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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 |
| 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. | 1 |
| CTX Mortgage Co., LLC, as Successor in Interest to CTX Mortgage Co., Inc. v. Strayhorn, et al. | 1 |
| Centex Construction Co., Inc., as Successor in Interest to Centex Bateson Construction Co., Inc. v. Strayhorn, et al. | 2 |
| Centex Construction Co., Inc., as Successor in Interest to Centex Bateson Construction Co., Inc. v. Strayhorn, et al. | 2 |
| Centex International, Inc., as Successor in Interest to 2728 Holding Corp., as Successor in Interest to Centex Real Estate Corp. v Strayhorn, et al. | 3 |
| Centex Materials, L.P., As Successor in Interest to Centex Materials, Inc. v. Strayhorn, et al. | 3 |
| Central Telephone Co. of Texas and United Telephone Co. of Texas v. Rylander, et al. | 4 |
| Chevron USA, Inc. v. Strayhorn, et al. | 4 |
| DaimlerChrysler Services North American, LLC | 5 |
| Dillard Department Stores, Inc. v. Strayhorn, et al. | 5 |
| El Paso Corp. v. Strayhorn, et al. | 6 |
| El Paso Natural Gas Co. v. Strayhorn, et al. | 6 |
| First Co. v. Rylander, et al. | 7 |
| Home Interiors & Gifts, Inc. v. Strayhorn, et al. | 7 |
| Inland Truck Parts Co. v. Strayhorn, et al. | 8 |
| Inova Diagnostics, Inc. v. Strayhorn, et al. | 8 |
| Randall’s Food & Drugs, Inc. v. Rylander, et al. | 9 |
| Reliant Energy Corp. (formerly Houston Industries, Inc.) v. Rylander, et al. | 9 |
| Reliant Energy Gas Transmission Co., fka Noram Gas Transmission Co. v. Rylander, et al. | 10 |
| Southern Union Co. v. Rylander, et al. | 10 |
| Southwestern Bell Telephone Co. v. Rylander, et al. | 10 |
| Strattec Security Corp. v. Strayhorn, et al. | 11 |
| Texaco Refining & Marketing (East), Inc. v. Rylander, et al. | 11 |
| Tyson Foods, Inc. v. Strayhorn, et al. | 12 |
| Viacom International, Inc. v. Strayhorn, et al. | 12 |
| Sales Tax | 13 |
| 7-Eleven, Inc. v. Strayhorn, et al. | 13 |
| AccuTel of Texas, L.P. v. Rylander, et al. | 13 |

| | |
|--|----|
| Advanta Business Services Corp. v. Rylander, et al. | 13 |
| Alpine Industries, Inc. v. Sharp, et al. | 14 |
| Amerada Hess Corp. v. Strayhorn, et al. | 14 |
| American Oil Change Corp. v. Rylander, et al. | 15 |
| Anderson Merchandisers Holding, Inc. v. Strayhorn, et al. | 15 |
| Apollo Paint & Body Shop, Inc. v. Strayhorn, et al. | 16 |
| Aramis Services, Inc. v. Sharp, et al. | 16 |
| Aramis Services, Inc. v. Rylander, et al. | 16 |
| B&B Gravel Co. v. Strayhorn, et al. | 17 |
| BGK Operating Co., Inc. v. Strayhorn, et al. | 17 |
| Baldry, Ann dba Annie's Housekeeping Services v. Sharp, et al. | 18 |
| Bell Bottom Foundation Co. v. Rylander, et al. | 18 |
| Bell Helicopter Textron, Inc. v. Rylander, et al. | 18 |
| Bell Helicopter Textron, Inc. v. Strayhorn, et al. | 19 |
| Blue Cross & Blue Shield of Texas, Inc. v. Strayhorn, et al. | 19 |
| Boeing North America, Inc. v. Rylander, et al. | 20 |
| Boeing North America, Inc. v. Strayhorn, et al. | 20 |
| Bonart, Richard C., DVM v. Strayhorn, et al. | 21 |
| Broadcast Satellite International, Inc. v. Rylander, et al. | 21 |
| C & T Stone Co. v. Rylander, et al. | 21 |
| Central Power & Light Co. v. Sharp, et al. | 22 |
| Chapal Zenray, Inc. v. Rylander, et al. | 22 |
| Chaparral Steel Co. and Chaparral Steel Midlothian, L.P. v. Strayhorn, et al. | 23 |
| Chevron Pipe Line Co. and West Texas Gulf Pipe Line Co. v. Strayhorn, et al. | 23 |
| Chevron USA, Inc. v. Strayhorn, et al. | 24 |
| Church & Dwight Co., Inc. v. Rylander, et al. | 24 |
| Clinique Services, Inc. v. Sharp, et al. | 24 |
| Clinique Services, Inc. v. Rylander, et al. | 25 |
| Clinique Services, Inc. v. Strayhorn, et al. | 25 |
| Coastal Refining & Marketing, Inc. v. Sharp, et al. | 26 |
| Cosmair, Inc. v. Strayhorn, et al. | 26 |
| Delta Air Lines, Inc. v. Strayhorn, et al. | 27 |
| Dillard's, Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Rylander, et al. | 27 |
| Dillard's Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Strayhorn, et al. | 28 |
| DuPont Photomasks, Inc. v. Strayhorn, et al. | 28 |
| E. de la Garza, Inc. v. Rylander, et al. | 29 |
| EFW, Inc. v. Rylander, et al. | 29 |
| ELC Beauty LLC, as Successor-in-Interest to Aramis Services, Inc. v. Rylander, et al. | 30 |
| ELC Beauty, LLC, as Successor-in-Interest to Origins Services Inc. v. Strayhorn, et al. | 30 |

| | |
|---|----|
| ELC Beauty, LLC, as a Successor-in-Interest to Estee Lauder Services Inc. v. Strayhorn, et al. | 31 |
| Estee Lauder Services, Inc. v. Sharp, et al. | 31 |
| Estee Lauder Services, Inc. v. Sharp, et al. | 31 |
| Estee Lauder Services, Inc. v. Rylander, et al. | 32 |
| Ethicon, Inc. v. Strayhorn, et al. | 32 |
| F M Express Food Mart, Inc., and Fouad Hanna Mekdessi v. Rylander, et al. . . | 33 |
| FXI Corp. v. Rylander, et al. | 33 |
| Fiesta Texas Theme Park, Ltd. v. Sharp, et al. | 34 |
| Fiesta Texas Theme Park, Ltd. and San Antonio Theme Park, L.P. v. Rylander, et al. | 34 |
| Garza, Lawrence v. Sharp, et al. | 35 |
| General Dynamics Corp. v. Rylander, et al. | 35 |
| General Dynamics Corp. v. Rylander, et al. | 35 |
| Gift Box Corp. of America, Inc. v. Rylander, et al. | 36 |
| Graybar Electric Co., Inc. v. Sharp, et al. | 36 |
| Grocers Supply-Institutional-Convenience, Inc. v. Rylander, et al. | 37 |
| H.J. Wilson Co., Inc. v. Sharp, et al. | 37 |
| Herndon Marine Products, Inc. v. Sharp, et al. | 37 |
| Hollon Oil Co. v. Strayhorn, et al. | 38 |
| JBI, Inc. v. Rylander, et al. | 38 |
| JBS Packing Co., Inc. v. Strayhorn, et al. | 39 |
| J.C. Penney Co., Inc. v. Strayhorn, et al. | 39 |
| Jerman Cookie Co. v. Rylander, et al. | 39 |
| Kennedy, Gary G. dba Kennedy's Korner v. Rylander, et al. | 40 |
| Kroger Co., The v. Strayhorn, et al. | 40 |
| LTV Aerospace & Defense Co. v. Rylander, et al. | 41 |
| LabOne, Inc. v. Rylander, et al. | 41 |
| Laredo Coca-Cola Bottling Co., and Coca-Cola Enterprises, Inc. v. Strayhorn, et al. | 42 |
| Laredo Coca-Cola Bottling Co., and Coca-Cola Enterprises, Inc. v. Strayhorn, et al. | 42 |
| Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al. | 43 |
| Laredo Pizza, Inc., and Samuel L. Alford, and L & H Pacific, L.L.C. v. Strayhorn, et al. | 43 |
| Lee Construction and Maintenance Co. v. Rylander, et al. | 43 |
| Levy, Tara, et al. v. OfficeMax, Inc. and Best Buy Stores, L.P. | 44 |
| Liaison Resources, L.P., and David S. Claunch v. Rylander, et al. | 44 |
| Local Neon Co., Inc. v. Rylander, et al. | 45 |
| Lockheed Martin Corp., as Successor to Lockheed Martin Vought Systems Corp. and Loral Vought Systems Corp. v. Rylander, et al. | 45 |
| Lockheed Corp. v. Rylander, et al. | 46 |
| Lockheed Martin Corp. v. Rylander, et al. | 46 |
| Lockheed Martin Corp., Successor to Lockheed Martin Vought Systems | |

| | |
|---|----|
| Corp. v. Rylander, et al. | 46 |
| Lockheed Martin Corp. v. Strayhorn, et al. | 47 |
| Lockheed Martin Kelly Aviation Center, Inc. v. Strayhorn, et al. | 47 |
| MG Building Materials, Ltd. v. Strayhorn, et al. | 48 |
| Mars, Inc. v. Strayhorn, et al. | 48 |
| Maxus Energy Corp. as Successor in Interest to Maxus Corporate Co. v. Strayhorn, et al. | 49 |
| May Department Stores Co., The v. Strayhorn, et al. | 50 |
| Medaphis Physicians Services Corp. v. Sharp, et al. | 50 |
| Mitchell, Christia Parr v. Rylander, et al. | 51 |
| Nachhattar Tejpal Legha Enterprises, Inc. v. Rylander, et al. | 51 |
| Neiman Marcus Group, Inc. v. Sharp, et al. | 51 |
| Neiman Marcus Group, Inc., The v. Rylander, et al. | 52 |
| North American Intelcom, Inc., et al. v. Sharp, et al. | 52 |
| North Texas Asset Management, Inc. v. Sharp, et al. | 53 |
| Northrop Grumman Systems Corp. (Successor to Northrop Grumman Corp. and Vought Aircraft Co.) v. Rylander, et al. | 53 |
| Petrolite Corp. v. Sharp, et al. | 54 |
| RAI Credit Corp. v. Rylander, et al. | 54 |
| R.H. Salas & Associates, Inc. v. Comptroller | 54 |
| Raytheon E-Systems, Inc. v. Rylander, et al. | 55 |
| Raytheon Co., as Successor in Interest to Raytheon Training, Inc. v. Rylander, et al. | 56 |
| Raytheon Co. and Daimlerchrysler Corp. as Successors to Central Texas Airborne Systems, Inc., fka Chrysler Technologies Airborne Systems, Inc. v. Strayhorn, et al. | 56 |
| Raytheon Co., as Successor to Raytheon TI Systems, Inc. v. Strayhorn, et al. . . | 57 |
| Raytheon Co. v. Strayhorn, et al. | 57 |
| Raytheon Co., as Successor to Raytheon E-Systems, Inc. v. Strayhorn, et al. . . . | 58 |
| Raytheon Co., as Successor to Raytheon E-Systems, Inc. v. Strayhorn, et al. . . . | 58 |
| Reynolds Metals Co. v. Strayhorn, et al. | 59 |
| Roadway Express, Inc. v. Rylander, et al. | 59 |
| Robbins & Myers, Inc. v. Strayhorn, et al. | 60 |
| Rockwell Collins, Inc. v. Rylander, et al. | 60 |
| Rollins & Rollins Enterprises, Inc. , dba Country Kwik Stop v. Rylander, et al. | 60 |
| Sabine Mining Co., The v. Strayhorn, et al. | 61 |
| San Antonio Spurs, L.L.C. v. Strayhorn, et al. | 61 |
| Schoenborn & Doll Enterprises, Inc. v. Rylander, et al. | 62 |
| Service Merchandise Co., Inc. v. Sharp, et al. | 62 |
| Sharper Image Corp. v. Rylander, et al. | 62 |
| Sharper Image Corp. v. Rylander, et al. | 63 |
| Southern Sandblasting and Coatings, Inc. v. Rylander, et al. | 64 |
| Southwest Food Processing & Refrigerated Services, aka Southwest | |

