** Cause #GN003692

AG Case #011399409

Franchise Tax; Refund Filed: 12/29/00 Period: 1994 Amount: \$549,983	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 Plaintiff was required to use historical cost as the basis of assets of an acquired corporation. Whether post-retirement benefit obligations are debt. Whether disallowing deduction of post-retirement benefits violates equal protection. Whether Plaintiff may use another method to account for depreciation.

Status: Partial settlement.

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**Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp** Cause #96-11071  
AG Case #96-600128

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. Agreed order of dismissal granted 02/07/01.

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**Specialty Retailers, Inc. v. Rylander, et al.** Cause #GN100415  
AG Case #011410529

Franchise Tax; Refund Filed: 02/08/01 Period: 1992-1996 Amount: \$34,167	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff is entitled to a refund for a business loss carryforward.

Status: Answer filed.

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**Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.** Cause #98-01348  
AG Case #98-893255

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  
AG Case #98-1052145

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: Retained on suspense docket. See *H.J. Heinz v. Comptroller, et al, supra.*

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***Star-Kist Foods, Inc. v. Sharp, et al.*** Cause #98-12749  
AG Case #98-1080369

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: Retained on suspense docket. See *H.J. Heinz v. Comptroller, et al, supra*.

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

AG Case #99-1168634

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

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

AG Case #95-277159

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

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. Awaiting final disposition of *General Motors*. Remaining issues settled.

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**Texaco Refining & Marketing (East), Inc. v. Rylander, et al.** Cause #99-14555  
AG Case #99-1249228

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  
AG Case #94-103018

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  
AG Case #95-234473

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  
AG Case #98-901683

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 its 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 05/03/01.

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***Upjohn Co., The v. Sharp, et al.*** Cause #98-03809  
#03-00-00055-CV  
AG Case #98-932917

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. Response filed 02/21/01. Briefs on the merits due 04/04/01 (Petitioner) and 04/24/01 (Respondent).

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***U.S. Home Corp. v. Rylander, et al.*** Cause #GN003082  
AG Case #001372424

Franchise Tax; Refund Filed: 10/20/00 Period: 1992 and 1993 Amount: \$46,607.88	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  D. Steven Henry Gregory A. Harwell Robert M. Reed, Jr. Gardere & Wynne Dallas
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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  
AG Case #98-1052137

Franchise Tax; Protest Filed: 09/28/98 Period: 1992-1995 Amount: \$122,677	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: Retained on suspense docket. 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  
AG Case #99-1168527

Franchise Tax; Refund  
Filed: 05/19/99  
Period: 1994  
Amount: \$62,417

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 *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  
AG Case #99-1093113

Franchise Tax; Protest  
Filed: 12/17/98  
Period: 01/01/92-12/31/94  
Amount: \$1,182,242.67

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

Mark W. Eidman  
Ray Langenberg  
Steve Wingard  
Scott, Douglass &  
McConnico  
Austin

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

Status: Inactive.

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***Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al.***

Cause #98-00942

AG Case #98-891532

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

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

Status: Discovery in progress. Deposition of plaintiff taken 01/25/01. Deposition of defendants scheduled for 03/22-23/01. Trial set for 06/11/01.

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

AG Case #99-1172602

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: Non-jury trial set for 12/10/01.

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## Sales Tax

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

AG Case #99-1152422

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

AG Case #99-1187865

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. Trial set 04/16/01. To be rescheduled before 06/15/01.

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**Alpine Industries, Inc. v. Sharp, et al.** Cause #98-12998  
AG Case #98-1080526

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  
AG Case #99-1175084

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  
AG Case #92-165918

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: Settlement discussions in progress.

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**American Telephone & Telegraph Co. v. Sharp, et al.** Cause #98-06401  
AG Case #98-980491

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  
AG Case #98-930349

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  
AG Case #001273051

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  
AG Case #95-234990

Sales Tax; Declaratory Judgment Filed: 2/27/95 Period: 04/01/88-06/30/92 Amount: \$63,588	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Alvin L. Thomas, II Littler, Mendleson & Fastiff Houston
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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  
AG Case #99-1112186

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

AG Case #95-386479

Sales Tax; Protest

Filed: 10/13/95

Period: 05/01/90-04/30/94

Amount: \$114,532

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Richard Flint

Pearson & Price

Corpus Christi

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

Status: Discovery in progress.

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

AG Case #99-1108499

Sales Tax; Protest

Filed: 01/26/99

Period: 04/01/91-03/31/95

Amount: \$51,711.94

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

G. Stewart Whitehead

Winstead, Sechrest &

Minick

Austin

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

Status: Preparing motion for summary judgment to be heard 04/19/01.

