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GENERAL**

TAXATION DIVISION

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

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Table of Contents

| | |
|--|----|
| Table of Cases | ix |
| Franchise Tax | 1 |
| 3 Beall Brothers 3, Inc. v. Rylander, et al. | 1 |
| AirBorn, Inc. v. Rylander, et al. | 1 |
| American General Corp. v. Rylander, et al. | 2 |
| Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc.; Restland Funeral Home; Singing Hills Funeral Homes, Inc.; Laurel Land Funeral Home of Fort Worth, Inc.; Blue Bonnet Hills Funeral Home, Inc.; and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al. | 2 |
| Beef Products, Inc. v. Rylander, et al. | 3 |
| Central Telephone Co. of Texas and United Telephone Co. of Texas v. Rylander, et al. | 3 |
| Chevron Chemical Co. v. Rylander, et al. | 3 |
| Continental Tire North America, Inc. v. Rylander, et al. | 4 |
| Dana Corp. v. Sharp, et al. | 4 |
| Delco Electronics Corp. v. Sharp, et al. | 5 |
| Fisher Controls International, Inc. v. Sharp, et al. | 5 |
| Fort James Operating Co., Inc. v. Rylander, et al. | 6 |
| General Motors Corp. v. Sharp, et al. | 6 |
| H.J. Heinz Co., Inc. v. Sharp, et al. | 6 |
| H.J. Heinz Co., Inc. v. Sharp, et al. | 7 |
| H.J. Heinz Co. v. Rylander, et al. | 8 |
| Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al. | 8 |
| Holt Rinehart & Winston, Inc., Drake Beam Morin, Inc., Harcourt Professional Education Group, Inc., The Psychological Corp. v. Rylander, et al. | 9 |
| House of Lloyd, Inc. v. Sharp, et al. | 9 |
| House of Lloyd, Inc. v. Sharp, et al. | 10 |
| James River II, Inc. v. Rylander, et al. | 10 |
| Jiffy Lube International, Inc. v. Rylander, et al. | 11 |
| Kerrville Telephone Co., The v. Rylander, et al. | 11 |
| May Department Stores Co., The v. Sharp, et al. | 11 |
| Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al. | 12 |
| North Star Steel Texas, Inc. v. Sharp, et al. | 12 |
| Ore-Ida Foods, Inc. v. Sharp, et al. | 13 |
| Ore-Ida Foods, Inc. v. Sharp, et al. | 13 |
| Ore-Ida Foods, Inc. v. Rylander, et al. | 14 |

| | |
|---|----|
| Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. | 14 |
| Pfizer, Inc. v. Rylander, et al. | 15 |
| Portion Pac, Inc. v. Sharp, et al. | 15 |
| Portion Pac, Inc. v. Sharp, et al. | 16 |
| Portion Pac, Inc. v. Rylander, et al. | 16 |
| Randall’s Food & Drugs, Inc. v. Rylander, et al. | 17 |
| Reliant Energy Gas Transmission Co., f/k/a Noram Gas Transmission Co. v. Rylander, et al. | 17 |
| Richland Development Corp. v. Rylander, et al. | 18 |
| Richland Development Corp. v. Comptroller, et al. | 18 |
| Saudi Refining, Inc. v. Rylander, et al. | 18 |
| Schlumberger Technology Corp. v. Rylander, et al. | 19 |
| Sergeant Enterprises, Inc. v. Sharp, et al. | 19 |
| Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al. | 20 |
| Southern Union Co. v. Rylander, et al. | 20 |
| Specialty Retailers, Inc. v. Rylander, et al. | 20 |
| Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. | 21 |
| Star-Kist Foods, Inc. v. Sharp, et al. | 21 |
| Star-Kist Foods, Inc. v. Sharp, et al. | 22 |
| Star-Kist Foods, Inc. v. Rylander, et al. | 22 |
| Tesoro Petroleum Corp. v. Sharp, et al. | 23 |
| Texaco Refining & Marketing (East), Inc. v. Rylander, et al. | 23 |
| Union Pacific Resources Co. v. Sharp, et al. | 24 |
| Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al. | 24 |
| U.S. Home Corp. v. Rylander, et al. | 25 |
| Weight Watchers Food Co. v. Sharp, et al. | 25 |
| Weight Watchers Gourmet Food Co. v. Rylander, et al. | 25 |
| Westcott Communications, Inc., Law Enforcement Television Network, Inc., Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al. | 26 |
| Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al. . . . | 27 |
| Xerox Credit Corp. v. Rylander, et al. | 27 |
| Sales Tax | 29 |
| Alexopolous, Dimitrios P. v. Rylander, et al. | 29 |
| Alpine Industries, Inc. v. Sharp, et al. | 29 |
| American Oil Change Corp. v. Rylander, et al. | 30 |
| American Standard, Inc. v. Sharp, et al. | 30 |
| American Telephone & Telegraph Co. v. Sharp, et al. | 30 |
| Aramis Services, Inc. v. Sharp, et al. | 31 |
| Aramis Services, Inc. v. Rylander, et al. | 31 |
| Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al. | 32 |
| Bedrock General Contractors v. Rylander, et al. | 32 |
| Bell Bottom Foundation Co. v. Rylander, et al. | 32 |

| | |
|--|----|
| BHC Co. v. Sharp, et al. | 33 |
| B.I. Moyle Associates, Inc. v. Rylander, et al. | 33 |
| Big Tex Air Conditioning, Inc. v. Bullock, et al. | 34 |
| Border Steel Rolling Mills, Inc. and Border Steel, Inc., as Successor in Interest to Border Steel Rollings Mills, Inc. v. Rylander, et al. | 34 |
| Brighton Builders, Inc. v. Sharp, et al. | 34 |
| Broadcast Satellite International, Inc. v. Rylander, et al. | 35 |
| C & T Stone Co. v. Rylander, et al. | 35 |
| Cafeteria Operators, L.P. v. Rylander, et al. | 36 |
| Central Power & Light Co. v. Sharp, et al. | 36 |
| Choi, Sung Ju d/b/a Sam Young Trading Co. v. Sharp | 36 |
| Church & Dwight Co., Inc. v. Rylander, et al. | 37 |
| Clinique Services, Inc. v. Sharp, et al. | 37 |
| Clinique Services, Inc. v. Rylander, et al. | 38 |
| Coastal Refining & Marketing, Inc. v. Sharp, et al. | 38 |
| Colt, Mach V., Trustee of the Harry T. Lloyd Charitable Trust, successor in interest to House of Lloyd, Inc. v. Rylander, et al. | 39 |
| D&D Recycling, Inc. v. Rylander, et al. | 39 |
| Denmon's H2 Safety Services, Inc. v. Sharp | 40 |
| E. de la Garza, Inc. v. Rylander, et al. | 40 |
| El Paso Silverton Construction Co., Inc. v. Sharp, et al. | 40 |
| Estee Lauder Services, Inc. v. Sharp, et al. | 41 |
| Estee Lauder Services, Inc. v. Sharp, et al. | 41 |
| Estee Lauder Services, Inc. v. Rylander, et al. | 41 |
| F M Express Food Mart, Inc., and Fouad Hanna Mekdessi v. Rylander, et al. . . | 42 |
| Fiesta Texas Theme Park, Ltd. v. Sharp, et al. | 42 |
| Galleria Limited v. Rylander, et al. | 43 |
| Garza, Lawrence v. Sharp, et al. | 43 |
| Gateway Homes, Inc. v. Sharp, et al. | 43 |
| GATX Terminals Corp. v. Sharp, et al. | 44 |
| GATX Terminals Corp. v. Sharp, et al. | 44 |
| Graybar Electric Co., Inc. v. Sharp, et al. | 45 |
| H.J. Wilson Co., Inc. v. Sharp, et al. | 45 |
| Heritage Numismatic Auctions, Inc. and Heritage Capital Corp. v. Rylander, et al. | 45 |
| Herndon Marine Products, Inc. v. Sharp, et al. | 46 |
| Hines Interests Limited Partnership v. Rylander, et al. | 46 |
| Holzem, Inc. v. Sharp, et al. | 47 |
| House of Lloyd, Inc. v. Rylander, et al. | 47 |
| Interpak Terminals, Inc. v. Sharp, et al. | 48 |
| Jerman Cookie Co. v. Rylander, et al. | 48 |
| Jett Racing and Sales, Inc. v. Sharp, et al. | 48 |
| John Hancock Mutual Life Insurance Co., The v. Rylander, et al. | 49 |

| | |
|---|----|
| Kroger Co., The v. Sharp, et al. | 49 |
| Kunz Construction Co., Inc. v. Sharp, et al. | 50 |
| L. D. Brinkman & Co., Inc. v. Sharp, et al. | 50 |
| LabOne, Inc. v. Rylander, et al. | 50 |
| Lake Charles Yamaha, Inc. v. Morales, et al. | 51 |
| Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al. | 51 |
| Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al. | 52 |
| Lee Construction and Maintenance Co. v. Rylander, et al. | 52 |
| Leyendecker Construction, Inc. v. Sharp, et al. | 52 |
| Local Neon Co., Inc. v. Rylander, et al. | 53 |
| Mazanec Construction Co., Inc. v. Sharp, et al. | 53 |
| Medaphis Physicians Services Corp. v. Sharp, et al. | 54 |
| Melek Corp. v. Rylander | 54 |
| Melek Corp. v. Rylander | 54 |
| Miller, Jerry W., Sr. v. Rylander, et al. | 55 |
| National Business Furniture, Inc. v. Sharp, et al. | 55 |
| Neiman Marcus Group, Inc. v. Sharp, et al. | 56 |
| North American Intelcom, Inc., et al. v. Sharp, et al. | 56 |
| North Texas Asset Management, Inc. v. Sharp, et al. | 57 |
| Norwood Homes, Inc. v. Sharp, et al. | 57 |
| Painter, Lisa G. v. Rylander, et al. | 57 |
| Paragon Communications v. Sharp, et al. | 58 |
| Perry Homes, A Joint Venture v. Sharp, et al. | 58 |
| Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al. | 59 |
| Petrolite Corp. v. Sharp, et al. | 59 |
| Pflugerville, City of v. Capital Metropolitan Transportation Authority and Carole Keeton Rylander | 59 |
| Phelan Co., The v. Sharp, et al. | 60 |
| Praxair, Inc. v. Sharp, et al. | 60 |
| Praxair, Inc. v. Sharp, et al. | 61 |
| Prodigy Services Co. v. Rylander, et al. | 61 |
| R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al. | 61 |
| RAI Credit Corp. v. Rylander, et al. | 62 |
| Raytheon E-Systems, Inc. v. Rylander, et al. | 62 |
| Roadway Express, Inc. v. Rylander, et al. | 63 |
| Sam Houston Race Park, Ltd. v. Rylander, et al. | 64 |
| Schmitz Industries, Inc. v. Sharp | 64 |
| Schoenborn & Doll Enterprises, Inc. v. Rylander, et al. | 64 |
| Sears Roebuck & Co. v. Rylander, et al. | 65 |
| Service Merchandise Co., Inc. v. Sharp, et al. | 65 |
| Southwest Pay Telephone Corp., Successor in Interest to Southwest Pay Telephone Systems, Inc. v. Sharp, et al. | 66 |
| Spaw-Glass, Inc. and Spaw Glass Construction Co. v. Rylander, et al. | 66 |