| | |
|--|-----------|
| Refrigerated Warehousing Services v. Rylander, et al. | 64 |
| Southwestern Bell Telephone, L.P. v. Strayhorn, et al. | 64 |
| Sprint International Communications, Inc. v. Sharp, et al. | 65 |
| Steamatic of Austin, Inc., et al. v. Rylander, et al. | 65 |
| Summit Photographix, Inc. v. Rylander, et al. | 66 |
| Sysco Food Services of Austin, Inc. v. Strayhorn, et al. | 66 |
| Sysco Food Services of Houston, L.P. (fka Sysco Food Service of Houston, Inc.) v. Rylander, et al. | 67 |
| Sysco Food Services of Houston, L.P. (fka Sysco Food Services of Houston, Inc.) v. Strayhorn, 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 |
| Texaco, Inc. v. Rylander, et al. | 70 |
| Texas Gulf, Inc. v. Bullock, et al. | 70 |
| Union Carbide Corp. v. Rylander, et al. | 70 |
| United Space Alliance, LLC v. Strayhorn, et al. | 71 |
| Val-Pak Franchise Operations, Inc. dba Valpak of Houston v. Strayhorn, et al. | 71 |
| West Texas Pizza, Limited Partnership v. Sharp, et al. | 72 |
| White Swan, Inc. v. Strayhorn, et al. | 72 |
| Williams, Duane Everett v. Comptroller | 72 |
| World Fitness Centers, Inc. v. Rylander, et al. | 73 |
| Zale Delaware, Inc. v. Rylander, et al. | 73 |
| Zale Delaware, Inc. v. Strayhorn, et al. | 74 |
| Insurance Tax | 75 |
| Allstate County Mutual Insurance Co.; Allstate Insurance Co.; Allstate Indemnity Co.; Allstate Texas Lloyds; and Allstate Property and Casualty Insurance Co. v. Strayhorn, et al. | 75 |
| American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al. | 75 |
| American Fidelity Assurance Co. v. Strayhorn, et al. | 76 |
| American International Specialty Lines Insurance Co. v. Rylander, et al. | 76 |
| Fireman's Fund Insurance Co. of Ohio v. Rylander, et al. | 77 |
| First American Title Insurance Co. v. Strayhorn, et al. | 77 |
| First American Title Insurance Co. v. Strayhorn, et al. | 78 |
| Lexington Insurance Co., Landmark Insurance Co. v. Rylander, et al. | 78 |
| Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. | 79 |
| Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. | 79 |
| Old Republic Title Insurance Co. v. Strayhorn, et al. | 80 |
| Old Republic National Title Insurance Co. v. Strayhorn, et al. | 80 |

| | |
|---|----|
| STP Nuclear Operating Co. v. Strayhorn, et al. | 81 |
| Security National Insurance Co. v. Rylander, et al. | 81 |
| St. Paul Surplus Lines Co. v. Rylander, et al. | 81 |
| Universe Life Insurance Co. v. State of Texas | 82 |
| Universe Life Insurance Co., The v. Cornyn, et al. | 83 |
| Warranty Underwriters Insurance Co. v. Rylander, et al. | 83 |
| Other Taxes | 85 |
| Alpine ISD v. Strayhorn | 85 |
| Armelin, John M. v. City of Houston | 85 |
| Arnold, Jessamine J., Estate of, Deceased, and Jim Arnold, Jr., Independent Executor v. Rylander, et al. | 85 |
| Barbers Hill ISD v. Comptroller | 86 |
| Bay City ISD v. Comptroller | 86 |
| CarMax Auto Superstores, Inc. v. Strayhorn, et al. | 87 |
| Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Comptroller | 87 |
| Chevron USA, Inc. v. Strayhorn, et al. | 87 |
| Comfort ISD v. Comptroller | 88 |
| Commerce ISD v. Comptroller | 88 |
| ConocoPhillips Co. v. Strayhorn, et al. | 89 |
| Cypress-Fairbanks ISD, et al. v. Troy G. Rountree, et al. | 89 |
| El Paso Natural Gas Co. v. Sharp | 89 |
| Fort Worth’s PR’s, Inc. v. Rylander, et al. | 90 |
| Gilani, Fred v. Progressive Amusement, Inc., Craig Byler and Comptroller | 90 |
| Glen Rose ISD v. Comptroller | 91 |
| Greenville ISD v. Comptroller | 91 |
| Harris County, et al. v. John W. Adams, et al. | 91 |
| Huntsville ISD v. Comptroller | 92 |
| Lake Austin Spa Investors, Ltd. v. Rylander, et al. | 92 |
| MFC Finance Co. of Texas v. Rylander, et al. | 93 |
| Marathon ISD v. Strayhorn | 93 |
| McLane Co., Inc. and McLane Foodservice-Lubbock, Inc. v. Rylander, et al. | 93 |
| Mirage Real Estate, Inc., et al. v. Richard Durbin, et al. | 94 |
| Petro Express Management, L.L.C. v. Rylander, et al. | 94 |
| Preston Motors by George L. Preston, Owner v. Sharp, et al. | 95 |
| Quinlan ISD v. Strayhorn | 95 |
| Texas RSA 15B2 Limited Partnership v. Strayhorn, et al. | 96 |
| Ranger Fuels & Maintenance , L.L.C. v. Rylander, et al. | 96 |
| Ranger Fuels & Maintenance, Inc., LLC v. Alon USA, LP | 96 |
| Robinson, Barbara Cooke, Estate of v. Strayhorn, et al. | 97 |
| San Vicente ISD v. Strayhorn | 97 |
| State Farm Fire and Casualty Co. and State Farm Mutual Automobile Insurance Co. v. Strayhorn, et al. | 97 |
| Terlingua Common ISD v. Comptroller | 98 |
| Texaco Exploration & Production, Inc. | 98 |

| | |
|--|-----|
| That's Entertainment - San Antonio, LLC dba Park Place v. Strayhorn, et al. | 99 |
| Willow Creek Resources, Inc. v. Strayhorn, et al. | 99 |
| Yantis ISD v. Comptroller | 100 |
| Closed Cases | 101 |
| 6S-B, Inc. v. Strayhorn, et al. | 101 |
| Akin, Ted M. v. State of Texas, Dallas County Appraisal District, et al. | 101 |
| Alexopolous, Dimitrios P. v. Rylander, et al. | 102 |
| Alvarado ISD v. Comptroller | 102 |
| Avery ISD v. Comptroller | 103 |
| Bailiff, Michael W. and Sylvia S. Bailiff v. Bexar County Appraisal District, et al. | 103 |
| Bandas, David v. Rylander, et al. | 103 |
| Bedrock General Contractors v. Rylander, et al. | 104 |
| Big Tex Air Conditioning, Inc. v. Bullock, et al. | 104 |
| Broadus ISD v. Comptroller | 104 |
| Caddo Mills ISD v. Comptroller | 105 |
| Colt, Mach V., Trustee of the Harry T. Lloyd Charitable Trust, Successor in Interest to House of Lloyd, Inc. v. Rylander, et al. | 105 |
| Columbia-Brazoria ISD v. Comptroller | 106 |
| Comstock ISD v. Comptroller | 106 |
| Dorinco Insurance Co. v. Rylander, et al. | 107 |
| Forney ISD v. Comptroller | 107 |
| Hines Interests Limited Partnership v. Rylander, et al. | 107 |
| House of Lloyd, Inc. v. Rylander, et al. | 108 |
| Inova Diagnostics, Inc. v. Rylander, et al. | 108 |
| JHS Enterprises, Inc. v. Rylander, et al. | 109 |
| John Hancock Mutual Life Insurance Co., The v. Rylander, et al. | 109 |
| Lebaron Hotel Corp., dba The Lebaron Hotel v. Sharp, et al. | 109 |
| Lubbock-Cooper ISD v. Comptroller | 110 |
| Lynch, Michael J. II, Assignee of Estrella Sola, Inc. v. Strayhorn | 110 |
| Marfa ISD v. Comptroller | 111 |
| Mineral Wells ISD v. Comptroller | 111 |
| National Business Furniture, Inc. v. Sharp, et al. | 111 |
| Point Isabel ISD v. Comptroller | 112 |
| Praxair, Inc. v. Sharp, et al. | 112 |
| Praxair, Inc. v. Sharp, et al. | 113 |
| Presidio ISD v. Comptroller | 113 |
| R Communications, Inc. fka RN Communications, Inc. v. Sharp, et al. | 113 |
| R.G.V. Vending, Inc. v. Strayhorn, et al. | 114 |
| Rahmes, Todd W., Individually and on Behalf of All Similarly Situated Consumers v. Louis Shanks of Texas, Inc., Strayhorn, et al. | 114 |
| Shelton, James M., Estate of, Deceased, and Carroll A. Maxon, Independent Co-Executor v. Rylander, et al. | 115 |
| Stephenville ISD v. Comptroller | 115 |

| | |
|--|-----|
| Stephenville ISD v. Comptroller | 116 |
| Tarkington ISD v. Comptroller | 116 |
| Texas Instruments, Inc. v. Rylander, et al. | 116 |
| Texas Instruments, Inc. v. Rylander, et al. | 117 |
| Texas Instruments, Inc. v. Rylander, et al. | 117 |
| USA Waste Services of Houston, Inc. v. Rylander, et al. | 118 |
| U.S. Home Corp. v. Rylander, et al. | 118 |
| United Services Automobile Association & USAA Life Insurance Co. v. Rylander, et al. | 119 |
| Westcott Communications, Inc., Law Enforcement Television Network, Inc., Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al. | 119 |
| Index | 121 |

Table of Cases

| | |
|---|-----|
| 6S-B, Inc. v. Strayhorn, et al. | 101 |
| 7-Eleven, Inc. v. Strayhorn, et al. | 13 |
| AccuTel of Texas, L.P. v. Rylander, et al. | 13 |
| Advanta Business Services Corp. v. Rylander, et al. | 13 |
| Akin, Ted M. v. State of Texas, Dallas County Appraisal District, et al. | 101 |
| Alexopolous, Dimitrios P. v. Rylander, et al. | 102 |
| Allstate County Mutual Insurance Co.; Allstate Insurance Co.; Allstate Indemnity Co.; Allstate Texas Lloyds; and Allstate Property and Casualty Insurance Co. v. Strayhorn, et al. | 75 |
| Alpine Industries, Inc. v. Sharp, et al. | 14 |
| Alpine ISD v. Strayhorn | 85 |
| Alvarado ISD v. Comptroller | 102 |
| Amerada Hess Corp. v. Strayhorn, et al. | 14 |
| American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al. | 75 |
| American Fidelity Assurance Co. v. Strayhorn, et al. | 76 |
| American International Specialty Lines Insurance Co. v. Rylander, et al. | 76 |
| American Oil Change Corp. v. Rylander, et al. | 15 |
| Anderson Merchandisers Holding, Inc. v. Strayhorn, et al. | 15 |
| 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. | 1 |
| Apollo Paint & Body Shop, Inc. v. Strayhorn, et al. | 16 |
| Aramis Services, Inc. v. Rylander, et al. | 16 |
| Aramis Services, Inc. v. Sharp, et al. | 16 |
| Armelin, John M. v. City of Houston | 85 |
| Arnold, Jessamine J., Estate of, Deceased, and Jim Arnold, Jr., Independent Executor v. Rylander, et al. | 85 |
| Avery ISD v. Comptroller | 103 |
| B&B Gravel Co. v. Strayhorn, et al. | 17 |
| Bailiff, Michael W. and Sylvia S. Bailiff v. Bexar County Appraisal District, et al. | 103 |
| Baldry, Ann dba Annie's Housekeeping Services v. Sharp, et al. | 18 |
| Bandas, David v. Rylander, et al. | 103 |
| Barbers Hill ISD v. Comptroller | 86 |
| Bay City ISD v. Comptroller | 86 |
| Bedrock General Contractors v. Rylander, et al. | 104 |
| Bell Bottom Foundation Co. v. Rylander, et al. | 18 |
| Bell Helicopter Textron, Inc. v. Strayhorn, et al. | 19 |
| Bell Helicopter Textron, Inc. v. Rylander, et al. | 18 |
| BGK Operating Co., Inc. v. Strayhorn, et al. | 17 |