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**Big Tex Air Conditioning, Inc. v. Bullock, et al.** Cause #486,321  
AG Case #90-322672

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

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

Status: Some discovery done. Inactive.

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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  
AG Case #001352137

Sales Tax; Refund Filed: 09/08/00	Asst. AAG Assigned:	Scott Simmons
Period: 06/01/91-08/31/95 Amount: \$76,281.34	Plaintiff's Counsel:	Ray Bonilla Ray, Wood, Fine & Bonilla Austin

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  
AG Case #97-837489

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

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

Status: Discovery near completion. Settlement discussions in progress.

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**Broadcast Satellite International, Inc. v. Rylander, et al.** Cause #GN002895  
AG Case #001365014

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 10/02/00	Plaintiff's Counsel:	William E. Bailey
Period: 01/01/91-12/31/97		Dallas
Amount: \$250,840.25		

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. Temporary injunction denied 02/08/01.

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**C & T Stone Co. v. Rylander, et al.** Cause #GN002428  
AG Case #001344233

Sales Tax; Protest	Asst. AAG Assigned:	Steve Rodriguez
Filed: 08/18/00	Plaintiff's Counsel:	William T. Peckham
Period: 04/01/94-12/31/97		Austin
Amount: \$207,454.40		

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  
AG Case #99-1243411

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

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

Status: Discovery in progress. Plaintiff's motion for summary judgment filed. Summary judgment hearing set 04/05/01.

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

AG Case #96-602037

Sales Tax; Refund

Filed: 09/20/96

Period: 07/01/86-12/31/89

Amount: \$32,788

Asst. AAG Assigned:

Plaintiff's Counsel:

Cecilia Gonzalez

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

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

Status: Discovery in progress.

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

AG Case #95-424767

Sales Tax; Injunction

Filed: 11/30/95

Period: 01/01/88-12/31/91

Amount: \$54,068

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Kenneth Thomas  
Attorney at Law  
Dallas

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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**Church & Dwight Co., Inc. v. Rylander, et al.** Cause #GN000525  
AG Case #001258201

Sales Tax; Refund Filed: 01/12/00 Period: 10/01/90-12/31/93 Amount: \$64,868.50	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Robert C. Alden Phillip L. Sampson, Jr. Bracewell & Patterson Austin
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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  
AG Case #98-930330

Sales Tax; Protest Filed: 04/03/98 Period: 04/01/90-03/31/94 Amount: \$519,192	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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**Clinique Services, Inc. v. Rylander, et al.** Cause #GN000376  
AG Case #001273069

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  
AG Case #98-930321

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

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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**Colt, Mach V., Trustee of the Harry T. Lloyd Charitable Trust, successor in interest to House of Lloyd, Inc. v. Rylander, et al.** Cause #GN100740  
AG Case #011423951

Sales Tax; Refund &  
Declaratory Judgment  
Filed: 03/09/01  
Period: 01/01/95-03/31/99  
Amount: \$645,193.40

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Steve Rodriguez  
  
Maryilyn A. Wethekam  
Horwood Marcus & Berk  
Chartered  
Chicago, Illinois  
  
David E. Cowling  
Charolette Noel  
Gregory E. Perry  
Jones, Day, Reavis & Pogue  
Dallas

Issue: Whether Plaintiff is entitled to refund of sales tax on "hostess free goods," because Plaintiff paid use tax on the goods. Whether sales tax collected from its hostesses on hostess free goods can be refunded to them by a credit for merchandise. Whether Rule 3.325(b)(2) is invalid. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

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

AG Case #001339886

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Scott Simmons
Filed: 08/09/00	Plaintiff's Counsel:	Curtis J. Osterloh
Period: 1993-1996		Scott, Douglass & McConnico
Amount: \$38,141.72		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

AG Case #98-1047269

Sales Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 09/09/98	Plaintiff's Counsel:	Judy M. Cunningham
Period: 07/01/92-01/31/96		Attorney at Law
Amount: \$67,366		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  
AG Case #0011395316

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

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: Discovery in progress.

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***East Rio Hondo Water Supply Corp. v. Rylander, et al.*** Cause #GN002807  
AG Case #001357623

Sales Tax; Refund Filed: 09/22/00	Asst. AAG Assigned:	Nicole Galwardi
Period: 10/01/95-12/31/99 Amount: \$13,104.00	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: Mediation held 4/03/01.

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***El Paso Silverton Construction Co., Inc. v. Sharp, et al.*** Cause #97-00547  
AG Case #97-658485

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

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

Status: Settled.