| | |
|--|-----------|
| Sprint International Communications, Inc. v. Sharp, et al. | 66 |
| Summit Photographix, Inc. v. Rylander, et al. | 67 |
| Sysco Food Services of Houston, L.P. (f/k/a Sysco Food Service of Houston, Inc.) v. Rylander, et al. | 67 |
| TCCT Real Estate, Inc. v. Rylander, et al. | 68 |
| TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al. | 68 |
| TDI-Halter, Inc. v. Rylander, et al. | 69 |
| Telecable Associates, Inc.; Teleservice Corp. of America; Texas Telecable, Inc.; TCA Cable of Amarillo, Inc.; and Texas Community Antennas, Inc. v. Rylander, et al. | 69 |
| Tennessee Gas Pipeline Co. v. Sharp, et al. | 70 |
| Texas Gulf, Inc. v. Bullock, et al. | 70 |
| Transcontinental Gas Pipeline Corp. v. Rylander, et al. | 71 |
| Union Carbide Corp. v. Rylander, et al. | 71 |
| Unit 82 Joint Venture v. Rylander, et al. | 72 |
| United Services Automobile Association v. Sharp, et al. | 72 |
| U.S. On-Line Cable v. Rylander, et al. | 72 |
| USA Waste Services of Houston, Inc. v. Rylander, et al. | 73 |
| Waller Hotel Group, Inc. v. Sharp, et al. | 73 |
| West Texas Pizza, Limited Partnership v. Sharp, et al. | 73 |
| Westar Hotels, Inc. v. Sharp, et al. | 74 |
| Insurance Tax | 75 |
| All American Life Insurance Co., et al. v. Rylander, et al. | 75 |
| All American Life Insurance Co. v. Sharp, et al. | 75 |
| Allianz Underwriters Insurance Co. v. Rylander, et al. | 76 |
| Allmerica Financial Life Insurance Co. and Annuity Co. v. Rylander, et al. | 76 |
| American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al. | 77 |
| American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al. | 77 |
| American International Specialty Lines Insurance Co. v. Rylander, et al. | 78 |
| Dow Chemical Co. v. Rylander, et al. | 78 |
| Dow Chemical Co., The v. Rylander, et al. | 79 |
| Federal Home Life Insurance Co. v. Rylander, et al. | 79 |
| Fireman’s Fund Insurance Co. of Ohio v. Rylander, et al. | 79 |
| First Colony Life Insurance Co. v. Rylander, et al. | 80 |
| GE Life and Annuity Assurance Co., f/k/a Life Insurance Co. of Virginia v. Rylander, et al. | 80 |
| General Electric Capital Assurance Co. v. Rylander, et al. | 81 |
| Great Northern Insured Annuity Corp. v. Rylander, et al. | 81 |
| Harvest Life Insurance Co., The v. Rylander, et al. | 81 |
| Heritage Life Insurance Co. v. Rylander, et al. | 82 |
| IDS Life Insurance Co. v. Rylander, et al. | 82 |

| | |
|---|------------|
| Lexington Insurance Co., Landmark Insurance Co. v. Rylander, et al. | 83 |
| Liberty National Life Insurance Co. v. Martha Whitehead, et al. | 83 |
| Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. | 83 |
| Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. | 84 |
| Philadelphia Life Insurance Co. v. Rylander, et al. | 84 |
| Principal Life Insurance Co. v. Rylander, et al. | 85 |
| Redland Insurance Co. v. State of Texas, et al. | 85 |
| Security National Insurance Co. v. Rylander, et al. | 85 |
| Southwestern Life Insurance Co. v. Sharp, et al. | 86 |
| Southwestern Life Insurance Co. v. Rylander, et al. | 86 |
| State Farm Life Insurance Co. v. Cornyn, et al. | 87 |
| Texas Workers' Compensation Insurance Facility v. Comptroller | 87 |
| Texas Workers' Compensation Insurance Facility v. Comptroller, et al. | 88 |
| Union Fidelity Life Insurance Co. v. Rylander, et al. | 88 |
| Union Standard Insurance Co. v. Rylander, et al. | 88 |
| United American Insurance Co. v. Rylander, et al. | 89 |
| Universe Life Insurance Co. v. State of Texas | 89 |
| Universe Life Insurance Co., The v. Cornyn, et al. | 90 |
| Warranty Underwriters Insurance Co. v. Rylander, et al. | 90 |
| Other Taxes | 93 |
| Buffalo ISD v. Comptroller | 93 |
| Caldwell, Marcie v. Rylander | 93 |
| Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Comptroller | 94 |
| Centerville ISD v. Comptroller | 94 |
| Chevron USA, Inc. v. Sharp, et al. | 94 |
| Chrysler Financial Co., L.L.C. v. Rylander, et al. | 95 |
| Cockrill, Charles T. v. Comptroller of Public Accounts, et al. | 95 |
| Deweyville ISD v. Rylander | 96 |
| El Paso Natural Gas Co. v. Sharp | 96 |
| Fort Davis ISD v. Comptroller | 96 |
| Hernandez, Juan Luis v. Rylander, et al. | 97 |
| MFC Finance Co. of Texas v. Rylander, et al. | 97 |
| MFN Financial Corp. v. Rylander, et al. | 98 |
| Marathon Oil Co. v. Rylander, et al. | 98 |
| New Crew Quarters 2, Inc. v. Rylander, et al. | 98 |
| Oakwood ISD v. Comptroller | 99 |
| P.W. Jones Oil Co., Inc. v. Sharp, et al. | 99 |
| Preston Motors by George L. Preston, Owner v. Sharp, et al. | 100 |
| Travis Co., et al. v. Lot 1, Baker Dale Addn. | 100 |
| Valentine ISD v. Comptroller | 100 |
| West Orange-Cove CISD, Coppell ISD, La Porte ISD, Port Neches-Groves ISD v. Rylander, et al. | 101 |
| Closed Cases | 103 |

| | |
|--|------------|
| Abbassinezhad, Akbar v. Rylander, et al. | 103 |
| Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller | 103 |
| Bandag Licensing Corp. v. Rylander, et al. | 103 |
| Burleson ISD v. Comptroller | 104 |
| Chevron Chemical Co. v. Rylander, et al. | 104 |
| Commercial Janitorial Services, Inc. v. Sharp, et al. | 105 |
| East Rio Hondo Water Supply Corp. v. Rylander, et al. | 105 |
| El Paso Electric Co. v. Sharp, et al. | 106 |
| El Paso Electric Co. v. Sharp, et al. | 106 |
| F.C. Felhaber & Co., Inc. v. Sharp, et al. | 106 |
| Grocers Supply Co., Inc. v. Sharp, et al. | 107 |
| Grocers Supply Co., Inc. v. Sharp, et al. | 107 |
| Gulf Publishing Co. v. Sharp, et al. | 108 |
| Houston Industries, Inc. v. Sharp, et al. | 108 |
| Impaco, Inc. v. Rylander, et al. | 108 |
| LTV Steel Co., Inc. v. Sharp, et al. | 109 |
| Lake Charles Yamaha, Inc. v. Morales, et al. | 109 |
| Lopez-Gloria Construction Services, Inc. v. Sharp, et al. | 110 |
| Lyondell Chemical Worldwide, Inc., f/k/a Arco Chemical Co. v. Rylander, et al. | 110 |
| Macias, David Ronald v. Sharp | 110 |
| Martinez, Jesus Manuel v. Sharp, et al. | 111 |
| McCarty-Hull Cigar Co. v. Sharp, et al. | 112 |
| McCarty-Hull Cigar Co. v. Rylander, et al. | 112 |
| Mcorp v. Sharp, et al. | 112 |
| North Alamo Water Supply Corp. v. Rylander, et al. | 113 |
| Peter Scalamandre & Sons, Inc., et al. v. Sharp, et al. | 113 |
| Samedan Oil Corp. v. Sharp, et al. | 114 |
| Sanchez, Joseph I. & Zyle Glass & Anthony Montoya v. Rylander, et al. | 114 |
| Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al. | 115 |
| Sharyland Water Supply Corp. v. Rylander, et al. | 115 |
| Sledd, Charles Bruce | 115 |
| Southern Union Co. v. Sharp, et al. | 116 |
| Southern Union Co. v. Sharp, et al. | 116 |
| Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp | 117 |
| Southwestern Life Insurance Co. v. Philip Barnes, et al. | 117 |
| Texas Aromatics, Inc. v. Sharp, et al. | 117 |
| Upjohn Co., The v. Sharp, et al. | 118 |
| Young's Beer Barn, Inc. v. Sharp | 118 |
| Index | 119 |