| | |
|--|-----|
| Big Tex Air Conditioning, Inc. v. Bullock, et al. | 104 |
| Blue Cross & Blue Shield of Texas, Inc. v. Strayhorn, et al. | 19 |
| Boeing North America, Inc. v. Strayhorn, et al. | 20 |
| Boeing North America, Inc. v. Rylander, et al. | 20 |
| Bonart, Richard C., DVM v. Strayhorn, et al. | 21 |
| Broadcast Satellite International, Inc. v. Rylander, et al. | 21 |
| Broaddus ISD v. Comptroller | 104 |
| C & T Stone Co. v. Rylander, et al. | 21 |
| Caddo Mills ISD v. Comptroller | 105 |
| CarMax Auto Superstores, Inc. v. Strayhorn, et al. | 87 |
| Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Comptroller | 87 |
| Centex Construction Co., Inc., as Successor in Interest to Centex Bateson Construction Co., Inc. v. Strayhorn, et al. | 2 |
| Centex Construction Co., Inc., as Successor in Interest to Centex Bateson Construction Co., Inc. v. Strayhorn, et al. | 2 |
| Centex International, Inc., as Successor in Interest to 2728 Holding Corp., as Successor in Interest to Centex Real Estate Corp. v Strayhorn, et al. | 3 |
| Centex Materials, L.P., As Successor in Interest to Centex Materials, Inc. v. Strayhorn, et al. . . | 3 |
| Central Power & Light Co. v. Sharp, et al. | 22 |
| Central Telephone Co. of Texas and United Telephone Co. of Texas v. Rylander, et al. | 4 |
| Chapal Zenray, Inc. v. Rylander, et al. | 22 |
| Chaparral Steel Co. and Chaparral Steel Midlothian, L.P. v. Strayhorn, et al. | 23 |
| Chevron Pipe Line Co. and West Texas Gulf Pipe Line Co. v. Strayhorn, et al. | 23 |
| Chevron USA, Inc. v. Strayhorn, et al. | 24 |
| Chevron USA, Inc. v. Strayhorn, et al. | 4 |
| Chevron USA, Inc. v. Strayhorn, et al. | 87 |
| Church & Dwight Co., Inc. v. Rylander, et al. | 24 |
| Clinique Services, Inc. v. Sharp, et al. | 24 |
| Clinique Services, Inc. v. Strayhorn, et al. | 25 |
| Clinique Services, Inc. v. Rylander, et al. | 25 |
| Coastal Refining & Marketing, Inc. v. Sharp, et al. | 26 |
| Colt, Mach V., Trustee of the Harry T. Lloyd Charitable Trust, Successor in Interest to House of Lloyd, Inc. v. Rylander, et al. | 105 |
| Columbia-Brazoria ISD v. Comptroller | 106 |
| Comfort ISD v. Comptroller | 88 |
| Commerce ISD v. Comptroller | 88 |
| Comstock ISD v. Comptroller | 106 |
| ConocoPhillips Co. v. Strayhorn, et al. | 89 |
| Cosmair, Inc. v. Strayhorn, et al. | 26 |
| CTX Mortgage Co., LLC, as Successor in Interest to CTX Mortgage Co., Inc. v. Strayhorn, et al. | 1 |
| Cypress-Fairbanks ISD, et al. v. Troy G. Rountree, et al. | 89 |
| DaimlerChrysler Services North American, LLC | 5 |
| Delta Air Lines, Inc. v. Strayhorn, et al. | 27 |

| | |
|---|-----|
| Dillard Department Stores, Inc. v. Strayhorn, et al. | 5 |
| Dillard’s Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Strayhorn, et al. | 28 |
| Dillard’s, Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Rylander, et al. | 27 |
| Dorinco Insurance Co. v. Rylander, et al. | 107 |
| DuPont Photomasks, Inc. v. Strayhorn, et al. | 28 |
| E. de la Garza, Inc. v. Rylander, et al. | 29 |
| EFW, Inc. v. Rylander, et al. | 29 |
| El Paso Corp. v. Strayhorn, et al. | 6 |
| El Paso Natural Gas Co. v. Strayhorn, et al. | 6 |
| El Paso Natural Gas Co. v. Sharp | 89 |
| ELC Beauty LLC, as Successor-in-Interest to Aramis Services, Inc. v. Rylander, et al. | 30 |
| ELC Beauty, LLC, as a Successor-in-Interest to Estee Lauder Services Inc. v. Strayhorn, et al. | 31 |
| ELC Beauty, LLC, as Successor-in-Interest to Origins Services Inc. v. Strayhorn, et al. | 30 |
| Estee Lauder Services, Inc. v. Rylander, et al. | 32 |
| Estee Lauder Services, Inc. v. Sharp, et al. | 31 |
| Estee Lauder Services, Inc. v. Sharp, et al. | 31 |
| Ethicon, Inc. v. Strayhorn, et al. | 32 |
| F M Express Food Mart, Inc., and Fouad Hanna Mekdessi v. Rylander, et al. | 33 |
| Fiesta Texas Theme Park, Ltd. v. Sharp, et al. | 34 |
| Fiesta Texas Theme Park, Ltd. and San Antonio Theme Park, L.P. v. Rylander, et al. | 34 |
| Fireman’s Fund Insurance Co. of Ohio v. Rylander, et al. | 77 |
| First American Title Insurance Co. v. Strayhorn, et al. | 78 |
| First American Title Insurance Co. v. Strayhorn, et al. | 77 |
| First Co. v. Rylander, et al. | 7 |
| Forney ISD v. Comptroller | 107 |
| Fort Worth’s PR’s, Inc. v. Rylander, et al. | 90 |
| FXI Corp. v. Rylander, et al. | 33 |
| Garza, Lawrence v. Sharp, et al. | 35 |
| General Dynamics Corp. v. Rylander, et al. | 35 |
| General Dynamics Corp. v. Rylander, et al. | 35 |
| Gift Box Corp. of America, Inc. v. Rylander, et al. | 36 |
| Gilani, Fred v. Progressive Amusement, Inc., Craig Byler and Comptroller | 90 |
| Glen Rose ISD v. Comptroller | 91 |
| Graybar Electric Co., Inc. v. Sharp, et al. | 36 |
| Greenville ISD v. Comptroller | 91 |
| Grocers Supply-Institutional-Convenience, Inc. v. Rylander, et al. | 37 |
| H.J. Wilson Co., Inc. v. Sharp, et al. | 37 |
| Harris County, et al. v. John W. Adams, et al. | 91 |
| Herndon Marine Products, Inc. v. Sharp, et al. | 37 |
| Hines Interests Limited Partnership v. Rylander, et al. | 107 |
| Hollon Oil Co. v. Strayhorn, et al. | 38 |
| Home Interiors & Gifts, Inc. v. Strayhorn, et al. | 7 |

| | |
|---|-----|
| House of Lloyd, Inc. v. Rylander, et al. | 108 |
| Huntsville ISD v. Comptroller | 92 |
| Inland Truck Parts Co. v. Strayhorn, et al. | 8 |
| Inova Diagnostics, Inc. v. Strayhorn, et al. | 8 |
| Inova Diagnostics, Inc. v. Rylander, et al. | 108 |
| J.C. Penney Co., Inc. v. Strayhorn, et al. | 39 |
| JBI, Inc. v. Rylander, et al. | 38 |
| JBS Packing Co., Inc. v. Strayhorn, et al. | 39 |
| Jerman Cookie Co. v. Rylander, et al. | 39 |
| JHS Enterprises, Inc. v. Rylander, et al. | 109 |
| John Hancock Mutual Life Insurance Co., The v. Rylander, et al. | 109 |
| Kennedy, Gary G. dba Kennedy’s Korner v. Rylander, et al. | 40 |
| Kroger Co., The v. Strayhorn, et al. | 40 |
| LabOne, Inc. v. Rylander, et al. | 41 |
| Lake Austin Spa Investors, Ltd. v. Rylander, et al. | 92 |
| Laredo Coca-Cola Bottling Co., and Coca-Cola Enterprises, Inc. v. Strayhorn, et al. | 42 |
| Laredo Coca-Cola Bottling Co., and Coca-Cola Enterprises, Inc. v. Strayhorn, et al. | 42 |
| Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al. | 43 |
| Laredo Pizza, Inc., and Samuel L. Alford, and L & H Pacific, L.L.C. v. Strayhorn, et al. | 43 |
| Lebaron Hotel Corp., dba The Lebaron Hotel v. Sharp, et al. | 109 |
| Lee Construction and Maintenance Co. v. Rylander, et al. | 43 |
| Levy, Tara, et al. v. OfficeMax, Inc. and Best Buy Stores, L.P. | 44 |
| Lexington Insurance Co., Landmark Insurance Co. v. Rylander, et al. | 78 |
| Liaison Resources, L.P., and David S. Claunch v. Rylander, et al. | 44 |
| Local Neon Co., Inc. v. Rylander, et al. | 45 |
| Lockheed Corp. v. Rylander, et al. | 46 |
| Lockheed Martin Corp., as Successor to Lockheed Martin Vought Systems Corp. and Loral Vought Systems Corp. v. Rylander, et al. | 45 |
| Lockheed Martin Corp. v. Strayhorn, et al. | 47 |
| Lockheed Martin Corp., Successor to Lockheed Martin Vought Systems Corp. v. Rylander, et al. | 46 |
| Lockheed Martin Corp. v. Rylander, et al. | 46 |
| Lockheed Martin Kelly Aviation Center, Inc. v. Strayhorn, et al. | 47 |
| LTV Aerospace & Defense Co. v. Rylander, et al. | 41 |
| Lubbock-Cooper ISD v. Comptroller | 110 |
| Lynch, Michael J. II, Assignee of Estrella Sola, Inc. v. Strayhorn | 110 |
| Marathon ISD v. Strayhorn | 93 |
| Marfa ISD v. Comptroller | 111 |
| Mars, Inc. v. Strayhorn, et al. | 48 |
| Maxus Energy Corp. as Successor in Interest to Maxus Corporate Co. v. Strayhorn, et al. | 49 |
| May Department Stores Co., The v. Strayhorn, et al. | 50 |
| McLane Co., Inc. and McLane Foodservice-Lubbock, Inc. v. Rylander, et al. | 93 |
| Medaphis Physicians Services Corp. v. Sharp, et al. | 50 |
| Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. | 79 |

| | |
|--|-----|
| Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. | 79 |
| MFC Finance Co. of Texas v. Rylander, et al. | 93 |
| MG Building Materials, Ltd. v. Strayhorn, et al. | 48 |
| Mineral Wells ISD v. Comptroller | 111 |
| Mirage Real Estate, Inc., et al. v. Richard Durbin, et al. | 94 |
| Mitchell, Christia Parr v. Rylander, et al. | 51 |
| Nachhattar Tejpal Legha Enterprises, Inc. v. Rylander, et al. | 51 |
| National Business Furniture, Inc. v. Sharp, et al. | 111 |
| Neiman Marcus Group, Inc., The v. Rylander, et al. | 52 |
| Neiman Marcus Group, Inc. v. Sharp, et al. | 51 |
| North American Intelcom, Inc., et al. v. Sharp, et al. | 52 |
| North Texas Asset Management, Inc. v. Sharp, et al. | 53 |
| Northrop Grumman Systems Corp. (Successor to Northrop Grumman Corp. and Vought Aircraft Co.) v. Rylander, et al. | 53 |
| Old Republic National Title Insurance Co. v. Strayhorn, et al. | 80 |
| Old Republic Title Insurance Co. v. Strayhorn, et al. | 80 |
| Petro Express Management, L.L.C. v. Rylander, et al. | 94 |
| Petrolite Corp. v. Sharp, et al. | 54 |
| Point Isabel ISD v. Comptroller | 112 |
| Praxair, Inc. v. Sharp, et al. | 113 |
| Praxair, Inc. v. Sharp, et al. | 112 |
| Presidio ISD v. Comptroller | 113 |
| Preston Motors by George L. Preston, Owner v. Sharp, et al. | 95 |
| Quinlan ISD v. Strayhorn | 95 |
| R Communications, Inc. fka RN Communications, Inc. v. Sharp, et al. | 113 |
| R.G.V. Vending, Inc. v. Strayhorn, et al. | 114 |
| R.H. Salas & Associates, Inc. v. Comptroller | 54 |
| Rahmes, Todd W., Individually and on Behalf of All Similarly Situated Consumers v. Louis Shanks of Texas, Inc., Strayhorn, et al. | 114 |
| RAI Credit Corp. v. Rylander, et al. | 54 |
| Randall's Food & Drugs, Inc. v. Rylander, et al. | 9 |
| Ranger Fuels & Maintenance , L.L.C. v. Rylander, et al. | 96 |
| Ranger Fuels & Maintenance, Inc., LLC v. Alon USA, LP | 96 |
| Raytheon Co. and Daimlerchrysler Corp. as Successors to Central Texas Airborne Systems, Inc., fka Chrysler Technologies Airborne Systems, Inc. v. Strayhorn, et al. . . | 56 |
| Raytheon Co., as Successor to Raytheon E-Systems, Inc. v. Strayhorn, et al. | 58 |
| Raytheon Co., as Successor to Raytheon E-Systems, Inc. v. Strayhorn, et al. | 58 |
| Raytheon Co., as Successor in Interest to Raytheon Training, Inc. v. Rylander, et al. | 56 |
| Raytheon Co., as Successor to Raytheon TI Systems, Inc. v. Strayhorn, et al. | 57 |
| Raytheon Co. v. Strayhorn, et al. | 57 |
| Raytheon E-Systems, Inc. v. Rylander, et al. | 55 |
| Reliant Energy Corp. (formerly Houston Industries, Inc.) v. Rylander, et al. | 9 |
| Reliant Energy Gas Transmission Co., fka Noram Gas Transmission Co. v. Rylander, et al. . . | 10 |
| Reynolds Metals Co. v. Strayhorn, et al. | 59 |