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**Estee Lauder Services, Inc. v. Sharp, et al.** Cause #98-03525  
AG Case #98-930358

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  
AG Case #98-930367

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  
AG Case #97-729042

Sales Tax; Declaratory Judgment Filed: 04/28/97 Period: 1995 Amount: \$	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 Mekdessi v. Rylander, et al.***

Cause #GN002724

AG Case #001353960

Sales Tax; Injunction

Asst. AAG Assigned:

Blake Hawthorne

Filed: 09/15/00

Period: 12/01/90-11/30/97

Plaintiff's Counsel:

Percy L. "Wayne" Isgitt

Amount: \$360,671.05

Houston

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

AG Case #98-914152

Sales Tax; Refund

Asst. AAG Assigned:

Cecilia Gonzalez

Filed: 03/05/98

Period: 10/01/90-04/30/93

Plaintiff's Counsel:

Jasper G. Taylor, III

Amount: \$328,829

Fulbright & Jaworski

Houston

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

Status: Discovery in progress. Plaintiff filed unopposed motion to retain and will consolidate case with pending administrative matters when they are concluded. Motion to retain granted.

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**Galleria Limited v. Rylander, et al.** Cause #GN002277  
AG Case #001339944

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  
AG Case #98-1001886

Sales Tax; Protest Filed: 07/17/98 Period: 01/01/93-09/30/95 Amount: \$83,910	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  Stephen P. Dillon Lindeman & Dillon Houston
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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  
AG Case #99-1093188

Sales Tax; Protest Filed: 12/22/98 Period: 01/01/91-09/30/95 Amount: \$133,146.26	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: Settlement discussions in progress.

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

AG Case #96-595679

Sales Tax; Refund  
Filed: 09/06/96  
Period:  
Amount: \$698,491

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Jim Cloudt  
  
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 rescheduled for 05/15/01.

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

AG Case #98-1085483

Sales Tax; Protest  
Filed: 12/02/98  
Period: 09/01/92-06/30/96  
Amount: \$125,330.40

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Jim Cloudt  
  
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 rescheduled for 05/15/01.

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**Graybar Electric Co., Inc. v. Sharp, et al.** Cause #97-01795  
AG Case #97-682966

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

Status: Settlement negotiations in progress.

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**Grocers Supply Co., Inc. v. Sharp, et al.** Cause #97-07564  
AG Case #97-773840

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  
AG Case #97-864573

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  
AG Case #98-1063332

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. and Heritage Capital Corp. v. Rylander, et al.**  
Cause #99-06186  
AG Case #99-1175282

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

Status: Negotiations in progress.

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**Herndon Marine Products, Inc. v. Sharp, et al.** Cause #91-14786  
AG Case #91-164788

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

AG Case #001381680

Sales Tax; Protest & Refund Filed: 11/08/00	Asst. AAG Assigned:	Christopher Jackson
Period: 07/01/92-02/28/94 Amount: \$129,677.60	Plaintiff's Counsel:	Gerard A. Desrochers Baker Botts Houston

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

AG Case #96-457827

Sales Tax; Declaratory Judgment Filed: 01/26/96	Asst. AAG Assigned:	Jim Cloudt
Period: 07/01/88-03/31/92 Amount: \$229,930	Plaintiff's Counsel:	Leland C. De La Garza De La Garza & Clark 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  
AG Case #001261478

Sales Tax; Protest & Refund  
Filed: 01/21/00  
Period: 06/01/92-12/31/96  
Amount: \$597,281.67

Asst. AAG Assigned:  
Plaintiff's Counsel:

Steve Rodriguez  
  
Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chartered  
Chicago, Illinois  
  
L.G. (Skip) Smith  
Clark, Thomas & Winters  
Austin

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

Status: Answer filed.

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**Impaco, Inc. v. Rylander, et al.** Cause #GN001570  
AG Case #001310879

Sales Tax; Declaratory  
Judgment  
Filed: 05/31/00  
Period: 07/01/88-03/31/94  
Amount: \$345,124.47

Asst. AAG Assigned:  
Plaintiff's Counsel:

Christopher Jackson  
  
Mark Foster  
Foster & Malish  
Austin

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

Status: Discovery in progress. Case settled. Preparing agreed motion to dismiss.

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**Interpak Terminals, Inc. v. Sharp, et al.** Cause #95-15213  
AG Case #95-428718

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

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

Status: Discovery in progress.

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**Jett Racing and Sales, Inc. v. Sharp, et al.** Cause #96-04721  
AG Case #96-511242

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

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

Status: Discovery in progress.