Table of Cases

| | |
|--|-----|
| 3 Beall Brothers 3, Inc. v. Rylander, et al. | 1 |
| Abbassinezhad, Akbar v. Rylander, et al. | 103 |
| Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller | 103 |
| AirBorn, Inc. v. Rylander, et al. | 1 |
| Alexopolous, Dimitrios P. v. Rylander, et al. | 29 |
| All American Life Insurance Co., et al. v. Rylander, et al. | 75 |
| All American Life Insurance Co. v. Sharp, et al. | 75 |
| Allianz Underwriters Insurance Co. v. Rylander, et al. | 76 |
| Allmerica Financial Life Insurance Co. and Annuity Co. v. Rylander, et al. | 76 |
| Alpine Industries, Inc. v. Sharp, et al. | 29 |
| American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al. | 77 |
| American General Corp. v. Rylander, et al. | 2 |
| American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al. | 77 |
| American International Specialty Lines Insurance Co. v. Rylander, et al. | 78 |
| American Oil Change Corp. v. Rylander, et al. | 30 |
| American Standard, Inc. v. Sharp, et al. | 30 |
| American Telephone & Telegraph Co. v. Sharp, et al. | 30 |
| Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc.; Restland Funeral Home; Singing Hills Funeral Homes, Inc.; Laurel Land Funeral Home of Fort Worth, Inc.; Blue Bonnet Hills Funeral Home, Inc.; and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al. | 2 |
| Aramis Services, Inc. v. Rylander, et al. | 31 |
| Aramis Services, Inc. v. Sharp, et al. | 31 |
| B.I. Moyle Associates, Inc. v. Rylander, et al. | 33 |
| Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al. | 32 |
| Bandag Licensing Corp. v. Rylander, et al. | 103 |
| Bedrock General Contractors v. Rylander, et al. | 32 |
| Beef Products, Inc. v. Rylander, et al. | 3 |
| Bell Bottom Foundation Co. v. Rylander, et al. | 32 |
| BHC Co. v. Sharp, et al. | 33 |
| Big Tex Air Conditioning, Inc. v. Bullock, et al. | 34 |
| Border Steel Rolling Mills, Inc. and Border Steel, Inc., as Successor in Interest to Border Steel Rollings Mills, Inc. v. Rylander, et al. | 34 |
| Brighton Builders, Inc. v. Sharp, et al. | 34 |
| Broadcast Satellite International, Inc. v. Rylander, et al. | 35 |
| Buffalo ISD v. Comptroller | 93 |
| Burleson ISD v. Comptroller | 104 |
| C & T Stone Co. v. Rylander, et al. | 35 |

| | |
|---|-----|
| Cafeteria Operators, L.P. v. Rylander, et al. | 36 |
| Caldwell, Marcie v. Rylander | 93 |
| Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Comptroller | 94 |
| Centerville ISD v. Comptroller | 94 |
| Central Power & Light Co. v. Sharp, et al. | 36 |
| Central Telephone Co. of Texas and United Telephone Co. of Texas v. Rylander, et al. | 3 |
| Chevron Chemical Co. v. Rylander, et al. | 3 |
| Chevron Chemical Co. v. Rylander, et al. | 104 |
| Chevron USA, Inc. v. Sharp, et al. | 94 |
| Choi, Sung Ju d/b/a Sam Young Trading Co. v. Sharp | 36 |
| Chrysler Financial Co., L.L.C. v. Rylander, et al. | 95 |
| Church & Dwight Co., Inc. v. Rylander, et al. | 37 |
| Clinique Services, Inc. v. Rylander, et al. | 38 |
| Clinique Services, Inc. v. Sharp, et al. | 37 |
| Coastal Refining & Marketing, Inc. v. Sharp, et al. | 38 |
| Cockrill, Charles T. v. Comptroller of Public Accounts, et al. | 95 |
| Colt, Mach V., Trustee of the Harry T. Lloyd Charitable Trust, successor in interest to House of Lloyd, Inc. v. Rylander, et al. | 39 |
| Commercial Janitorial Services, Inc. v. Sharp, et al. | 105 |
| Continental Tire North America, Inc. v. Rylander, et al. | 4 |
| D&D Recycling, Inc. v. Rylander, et al. | 39 |
| Dana Corp. v. Sharp, et al. | 4 |
| Delco Electronics Corp. v. Sharp, et al. | 5 |
| Denmon's H2 Safety Services, Inc. v. Sharp | 40 |
| Deweyville ISD v. Rylander | 96 |
| Dow Chemical Co. v. Rylander, et al. | 78 |
| Dow Chemical Co., The v. Rylander, et al. | 79 |
| E. de la Garza, Inc. v. Rylander, et al. | 40 |
| East Rio Hondo Water Supply Corp. v. Rylander, et al. | 105 |
| El Paso Electric Co. v. Sharp, et al. | 106 |
| El Paso Electric Co. v. Sharp, et al. | 106 |
| El Paso Natural Gas Co. v. Sharp | 96 |
| El Paso Silverton Construction Co., Inc. v. Sharp, et al. | 40 |
| Estee Lauder Services, Inc. v. Sharp, et al. | 41 |
| Estee Lauder Services, Inc. v. Rylander, et al. | 41 |
| Estee Lauder Services, Inc. v. Sharp, et al. | 41 |
| F M Express Food Mart, Inc., and Fouad Hanna Mekdessi v. Rylander, et al. | 42 |
| F.C. Felhaber & Co., Inc. v. Sharp, et al. | 106 |
| Federal Home Life Insurance Co. v. Rylander, et al. | 79 |
| Fiesta Texas Theme Park, Ltd. v. Sharp, et al. | 42 |
| Fireman's Fund Insurance Co. of Ohio v. Rylander, et al. | 79 |
| First Colony Life Insurance Co. v. Rylander, et al. | 80 |
| Fisher Controls International, Inc. v. Sharp, et al. | 5 |

| | |
|--|-----|
| Fort Davis ISD v. Comptroller | 96 |
| Fort James Operating Co., Inc. v. Rylander, et al. | 6 |
| Galleria Limited v. Rylander, et al. | 43 |
| Garza, Lawrence v. Sharp, et al. | 43 |
| Gateway Homes, Inc. v. Sharp, et al. | 43 |
| GATX Terminals Corp. v. Sharp, et al. | 44 |
| GATX Terminals Corp. v. Sharp, et al. | 44 |
| GE Life and Annuity Assurance Co., f/k/a Life Insurance Co. of Virginia v. Rylander, et al. | 80 |
| General Electric Capital Assurance Co. v. Rylander, et al. | 81 |
| General Motors Corp. v. Sharp, et al. | 6 |
| Graybar Electric Co., Inc. v. Sharp, et al. | 45 |
| Great Northern Insured Annuity Corp. v. Rylander, et al. | 81 |
| Grocers Supply Co., Inc. v. Sharp, et al. | 107 |
| Grocers Supply Co., Inc. v. Sharp, et al. | 107 |
| Gulf Publishing Co. v. Sharp, et al. | 108 |
| H.J. Heinz Co. v. Rylander, et al. | 8 |
| H.J. Heinz Co., Inc. v. Sharp, et al. | 7 |
| H.J. Heinz Co., Inc. v. Sharp, et al. | 6 |
| H.J. Wilson Co., Inc. v. Sharp, et al. | 45 |
| Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al. | 8 |
| Harvest Life Insurance Co., The v. Rylander, et al. | 81 |
| Heritage Life Insurance Co. v. Rylander, et al. | 82 |
| Heritage Numismatic Auctions, Inc. and Heritage Capital Corp. v. Rylander, et al. | 45 |
| Hernandez, Juan Luis v. Rylander, et al. | 97 |
| Herndon Marine Products, Inc. v. Sharp, et al. | 46 |
| Hines Interests Limited Partnership v. Rylander, et al. | 46 |
| Holt Rinehart & Winston, Inc., Drake Beam Morin, Inc., Harcourt Professional Education Group, Inc., The Psychological Corp. v. Rylander, et al. | 9 |
| Holzem, Inc. v. Sharp, et al. | 47 |
| House of Lloyd, Inc. v. Sharp, et al. | 9 |
| House of Lloyd, Inc. v. Sharp, et al. | 10 |
| House of Lloyd, Inc. v. Rylander, et al. | 47 |
| Houston Industries, Inc. v. Sharp, et al. | 108 |
| IDS Life Insurance Co. v. Rylander, et al. | 82 |
| Impaco, Inc. v. Rylander, et al. | 108 |
| Interpak Terminals, Inc. v. Sharp, et al. | 48 |
| James River II, Inc. v. Rylander, et al. | 10 |
| Jerman Cookie Co. v. Rylander, et al. | 48 |
| Jett Racing and Sales, Inc. v. Sharp, et al. | 48 |
| Jiffy Lube International, Inc. v. Rylander, et al. | 11 |
| John Hancock Mutual Life Insurance Co., The v. Rylander, et al. | 49 |
| Kerrville Telephone Co., The v. Rylander, et al. | 11 |

| | |
|---|-----|
| Kroger Co., The v. Sharp, et al. | 49 |
| Kunz Construction Co., Inc. v. Sharp, et al. | 50 |
| L. D. Brinkman & Co., Inc. v. Sharp, et al. | 50 |
| LabOne, Inc. v. Rylander, et al. | 50 |
| Lake Charles Yamaha, Inc. v. Morales, et al. | 109 |
| Lake Charles Yamaha, Inc. v. Morales, et al. | 51 |
| Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al. | 51 |
| Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al. | 52 |
| Lee Construction and Maintenance Co. v. Rylander, et al. | 52 |
| Lexington Insurance Co., Landmark Insurance Co. v. Rylander, et al. | 83 |
| Leyendecker Construction, Inc. v. Sharp, et al. | 52 |
| Liberty National Life Insurance Co. v. Martha Whitehead, et al. | 83 |
| Local Neon Co., Inc. v. Rylander, et al. | 53 |
| Lopez-Gloria Construction Services, Inc. v. Sharp, et al. | 110 |
| LTV Steel Co., Inc. v. Sharp, et al. | 109 |
| Lyondell Chemical Worldwide, Inc., f/k/a Arco Chemical Co. v. Rylander, et al. | 110 |
| Macias, David Ronald v. Sharp | 110 |
| Marathon Oil Co. v. Rylander, et al. | 98 |
| Martinez, Jesus Manuel v. Sharp, et al. | 111 |
| May Department Stores Co., The v. Sharp, et al. | 11 |
| Mazanec Construction Co., Inc. v. Sharp, et al. | 53 |
| McCarty-Hull Cigar Co. v. Rylander, et al. | 112 |
| McCarty-Hull Cigar Co. v. Sharp, et al. | 112 |
| Mcorp v. Sharp, et al. | 112 |
| Medaphis Physicians Services Corp. v. Sharp, et al. | 54 |
| Melek Corp. v. Rylander | 54 |
| Melek Corp. v. Rylander | 54 |
| Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. | 83 |
| Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. | 84 |
| MFC Finance Co. of Texas v. Rylander, et al. | 97 |
| MFN Financial Corp. v. Rylander, et al. | 98 |
| Miller, Jerry W., Sr. v. Rylander, et al. | 55 |
| National Business Furniture, Inc. v. Sharp, et al. | 55 |
| Neiman Marcus Group, Inc. v. Sharp, et al. | 56 |
| Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al. | 12 |
| New Crew Quarters 2, Inc. v. Rylander, et al. | 98 |
| North Alamo Water Supply Corp. v. Rylander, et al. | 113 |
| North American Intelcom, Inc., et al. v. Sharp, et al. | 56 |
| North Star Steel Texas, Inc. v. Sharp, et al. | 12 |
| North Texas Asset Management, Inc. v. Sharp, et al. | 57 |
| Norwood Homes, Inc. v. Sharp, et al. | 57 |
| Oakwood ISD v. Comptroller | 99 |