| | |
|--|-----|
| Roadway Express, Inc. v. Rylander, et al. | 59 |
| Robbins & Myers, Inc. v. Strayhorn, et al. | 60 |
| Robinson, Barbara Cooke, Estate of v. Strayhorn, et al. | 97 |
| Rockwell Collins, Inc. v. Rylander, et al. | 60 |
| Rollins & Rollins Enterprises, Inc. , dba Country Kwik Stop v. Rylander, et al. | 60 |
| Sabine Mining Co., The v. Strayhorn, et al. | 61 |
| San Antonio Spurs, L.L.C. v. Strayhorn, et al. | 61 |
| San Vicente ISD v. Strayhorn | 97 |
| Schoenborn & Doll Enterprises, Inc. v. Rylander, et al. | 62 |
| Security National Insurance Co. v. Rylander, et al. | 81 |
| Service Merchandise Co., Inc. v. Sharp, et al. | 62 |
| Sharper Image Corp. v. Rylander, et al. | 63 |
| Sharper Image Corp. v. Rylander, et al. | 62 |
| Shelton, James M., Estate of, Deceased, and Carroll A. Maxon, Independent Co-Executor v. Rylander, et al. | 115 |
| Southern Sandblasting and Coatings, Inc. v. Rylander, et al. | 64 |
| Southern Union Co. v. Rylander, et al. | 10 |
| Southwest Food Processing & Refrigerated Services, aka Southwest Refrigerated Warehousing Services v. Rylander, et al. | 64 |
| Southwestern Bell Telephone, L.P. v. Strayhorn, et al. | 64 |
| Southwestern Bell Telephone Co. v. Rylander, et al. | 10 |
| Sprint International Communications, Inc. v. Sharp, et al. | 65 |
| St. Paul Surplus Lines Co. v. Rylander, et al. | 81 |
| State Farm Fire and Casualty Co. and State Farm Mutual Automobile Insurance Co. v. Strayhorn, et al. | 97 |
| Steamatic of Austin, Inc., et al. v. Rylander, et al. | 65 |
| Stephenville ISD v. Comptroller | 115 |
| Stephenville ISD v. Comptroller | 116 |
| STP Nuclear Operating Co. v. Strayhorn, et al. | 81 |
| Strattec Security Corp. v. Strayhorn, et al. | 11 |
| Summit Photographix, Inc. v. Rylander, et al. | 66 |
| Sysco Food Services of Austin, Inc. v. Strayhorn, et al. | 66 |
| Sysco Food Services of Houston, L.P. (fka Sysco Food Services of Houston, Inc.) v. Strayhorn, et al. | 67 |
| Sysco Food Services of Houston, L.P. (fka Sysco Food Service of Houston, Inc.) v. Rylander, et al. | 67 |
| Tarkington ISD v. Comptroller | 116 |
| 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 |
| Terlingua Common ISD v. Comptroller | 98 |
| Texaco Exploration & Production, Inc. | 98 |

| | |
|--|-----|
| Texaco, Inc. v. Rylander, et al. | 70 |
| Texaco Refining & Marketing (East), Inc. v. Rylander, et al. | 11 |
| Texas Gulf, Inc. v. Bullock, et al. | 70 |
| Texas Instruments, Inc. v. Rylander, et al. | 117 |
| Texas Instruments, Inc. v. Rylander, et al. | 117 |
| Texas Instruments, Inc. v. Rylander, et al. | 116 |
| Texas RSA 15B2 Limited Partnership v. Strayhorn, et al. | 96 |
| That's Entertainment - San Antonio, LLC dba Park Place v. Strayhorn, et al. | 99 |
| Tyson Foods, Inc. v. Strayhorn, et al. | 12 |
| U.S. Home Corp. v. Rylander, et al. | 118 |
| Union Carbide Corp. v. Rylander, et al. | 70 |
| United Services Automobile Association & USAA Life Insurance Co. v. Rylander, et al. ... | 119 |
| United Space Alliance, LLC v. Strayhorn, et al. | 71 |
| Universe Life Insurance Co. v. State of Texas | 82 |
| Universe Life Insurance Co., The v. Cornyn, et al. | 83 |
| USA Waste Services of Houston, Inc. v. Rylander, et al. | 118 |
| Val-Pak Franchise Operations, Inc. dba Valpak of Houston v. Strayhorn, et al. | 71 |
| Viacom International, Inc. v. Strayhorn, et al. | 12 |
| Warranty Underwriters Insurance Co. v. Rylander, et al. | 83 |
| West Texas Pizza, Limited Partnership v. Sharp, et al. | 72 |
| Westcott Communications, Inc., Law Enforcement Television Network, Inc., Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al. | 119 |
| White Swan, Inc. v. Strayhorn, et al. | 72 |
| Williams, Duane Everett v. Comptroller | 72 |
| Willow Creek Resources, Inc. v. Strayhorn, et al. | 99 |
| World Fitness Centers, Inc. v. Rylander, et al. | 73 |
| Yantis ISD v. Comptroller | 100 |
| Zale Delaware, Inc. v. Rylander, et al. | 73 |
| Zale Delaware, Inc. v. Strayhorn, et al. | 74 |

Franchise Tax

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

#03-03-00458-CV

AG Case #991227646

Franchise Tax; Refund
Filed: 10/18/99
Period: 1993-1996
Amount: \$407,212.91
\$107,861.97

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Jan Soifer
Brim, Arnett, Soifer,
Robinett, Hanner &
Connors
Austin

Susan A. Kidwell
Locke, Liddell & Sapp
Austin

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

Status: Motion for Summary Judgment held 04/10/03; granted in favor of the State 06/24/03. Plaintiff's Notice of Appeal filed 07/31/03. Appellants' brief filed 09/18/03. Appellees' brief filed 10/24/03. Appellants' reply brief filed 11/12/03. Oral Argument completed 01/07/04. Appellees' post-submission brief filed 01/22/04. Appellants' reply brief filed 02/06/04. Opinion issued 08/12/04 in favor of State affirming the district court's judgment. Motion for Rehearing filed 10/01/04; overruled 12/09/04. Mandate to Issue 02/18/05.

CTX Mortgage Co., LLC, as Successor in Interest to CTX Mortgage Co., Inc. v. Strayhorn, et al. Cause #GN300145

AG Case #031738131

Franchise Tax; Protest &
Declaratory Judgment
Filed: 01/15/03
Period: 1992-1994
Amount: \$6,482.90

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

David Cowling
Robert Lochridge
Jones Day
Dallas

Issue: Whether application of the requirement of documentation that officers do not participate in significant policy-making aspects of the corporation is retroactive and unconstitutional. Whether different treatment of banks and mortgage companies violates equal protection. Whether Plaintiff's vice presidents and others should not be included in the officer add-back provision of the franchise tax. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

Centex Construction Co., Inc., as Successor in Interest to Centex Bateson Construction Co., Inc. v. Strayhorn, et al. Cause #GN301292

AG Case #031787153

Franchise Tax; Protest &
Declaratory Judgment
Filed: 04/23/03
Period: 1992-1995
Amount: \$191,167.76

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

David Cowling
Robert Lochridge
Jones Day
Dallas

Issue: Whether the Comptroller's add-back of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Whether the Comptroller improperly applied changes in Rule 3.558 to earlier periods. Whether the officer add-back is arbitrary and discriminatory. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress.

Centex Construction Co., Inc., as Successor in Interest to Centex Bateson Construction Co., Inc. v. Strayhorn, et al. Cause #GN301293

AG Case #031787161

Franchise Tax; Protest &
Declaratory Judgment
Filed: 04/23/03
Period: 1996
Amount: \$48,729.67

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

David Cowling
Robert Lochridge
Jones Day
Dallas

Issue: Whether the Comptroller's add-back of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Whether the Comptroller improperly applied changes in Rule 3.558 to earlier periods. Whether the officer add-back is arbitrary and discriminatory. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress.

Centex International, Inc., as Successor in Interest to 2728 Holding Corp., as Successor in Interest to Centex Real Estate Corp. v Strayhorn, et al. Cause

#GN400903

AG Case #041941147

Franchise Tax; Protest &
Declaratory Judgment

Filed: 03/17/04

Period: 1992-1995

Amount: \$634,494.07

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

David Cowling

Robert Lochridge

Jones Day

Dallas

Issue: Whether the Comptroller's add-back of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Whether the Comptroller improperly applied changes in Rule 3.558 to earlier periods. Whether the officer add-back is arbitrary and discriminatory. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

Centex Materials, L.P., As Successor in Interest to Centex Materials, Inc. v. Strayhorn, et al. Cause #GN301277

AG Case #031787146

Franchise Tax; Protest &
Declaratory Judgment

Filed: 04/22/03

Period: 1997-2000

Amount: \$96,248.92

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

David Cowling

Robert Lochridge

Jones Day

Dallas

Issue: Whether the Comptroller's add-back of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Whether the Comptroller improperly applied changes in Rule 3.558 to earlier periods. Whether the officer add-back is arbitrary and discriminatory. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress.

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 Filed: 02/01/01 Period: 1988-1994 Amount: \$300,772.95 \$204,616.25 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
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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 USA, Inc. v. Strayhorn, et al. Cause #GN401579

AG Case #041972456

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| Franchise Tax; Refund Filed: 05/17/04 Period: 1987-1999 Amount: \$44,063,913.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg R. Eric Hagenswold Scott, Douglass & McConnico Austin |
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Issue: Whether Plaintiff may compute surplus using an alternative GAAP method of calculating impairment. Whether Plaintiff may use business loss carry-forward as a deduction to taxable earned surplus. Whether the Comptroller incorrectly calculated Plaintiff's pushdown adjustments. Whether environmental reserves should be calculated as taxable capital surplus. Whether Plaintiff is entitled to the manufacturing credit.

Status: Answer filed.

DaimlerChrysler Services North American, LLC Cause #GN401380
AG Case #041965591

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| Franchise Tax; Refund Filed: 04/30/04 Period: 1988 through 1991 Amount: \$2,123,382.74 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg Matthew J. Meese Scott, Douglass & McConnico Austin |
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Issue: How should proceeds from the sale of accounts receivables, including retail and wholesale, be calculated for franchise tax apportionment purposes. Whether plaintiff's accounts receivables are capital assets or investments. Plaintiff claims that the Comptroller's use of the net gain method instead of the gross receipts method in calculating plaintiff's total gross receipts for franchise tax apportionment purposes violates the Texas Tax Code, the Comptroller's rules, Comptroller policy, and the constitutional requirements of equal protection and equal and uniform taxation.

Status: Answer filed.

Dillard Department Stores, Inc. v. Strayhorn, et al. Cause #GN300878
AG Case #031770621

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| Franchise Tax; Refund & Declaratory Judgment Filed: 03/19/03 Period: 1992-1995 Amount: \$1,646,637 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Cynthia M. Ohlenforst Tracy D. Eaton Dallas |
|--|---|---|

Issue: Whether the franchise tax requirement to add back officer and director compensation to the tax base is an unconstitutional tax on the income of natural persons. Whether the shareholder limit for the add-back is arbitrary, unreasonable and discriminatory. Whether the provision also discriminates unconstitutionally between banks and other corporations and should be limited to officers with significant authority.