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**John Hancock Mutual Life Insurance Co., The v. Rylander, et al.** Cause  
#GN001612  
AG Case #001316520

Sales Tax; Refund Filed: 06/05/00	Asst. AAG Assigned:	Blake Hawthorne
Period: 01/01/94-12/31/98 Amount: \$345,377.95	Plaintiff's Counsel:	James D. Blume Jennifer S. Stoddard Blume & Stoddard Dallas

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  
AG Case #98-964231

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  
AG Case #96-595651

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 M. 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  
AG Case #95-289583

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  
AG Case #001335645

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  
AG Case #96-485324

Sales Tax; Declaratory Judgment Filed: 11/13/95 Period: 04/01/91-03/31/95 Amount: \$150,214	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Russell J. Stutes, Jr. Scofield, Gerard, Veron, Singletary & Pohorelsky Lake Charles, Louisiana
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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  
AG Case #95-325883

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

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

Status: Will be dismissed or 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  
AG Case #98-1064363

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: Discovery in progress.

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**Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al.** Cause #91-17399  
AG Case #92-10477

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  
AG Case #99-1112160

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  
AG Case #98-1007248

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 granted.

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**Local Neon Co., Inc. v. Rylander, et al.** Cause #99-15042  
AG Case #001254036

Sales Tax; Protest &  
Declaratory Judgment  
Filed: 12/31/99  
Period:  
Amount: \$34,390.24

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

James D. Blume  
Jennifer S. Stoddard  
Blume & Stoddard  
Dallas

Judy M. Cunningham  
Austin

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  
AG Case #96-555542

Sales Tax; Declaratory  
Judgment  
Filed: 07/05/96  
Period: 01/01/89-12/31/92  
Amount: \$791,171

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

No attorney of record.

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. Plaintiff is pro se. Motion to Dismiss granted 03/16/01.

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**Macias, David Ronald v. Sharp** Cause #96-07543  
#03-98-00513-CV  
AG Case #96-550565

Sales Tax; Declaratory Judgment Filed: 06/28/96 Period: 1995 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark N. Osborn Kemp, Smith, Duncan & Hammond El Paso
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Issue: Plaintiff contests the suspension of his Texas Customs Broker License and disagrees with the Comptroller's policy that brokers must actually see goods being exported before affixing their stamps.

Status: State's motion for summary judgment heard 06/10/98. Court ruled for State, upholding license suspension and finding standard of review to be substantial evidence. Notice of appeal filed. Oral argument occurred 03/24/99. Third Court of Appeals reversed substantial evidence determination and remanded for further proceedings. Partial summary judgment on Macias' license suspension 02/06/00. Summary judgment in Comptroller's favor obtained on licensee's suspension. Suspension period set at 90 days. Preparing for second appeal. Brief filed 12/11/00. Oral argument completed 01/24/01. Trial Court's decision suspending Plaintiff's license was affirmed on 02/28/01.

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**Mazanec Construction Co., Inc. v. Sharp, et al.** Cause #96-06955  
AG Case #96-538759

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

Status: Settlement pending.

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**Medaphis Physicians Services Corp. v. Sharp, et al.** Cause #94-11610  
AG Case #94-149390

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

Status: On hold pending conclusion of the audit.

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**Melek Corp. v. Rylander** Cause #GN002146  
AG Case #001339936

Sales Tax; Declaratory Judgment Filed: 07/28/00 Period: 1998 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mitzi T. Shannon Kemp Smith, P.C. El Paso
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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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**Melek Corp. v. Rylander** Cause #GN100441  
AG Case #011410511

Sales Tax; Declaratory Judgment Filed: 02/12/01 Period: 2000 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mitzi T. Shannon Susan Zulkowski Kemp Smith, P.C. El Paso
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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  
AG Case #001260140

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

Status: Discovery in progress.

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**National Business Furniture, Inc. v. Sharp, et al.** Cause #98-03927  
AG Case #98-932766

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  
AG Case #93-340549

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

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  
AG Case #001344217

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

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 held 4/03/01.

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**North American Intelcom, Inc., et al. v. Sharp, et al.** Cause #97-05318  
AG Case #97-733563

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: Inactive.

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**North Texas Asset Management, Inc. v. Sharp, et al.** Cause #94-08603  
AG Case #94-113766

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  
AG Case #98-970135

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, Bimberg & 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

AG Case #97-825189

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

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

AG Case #99-1093170

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

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: Settlement discussions in progress.

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**Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al.** Cause #96-11750  
AG Case #96-613454

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  
AG Case #91-149840

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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**Pflugerville, City of v. Capital Metropolitan Transportation Authority and Carole Keeton Rylander** Cause #GV100065  
AG Case #

Sales Tax; Declaratory Judgment Filed: 01/11/01 Period: 01/22/00-07/01/00 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	J. Bruce Scrafford Mark L. Hawkins Ambrust, Brown & Davis Austin
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Issue: What amounts of local tax are due to the City of Pflugerville and Capital Metro.