| | |
|--|-----|
| Ore-Ida Foods, Inc. v. Sharp, et al. | 13 |
| Ore-Ida Foods, Inc. v. Sharp, et al. | 13 |
| Ore-Ida Foods, Inc. v. Rylander, et al. | 14 |
| P.W. Jones Oil Co., Inc. v. Sharp, et al. | 99 |
| Painter, Lisa G. v. Rylander, et al. | 57 |
| Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. | 14 |
| Paragon Communications v. Sharp, et al. | 58 |
| Perry Homes, A Joint Venture v. Sharp, et al. | 58 |
| Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al. | 59 |
| Peter Scalamandre & Sons, Inc., et al. v. Sharp, et al. | 113 |
| Petrolite Corp. v. Sharp, et al. | 59 |
| Pfizer, Inc. v. Rylander, et al. | 15 |
| Pflugerville, City of v. Capital Metropolitan Transportation Authority and Carole Keeton Ryland | 59 |
| Phelan Co., The v. Sharp, et al. | 60 |
| Philadelphia Life Insurance Co. v. Rylander, et al. | 84 |
| Portion Pac, Inc. v. Sharp, et al. | 16 |
| Portion Pac, Inc. v. Rylander, et al. | 16 |
| Portion Pac, Inc. v. Sharp, et al. | 15 |
| Praxair, Inc. v. Sharp, et al. | 60 |
| Praxair, Inc. v. Sharp, et al. | 61 |
| Preston Motors by George L. Preston, Owner v. Sharp, et al. | 100 |
| Principal Life Insurance Co. v. Rylander, et al. | 85 |
| Prodigy Services Co. v. Rylander, et al. | 61 |
| R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al. | 61 |
| RAI Credit Corp. v. Rylander, et al. | 62 |
| Randall’s Food & Drugs, Inc. v. Rylander, et al. | 17 |
| Raytheon E-Systems, Inc. v. Rylander, et al. | 62 |
| Redland Insurance Co. v. State of Texas, et al. | 85 |
| Reliant Energy Gas Transmission Co., f/k/a Noram Gas Transmission Co. v. Rylander, et al. . . | 17 |
| Richland Development Corp. v. Rylander, et al. | 18 |
| Richland Development Corp. v. Comptroller, et al. | 18 |
| Roadway Express, Inc. v. Rylander, et al. | 63 |
| Sam Houston Race Park, Ltd. v. Rylander, et al. | 64 |
| Samedan Oil Corp. v. Sharp, et al. | 114 |
| Sanchez, Joseph I. & Zyle Glass & Anthony Montoya v. Rylander, et al. | 114 |
| Saudi Refining, Inc. v. Rylander, et al. | 18 |
| Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al. | 115 |
| Schlumberger Technology Corp. v. Rylander, et al. | 19 |
| Schmitz Industries, Inc. v. Sharp | 64 |
| Schoenborn & Doll Enterprises, Inc. v. Rylander, et al. | 64 |
| Sears Roebuck & Co. v. Rylander, et al. | 65 |
| Security National Insurance Co. v. Rylander, et al. | 85 |

| | |
|---|-----|
| Sergeant Enterprises, Inc. v. Sharp, et al. | 19 |
| Service Merchandise Co., Inc. v. Sharp, et al. | 65 |
| Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al. | 20 |
| Sharyland Water Supply Corp. v. Rylander, et al. | 115 |
| Sledd, Charles Bruce | 115 |
| Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp | 117 |
| Southern Union Co. v. Rylander, et al. | 20 |
| Southern Union Co. v. Sharp, et al. | 116 |
| Southern Union Co. v. Sharp, et al. | 116 |
| Southwest Pay Telephone Corp., Successor in Interest to Southwest Pay Telephone Systems, Inc. v. Sharp, et al. | 66 |
| Southwestern Life Insurance Co. v. Rylander, et al. | 86 |
| Southwestern Life Insurance Co. v. Philip Barnes, et al. | 117 |
| Southwestern Life Insurance Co. v. Sharp, et al. | 86 |
| Spaw-Glass, Inc. and Spaw Glass Construction Co. v. Rylander, et al. | 66 |
| Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al. | 21 |
| Specialty Retailers, Inc. v. Rylander, et al. | 20 |
| Sprint International Communications, Inc. v. Sharp, et al. | 66 |
| Star-Kist Foods, Inc. v. Rylander, et al. | 22 |
| Star-Kist Foods, Inc. v. Sharp, et al. | 22 |
| Star-Kist Foods, Inc. v. Sharp, et al. | 21 |
| State Farm Life Insurance Co. v. Cornyn, et al. | 87 |
| Summit Photographix, Inc. v. Rylander, et al. | 67 |
| Sysco Food Services of Houston, L.P. (f/k/a Sysco Food Service of Houston, Inc.) v. Rylander, et al. | 67 |
| TCCT Real Estate, Inc. v. Rylander, et al. | 68 |
| TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al. | 68 |
| TDI-Halter, Inc. v. Rylander, et al. | 69 |
| Telecable Associates, Inc.; Teleservice Corp. of America; Texas Telecable, Inc.; TCA Cable of Amarillo, Inc.; and Texas Community Antennas, Inc. v. Rylander, et al. | 69 |
| Tennessee Gas Pipeline Co. v. Sharp, et al. | 70 |
| Tesoro Petroleum Corp. v. Sharp, et al. | 23 |
| Texaco Refining & Marketing (East), Inc. v. Rylander, et al. | 23 |
| Texas Aromatics, Inc. v. Sharp, et al. | 117 |
| Texas Gulf, Inc. v. Bullock, et al. | 70 |
| Texas Workers' Compensation Insurance Facility v. Comptroller | 87 |
| Texas Workers' Compensation Insurance Facility v. Comptroller, et al. | 88 |
| Transcontinental Gas Pipeline Corp. v. Rylander, et al. | 71 |
| Travis Co., et al. v. Lot 1, Baker Dale Addn. | 100 |
| U.S. Home Corp. v. Rylander, et al. | 25 |
| U.S. On-Line Cable v. Rylander, et al. | 72 |
| Union Carbide Corp. v. Rylander, et al. | 71 |
| Union Fidelity Life Insurance Co. v. Rylander, et al. | 88 |

| | |
|--|-----|
| Union Pacific Resources Co. v. Sharp, et al. | 24 |
| Union Standard Insurance Co. v. Rylander, et al. | 88 |
| Unit 82 Joint Venture v. Rylander, et al. | 72 |
| United American Insurance Co. v. Rylander, et al. | 89 |
| United Services Automobile Association v. Sharp, et al. | 72 |
| Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al. | 24 |
| Universe Life Insurance Co., The v. Cornyn, et al. | 90 |
| Universe Life Insurance Co. v. State of Texas | 89 |
| Upjohn Co., The v. Sharp, et al. | 118 |
| USA Waste Services of Houston, Inc. v. Rylander, et al. | 73 |
| Valentine ISD v. Comptroller | 100 |
| Waller Hotel Group, Inc. v. Sharp, et al. | 73 |
| Warranty Underwriters Insurance Co. v. Rylander, et al. | 90 |
| Weight Watchers Food Co. v. Sharp, et al. | 25 |
| Weight Watchers Gourmet Food Co. v. Rylander, et al. | 25 |
| West Orange-Cove CISD, Coppell ISD, La Porte ISD, Port Neches-Groves ISD v. Rylander, et al. | 101 |
| West Texas Pizza, Limited Partnership v. Sharp, et al. | 73 |
| Westar Hotels, Inc. v. Sharp, et al. | 74 |
| Westcott Communications, Inc., Law Enforcement Television Network, Inc., Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al. | 26 |
| Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al. | 27 |
| Xerox Credit Corp. v. Rylander, et al. | 27 |
| Young's Beer Barn, Inc. v. Sharp | 118 |

Franchise Tax

3 Beall Brothers 3, Inc. v. Rylander, et al. Cause #GN002755
AG Case #001354026

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|---|---|--|
| 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.

AirBorn, Inc. v. Rylander, et al. Cause #99-08165
AG Case #99-1189192

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| 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 |
|---|---|--|

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*.

American General Corp. v. Rylander, et al. Cause #GN003178
AG Case #001375419

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| 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.

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

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| 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 |
|---|---|---|

Issue: Whether income earned on Plaintiff's trust accounts for prepaid funeral services gives rise to Texas gross receipts.

Status: Motion to dismiss set by court for 08/22/01.

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

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| Franchise Tax; Protest Filed: 02/01/99 | Asst. AAG Assigned: | Christine Monzingo |
| Period: 1992 and 1993 Amount: \$331,040.60 | 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.*

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

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| Franchise Tax; Protest & Refund Filed: 02/01/01 | Asst. AAG Assigned: | Blake Hawthorne |
| Period: 1988-1994 Amount: \$300,772.95 \$204,616.25 | 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.

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

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| Franchise Tax; Refund Filed: 03/30/01 | Asst. AAG Assigned: | Christine Monzingo |
| Period: 1987-1993 Amount: \$ | 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.

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

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| 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.

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

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| 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.

Delco Electronics Corp. v. Sharp, et al. Cause #97-12045
AG Case #97-843052

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| 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: Discovery in progress.

Fisher Controls International, Inc. v. Sharp, et al. Cause #98-08893
#03-00-00183-CV
AG Case #98-1020621

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|---|---|---|
| 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. Third Court of Appeals affirmed on 04/25/01. Motion for Rehearing denied 06/07/01. Petition for review due 08/22/01 (extension granted).