Status: Answer filed.

El Paso Corp. v. Strayhorn, et al. Cause #GN304213
AG Case #031879356

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| Franchise Tax; Protest Filed: 10/28/03 Period: 1999 - 2001 Amount: \$2,278,308.75 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
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Issue: Whether severance pay and merger expenses were improperly included in Plaintiff's apportionment factor. Whether other income was improperly sourced or included. Whether certain deductions were erroneously disallowed. Plaintiff also seeks waiver of all penalty and interest.

Status: Answer filed.

El Paso Natural Gas Co. v. Strayhorn, et al. Cause #GN301003
AG Case #031778939

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| Franchise Tax; Refund Filed: 03/28/03 Period: 1989-1991 Amount: \$3,000,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
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Issue: Whether Plaintiff may use the successful efforts method of accounting. Whether revenue should be recognized when it is billed rather than when it is booked. Whether unamortized loss on reacquired debt may be expensed. Whether certain accounts should be removed from surplus because they had zero balances. Whether Plaintiff's apportionment factor should be reduced for receipts from gas not picked up or delivered in Texas.

Status: Discovery in progress. Summary Judgment hearing held 08/24/04; taken under advisement. Both motions granted in part and denied in part.

First Co. v. Rylander, et al. Cause #GN200229

AG Case #021556980

Franchise Tax; Refund &
Declaratory Judgment
Filed: 01/24/02
Period: 1996 through
1999
Amount: \$1,919,109

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

James F. Martens
Christina A. Mondrik
James F. Martens &
Associates
Austin

Issue: Whether the throwback rule is unconstitutional and violates P.L. 86-272. Whether apportionment under the throwback rule, when compared to a separate accounting method, creates such a gross disparity in taxable income as to be unconstitutional. Plaintiff also seeks declaratory judgment and attorneys' fees.

Status: Discovery suspended.

Home Interiors & Gifts, Inc. v. Strayhorn, et al. Cause #GN303185

#03-04-00660-CV

AG Case #031842420

Franchise Tax; Refund
Filed: 08/25/03
Period: 1992-1999
Amount: \$16,085,391.00

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Daniel L. Butcher
Strasburger & Price
Dallas

Farley P. Katz
Strasburger & Price
San Antonio

Issue: Whether the Texas throwback provision, Tax Code §171.1032, is unconstitutional in violation of the Due Process, Commerce, Supremacy, and Equal Protection Clauses.

Status: Hearing on Cross-Motions for Summary Judgment held 09/21/04. Court granted Defendants' MSJ 09/30/04. Notice of Appeal filed 10/20/04. Clerk's Record filed 11/22/04. Appellant's brief due 01/21/05.

Inland Truck Parts Co. v. Strayhorn, et al. Cause #GN302603
AG Case #031831746

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| Franchise Tax; Refund & Declaratory Judgment Filed: 07/24/03 Period: 1999 Amount: \$47,775.25 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Cynthia M. Ohlenforst G. James Landon J. Blake Rice Hughes & Luce Dallas |
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Issue: Whether an S corporation owned by an ESOP owes franchise tax when the shareholder has no income reportable to the IRS as taxable.

Status: Answer filed.

Inova Diagnostics, Inc. v. Strayhorn, et al. Cause #GN302862
#03-04-00503-CV
AG Case #031836471

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|--|---|--|
| Franchise Tax; Protest & Declaratory Judgment Filed: 08/11/03 Period: 1999 through 2003 Amount: \$4,658 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Gilbert J. Bernal, Jr. Stahl & Bernal Austin |
|--|---|--|

Issue: Whether taxpayer has nexus with Texas. Whether the capital-based franchise tax is measured by net income for purposes of P.L. 86-272. Whether the Comptroller wrongfully forfeited plaintiff's corporate privileges. Plaintiff also seeks attorneys' fees.

Status: Non-jury trial held 07/13/04 and Judgment granted for State. Findings of Fact and Conclusions of Law filed 07/21/04. Notice of Appeal filed 08/16/04. Appellant's brief filed 12/29/04; Oral Argument requested. Appellees' brief due 01/28/05.

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

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

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: Non-jury trial held 12/14/04. Court to rule on 01/21/05.

Reliant Energy Corp. (formerly Houston Industries, Inc.) v. Rylander, et al.
Cause #GN103935
AG Case #011532348

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|--|---|--|
| Franchise Tax; Refund Filed: 11/28/01 Period: 1998 Amount: \$2,581,013.52 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin |
|--|---|--|

Issue: Whether plaintiff may use business loss carry-forward from non-surviving corporation in merger to reduce its franchise tax.

Status: Discovery in progress.

Reliant Energy Gas Transmission Co., fka Noram Gas Transmission Co. v. Rylander, et al. Cause #99-08127
AG Case #991187675

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

Issue: Whether a business loss carry-forward of a merged corporation may be used to reduce the surviving corporation's franchise tax.

Status: Discovery in progress.

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: Settled.

Southwestern Bell Telephone Co. v. Rylander, et al. Cause #GN204559
AG Case #031730666

| | | |
|---|---|--|
| Franchise Tax; Protest Filed: 12/20/02 Period: 1996-1999; 2001 Amount: \$25,000,000.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether interstate access revenues are Texas receipts for franchise tax purposes. Whether treating the revenues as Texas receipts violates the Comptroller's Rule on interstate calls and the due process, equal protection and commerce clauses of the Constitution. Whether other interstate call revenues in border areas are not Texas receipts.

Status: First Amended Original Petition adding 2001 final report filed.

Strattec Security Corp. v. Strayhorn, et al. Cause #GN401136
AG Case #041954496

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|--|---|--|
| Franchise Tax; Refund Filed: 04/08/04 Period: 07/03/95- 06/29/99 Amount: \$1,165,345 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico |
|--|---|--|

Issue: Whether gross receipts from the sales of locksets are Texas receipts. Whether the throwback rule was applied to Plaintiff's receipts. Plaintiff claims violation of the commerce clause.

Status: Discovery in progress. Non-jury trial set 03/07/05. Case to be settled.

Texaco Refining & Marketing (East), Inc. v. Rylander, et al. Cause #99-14555
AG Case #991249228

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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 Ray Langenberg Scott, Douglass & McConnico 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: Discovery in progress.

Tyson Foods, Inc. v. Strayhorn, et al. Cause #GN302279
AG Case #031818966

| | | |
|---|---|--|
| Franchise Tax; Refund Filed: 06/27/03 Period: 1992-1997 Amount: \$4,462,424.56 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether Plaintiff must use accelerated or straight line depreciation. Whether penalty and interest should have been waived because Plaintiff's affiliates had overpayments during the audit period that could have been credited to Plaintiff's deficiencies.

Status: Discovery in progress.

Viacom International, Inc. v. Strayhorn, et al. Cause #GN402433
AG Case #041999269

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|--|---|--|
| Franchise Tax; Protest Filed: 07/30/04 Period: 1997-1999 Amount: \$754,178.16 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne David H. Gilliland Clark, Thomas & Winters Austin |
|--|---|--|

Issue: Whether revenue received from third-party cable television system operators is revenue earned from licensing or from the service of producing, creating, editing, packaging and transmitting 24-hour-per day network programming performed out-of-state. Should revenue from providing these services be considered Texas receipts for franchise tax purposes. Plaintiff also claims violation of due process and the Commerce Clause.

Status: Answer filed.

Sales Tax

7-Eleven, Inc. v. Strayhorn, et al. Cause #GN403369

AG Case #042046367

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 10/08/04 Period: 04/01/93- 09/30/96 Amount: \$299,328.98 | Asst. AAG Assigned: Plaintiff's Counsel: | Jeff Mullins Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether the purchase of bookkeeping software installed on computers located out-of-state and subsequently shipped to stores in-state qualifies for the sale for resale exemption.

Status: Discovery in progress.

AccuTel of Texas, L.P. v. Rylander, et al. Cause #GN300091

AG Case #031735236

| | | |
|--|---|---|
| Sales Tax; Refund Filed: 01/10/03 Period: 06/01/97- 11/30/00 Amount: \$45,658.15 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Christopher Malish Foster & Malish Austin |
|--|---|---|

Issue: Whether Plaintiff should have been assessed interest and penalty.

Status: Answer filed.

Advanta Business Services Corp. v. Rylander, et al. Cause #GN103463

AG Case #011514544

| | | |
|--|---|---|
| Sales Tax; Protest Filed: 10/19/01 Period: 11/01/92- 12/31/97 Amount: \$929,964.11 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne W. Stephen Benesh Deanna E. King Bracewell & Patterson Austin |
|--|---|---|

Issue: Whether plaintiff's leases were financing leases and not taxable operating leases under Comptroller Rule 3.294(i). Whether the Comptroller's sample was flawed. Alternatively, whether penalty and interest should have been waived.

Status: Discovery in progress.

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

#03-03-0643-CV

#04-0785

AG Case #981080526

Sales Tax; Protest

Filed: 11/20/98

Period: 1994-1998

Amount: \$31,128.62

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Stephen D. Good
Gregory A. Harwell
Gardere & Wynne
Dallas

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: Trial held 07/28/03. Summary Judgment, including counter-claim, granted for Comptroller 07/18/03. Final judgment entered 08/15/03. Motion for new trial filed 08/18/03. Plaintiff's Notice of Appeal filed 10/20/03. Appellant's brief filed 02/02/04. Appellees' brief filed 04/02/04. Oral Argument held 04/14/04. Third COA affirmed District Court's Judgment 07/15/04. Petition for Review filed in Tx. Supreme Court 09/29/04. Response filed by Respondents 11/18/04. Petitioner's reply filed 12/06/04. On 12/17/04 Court requested briefs on the merits. Petitioner's brief due 01/31/05. Respondents' brief due 02/21/05. Petitioner's reply brief due 03/08/05.

Amerada Hess Corp. v. Strayhorn, et al. Cause #GN402614

AG Case #042005314

Sales Tax; Refund

Filed: 08/13/04

Period: 01/01/90-
12/31/95

Amount: \$44,500.00

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

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

Issue: Whether submersible pumps, motors, separators, couplings and related down hole equipment are exempt from sales tax under the manufacturing exemption. Whether certain benefits of a membership fee cause the fee to be taxable.

Status: Answer filed.

American Oil Change Corp. v. Rylander, et al. Cause #99-06374
AG Case #991175084

| | | |
|---|----------------------|--|
| Sales Tax; Protest Filed: 06/03/99 | Asst. AAG Assigned: | Christopher Jackson |
| Period: 1992-1993 Amount: \$467,142.31 | Plaintiff's Counsel: | Gilbert J. Bernal, Jr. Stahl & Bernal Austin |

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: Discovery in progress. Mediation held 10/15/02. Trial postponed. Case settled.

Anderson Merchandisers Holding, Inc. v. Strayhorn, et al. Cause #GN400421
AG Case #041921966

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|--|----------------------|--|
| Sales Tax; Refund Filed: 02/11/04 | Asst. AAG Assigned: | Natalie McLemore |
| Period: 07/01/94- 03/31/98 Amount: \$28,353.00 | Plaintiff's Counsel: | Mark W. Eidman Doug Sigel Scott, Douglass & McConnico Austin |

Issue: Whether industrial solid waste removal is exempt as a real property service.

Status: Answer filed.

Apollo Paint & Body Shop, Inc. v. Strayhorn, et al. Cause #GN300886
AG Case #031770605

| | | |
|--|---|--|
| Sales Tax; Protest Filed: 03/19/03 Period: 10/01/91- 09/30/98 Amount: \$285,284.13 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Tom Tourtellotte Hance Scarborough Wright Woodward & Weisbart Austin |
|--|---|--|

Issue: Whether plaintiff performed its repairs under lump-sum contracts. Plaintiff also challenges the constitutionality of Rider 11.

Status: Discovery in progress. Trial setting of 09/20/04 passed by agreement.

Aramis Services, Inc. v. Sharp, et al. Cause #98-03527
AG Case #98930349

| | | |
|---|---|--|
| 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 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: Discovery in progress.

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 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: Discovery in progress.

B&B Gravel Co. v. Strayhorn, et al. Cause #GN302323
AG Case #031831712

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|----------------------------------|----------------------|--------------------------|
| Sales Tax; Administrative Appeal | Asst. AAG Assigned: | Blake Hawthorne |
| Filed: 07/01/03 | Plaintiff's Counsel: | Richard S. Browne |
| Period: 11/01/95-07/31/99 | | George D. Gordon |
| Amount: \$99,094.58 | | Baggett, Gordon & Deison |
| | | Conroe |

Issue: Plaintiff claims that the liability assessed is inconsistent with the ALJ's decision and seeks review under the APA.