Status: Answer filed.

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***Phelan Co., The v. Sharp, et al.*** Cause #98-00504  
AG Case #98-884283

Sales Tax; Protest &  
Declaratory Judgment  
Filed: 01/15/98  
Period: 1988-1992  
Amount: \$60,587

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Rick Harrison  
Harrison & Rial  
Austin

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

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.*)  
AG Case #97-706272

Sales Tax; Refund &  
Declaratory Judgment  
Filed: 04/01/97  
Period: 01/01/90-12/31/90  
Amount: \$57,815

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

Gerard A. Desrochers  
Baker Botts  
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  
AG Case #95-214921

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  
AG Case #99-1130410

Sales Tax; Protest	Asst. AAG Assigned:	Christopher Jackson
Filed: 03/05/99	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 01/01/93-06/30/96		Stahl, Martens & Bernal
Amount: \$206,971.88		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  
AG Case #91-62355

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

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

Status: District Court granted State's plea to the jurisdiction. State won appeal. Supreme Court reversed and remanded on 04/27/94. State's motion for rehearing denied. Inactive.

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***RAI Credit Corp. v. Rylander, et al.*** Cause #GN003556  
AG Case #011395266

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 12/12/00	Plaintiff's Counsel:	David Cowling
Period: 01/01/89-12/31/93		Gregory E. Perry
Amount: \$297,616.32		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  
AG Case #001357631

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 09/25/00	Plaintiff's Counsel:	David Cowling
Period: 04/01/88-05/31/92		Robert Lochridge
Amount: \$713,686.05		Jones, Day, Reavis & Pogue
\$206,053.87		Dallas

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  
AG Case #99-1097593

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.

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**Sam Houston Race Park, Ltd. v. Rylander, et al.** Cause #GN001096  
AG Case #001294263

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  
AG Case #96-436841

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  
AG Case #99-1187592

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: Inactive.

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**Sears Roebuck & Co. v. Rylander, et al.** Cause #99-04138  
AG Case #99-1152398

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

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

Status: Answer filed.

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**Service Merchandise Co., Inc. v. Sharp, et al.** Cause #98-11572  
AG Case #98-1063308

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

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

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

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**Sharyland Water Supply Corp. v. Rylander, et al.** Cause #9910283  
AG Case #001291798

Sales Tax; Refund Filed: 09/03/99	Asst. AAG Assigned:	Nicole Galwardi
Period: 10/01/93-09/30/97 Amount: \$45,053.00	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: Mediation held 04/03/01.

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

AG Case #97-662434

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: Inactive.

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

AG Case #99-1177965

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  
AG Case #96-637296

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  
AG Case #001323633

Sales Tax; Declaratory Judgment Filed: 06/23/00 Period: 01/01/94-12/31/96 Amount: \$6,532,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark D. Hopkins Fields & Hopkins Austin  Hilary Thomas Kondos & Kondos Law Offices Richardson
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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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**Sysco Food Services of Houston, L.P. (f/k/a Sysco Food Service of Houston, Inc.) v. Rylander, et al.** Cause #GN100633

AG Case #011420734

Sales Tax; Refund &  
Declaratory Judgment

Filed: 03/01/01

Period: 01/01/94-12/31/96

Amount: \$196,492.74

Asst. AAG Assigned:

Plaintiff's Counsel:

Nicole Galwardi

Judy M. Cunningham  
Austin

Issue: Whether electricity used to lower the temperature of food products is exempt as electricity used in processing. Whether equipment is exempt for the same reason.

Status: Answer filed.

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

AG Case #991219239

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

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

AG Case #99-1219221

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

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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***TDI-Halter, Inc. v. Rylander, et al.*** Cause #GN100339

AG Case #011409653

Sales Tax; Refund

Filed: 02/01/01

Period: 01/01/93-06/30/96

Amount: \$475,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

Mark W. Eidman  
Ray Langenberg  
Eric Hagenswold  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether conversion of drilling rigs to self-propelled, deep water rigs is manufacturing under the statute and Comptroller rules. Whether dredging is non-taxable maintenance of real property. Alternatively, whether interest should be waived.

Status: Answer filed.

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***Telecable Associates, Inc.; Teleservice Corp. of America; Texas Telecable, Inc.; TCA Cable of Amarillo, Inc.; and Texas Community Antennas, Inc. v. Rylander, et al.*** Cause #GN100705

AG Case #011422482

Sales Tax; Refund

Filed: 03/07/01

Period: 03/01/93-12/31/96

Amount: \$400,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Scott Simmons

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

Issue: Whether cable equipment on the customer's premises qualifies for the sale for resale exemption for property used to provide a taxable service.