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

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| 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.

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

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| 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. Petition denied. Plaintiff will not file a petition for writ of certiorari.

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*, 38 S.W.3d 600 (Tex. App.-Austin 2000, pet. denied).

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*, 38 S.W.3d 600 (Tex. App.-Austin 2000, pet. denied).

H.J. Heinz Co. v. Rylander, et al. Cause #99-05828
AG Case #99-1168451

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

Status: Answer filed. Should be resolved as for *Nabisco* and *Upjohn*. Set for dismissal by court.

**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

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| Franchise Tax; Protest and Declaratory Judgment Filed: 03/28/97 Period: 1987-1990 1989-1991 1988-1991 Amount: \$243,469 (total of all) | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Jess M. Irwin, III Steven D. Moore Jackson & Walker Austin |
|---|---|--|

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

Status: Inactive.

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.

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: Settled.

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: Settled.

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.

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

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| Franchise Tax; Refund Filed: 10/13/99 Period: 1992 Amount: \$34,768.59 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Gerard A. Desrochers 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: Inactive.

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 |
|---|---|--|

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.

May Department Stores Co., The v. Sharp, et al. Cause #98-06899
AG Case #98-983559

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|--|---|--|
| Franchise Tax; Refund Filed: 06/26/98 Period: 1991-1995 Amount: \$207,375 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo 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*.

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

Issue: Whether acquisition debt incurred by an acquiring corporation may be pushed down to the acquired corporation to reduce taxable capital.

Status: Discovery in progress.

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

Issue: Whether Comptroller properly interpreted the throw-back rule for purposes of apportioning gross receipts.

Status: Inactive pending *Comptroller v. Fisher Controls, Inc.*

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*, 38 S.W.3d 600 (Tex. App.-Austin 2000, pet. denied).

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*, 38 S.W.3d (Tex. App.-Austin 2000, pet. denied).

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:

Jana Kinkade

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*. Set for dismissal by court.

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. Appellants' brief filed 06/22/01.

Pfizer, Inc. v. Rylander, et al. Cause #GN001781
AG Case #001323641

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|---|---|--|
| Franchise Tax; Protest Filed: 06/20/00 Period: 1994-1996 Amount: \$309,078 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether franchise tax is due on gain from sale of an operating division that was capitalized, incorporated and sold. 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: Plaintiff filed a motion for summary judgment 04/30/01 on the unitary business issue. Hearing set 02/05/02.

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 *Upjohn*.

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:

Christine Monzingo

Plaintiff's Counsel:

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

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

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

Status: See *Upjohn*.

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:

Jana Kinkade

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*. Set for dismissal by court.

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

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|------------------------------------|----------------------|---------------------------------|
| Franchise Tax; Protest & Refund | Asst. AAG Assigned: | Christine Monzingo |
| Filed: 10/31/00 | Plaintiff's Counsel: | Jasper G. Taylor, III |
| Period: 1994-1997 | | Jay M. Chadha |
| Amount: \$4,006,942.39 | | Fulbright & Jaworski Houston |

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

Status: Answer filed.

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 | Asst. AAG Assigned: | Jim Cloudt |
| Filed: 07/15/99 | Plaintiff's Counsel: | L.G. Skip Smith |
| Period: 1996 | | David H. Gilliland |
| Amount: \$163,758.10 | | 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.

Richland Development Corp. v. Rylander, et al. Cause #99-12042
AG Case #99-1227638

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

Richland Development Corp. v. Comptroller, et al. Cause #96-09117
AG Case #96-573461

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

Saudi Refining, Inc. v. Rylander, et al. Cause #99-04227
AG Case #99-1155755

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|--|---|---|
| Franchise Tax; Refund & Protest Filed: 04/09/99 Period: 1994-1995 Amount: \$502,834.84 & \$190,000.58 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Ira A. Lipstet Therese L. Surprenant 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: Motion to retain granted. Order waiving mediation granted 05/29/01.

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

AG Case #001348614

Franchise Tax; Refund &
Declaratory Judgment

Filed: 08/23/00

Period: 1991

Amount: \$35,537

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Gerard A. Desrochers
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: First amended answer filed.

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

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.

Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al. Cause #96-06767
AG Case #96-537466

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|--|---|--|
| 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 |
|--|---|--|

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

Status: First amended answer filed.

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 |
|---|---|---|

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.

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 |
|---|---|--|

Issue: Whether Plaintiff is entitled to a refund for a business loss carryforward.

Status: Answer filed.

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 |
|---|---|--|

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.*

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:

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*.

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:

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*.

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:

Jana Kinkade

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*. Set for dismissal by court.

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:

Christopher Jackson

Plaintiff's Counsel:

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.

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

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|--|---|---|
| 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 |
|--|---|---|

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.

Union Pacific Resources Co. v. Sharp, et al. Cause #95-02334
AG Case #95-234473

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|--|---|---|
| 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 |
|--|---|---|

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*.

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

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|---|---|--|
| 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 |
|---|---|--|

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

Status: Hearing on cross-motions for summary judgment to be reset for 09/01.

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

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|--|---|--|
| 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 |
|--|---|--|

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

Status: Answer filed.

Weight Watchers Food Co. v. Sharp, et al. Cause #98-10927
AG Case #98-1052137

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|---|---|---|
| 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 |
|---|---|---|

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*.

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:

Jana Kinkade

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*. Set for dismissal by court.

***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. Waiting for Court's decision on plaintiff's motion to retain.

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 taken 03/22-23/01. Trial set 11/13/01.

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

AG Case #99-1172602

Franchise Tax; Protest

Filed: 05/28/99

Period: 1992-2000

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: Partial agreed judgment based on *Bandag*. Non-jury trial on remaining issues set for 12/10/01.

Sales Tax

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

AG Case #99-1187865

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|---------------------------------|----------------------|----------------------------|
| 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 10/15/01.

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

AG Case #98-1080526

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

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

Status: Discovery in progress.

American Oil Change Corp. v. Rylander, et al. Cause #99-06374
AG Case #99-1175084

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|--|---|--|
| 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 Houston |
|--|---|--|

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

Status: Motion to dismiss set by Court for 08/16/01.

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: | Jana Kinkade Judy M. Cunningham Attorney at Law Austin |
|---|---|---|

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

Status: Settlement discussions in progress.

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 |
|---|---|--|

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: Discovery in progress. Trial scheduled for 04/15/02.

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 |
|---|---|---|

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: Answer filed.

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 |
|--|---|---|

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: Answer filed.

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 |
|---|---|---|

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.

Bedrock General Contractors v. Rylander, et al. Cause #GN101432
AG Case #011442035

| | | |
|---|---|---|
| Sales Tax; Declaratory Judgment Filed: 05/10/01 Period: 06/01/92-01/31/96 Amount: \$64,552.33 | Asst. AAG Assigned: Plaintiff's Counsel: | Nicole Galwardi Timothy M. Trickey The Trickey Law Firm Austin |
|---|---|---|

Issue: Whether successor liability was retroactively imposed. Whether successor liability may be imposed when little or no cash is exchanged in the purchase of the predecessor.

Status: Answer filed.

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: | Scott Simmons Timothy M. Trickey The Trickey Law Firm Austin |
|---|---|---|

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

Status: Answer filed. Change of counsel filed.

BHC Co. v. Sharp, et al. Cause #95-13037
AG Case #95-386479

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

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

Status: Discovery in progress.

B.I. Moyle Associates, Inc. v. Rylander, et al. Cause #99-00907
AG Case #99-1108499

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

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

Status: Cross-motion for summary judgment filed. Settled.

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

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

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

Status: Some discovery done. Inactive.

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

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.

Brighton Builders, Inc. v. Sharp, et al. Cause #97-11830
AG Case #97-837489

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

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

Status: Discovery near completion.

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.

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.

Cafeteria Operators, L.P. v. Rylander, et al. Cause #99-14363
AG Case #99-1243411

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

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

Status: Discovery in progress. Plaintiff's motion for summary judgment filed. Summary judgment hearing set 04/05/01. Summary judgment granted for defendants 07/05/01.

Central Power & Light Co. v. Sharp, et al. Cause #96-11455
AG Case #96-602037

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

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

Status: Discovery in progress.

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 | Asst. AAG Assigned: | Steve Rodriguez |
| Period: 01/01/88-12/31/91 Amount: \$54,068 | Plaintiff's Counsel: | 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.

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

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

Status: Answer filed.

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

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

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: Answer filed.

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 |
|--|---|---|

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: Answer filed.

Coastal Refining & Marketing, Inc. v. Sharp, et al. Cause #98-03540
AG Case #98-930321

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|--|---|--|
| 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.

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:

Steve Rodriguez

Plaintiff's Counsel:

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.

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

AG Case #001339886

Sales Tax; Declaratory
Judgment

Filed: 08/09/00

Period: 1993-1996

Amount: \$38,141.72

Asst. AAG Assigned:

Scott Simmons

Plaintiff's Counsel:

Curtis J. Osterloh
Scott, Douglass &
McConnico
Austin

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

Status: Negotiations pending. Reviewing taxpayer's settlement offer.

Denmon's H2 Safety Services, Inc. v. Sharp Cause #98-10165
AG Case #98-1047269

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

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

Status: Discovery in progress. Settled.

E. de la Garza, Inc. v. Rylander, et al. Cause #GN003589
AG Case #0011395316

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

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

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

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 |
|---|---|---|

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: Answer filed.

Estee Lauder Services, Inc. v. Sharp, et al. Cause #98-03524
AG Case #98-930367

| | | |
|---|---|---|
| Sales Tax; Protest Filed: 04/03/98 Period: 10/01/92-03/31/96 Amount: \$748,773 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson David E. Cowling Jones, Day, Reavis & Pogue Dallas |
|---|---|---|

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

Status: Answer filed.

Estee Lauder Services, Inc. v. Rylander, et al. Cause #GN101312
AG Case #011439874

| | | |
|--|---|---|
| Sales Tax; Protest Filed: 05/01/01 Period: 04/01/96-06/30/99 Amount: \$614,814.78 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson David E. Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas |
|--|---|---|

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

Status: Answer filed.

F M Express Food Mart, Inc., and Fouad Hanna Mekkdesi 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.

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

AG Case #98-914152

Sales Tax; Refund

Asst. AAG Assigned:

Jana Kinkade

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. Scheduling order filed. Trial set 11/12/02.