Status: Discovery in progress. To be dismissed.

BGK Operating Co., Inc. v. Strayhorn, et al. Cause #GN301224
AG Case #031786478

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|---------------------------|----------------------|--------------------------------|
| Sales Tax; Protest | Asst. AAG Assigned: | Jeff Mullins |
| Filed: 04/17/03 | Plaintiff's Counsel: | Kal Malik |
| Period: 01/01/99-07/31/02 | | Robert N. LeMay |
| Amount: \$28,407.44 | | Kane, Russell, Coleman & Logan |
| | | Dallas |

Issue: Whether Plaintiff is a lump-sum repairer of motor vehicles who should have paid tax on its purchases of oil and filters. Whether charging tax to the Plaintiff results in unconstitutional double taxation.

Status: Discovery in progress. Plaintiff has made a settlement offer.

Baldry, Ann dba Annie's Housekeeping Services v. Sharp, et al. Cause #95-02389
AG Case #95234990

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|---------------------------------|----------------------|----------------------|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Jeff Mullins |
| Filed: 2/27/95 | Plaintiff's Counsel: | Timothy M. Trickey |
| Period: 04/01/88-06/30/92 | | The Trickey Law Firm |
| Amount: \$63,588 | | Austin |

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. Motion to Compel passed on 01/06/05. Trial to be set prior to 03/15/05.

Bell Bottom Foundation Co. v. Rylander, et al. Cause #99-01092
AG Case #991112186

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

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

Status: Case dismissed for want of prosecution 06/17/03. Motion to Reinstate granted. Negotiating an Agreed Scheduling Order.

Bell Helicopter Textron, Inc. v. Rylander, et al. Cause #GN200525
AG Case #021567755

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|--|----------------------|------------------------|
| Sales Tax; Refund & Declaratory Judgment | Asst. AAG Assigned: | Jim Cloudt |
| Filed: 02/15/02 | Plaintiff's Counsel: | Gilbert J. Bernal, Jr. |
| Period: 01/01/90-06/30/93 | | Stahl & Bernal |
| 07/01/93-06/30/97 | | Austin |
| Amount: \$7,280,079 | | |

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 and a declaration that the Comptroller disregarded controlling federal law, violated equal protection or imposed tax on the U.S. government.

Status: Answer filed.

Bell Helicopter Textron, Inc. v. Strayhorn, et al. Cause #GN204437
AG Case #041927062

| | | |
|--|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 12/11/02 Period: 07/01/97- 05/31/02 Amount: \$3,000,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Gilbert J. Bernal, Jr. Stahl & Bernal 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 and a declaration that the Comptroller disregarded controlling federal law, violated equal protection or imposed tax on the U.S. government. Plaintiff also seeks recovery of attorneys' fees.

Status: Answer filed.

Blue Cross & Blue Shield of Texas, Inc. v. Strayhorn, et al. Cause #GN401955
AG Case #041988023

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 06/21/04 Period: 12/01/88- 05/31/95 Amount: \$3,750,000.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Doug Sigel 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*.

Status: Answer filed.

Boeing North America, Inc. v. Rylander, et al. Cause #GN203340
AG Case #021676804

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|--|---|---|
| Sales Tax; Refund Filed: 09/13/02 Period: 01/01/95- 12/31/96 Amount: \$343,487 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt David H. Gilliland Clark, Thomas & Winters Austin |
|--|---|---|

Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. Plaintiff also claims a denial of equal protection and an exemption under §151.3111.

Status: Answer filed.

Boeing North America, Inc. v. Strayhorn, et al. Cause #GN304372
AG Case #031884471

| | | |
|--|---|--|
| Sales Tax; Refund Filed: 11/10/03 Period: 01/01/95- 12/31/99 Amount: \$500,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin |
|--|---|--|

Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. 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*.

Status: Answer filed.

Bonart, Richard C., DVM v. Strayhorn, et al. Cause #GN400552
AG Case #041928532

| | | |
|---|---|--|
| Sales Tax; Protest Filed: 02/20/04 Period: 01/01/02- 12/31/02 Amount: \$50.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Richard C. Bonart (Pro Se) El Paso |
|---|---|--|

Issue: Whether microchips implanted in animals are exempt as health care supplies and as a therapeutic appliance or device. Plaintiff also claims a denial of equal and uniform protection.

Status: Answer filed.

Broadcast Satellite International, Inc. v. Rylander, et al. Cause #GN103568
AG Case #011518479

| | | |
|---|---|--|
| Sales Tax; Protest & Declaratory Judgment Filed: 10/26/01 Period: 01/01/91- 12/31/97 Amount: \$200,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson William E. Bailey Dallas |
|---|---|--|

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 asserts limitations as to part of the liability and also seeks attorneys' fees.

Status: Answer filed.

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

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

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: Discovery in progress. Trial set 03/07/05.

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

AG Case #96602037

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 09/20/96 Period: 07/01/86- 12/31/89 Amount: \$32,788 | Asst. AAG Assigned: Plaintiff's Counsel: | Jeff Mullins 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. Settlement negotiations in progress.

Chapal Zenray, Inc. v. Rylander, et al. Cause #GN204506

AG Case #031729197

| | | |
|--|---|--|
| Sales Tax; Protest Filed: 12/16/02 Period: 01/01/94- 12/31/97 Amount: \$210,943.91 | Asst. AAG Assigned: Plaintiff's Counsel: | Jeff Mullins Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin |
|--|---|--|

Issue: Whether items such as boxes, foam pads and twist ties are not subject to tax pursuant to Tex. Tax Code §151.011 (f)(2) and Rule 3.346 (c)(1)(c) when purchased by a person who uses the items to secure jewelry for shipment out-of-state.

Status: Discovery in progress. Plaintiff to submit Motion for Summary Judgment.

Chaparral Steel Co. and Chaparral Steel Midlothian, L.P. v. Strayhorn, et al.

Cause #GN403208

AG Case #042040154

Sales Tax; Refund

Filed: 09/27/04

Period: 10/01/93-
02/28/97

03/01/97-10/31/97

Amount: \$569,549.24

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Mark W. Eidman

Ray Langenberg

Doug Sigel

Scott, Douglass &

McConnico

Austin

Issue: Whether the following items and services are exempt from sales tax: certain property Plaintiff purchased and used or consumed during manufacturing; certain services performed on exempt property; third party installation services; contracted services by the Plaintiff; wrapping and packaging used to complete the manufacturing process; maintenance on real property; items with a useful life of six months or less; and items used and consumed in manufacturing.

Status: Answer filed.

Chevron Pipe Line Co. and West Texas Gulf Pipe Line Co. v. Strayhorn, et al.

Cause #GN304712

AG Case #031899016

Sales Tax; Refund

Filed: 12/12/03

Period: 07/01/91-
09/30/97

01/01/92-09/30/97

Amount: \$683,979.99

\$220,773.61

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman

Ray Langenberg

Matthew J. Meese

Scott, Douglass &

McConnico

Austin

Issue: Whether installation of cathodic protection devices was new construction or maintenance. Whether excavation and back-filling were non-taxable unrelated services. Whether pipe replacement and recoating was non-taxable maintenance.

Status: Trial set 03/23/05.

Chevron USA, Inc. v. Strayhorn, et al. Cause #GN403978
AG Case #042071324

| | | |
|--|---|--|
| Sales Tax; Refund Filed: 12/06/04 Period: 01/01/93- 06/30/96 Amount: \$10,000,000.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin |
|--|---|--|

Issue: Whether charges of contractors for erecting, maintaining and dismantling scaffolding are exempt from sales and use tax as a non-taxable service, or taxable as rental of tangible personal property.

Status: Answer filed.

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 #98930330

| | | |
|---|---|--|
| 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 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: Discovery in progress.

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 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: Discovery in progress.

Clinique Services, Inc. v. Strayhorn, et al. Cause #GN500049
AG Case #052085933

| | | |
|--|---|---|
| Sales Tax; Protest & Declaratory Judgment Filed: 01/06/05 Period: 04/01/98- 03/31/02 Amount: \$654,245.96 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson David Cowling Maryann E. Landrigan Jones Day 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. Plaintiff also claims violation of rights under the Commerce and Due Process Clauses, and right to equal and uniform taxation. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Coastal Refining & Marketing, Inc. v. Sharp, et al. Cause #98-03540
AG Case #98930321

| | | |
|--|---|--|
| 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. Plaintiff has submitted settlement offer.

Cosmair, Inc. v. Strayhorn, et al. Cause #GN302009
AG Case #031816135

| | | |
|--|---|---|
| Sales Tax; Protest & Declaratory Judgment Filed: 06/09/03 Period: 07/01/96- 12/31/98 Amount: \$1,322,536.67 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson David Cowling Robert Lochridge Jones Day Dallas |
|--|---|---|

Issue: Whether Plaintiff owes use tax on items transferred free of charge that are subsequently brought into Texas. Plaintiff specifically challenges whether: 1) "use" includes distribution; 2) use was only out-of-state where control transferred; 3) longstanding policy may be changed; 4) Rule 3.346 does not support tax on promotional materials; 5) use tax applies without title or possession; 6) no consideration for transfer; 7) Rule 3.346(b)(3)(A) is invalid; 8) tax is bared by Commerce, Due Process and Equal Protection Clauses; and 9) resale exemption applies. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Delta Air Lines, Inc. v. Strayhorn, et al. Cause #GN400439
AG Case #041925868

| | | |
|---|---|---|
| Sales Tax; Refund Filed: 02/13/04 Period: 02/01/93- 12/31/96 Amount: \$1,642,267.15 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Mark W. Eidman Ray Langenberg Matthew J. Meese Scott, Douglass & McConnico Austin |
|---|---|---|

Issue: Whether Plaintiff's purchases of janitorial and building maintenance services being resold under a lease agreement are exempt under the sale for resale exemption. Whether Plaintiff's purchases of mechanical maintenance services were exempt as taxable services purchased in the performance of a real property contract for an exempt entity.

Status: Answer filed.

Dillard's, Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Rylander, et al. Cause #GN203937
AG Case #021703947

| | | |
|---|---|--|
| Sales Tax; Protest Filed: 10/30/02 Period: 07/01/93- 01/31/96 02/01/96-11/30/96 Amount: \$1,100,000+ | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether Plaintiff's sewing machines and other property used to alter clothing qualify for the manufacturing exemption. Whether Plaintiff is entitled to a refund of tax on packaging supplies, non-taxable services, and industrial solid waste disposal. Whether the Comptroller improperly applied a franchise tax credit to the assessed amount.

Status: Answer filed.

Dillard's Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Strayhorn, et al. Cause #GN304838 (Consolidated with *Dillard's, Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Rylander, et al.*, Cause #GN203937)
AG Case #041904590

| | | |
|--|---|--|
| Sales Tax; Refund Filed: 12/23/03 Period: 07/01/93- 01/31/96 02/01/96-11/30/96 Amount: \$1,172,784.29 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin |
|--|---|--|

Issue: Whether Plaintiff's sewing machines and other property used to alter clothing qualify for the manufacturing exemption. Whether Plaintiff is entitled to a refund of tax on packaging supplies, non-taxable services, industrial solid waste disposal, and sale for resale items.

Status: Motion to consolidate cases granted 11/23/04. See *Dillard's Inc., aka Dillard Department Stores, Inc., and Dillard Texas Operating Limited Partnership v. Rylander, et al.*, Cause No. GN203937.

DuPont Photomasks, Inc. v. Strayhorn, et al. Cause #GN303695
#03-04-00822-CV
AG Case #031855117

| | | |
|--|---|--|
| Sales Tax; Protest & Declaratory Judgment Filed: 09/12/03 Period: 01/01/96- 10/31/97 Amount: \$299,987.35 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Larry F. York Susan F. Gusky York, Keller & Field Austin Jennifer K. Patterson Austin |
|--|---|--|

Issue: Whether Plaintiff's purchase of a cleanroom should have been an exempt sale for resale. Whether the lease of the cleanroom was incidental to the lease of the building in which it was housed and whether Rule 3.294(k)(1) is invalid. Whether the Comptroller's final decision is arbitrary and violates due process, equal and uniform taxation, and equal protection. Whether Rider 11 is unconstitutional as: (1) an amendment to substantive law; (2) a violation of due process, equal protection and open courts; and (3) an unconstitutional taking. Plaintiff seeks attorney's fees and demands a jury trial.