Status: Discovery in progress.

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

AG Case #98-1022296

Sales Tax; Refund

Filed: 08/25/98

Period: 01/01/94-04/03/96

Amount: \$85,430

Asst. AAG Assigned:

Plaintiff's Counsel:

Cecilia Gonzalez

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 granted. Plaintiff will propose stipulations.

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

AG Case #90-311185

Sales Tax; Refund

Filed: 06/05/90

Period: 01/01/85 - 06/30/88

Amount: \$294,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Cecilia Gonzalez

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  
AG Case #99-1178526

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

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

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

Michael R. Garatoni  
Kliewer, 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  
AG Case #001261452

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

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

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  
AG Case #001327964

Sales Tax; Protest Filed: 07/03/00 Period: 07/01/93-12/31/96 Amount: \$44,519.03	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  H. Christopher Mott Krafsur Gordon Mott Davis & Woody El Paso
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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  
AG Case #97-694723

Sales Tax; Refund Filed: 03/10/97 Period: 02/01/91-07/31/94 Amount: \$656,667	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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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  
AG Case #99-1198896

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

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**USA Waste Services of Houston, Inc. v. Rylander, et al.** Cause #GN003453  
AG Case #001388065

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  
AG Case #98-939849

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  
AG Case #96-611633

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  
AG Case #97-743945

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

Status: Answer filed.

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# Insurance Tax

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

#03-00-427-CV

AG Case #98-880394

Insurance Premium &  
Insurance Maintenance Tax;

Protest

Filed: 01/07/98

Period: 1991-1994

Amount: \$276,151

(Premium)

\$4,804 (Maintenance)

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Barry K. Bishop  
Clark, Thomas & Winters  
Austin

Dudley D. McCalla  
Heath, Davis & McCalla  
Austin

Jay A. Thompson  
Thompson, Coe, Cousins &  
Irons  
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: 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 held 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.*)

AG Case #98-1001902

Gross Premium Tax; Protest

Filed: 07/24/98

Period: 1994-1996

Amount: \$29,169

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Dudley D. McCalla  
Heath, Davis & McCalla  
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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**Allianz Underwriters Insurance Co. v. Rylander, et al.** Cause #GN000663  
AG Case #001280114

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  
AG Case #001304807

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  
AG Case #86-1483

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

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

Status: Inactive.

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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.*)  
AG Case #99-1093402

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

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

Status: Consolidated with Cause #98-00195, *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  
AG Case #001351998

Insurance Premium Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 09/08/00	Plaintiff's Counsel:	Anthony Icenogle
Period: 1995		Joseph C. Boggins
Amount: \$362,975.97		DeLeon & Boggins
		Austin

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

AG Case #99-1168444

Independently Procured  
Insurance Tax; Protest  
Filed: 05/17/99  
Period: 1991-1997  
Amount: \$427,148.80

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

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

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

Status: Plaintiff's summary judgment motion filed. State's motion for summary judgment granted 04/06/00. Plaintiff filed notice of appeal. Dow's brief filed. Comptroller's brief filed. Argued 11/15/00. Reversed and rendered 01/25/01. Comptroller's petition filed 03/12/01.

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

AG Case #001348606

Independently Procured  
Insurance Tax; Protest  
Filed: 08/22/00  
Period: 1998 & 1999  
Amount: \$61,711.06

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

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

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  
AG Case #99-1173279

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: \$9,328.01		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: Settled.

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**First Colony Life Insurance Co. v. Rylander, et al.** Cause #99-06143  
AG Case #99-1173287

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: \$192,371.48		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: Settled.

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**GE Life and Annuity Assurance Co., f/k/a Life Insurance Co. of Virginia v. Rylander, et al.** Cause #99-06145  
AG Case #99-1173097

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: \$59,574.64		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: Settled.

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**General Electric Capital Assurance Co. v. Rylander, et al.** Cause #99-06144  
AG Case #99-1173295

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: Settled.

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**Great Northern Insured Annuity Corp. v. Rylander, et al.** Cause #99-06146  
AG Case #99-1173089

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: Settled.

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**Harvest Life Insurance Co., The v. Rylander, et al.** Cause #99-06147  
AG Case #99-1173063

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: Settled.

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**Heritage Life Insurance Co. v. Rylander, et al.** Cause #99-06148  
AG Case #99-1172958

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: Settled.