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 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.

Garza, Lawrence v. Sharp, et al. Cause #98-07607
AG Case #98-1001886

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

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

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

Gateway Homes, Inc. v. Sharp, et al. Cause #98-14225
AG Case #99-1093188

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|--|---|--|
| 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 |
|--|---|--|

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

Status: Answer filed.

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

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. Court ordered judgment for defendants 05/29/01.

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. Consolidated with *GATX Terminals Corp. v. Sharp, et al.*, Cause No. 96-10815. Court ordered judgment for defendants 05/29/01.

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 |
|---|---|---|

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

Status: Settlement negotiations pending.

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 |
|---|---|---|

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. Motion to dismiss by court set 05/07/01. Plaintiff filed motion to retain 04/25/01.

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

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|--|---|--|
| 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 |
|--|---|--|

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.

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 |
|---|---|---|

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.

Hines Interests Limited Partnership v. Rylander, et al. Cause #GN003245
AG Case #001381680

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

Holzem, Inc. v. Sharp, et al. Cause #96-01041
AG Case #96-457827

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

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

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

House of Lloyd, Inc. v. Rylander, et al. Cause #GN000111
AG Case #001261478

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

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

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

Jerman Cookie Co. v. Rylander, et al. Cause #GN101492
AG Case #011451598

| | | |
|---|---|--|
| Sales Tax; Refund and Declaratory Judgment Filed: 05/16/01 Period: 12/01/92 through 03/31/97 Amount: \$43,121.45 | Asst. AAG Assigned: Plaintiff's Counsel: | Scott Simmons Steve M. Williard L. Don Knight Meyer, Knight & Williams Houston |
|---|---|--|

Issue: Whether plaintiff's sale of cookies and brownies is taxable under Tax Code §151.314 and Comptroller Rule 3.293. Plaintiff also seeks review under the Administrative Procedures Act and the UDJA, and seeks attorneys fees.

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

Issue: Whether an insurance company is exempt from sales taxes on its use of electricity on the grounds that Tex. Ins. Code Art. 4.11, Section 9 prohibits them.

Status: Answer filed.

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

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. Mediation held 05/23/01. Settled.

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 |
|---|---|--|

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.

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 |
|---|---|---|

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.

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 |
|--|---|---|

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.

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

AG Case #95-325883

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

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

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

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.

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 |
|--|---|--|

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

Status: Answer filed.

Lee Construction and Maintenance Co. v. Rylander, et al. Cause #99-01091
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: | Scott Simmons Timothy M. Trickey The Trickey Law Firm Austin |
|---|---|---|

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. Change of counsel filed.

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: | Jana Kinkade Donato D. Ramos Baldemar Garcia, Jr. Person, Whitworth, Ramos, Borchers & Morales Laredo |
|--|---|--|

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.

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.

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:

Steve Rodriguez

Plaintiff's Counsel:

Judy M. Cunningham
Attorney at Law
Austin

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

Status: Settled.

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 |
|--|---|--|

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.

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 |
|---|---|--|

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.

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 |
|---|---|---|

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.

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 |
|---|---|---|

Issue: Whether Plaintiff owes tax on mowing services sold to contractors, home builders and developers engaged in new construction of residential properties. Whether Comptroller misapplied Rule 3.356(a)(5) to Plaintiff's business. Whether Plaintiff was denied due process, and whether Plaintiff should pay penalty and interest. Plaintiff also asserts that the burden of proof is on the Comptroller to show that his business was taxable.

Status: Discovery in progress.

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

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 |
|--|---|--|

Issue: Whether promotional materials printed out-of-state and delivered into Texas are subject to use tax.

Status: Answer filed.

Neiman Marcus Group, Inc. v. Sharp, et al. Cause #93-10279-A
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 remodeling issues and the attorneys' fees. Cause renumbered 93-10279-A. State filed a plea to jurisdiction on attorneys' fees on 10/06/93. Awaiting Plaintiff's response for document request.

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 |
|--|---|---|

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.

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

| | | |
|------------------------------------|----------------------|--------------------|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | James Parsons |
| Filed: 7/14/94 | Plaintiff's Counsel: | Judy M. Cunningham |
| Period: 05/02/91-12/31/91 | | Attorney at Law |
| Amount: \$24,307 | | Austin |

Issue: Whether a sale of a business approved by the SBA (which held a lien and received the proceeds) is tantamount to a foreclosure sale so that no successor liability should attach.

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

Norwood Homes, Inc. v. Sharp, et al. Cause #98-05637
AG Case #98-970135

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

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

Status: Discovery in progress.

Painter, Lisa G. v. Rylander, et al. Cause #GN101804
AG Case #011459179

| | | |
|------------------------------------|----------------------|--------------------------------|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Jana Kinkade |
| Filed: 06/12/01 | Plaintiff's Counsel: | Mark Eidman |
| Period: 02/01/96-03/31/98 | | Ray Langenberg |
| Amount: \$21,074.28 | | Curtis Osterloh |
| | | Scott, Douglass & McConnico |
| | | Austin |

Issue: Whether the Comptroller improperly applied sales tax to sales made out-of-state. Plaintiff also seeks attorney's fees.

Status: Answer filed.

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.

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: Answer filed.

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 |
|---|---|--|

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

Status: Discovery in progress.

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

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

Status: Inactive.

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 |
|--|---|---|

Issue: What amounts of local tax are due to the City of Pflugerville and Capital Metro.

Status: Answer filed.

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.

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:

Jana Kinkade

Plaintiff's Counsel:

Gerard A. Desrochers
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.*

Praxair, Inc. v. Sharp, et al. Cause #95-00690
AG Case #95-214921

Sales Tax; Refund &
Declaratory Judgment
Filed: 01/18/95
Period: 1990
Amount: \$74,608

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

Gerard A. Desrochers
Houston

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

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

Prodigy Services Co. v. Rylander, et al. Cause #99-02693
AG Case #99-1130410

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

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

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

Martin I. Eisenstein
Brann & Isaacson
Lewiston, Maine

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

Status: Motion to dismiss set 05/14/01. Plaintiff filed motion to retain.

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.

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.

Raytheon E-Systems, Inc. v. Rylander, et al. Cause #GN101511
AG Case #011451606

| | | |
|---|---|--|
| Sales Tax; Declaratory Judgment and Refund Filed: 05/17/01 Period: 06/01/89 - 12/31/96 Amount: \$30,000,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Doug Sigel Curtis J. Osterloh Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress. Trial scheduled for 01/22/02.

Roadway Express, Inc. v. Rylander, et al. Cause #GN002831
AG Case #001357631

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

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.

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 |
|--|---|---|

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

Status: Answer filed.

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

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

Status: Answer filed.

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

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.

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

AG Case #99-1152398

Sales Tax; Refund

Filed: 04/08/99

Period: 10/01/88-12/31/91

Amount: \$1,792,421.59

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

David E. Cowling

Jones, Day, Reavis & Pogue
Dallas

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

Status: Answer filed.

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

AG Case #98-1063308

Sales Tax; Protest

Filed: 10/13/98

Period: 01/01/92-12/31/93

Amount: \$413,569

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

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. Motion to dismiss set 05/07/01. Plaintiff filed motion to retain 04/25/01.

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

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

Status: Inactive.

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

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

Status: Negotiations completed. Reviewing Plaintiffs' offer of settlement.

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

AG Case #96-637296

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

Issue: Whether networking services are taxable as telecommunications services.

Status: Answer filed.

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

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.

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.

TCCT Real Estate, Inc. v. Rylander, et al. Cause #99-11647
AG Case #991219239

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

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

Status: Answer filed.

TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al. Cause #99-11648
AG Case #99-1219221

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

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

Status: Discovery in progress.

TDI-Halter, Inc. v. Rylander, et al. Cause #GN100339
AG Case #011409653

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|--|---|--|
| Sales Tax; Refund Filed: 02/01/01 Period: 01/01/93-06/30/96 Amount: \$475,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne 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.

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

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|--|---|---|
| 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.

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: | Christopher Jackson Ron Patterson Kliewer, 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 and order waiving mediation granted. Plaintiff will propose stipulations. Motion for Summary Judgment set 09/20/01.

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: | Jana Kinkade 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. Discovery and settlement negotiations in progress.

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:

Jana Kinkade

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.

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.

Unit 82 Joint Venture v. Rylander, et al. Cause #GN001888
AG Case #001327964

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|---|---|---|
| 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 |
|---|---|---|

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

Status: Discovery in progress. Negotiations in progress.

United Services Automobile Association v. Sharp, et al. Cause #97-02927
AG Case #97-694723

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|--|---|--|
| 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 |
|--|---|--|

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: Partial settlement.

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 |
|---|---|--|

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 pending.

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

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|---|---|--|
| 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 |
|---|---|--|

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. Discovery initiated.

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: | Jana Kinkade Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin Mark Cohen Attorney at Law Austin |
|---|---|--|

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

Status: Discovery in progress.

West Texas Pizza, Limited Partnership v. Sharp, et al. Cause #96-11751
AG Case #96-611633

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|--|---|--|
| 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 |
|--|---|--|

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

Status: Discovery in progress.

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

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

Status: Discovery in progress.

Insurance Tax

All American Life Insurance Co., et al. v. Rylander, 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.

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.*

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 |
|---|---|--|

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. Settlement negotiations pending.

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 |
|--|---|---|

Issue: Whether premium taxes are owed on internal rollover transactions. Plaintiff also seeks declaratory judgment under the UDJA and APA and attorneys' fees.

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

American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al. Cause #396,975
AG Case #86-1483

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|--|----------------------|--------------------|
| 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.

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.*

American International Specialty Lines Insurance Co. v. Rylander, et al. Cause #GN002666
AG Case #001351998

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

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.

Dow Chemical Co. v. Rylander, et al. Cause #99-05725
#03-00-354-CV; #01-0203
AG Case #99-1168444

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

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. Response to petition filed 05/16/01. Comptroller's reply filed 05/31/01. Petition denied 06/07/01. Comptroller's petition for writ of certiorari due 09/05/01.

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: Plaintiff's Counsel: | Gene Storie 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.

Federal Home Life Insurance Co. v. Rylander, et al. Cause #99-06142
AG Case #99-1173279

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

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.