Status: Discovery in progress. Motion for Summary Judgment hearing held 09/23/04. Rule upheld. Both Motions denied. Trial Judgment signed 11/29/04. Notice of Appeal filed by Plaintiff 12/17/04.

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: Dismissed for Want of Prosecution 06/25/04. Plaintiff filed Motion to Retain 07/08/04. Motion to Reinstate filed 08/29/04; granted 10/04/04. Plaintiff's Partial Motion for Summary Judgment hearing held 11/23/04; denied. Defendants' Motion for Summary Judgment hearing set 01/20/05. Trial set 02/14/05.

EFW, Inc. v. Rylander, et al. Cause #GN200906
AG Case #021579578

| | | |
|--|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 03/19/02 Period: 04/94-03/31/98 Amount: \$123,440.25 | 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: Answer filed.

ELC Beauty LLC, as Successor-in-Interest to Aramis Services, Inc. v. Rylander, et al. Cause #GN203514
AG Case #021681226

| | | |
|--|---|---|
| Sales Tax; Protest & Declaratory Judgment Filed: 09/26/02 Period: 01/01/98- 12/31/00 Amount: \$284,508.69 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson David Cowling Robert Lochridge Jones Day 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.

ELC Beauty, LLC, as Successor-in-Interest to Origins Services Inc. v. Strayhorn, et al. Cause #GN500047
AG Case #052085966

| | | |
|--|---|---|
| Sales Tax; Protest & Declaratory Judgment Filed: 01/06/05 Period: 03/01/98- 06/30/01 Amount: \$750,946.09 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson David Cowling Maryann E. Landrigan Jones Day 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. Plaintiff also claims violation of rights under the Commerce and Due Process Clauses, and right to equal and uniform taxation. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

ELC Beauty, LLC, as a Successor-in-Interest to Estee Lauder Services Inc. v. Strayhorn, et al. Cause #GN500048
AG Case #052085990

| | | |
|--|---|---|
| Sales Tax; Protest & Declaratory Judgment Filed: 01/06/05 Period: 07/01/99- 06/30/01 Amount: \$586,255.47 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson David Cowling Maryann E. Landrigan Jones Day 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. Plaintiff also claims violation of rights under the Commerce and Due Process Clauses, and right to equal and uniform taxation. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Estee Lauder Services, Inc. v. Sharp, et al. Cause #98-03525
AG Case #98930358

| | | |
|---|---|--|
| 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 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 #98930367

| | | |
|---|---|--|
| 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 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: Discovery in progress. Non-jury trial to be set prior to 05/23/05.

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 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.

Ethicon, Inc. v. Strayhorn, et al. Cause #GN304779
AG Case #041904616

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 12/18/03 Period: 01/01/96- 12/31/99 01/01/94-12/31/95 Amount: \$52,616.94 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Mark W. Eidman Doug Sigel Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether Plaintiff leased real property not subject to the sales and use tax.

Status: Plaintiff's Motion for Summary Judgment hearing set 11/04/04 was passed.
Settlement negotiations in progress.

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

Cause #GN002724

AG Case #001353960

Sales Tax; Injunction

Filed: 09/15/00

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

Amount: \$360,671.05

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Percy L. "Wayne" Isgitt
Law Offices of Percy L.
"Wayne" Isgitt, P.C.
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. Summary Judgment hearing set 02/03/05.

FXI Corp. v. Rylander, et al. Cause #GN102724

AG Case #011492857

Sales Tax; Refund

Filed: 08/22/01

Period: 10/01/94-
06/30/98

Amount: \$51,832.31

Asst. AAG Assigned:

Plaintiff's Counsel:

Jeff Mullins

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

Issue: Whether Plaintiff's boxes and packing materials are exempt as items shipped out-of-state. Whether denial of the exemption violates equal protection.

Status: Discovery in progress. Hearing on Cross-Motions for Summary Judgment set 02/22/05.

Fiesta Texas Theme Park, Ltd. v. Sharp, et al. Cause #98-02407 (Consolidated with *Fiesta Texas Theme Park, Ltd. v. Sharp, et al.* Cause #GN200563)
AG Case #98914152

| | | |
|--|---|--|
| Sales Tax; Refund Filed: 03/05/98 Period: 10/01/90- 04/30/93 Amount: \$328,829 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|--|---|--|

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: See *Fiesta Texas Theme Park, Ltd. v. Sharp, et al.* Cause #GN200563.

Fiesta Texas Theme Park, Ltd. and San Antonio Theme Park, L.P. v. Rylander, et al. Cause #GN200563
AG Case #021567789

| | | |
|--|---|--|
| Sales Tax; Refund Filed: 02/20/02 Period: 05/01/93- 03/01/96 03/01/96-02/28/98 Amount: \$592,759.97 \$349,933.08 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|--|---|--|

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. Whether the assessment against Fiesta was outside limitations.

Status: Hearing on Plaintiff's Motion for Summary Judgment and Defendants' Motion for Partial Summary Judgment set 02/15/05.

Garza, Lawrence v. Sharp, et al. Cause #98-07607
AG Case #981001886

| | | |
|--|---|---|
| Sales Tax; Protest Filed: 07/17/98 Period: 01/01/93- 09/30/95 Amount: \$83,910 | Asst. AAG Assigned: Plaintiff's Counsel: | Jeff Mullins 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 setting passed by agreement. Settlement negotiations in progress.

General Dynamics Corp. v. Rylander, et al. Cause #GN201322
AG Case #021598057

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|--|---|---|
| Sales Tax; Refund Filed: 04/22/02 Period: 09/01/88- 11/30/91 Amount: \$7,000,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist 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*.

Status: Answer filed.

General Dynamics Corp. v. Rylander, et al. Cause #GN201323
AG Case #021598073

| | | |
|--|---|---|
| Sales Tax; Refund Filed: 04/22/02 Period: 12/01/91- 02/28/93 Amount: \$4,500,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist 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*.

Status: Answer filed.

Gift Box Corp. of America, Inc. v. Rylander, et al. Cause #GN102934
AG Case #011492865

| | | |
|--|---|--|
| Sales Tax; Protest Filed: 09/05/01 Period: 10/91-03/97 Amount: \$359,929.22 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist Austin |
|--|---|--|

Issue: Whether additional resale certificates should have been accepted for Plaintiff's sales of boxes and packaging materials.

Status: Plaintiff to make settlement offer.

Graybar Electric Co., Inc. v. Sharp, et al. Cause #97-01795
AG Case #97682966

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

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

Status: Settlement negotiations in progress.

Grocers Supply-Institutional-Convenience, Inc. v. Rylander, et al. Cause #GN300904
AG Case #031782931

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| Sales Tax; Refund & Declaratory Judgment Filed: 03/20/03 Period: 06/01/95-05/31/98 Amount: \$79,688.23 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Judy M. Cunningham Attorney at Law Austin |
|---|---|--|

Issue: Whether Plaintiff's purchase of electricity used to lower the temperature of food products is exempt as electricity used in processing.

Status: Answer filed.

H.J. Wilson Co., Inc. v. Sharp, et al. Cause #98-11574
AG Case #981063332

| | | |
|---|---|--|
| 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 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: On hold. Plaintiff filed bankruptcy in Tennessee 03/25/99. Motion to dismiss by court held 05/07/01. Plaintiff filed motion to retain 04/25/01; granted order to retain 08/14/01 on DWOP, again on 07/25/02, and again 01/16/03.

Herndon Marine Products, Inc. v. Sharp, et al. Cause #91-14786
AG Case #91164788

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

Hollon Oil Co. v. Strayhorn, et al. Cause #GN303895
AG Case #031866668

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|---------------------------------------|----------------------|--|
| Sales Tax; Protest Filed: 09/30/03 | Asst. AAG Assigned: | Christopher Jackson |
| Period: 01/01/99- 12/31/02 | Plaintiff's Counsel: | Gilbert J. Bernal, Jr. Stahl & Bernal |
| Amount: \$144,937.05 | | Austin |

Issue: Whether Plaintiff owes sales and use tax on materials which Plaintiff purchased for installation in customers' vehicles. Whether Plaintiff is entitled to a credit for sales tax collected from customers for said materials.

Status: Answer filed.

JBI, Inc. v. Rylander, et al. Cause #GN203450
AG Case #021681218

| | | |
|---------------------------------------|----------------------|--|
| Sales Tax; Protest Filed: 09/20/02 | Asst. AAG Assigned: | Christine Monzingo |
| Period: 01/01/93- 08/31/99 | Plaintiff's Counsel: | W. Stephen Benesh James E. Boice Bracewell & Patterson |
| Amount: \$1,046,033.09 | | Austin |

Issue: Whether the Comptroller assessed tax on transactions that were sales for resale or on which use tax had already been paid.

Status: Discovery in progress.

JBS Packing Co., Inc. v. Strayhorn, et al. Cause #GN402498
AG Case #042003590

| | | |
|---|---|---|
| Sales Tax; Refund Filed: 08/05/04 Period: 12/01/96- 12/31/99 Amount: \$1,820.48 | Asst. AAG Assigned: Plaintiff's Counsel: | Jeff Mullins Mike Cichowski Port Arthur |
|---|---|---|

Issue: Whether parts and services for an ice machine, a hydro-blasting machine, and for a steam cleaning machine are exempt from sales tax under the manufacturing exemption.

Status: Settlement offer made; rejected by Defendants.

J.C. Penney Co., Inc. v. Strayhorn, et al. Cause #GN300883
AG Case #031770613

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|---|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 03/19/03 Period: 01/01/91- 03/31/93 Amount: \$951,802.17 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt David Cowling Robert Lochridge Jones Day Dallas |
|---|---|--|

Issue: Whether Plaintiff owes use tax on paper, ink and the printing of catalogs printed out-of-state. Whether local use tax in McAllen, Texas applies to Plaintiff's aircraft. Alternatively, whether the printing service is performed outside Texas. Whether a sales and use tax on the catalogs violates the Commerce Clause, due process or equal protection. Plaintiff also seeks declaratory relief and attorney's fees.

Status: Answer filed.

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: | Natalie McLemore 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: Amended Petition filed. Discovery in progress.

Kennedy, Gary G. dba Kennedy's Korner v. Rylander, et al. Cause #GN202992
AG Case #021663539

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|---------------------------------|----------------------|-----------------------------|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Blake Hawthorne |
| Filed: 08/22/02 | Plaintiff's Counsel: | Gary G. Kennedy (Pro Se) |
| Period: N/A | | Austin |
| Amount: \$N/A | | |

Issue: Whether Plaintiff may enjoin fraud audit subpoena and suspension of his sales and mixed beverage permits.

Status: Counter-claim filed. Taxpayer filed bankruptcy 10/15/03.

Kroger Co., The v. Strayhorn, et al. Cause #GN403582
AG Case #042058032

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|---------------------------|----------------------|---------------------------------------|
| Sales Tax; Refund | Asst. AAG Assigned: | Jeff Mullins |
| Filed: 10/28/04 | Plaintiff's Counsel: | Judy M. Cunningham Attorney at Law |
| Period: 01/01/94-06/30/97 | | Austin |
| Amount: \$366,142.79 | | |

Issue: Whether electricity used in a manufacturing process is exempt from sales tax. Whether the manufacturing process used by Plaintiff results in a physical change to tangible personal property being resold.

Status: Answer filed.

LTV Aerospace & Defense Co. v. Rylander, et al. Cause #GN203321
AG Case #021676770

| | | |
|--|----------------------|---------------------------------|
| Sales Tax; Refund & Declaratory Judgment | Asst. AAG Assigned: | Jim Cloudt |
| Filed: 09/13/02 | Plaintiff's Counsel: | Alan E. Sherman, Esq. Dallas |
| Period: 06/01/86-08/31/92 | | |
| Amount: \$8,576,046 | | |

Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. Plaintiff also claims a denial of equal protection and that the incidence of the tax falls on the federal government. Plaintiff claims that the Comptroller violated the commerce clause by failing to follow title-passing regulations and also seeks a declaratory judgment and attorneys' fees.

Status: Answer filed.

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: | Blake Hawthorne James F. Martens James F. Martens & Associates 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: Plaintiff's motion for summary judgment hearing held 06/24/02. District Court denied parties' cross-motions for summary judgment. Trial postponed. Settlement negotiations in progress; case to be settled.