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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.*)  
AG Case #99-1238965

Insurance Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 11/16/99	Plaintiff's Counsel:	Jay A. Thompson
Period: 1995-1998		Thompson, Coe, Cousins &
Amount: \$234,383.82		Irons
\$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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**Lexington Insurance Co., Landmark Insurance Co. v. Rylander, et al.** Cause #GN100569  
AG Case #011417896

Insurance Premium Tax Tax; Protest & Declaratory Judgment Filed: 02/22/01 Period: 1992-1995 Amount: \$1,596,196.63 \$36,174.92	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Anthony Icenogle Joseph C. Boggins De Leon & 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: Answer filed.

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**Liberty National Life Insurance Co. v. Martha Whitehead, et al.** Cause #93-08432  
AG Case #93-311009

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

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**Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.** Cause #484,745  
AG Case #90-304512

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. Final judgment signed on paid-up additions issue. Renewal premium issue severed and retained on docket.

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**Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.** Cause #484,796  
AG Case #90-304503

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  
AG Case #99-1173105

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: Settled.

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

AG Case #91-168472

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

AG Case #001310820

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 Thompson, Coe, Cousins & Irons Austin  Barry K. 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. Sharp, et al.** Cause #98-11945  
AG Case #98-1065840

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  
AG Case #001288869

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: On hold pending outcome of *All American Life Insurance v. Rylander, et al.*

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**State Farm Life Insurance Co. v. Cornyn, et al.** Cause #99-07980  
AG Case #99-1187642

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  
AG Case #96-55551

Maintenance Tax; Declaratory Judgment Filed: 07/09/96 Period: 1992-1995 Amount: \$	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  
AG Case #97-700580

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: Plaintiff's amended motion for summary judgment filed. Hearing on cross motions held 03/07/01.

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**Union Fidelity Life Insurance Co. v. Rylander, et al.** Cause #99-06149  
AG Case #99-1173006

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: \$147,554.42		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: Settled.

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**Union Standard Insurance Co. v. Rylander, et al.** Cause #GN003565  
AG Case #011395308

Insurance Premium Tax Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 12/13/00	Plaintiff's Counsel:	Jim Shawn
Period: 01/01/93-12/31/96		Ron K. Eudy
Amount: \$216,572.39		Sneed, Vine & Perry
		Austin

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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**United American Insurance Co. v. Rylander, et al.** Cause #99-06836  
AG Case #99-1176355

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  
AG Case #97-727302

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  
AG Case #001348580

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

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  
AG Case #99-1226739

Insurance Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 10/20/99	Plaintiff's Counsel:	Nanette K. Beard
Period: 1993-1997 1993-1997		Raymond E. White
Amount: \$416,462.73 \$214,893.74		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. Case will go to mediation.

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## Other Taxes

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

AG Case #001376227

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: \$		McCreary, Veselka, Bragg & Allen
		Austin

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

AG Case #001339878

Property Tax; Administrative Appeal	Asst. AAG Assigned:	Nicole Galwardi
Filed: 07/27/00	Plaintiff's Counsel:	Robert Mott
Period:		Joseph Longoria
Amount: \$		Perdue, Brandon, Fielder, Collins & Mott
		Houston

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  
AG Case #99-1234329

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. Summary Judgment filed. County Association Amicus brief filed.

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**Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Comptroller** Cause #96-08010  
AG Case #96-599817

Property Tax; Declaratory Judgment Filed: 07/11/96 Period: 1994 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott Houston
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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  
AG Case #001376243

Property Tax;  
Administrative Appeal &  
Injunction  
Filed: 06/23/00  
Period: 1999  
Amount: \$

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Nicole Galwardi  
  
Roy L. Armstrong  
Robert L. Meyers  
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  
AG Case #96-538704

Natural Gas Production Tax;  
Refund  
Filed: 06/13/96  
Period: 08/18/90  
Amount: \$157,463

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Steve Rodriguez  
  
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  
AG Case #99-1238189

Motor Vehicle Tax; Refund  
Filed: 11/12/99  
Period: 10/01/90-11/30/96  
Amount: \$3,405,494.49

Asst. AAG Assigned:  
Plaintiff's Counsel:

Jim Cloudt  
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  
AG Case #001368513

Property Tax; Declaratory  
Judgment  
Filed: 10/12/00  
Period:  
Amount: \$99,425.50

Asst. AAG Assigned:  
Plaintiff's Counsel:

Gene Storie  
Douglas L. Jackson  
Vance T. Nye  
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  
AG Case #001335355

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: \$		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  
AG Case #91-78237

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  
AG Case #001339852

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: \$		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  
AG Case #001365550

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

Status: Answer filed.