Fireman's Fund Insurance Co. of Ohio v. Rylander, et al. Cause #GN101899
AG Case #011464476

| | | |
|---|---|---|
| Insurance Premium Tax; Protest & Declaratory Judgment Filed: 06/20/01 Period: 1992-1998 Amount: \$439,074.12 | Asst. AAG Assigned: Plaintiff's Counsel: | Steve Rodriguez Stephen L. Phillips Brian C. Newby Julie K. Lane Cantey & Hanger, Roan & Autry Austin |
|---|---|---|

Issue: Whether Plaintiff, an authorized surplus lines insurer, is liable for unauthorized insurance premiums tax. Whether the Comptroller lacks authority to determine that Plaintiff is an unauthorized insurer, and whether the Texas Department of Insurance is required to make that determination. Whether the Comptroller engaged in selective and improper enforcement. Whether the assessment violates Due Process and the McCarran-Ferguson Act. Alternatively, whether penalty should be waived. Plaintiff also seeks injunctive relief and attorneys' fees.

Status: Answer filed.

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

AG Case #99-1173287

Retaliatory Tax; Protest &
Declaratory Judgment

Filed: 05/26/99

Period: 1998

Amount: \$192,371.48

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Ron K. Eudy
Sneed, Vine & Perry
Austin

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.

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

Filed: 05/26/99

Period: 1998

Amount: \$59,574.64

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Ron K. Eudy
Sneed, Vine & Perry
Austin

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.

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

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|--|----------------------|---------------------|
| 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.

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

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|--|----------------------|---------------------|
| 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.

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.

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.

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

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|------------------------|----------------------|--------------------------|
| Insurance Tax; Protest | Asst. AAG Assigned: | Gene Storie |
| Filed: 11/16/99 | | |
| Period: 1995-1998 | Plaintiff's Counsel: | Jay A. Thompson |
| Amount: \$234,383.82 | | Thompson, Coe, Cousins & |
| \$2,039.79 | | 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: Consolidated with Cause #98-00195, *All American Life Insurance Co, et al. v. Sharp, et al.*

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 |
|--|---|---|

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.

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

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|--|---|--|
| 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 |
|--|---|--|

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.

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

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|--|---|---|
| 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 |
|--|---|---|

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.

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 |
|---|---|---|

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.

Philadelphia Life Insurance Co. v. Rylander, et al. Cause #GN101330
AG Case #011439866

| | | |
|---|---|--|
| Insurance Premium & Gross Premium Tax Tax; Protest Filed: 05/02/01 Period: 1992-1996 Amount: \$466,381.65 | Asst. AAG Assigned: Plaintiff's Counsel: | Scott Simmons Kevin F. Lee Michael W. Jones 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: Answer filed.

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:

Steve Rodriguez

Plaintiff's Counsel:

Ron K. Eudy
Sneed, Vine & Perry
Austin

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

Status: Settled.

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:

Jana Kinkade

Plaintiff's Counsel:

W. Hollis Webb, Jr.
Harding, Bass, Fargason &
Booth
Lubbock

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. Set for DWOP 08/23/01.

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 |
|---|---|---|

Issue: Whether daily negative bank account balances should be adjusted to \$0 to compute the proper percentage of Texas investments for gross premiums tax.

Status: Answer filed.

Southwestern Life Insurance Co. v. 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 |
|--|---|---|

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.*

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 |
|--|---|---|

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.*

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 |
|--|---|---|

Issue: Whether Plaintiff's debt instruments are mortgage loans or corporate bonds or other obligations for purposes of its Texas investments allocation. Whether Plaintiff's interests in limited partnerships qualified as real estate investments. Whether allocation of quarterly U.S. bond holdings was proper. Whether calculation of bank balances was proper. Alternatively, whether penalty should be waived. Plaintiff seeks attorneys' fees.

Status: Answer filed.

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

Issue: Plaintiff seeks a ruling that Rule 3.804(d) concerning a maintenance tax surcharge is invalid.

Status: Inactive. Court set on dismissal docket.

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

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. Summary Judgment granted for defendants 05/25/01. Plaintiff filed notice of appeal. Record filed. Facility's brief due 08/13/01.

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.

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.

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 |
|--|---|---|

Issue: Whether Plaintiff's investment in a limited partnership which held Texas mineral interests qualifies as a Texas investment for purposes of reducing Plaintiff's gross premiums tax rate. Whether investments in limited partnerships should be treated the same as investments in corporations. Whether Plaintiff was denied equal protection under the federal or state constitutions. Plaintiff also asks for attorneys' fees.

Status: Answer filed.

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

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.

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.

Warranty Underwriters Insurance Co. v. Rylander, et al. Cause #99-12271
AG Case #99-1226739

| | | |
|--|----------------------|--------------------------------------|
| Insurance Tax; Protest & Declaratory Judgment | Asst. AAG Assigned: | Gene Storie |
| 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. On dismissal docket. Plaintiff will file Motion to Retain.

Other Taxes

Buffalo ISD v. Comptroller Cause #GV001433
AG Case #001376227

| | | |
|--|---|--|
| 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 |
|--|---|--|

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

Status: Answer filed.

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 |
|--|---|--|

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.

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

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

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

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

Centerville ISD v. Comptroller Cause #GV001431
AG Case #001376243

| | | |
|--|----------------------|---|
| 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/Waco |

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

Status: Answer filed.

Chevron USA, Inc. v. Sharp, et al. Cause #96-06931
AG Case #96-538704

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

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

Status: Discussions in progress.

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

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.

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.

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.

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.

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 Blair Graham Pena & Sampson |
| 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.

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 |
|--|---|---|

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

Status: Answer filed.

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 |
|--|---|--|

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.

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.

Marathon Oil Co. v. Rylander, et al. Cause #GN000328
AG Case #001261395

| | | |
|---|----------------------|------------------|
| Gas/Oil Production Tax; Refund & Declaratory Judgment | Asst. AAG Assigned: | Jim Cloudt |
| Filed: 01/10/00 | Plaintiff's Counsel: | Hal 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.

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. Jury trial set 03/25/02.

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.

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.

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 |
|--|---|--|

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

Status: Inactive.

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 |
|---|---|---|

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.

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 |
|---|---|---|

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.

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: Plea to the jurisdiction set 06/28/01. Plea granted. Case dismissed.

Closed Cases

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. &

Amount: \$50,061.22

Associates

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: Dismissed for want of prosecution 05/15/01.

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

AG Case #98-1008774

Franchise Tax; Refund

Asst. AAG Assigned:

Christopher Jackson

Filed: 08/05/98

Plaintiff's Counsel:

Philip P. Sudan, Jr.

Period: 1993-1996

Mark F. Elvig

Amount: \$77,428

Ryan & Sudan

Houston

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

Status: Dismissed 12/28/00.

Bandag Licensing Corp. v. Rylander, 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 03/06/01.

Burleson ISD v. Comptroller Cause #GN002130
AG Case #001339878

Property Tax; Administrative
Appeal
Filed: 07/27/00
Period:
Amount: \$

Asst. AAG Assigned:

Nicole Galwardi

Plaintiff's Counsel:

Robert Mott
Joseph Longoria
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: Non-suit filed.

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

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.

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 Downing McDaniel
Attorney at Law
Austin

Sam Passman
Passman & Jones
Dallas

Issue: Whether fraud penalty should have been assessed. Whether the Comptroller should be enjoined from collecting the tax while this suit is pending.

Status: Dismissed for want of prosecution.

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

| | | |
|--|---|---|
| Sales Tax; Refund Filed: 09/22/00 Period: 10/01/95-12/31/99 Amount: \$13,104.00 | 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. Settled.

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. Agreed judgment signed 12/04/98.

El Paso Electric Co. v. Sharp, et al. Cause #96-07178A
AG Case #011441789

| | | |
|--|---|---|
| Franchise Tax; Refund Filed: 01/02/96 Period: 1988-1990 Amount: \$36,845.39 | 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: Non-suited.

F.C. Felhaber & Co., Inc. v. Sharp, et al. Cause #97-05061
AG Case #97-729042

| | | |
|------------------------------------|----------------------|--|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 04/28/97 | Plaintiff's Counsel: | Louis S. Zimmerman Fulbright & Jaworski Austin |
| Period: 1995 | | |
| Amount: \$ | | |

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: Plaintiff non-suited 06/07/01.

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

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

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. Agreed judgment entered 05/07/01.

Grocers Supply Co., Inc. v. Sharp, et al. Cause #97-13659
AG Case #97-864573

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

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

Status: Discovery in progress. Settled. Agreed judgment entered 05/07/01.

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 |
|--|---|---|

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.

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 Houston |
|--|---|---|

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

Status: Motion for summary judgment set for hearing on 11/16/00. Plaintiff non-suited. See *Rylander v. 3 Beall Brothers 3, Inc.*, 2 S.W.3d 562 (Tex. App. - Austin 1999, pet. den.)

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: Case settled. Motion to dismiss granted.

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 |
|--|---|--|

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.

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 |
|---|---|---|

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: Dismissed.

Lopez-Gloria Construction Services, Inc. v. Sharp, et al. Cause #96-07811
AG Case #96-555542

| | | |
|------------------------------------|----------------------|------------------------|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 07/05/96 | Plaintiff's Counsel: | No attorney of record. |
| Period: 01/01/89-12/31/92 | | |
| Amount: \$791,171 | | |

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.

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

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: Nonsuited 04/23/01.

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

| | | |
|------------------------------------|----------------------|---|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 06/28/96 | Plaintiff's Counsel: | Mark N. Osborn Kemp, Smith, Duncan & Hammond El Paso |
| Period: 1995 | | |
| Amount: \$ | | |

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. Plaintiff filed petition for review with Texas Supreme Court 04/04/01. Waiver of response filed by Comptroller 04/19/01. Petition denied by Supreme Court 06/07/01.

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 |
|--|---|--|

Issue: Whether the Controlled Substances Tax Act is unconstitutional on various grounds.

Status: Dismissed for want of prosecution.

McCarty-Hull Cigar Co. v. Sharp, et al. Cause #98-14217
AG Case #99-1093196

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

McCarty-Hull Cigar Co. v. Rylander, et al. Cause #99-01996
AG Case #99-1125014

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

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: Plaintiff's Counsel: | Christopher Jackson 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. Hearing on defendants’ motion to dismiss set 06/11/01. Motion to dismiss granted 06/11/01.