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**MFC Finance Co. of Texas v. Rylander, et al.** Cause #GN002653  
AG Case #001352632

Motor Vehicle Sales Tax; Refund Filed: 09/07/00 Period: 01/01/96-12/31/98 Amount: \$5,533,079.80	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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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  
AG Case #001352129

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  
AG Case #001261395

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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***New Crew Quarters 2, Inc. v. Rylander, et al.*** Cause #GN002606  
AG Case #001352111

Mixed Beverage Gross Receipts Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 09/01/00	Plaintiff's Counsel:	Mark W. Eidman
Period: 09/01/93-02/28/97		Ray Langenberg
Amount: \$216,325.07		Curtis J. Osterloh
		Scott, Douglass & McConnico

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: Discovery in progress.

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***Oakwood ISD v. Comptroller*** Cause #GV001432  
AG Case #001376201

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: \$		McCreary, Veselka, Bragg & Allen

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  
AG Case #96-485280

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

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

Status: Inactive.

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**Preston Motors by George L. Preston, Owner v. Sharp, et al.** Cause #91-11987  
AG Case #91-133170

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  
AG Case #99-1195629

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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**Valentine ISD v. Comptroller** Cause #GV001763  
AG Case #001339860

Property Tax; Administrative Appeal Filed: 07/28/00 Period: 1999 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Nicole Galwardi  James R. Evans, Jr. Linebarger Heard Goggan Blair Graham Pena & Sampson Austin
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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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**West Orange-Cove CISD, Coppell ISD, La Porte ISD, Port Neches-Groves ISD v. Rylander, et al.** Cause #GV-100528  
AG Case #011433026

Property Tax; Declaratory  
Judgment  
Filed: 04/09/01  
Period:  
Amount: \$

Asst. AAG Assigned:

Nicole Galwardi

Plaintiff's Counsel:

George W. Bramblett, Jr.  
Carrie L. Huff  
Haynes and Boone  
Dallas

W. Wade Porter  
Haynes and Boone  
Austin

Issue: Whether the \$1.50 cap on the school districts' maintenance and operations taxes creates an unconstitutional state property tax. Plaintiffs also seek attorneys' fees.

Status:

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## Closed Cases

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

AG Case #98-1008774

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: Dismissed 12/28/00.

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

AG Case #99-1178021

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: Settled.

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**Commercial Janitorial Services, Inc. v. Sharp, et al.** Cause #95-03259  
AG Case #95-249001

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 Judy M. Cunningham McDaniel Attorney at Law Austin  Sam Passman Passman & Jones Dallas
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Issue: Whether fraud penalty should have been assessed. Whether the Comptroller should be enjoined from collecting the tax while this suit is pending.

Status: Dismissed for want of prosecution.

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**Gulf Publishing Co. v. Sharp, et al.** Cause #98-04208  
AG Case #98-942862

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. Plaintiff's Motion for Summary Judgment granted.

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**Houston Industries, Inc. v. Sharp, et al.** Cause #98-11344  
AG Case #98-1063316

Franchise Tax; Refund Filed: 10/08/98 Period: 01/01/93-10/08/93 Amount: \$1,676,116	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Gerard A. Desrochers Baker Botts Houston
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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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**LTV Steel Co., Inc. v. Sharp, et al.** Cause #97-02822  
AG Case #97-690528

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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**Martinez, Jesus Manuel v. Sharp, et al.** Cause #95-06432  
AG Case #95-292622

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: Dismissed for want of prosecution.

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

AG Case #99-1093196

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

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

Status: Case dismissed pursuant to settlement agreement.

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

AG Case #99-1125014

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

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

Status: Case dismissed pursuant to settlement agreement.

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**Sanchez, Joseph I. & Zyle Glass & Anthony Montoya v. Rylander, et al.** Cause

#GN000444

AG Case #001271006

Controlled Substances Tax;  
Declaratory Judgment  
Filed: 02/15/00  
Period: 1992  
1993  
Amount: \$35,843.28  
\$47,670  
\$42,000

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Blake Hawthorne  
  
Tom Moran  
Schneider & McKinney  
Houston

Issue: Whether tax liens and tax assessments should be declared void as a violation of double jeopardy.

Status: Agreed Judgment granted 03/20/01.

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***Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al.*** Cause #99-10444  
AG Case #99-1212895

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

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: Plaintiff non-suited.

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***Sledd, Charles Bruce*** Cause #00-1180  
AG Case #001381748

Sales Tax; Writ of  
Mandamus  
Filed: 11/15/00  
Period: 07/04/99 &  
02/18/00  
Amount: \$11.54

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Gene Storie  
  
Charles Bruce Sledd  
Pro Se  
Houston

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

#00-99-00719-CV

AG Case #91-60078

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

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.* Plaintiff nonsuited.

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

AG Case #94-181807

Sales Tax; Injunction  
Filed: 11/17/94

Period: 06/01/89-07/31/92

Amount: \$144,608

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

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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