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. Settled.

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:

Plaintiff's Counsel:

Jana Kinkade

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; will close. Dismissed.

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

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 filed. Case dismissed.

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 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.

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 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.

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

| | | |
|--|---|---|
| Sales Tax; Refund Filed: 09/03/99 Period: 10/01/93-09/30/97 Amount: \$45,053.00 | 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 04/03/01. Non-suited.

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.

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 |
|--|---|--|

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.

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

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.

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

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.

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.

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 |
|---|---|---|

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: Non-suited.

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 | Asst. AAG Assigned: | Christine Monzingo |
| Period: 1991-1994 Amount: \$1,391,740 | Plaintiff's Counsel: | Ira A. Lipstet Jenkins & Gilchrist Austin |

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

Status: 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 requested and filed 04/04/01. Petition denied.

Young's Beer Barn, Inc. v. Sharp Cause #94-14347
AG Case #94-181807

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

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

Status: Discovery answered by Plaintiff.

Index

- Additional tax
 - imposed after merger, 108, 115, 118
 - Rule 3.557, 24
- Administrative hearing, 96
- Advertising receipts
 - allocation for franchise tax, 108
- Aircraft
 - maintenance, repair & remodeling, 70
 - repair & replacement parts, 71
 - sale for resale, 49
- Allocation
 - advertising receipts, 108
- Amusement tax
 - coin operated machines and non-coin operated games, 42
 - Fitness & aerobic training services, 65
- Business loss carryforward
 - merger, 17, 19
 - officer and director compensation, 1
 - trial of companion case, 21
- Cable services
 - municipal franchise fees, 58
- Catalogs
 - nexus, 65
 - nexus, taxable use, 45
 - use tax--printed out of state, 65
- Coin operated machines and non-coin operated games
 - amusement tax v. sales tax, 42
- Construction
 - 1984 amendment to Tex. Tax Code § 151.311, 40
 - government facility, 53
- Construction contract
 - lump sum or separated contract, 33, 38, 66
- Conveyor belts
 - manufacturing exemption, 30
- Country Club fees
 - sales tax, 51
- County Court Fees
 - punishment, 93
- Customs Broker License
 - export of goods, 54, 55, 107, 111
- Data processing, 54
 - intercompany transactions, 46
 - sale for resale, 64
- Debt
 - deduction from surplus, 24
 - depreciation methods, 116
 - intercompany transactions, 8, 9, 27
 - liability to Pension Benefit Guaranty Corporation under ERISA, 109
 - operating lease obligations, 6
 - post-retirement benefits, 4, 6, 10, 18, 23, 24, 116
 - taxability, 106
 - wage reserve accounts, 19
- Debt collection services, 54
- Depreciation
 - service lives, 116
- Detrimental reliance, 34
- Direct Sales
 - Definition and application, 67
 - nexus, 29
 - refund of tax collected from independent contractor, 39
 - taxable use, sampling, 47
- Doing Business
 - taxability, 9, 10
- Double Jeopardy
 - deferred adjudication, 114
- Electricity
 - insurer exemption, 49
 - processing, 36, 67, 68, 105, 113, 115
 - use in hotels, 74
- ERISA
 - liability to Pension Benefit Guaranty Corporation under ERISA, 109
 - post-retirement benefits, 4, 6, 116
- Export of goods
 - customs broker license, 54, 55, 111
- Food Products
 - mall vendor, 48
- Franchise fees, municipal cable services, 58
- Fraud
 - penalty, 105
- Games
 - amusement tax v. sales tax, 42
- Gas and electricity purchases
 - residential use, 73
- Government facility
 - construction, 53
- Gross Premiums
 - internal rollover, 75, 77, 86
 - paid-up additions, 84
 - renewal premiums, 84
 - workers compensation, 87, 88
- Gross receipts
 - apportionment of satellite service receipts,

- 26
- deduction for food shipped in from out of state, 7, 8, 13, 14, 15, 16, 22, 23, 25, 26
- health care supplies, 118
- intercompany transactions, 2, 27
- interstate telephone charges, 3, 11
- nexus, 27
- reimbursement for services, 18
- Sale of stock in non-unitary business, 15
- section 338 sale, 110
- throwback rule, 1, 3
- Gross Taxable Sales
 - collection of tax, 118
 - Inadequate Records, 29
- Health care supplies
 - exclusion from franchise tax receipts, 118
- Independent contractors
 - maid service, 32
- Installment Sales
 - bad debt credit, 98
- Insurance services, 54
 - market value estimate, 90
 - out-of-state lab tests, 51
- Internal rollover
 - gross premiums, 75, 82
 - insurance gross premiums tax, 76, 77, 82, 84
- Intracplant transportation
 - manufacturing exemption, 70
- Inventory samples
 - sale for resale, 50
- Janitorial services
 - new construction, 57
- Joint venture
 - Sales tax credits, 19, 23
- Lien
 - mistaken identity, 97
 - personal property, 95
- Limitations
 - contingent assets, 11, 18
- Local Sales Tax
 - MTA, 60
- Lump Sum Motor Vehicle Repairs
 - Software Services, 30
- Maid services
 - real property services, 32
- Maintenance
 - aircraft owned by certificated carrier (pipeline), 70
 - utility poles, 36
- Maintenance charges
 - manufacturing facility, 33
- Manufacturing exemption, 60, 61
- "pan glazing", 49
- conveyor belts, 30, 39
- intracplant transportation, 70
- packaging, 48, 50
- pipe, 70
- Manufacturing facility
 - management and operation, 33
- Market Value of Oil
 - processing and marketing costs, 98
- Mixed drinks
 - complimentary, sales tax, 52
- Motor Vehicle Property
 - nexus, 63
- Motor Vehicle Seller
 - bad debt collection, 95
 - liability for tax, 100
- New construction
 - drilling rigs, 69
 - janitorial services, 57
 - lump sum or separated contract, 38
 - original defects, 43, 46
 - real property repair and remodeling, 58
 - tax credits, 52
- Nexus
 - accounts receivable, 62
 - catalogs printed out of state, 45, 61, 65
 - Certificate of authority, 104
 - delivering goods, 51, 109
 - delivery and installation of goods, 53
 - licensed software, 33
 - McCarran-Ferguson Act, 78
 - promotional materials, 31, 37, 41, 42
 - shipping from out of state, 55
- Occasional sales, 52
- Officer and director compensation
 - add-back to surplus, 12, 20, 103
- Oil well services, 59
- Open Courts
 - prepayment of tax, 47, 62
- Operating lease obligations
 - debt, 5, 6
- Out-of-State Sales
 - sale from mobile location, 58
- Packaging
 - manufacturing exemption, 48, 50, 107
- Parking lot
 - repairs, 52
- Penalty
 - fraud, 105
 - waiver, 96
- Pension Benefit Guaranty Corporation , 109
- Pipe
 - manufacturing exemption, 70
- Post-retirement benefits

- debt, 4, 10, 23, 116
- ERISA, 4, 6
- taxability, 9
- Pre-acquisition earnings
 - deduction from surplus, 113
- Predominant use
 - electricity, 46
- Premiums
 - home warranty insurance, 91
- Prepayment of tax
 - Open Courts, 47, 62
- Presumption of taxable receipts
 - individual liability, 103
- Printing
 - out-of-state printer, 72
- Prizes
 - amusement tax v. sales tax, 42
 - cost of taxable, 59, 74
- Producer's Gross Receipts
 - Order 94 payments, 95
- Promotional materials
 - nexus, 31, 37, 41, 42
 - ownership of, 31, 38
- Proof
 - burden in administrative hearing, 46
- Public Law 86-272
 - taxability, 9, 10
- Public telephone service
 - transfer of care, custody, and control of
 - equipment, 66
- Push-down accounting, 12, 117
 - depreciation, 20
- Real Property Repair and Remodeling, 56
 - finish-out work, 72
 - maintenance, new construction, 44
 - new construction, 47, 58
 - new construction, pollution control, 71
 - property management services, 105
 - vs. maintenance, 36
- Real property service
 - industrial solid waste, 49
 - landscaping, 55
 - landscaping, waste removal, 35, 44, 58
 - maid service, 32
 - taxable price, 44
- Recycling, sludge
 - exempt corporation, 113
- Remodeling
 - aircraft owned by certificated carrier
 - (pipeline), 70
- Rental of equipment
 - inclusion of related services in taxable
 - price, 40
- Repair
 - parking lot, 52
- Residential Property
 - burden of proof, 104
 - sampling method, 93, 94, 96, 97, 99, 104
- Retaliatory Basis, 83
 - similar insurance company, 79, 80, 81, 82,
 - 85, 88
- Retroactivity of tax
 - earned surplus, 14, 21
- Rolling Stock
 - cranes and repair parts, 34
- Rule making
 - authority of Comptroller, 54
- Sale for resale
 - airplane, 49
 - blanket resale certificates, 40
 - cable equipment, 69
 - collection of tax, 37
 - detrimental reliance, 35
 - engines, 109
 - federal contractor, 63
 - telecommunications equipment, 72
- Sales price
 - warranties and rebates, 116
- Sample audits
 - compliance with procedures, 42, 43
 - fraud, 99
- Sampling technique
 - validity, 43, 45, 60, 64
- School Finance
 - maintenance and operations rate, 101
- Statute of limitations, 23
 - tax paid to vendors, 44
- Successor liability, 57
 - retroactive application, 32
- Surplus Lines Insurer
 - unauthorized insurance tax, 76, 78, 80, 83
- Tax Foreclosure
 - State University, 100
- Taxable Value
 - presumption, 94
- Telecommunication services
 - networking services, 67
 - private line services, 31
 - satellite broadcasting, 35
- Telecommunications equipment
 - sale for resale, 72
 - transfer of care, custody, and control of
 - equipment, 56
- Texas investments, 77
 - bank balances, 86
 - Bond & Cash Investments, 87
 - cash fund investments, 89
 - debt, 87

- Limited Partnership Holdings, 89
 - Partnership, 87
- Third Party Administration
 - ERISA, 84
- Throwback rule, 12
- tobacco
 - taxable price, 112
- Vacant Property and Rural Acreage
 - sampling method, 101
- Waste removal
 - industrial solid waste vs. garbage, 49
 - sale for resale, 73
- Write-off
 - investment in subsidiaries, 25