Laredo Coca-Cola Bottling Co., and Coca-Cola Enterprises, Inc. v. Strayhorn, et al. Cause #GN300575
AG Case #031759657

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|--|---|--|
| Sales Tax; Refund Filed: 02/21/03 Period: 05/01/93- 06/30/96 10/01/91-06/30/96 01/01/90-12/31/92 07/01/91-06/30/96 Amount: \$6,726 \$591,086 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin |
|--|---|--|

Issue: Whether post-mix machines qualify for manufacturing tax exemption. Whether some of the machines also qualify for the sale for resale exemption, because plaintiff received consideration even if not valued in money.

Status: Answer filed.

Laredo Coca-Cola Bottling Co., and Coca-Cola Enterprises, Inc. v. Strayhorn, et al. Cause #GN401379
AG Case #041964941

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 04/30/04 Period: 05/01/93- 06/30/96 10/01/91-06/30/96 01/01/90-12/31/92 07/01/91-06/30/96 Amount: \$18,579.66 \$443,299.77 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether Plaintiff owes sales tax on the purchase of money validators due to the integration of the validators into the final product, the vending machine.

Status: Answer filed.

Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al. Cause #98-11834
AG Case #981064363

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

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

Status: Dismissed for Want of Prosecution 07/25/02. Reopened, as plaintiff filed a Motion for Reinstatement, granted 10/31/02.

Laredo Pizza, Inc., and Samuel L. Alford, and L & H Pacific, L.L.C. v. Strayhorn, et al. Cause #GN401507
AG Case #041971482

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|---|---|---|
| Sales Tax; Protest Filed: 05/12/04 Period: 07/01/92- 08/31/95 Amount: \$34,965.35 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Richard L. Rothfelder Michael C. Falick Rothfelder & Falick, LLP Houston |
|---|---|---|

Issue: Whether prizes awarded by Plaintiff to successful contestants of amusement machines were purchased for resale and exempt from sales tax. Whether the sale of food, beverage and party packages is taxable as food and beverage or non-taxable as amusement services. Whether assets transferred from one subsidiary to another are exempt from sales tax as an "occasional sale."

Status: Answer filed.

Lee Construction and Maintenance Co. v. Rylander, et al. Cause #99-01091
AG Case #991112160

| | | |
|---|---|--|
| Sales Tax; Protest Filed: 01/29/99 Period: 01/01/92- 12/31/95 Amount: \$31,830.47 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore 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: Settlement negotiations pending.

Levy, Tara, et al. v. OfficeMax, Inc. and Best Buy Stores, L.P. Cause #GN201252
AG Case #041926635

| | | |
|---|---|---|
| Sales Tax; Declaratory Judgment Filed: Period: Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Gene Storie Mark L. Perlmutter C Brooks Schuelke Perlmutter & Schuelke, LLP Austin |
|---|---|---|

Issue: Plaintiff claims a refund for the class of persons who paid sales tax on rebates. Plaintiff seeks declaratory judgment interpreting Texas Tax Code Sections pertaining to cash discounts and exemption from sales tax.

Status: Class-action suit. Comptroller named defendant. Comptroller's Plea to the Jurisdiction and Plaintiffs' Motion for Declaratory Judgment heard 10/19/04. Plea granted. Court requested briefs to address whether any part of case survives. Amended Order dismisses all claims against the Comptroller.

Liaison Resources, L.P., and David S. Claunch v. Rylander, et al. Cause #GN202795
AG Case #021663307

Sales Tax; Protest &
Declaratory Judgment
Filed: 08/14/02
Period: 1991-1999
Amount: \$136,659.08

Asst. AAG Assigned:

Scott Simmons

Plaintiff's Counsel:

James F. Martens
Christina A. Mondrik
James F. Martens &
Associates
Austin

Issue: Whether Plaintiffs owe tax on computer-related temporary services. Whether the Comptroller improperly assessed tax on items sold out of state or on sales for resale. Plaintiffs also claim a violation of equal protection and seek attorneys' fees.

Status: Case to be settled. Negotiations in progress.

Local Neon Co., Inc. v. Rylander, et al. Cause #99-15042
#03-04-00261-CV
AG Case #001254036

Sales Tax; Protest &
Declaratory Judgment
Filed: 12/31/99
Period: 01/01/88-
03/31/95
Amount: \$34,390.24

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

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

Judy M. Cunningham
Attorney at Law
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: Plea to the Jurisdiction granted to State 04/07/04. Notice of Appeal filed 04/29/04. Clerk's Record filed 06/04/04. Appellant's brief filed 07/01/04; Oral Argument requested. Appellees' brief filed 08/02/04; Oral Argument requested. Submitted on Briefs 12/06/04.

Lockheed Martin Corp., as Successor to Lockheed Martin Vought Systems Corp. and Loral Vought Systems Corp. v. Rylander, et al. Cause #GN103525
AG Case #011523446

| | | |
|--|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 10/24/01 Period: 09/01/92- 11/30/95 Amount: \$2,680,000 | 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: Answer filed.

Lockheed Corp. v. Rylander, et al. Cause #GN201000
AG Case #021583745

| | | |
|--|---|---|
| Sales Tax; Refund Filed: 03/26/02 Period: 03/01/93- 01/31/96 Amount: \$7,000,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist 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*.

Status: Answer filed.

Lockheed Martin Corp. v. Rylander, et al. Cause #GN200999
AG Case #021583737

Sales Tax; Refund
Filed: 03/26/02
Period: 01/01/96-
09/30/97
Amount: \$3,500,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Ira A. Lipstet
Matthew G. Grimmer
Jenkins & Gilchrist
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*.

Status: Answer filed.

Lockheed Martin Corp., Successor to Lockheed Martin Vought Systems Corp. v. Rylander, et al. Cause #GN201725
AG Case #021620414

Sales Tax; Refund &
Declaratory Judgment
Filed: 05/23/02
Period: 12/01/95-
06/30/97
Amount: \$1,857,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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*.

Status: Answer filed.

Lockheed Martin Corp. v. Strayhorn, et al. Cause #GN300420
AG Case #031751118

| | | |
|--|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 02/10/03 Period: 07/01/97- 07/31/01 Amount: \$2,837,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Doug Sigel 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: Answer filed.

Lockheed Martin Kelly Aviation Center, Inc. v. Strayhorn, et al. Cause
#GN400625
AG Case #041928870

| | | |
|--|---|--|
| Sales Tax; Refund Filed: 02/26/04 Period: 01/01/99- 12/31/00 Amount: \$1,025,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Doug Sigel 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*.

Status: Answer filed.

MG Building Materials, Ltd. v. Strayhorn, et al. Cause #GN301686
AG Case #031802978

| | | |
|--|---|---|
| Sales Tax; Protest Filed: 05/23/03 Period: 01/01/96- 04/30/99 Amount: \$2,015,426.24 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Douglas W. Sanders Elizabeth A. Copeland Jeffrey T. Cullinane Oppenheimer, Blend, Harrison & Tate San Antonio |
|--|---|---|

Issue: Whether Plaintiff's audit was flawed because the Comptroller improperly failed to consider late resale or other exemptions in the sample. Whether the sample methodology and 60-day letter made it impossible for Plaintiff to show that the assessment was wrong. Plaintiff also requests a jury trial.

Status: Discovery in progress. Court denied both cross-motions for partial summary judgment 08/26/04. Plaintiff's Motion to Compel denied 11/18/04. Trial set 03/07/05.

Mars, Inc. v. Strayhorn, et al. Cause #GN401349
AG Case #041965336

| | | |
|--|---|---|
| Sales Tax; Refund Filed: 04/29/04 Period: 01/01/94- 09/30/97 Amount: \$726,024 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Mark W. Eidman Ray Langenberg R. Eric Hagenswold Scott, Douglass & McConnico Austin |
|--|---|---|

Issue: Whether Plaintiff's purchases of certain equipment and related items are exempt from sales tax under the manufacturing exemption. Whether Plaintiff's purchases of installation labor are exempt as purchases of non-taxable stand-alone installation services.

Status: Answer filed.

Maxus Energy Corp. as Successor in Interest to Maxus Corporate Co. v. Strayhorn, et al. Cause #GN404187
AG Case #052082260

| | | |
|---|----------------------|---------------------|
| Sales Tax; Protest & Declaratory Judgment | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 12/27/04 | Plaintiff's Counsel: | David Cowling |
| Period: 09/01/95-12/31/98 | | Robert Lochridge |
| Amount: \$1,794,780.29 | | Jones Day |
| | | Dallas |

Issue: Whether items purchased by Plaintiff to be exported outside of the US by a freight consolidator and not invoiced individually are exempt from sales and use tax. Whether the Comptroller's auditing techniques can assess tax on transactions previously audited and non-assessed. Whether Plaintiff "purchased" or "rented" software, and whether services provided to implement the software are taxable. Whether services performed on tangible personal property provided by a third party are exempt from sales and use tax. Plaintiff claims violation of equal and uniform taxation, and due process. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

May Department Stores Co., The v. Strayhorn, et al. Cause #GN300583
#03-03-00729-CV
#04-0904
AG Case #031759525

| | | |
|---------------------------|----------------------|-----------------------------|
| Sales Tax; Refund | Asst. AAG Assigned: | Jim Cloudt |
| Filed: 02/21/03 | Plaintiff's Counsel: | Mark W. Eidman |
| Period: 04/01/96-03/31/99 | | Ray Langenberg |
| Amount: \$930,000 | | Doug Sigel |
| | | Scott, Douglass & McConnico |
| | | Austin |

Issue: Whether printing on bulk paper purchased out-of-state and made into catalogs and circulars is subject to use tax. Whether the essence of the transaction in producing the catalogs is non-taxable labor. Whether “distribution” is included in the use tax.

Status: Summary Judgment granted to Comptroller 10/30/03. Notice of Appeal filed 12/02/03. Appellant’s brief filed 01/12/04. Appellees’ brief filed 02/17/04. Appellant’s reply brief filed 03/08/04. Submitted on Oral Argument 04/28/04. Third COA affirmed District Court’s judgment 07/15/04. Motion for Rehearing filed 07/30/04; denied. Substituted Opinion issued 08/26/04, still affirming judgment for Comptroller. Petition for Review filed in Tx. Supreme Court 10/11/04. Conditional waiver of response filed by State 10/13/04. Response to Petition for Review requested by Court 11/03/04. Response filed by Respondent 12/03/04. Petitioner’s Reply Brief filed 12/20/04.

Medaphis Physicians Services Corp. v. Sharp, et al. Cause #94-11610
AG Case #94149390

| | | |
|---|---|--|
| 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 Garry M. Miles Vinson & Elkins Austin |
|---|---|--|

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: Inactive.

Mitchell, Christia Parr v. Rylander, et al. Cause #GN201330
AG Case #021604541

| | | |
|---|---|---|
| Sales Tax; Refund Filed: 04/22/02 Period: 01/01/95-12/31/98 Amount: \$160,870.48 | Asst. AAG Assigned: Plaintiff’s Counsel: | Natalie McLemore Christia Parr Mitchell (Pro Se) San Antonio |
|---|---|---|

Issue: Whether plaintiff may recover a sales tax refund for taxes paid by a corporation controlled by her ex-husband when the liability was paid pursuant to orders of the court in which the divorce was granted.

Status: Inactive.

Nachhattar Tejpal Legha Enterprises, Inc. v. Rylander, et al. Cause #GN203398
AG Case #021676812

| | | |
|---|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 09/18/02 Period: 04/01/97- 07/31/99 Amount: \$15,841 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore James F. Martens James F. Martens & Associates Austin |
|---|---|--|

Issue: Plaintiff claims that the Comptroller wrongfully assessed additional sales tax by misstating Plaintiff's gross taxable receipts and wrongfully failed to entertain Plaintiff's refund claim. Plaintiff also seeks a declaratory judgment and attorneys' fees.

Status: Discovery in progress. Motion for Summary Judgment hearing set 04/05/05. Trial set 04/18/05.

Neiman Marcus Group, Inc. v. Sharp, et al. Cause #93-10279-A
AG Case #93340549

| | | |
|---|---|--|
| Sales Tax; Protest & 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 Jones Day 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 the jurisdiction on attorneys' fees on 10/06/93.

Neiman Marcus Group, Inc., The v. Rylander, et al. Cause #GN102403
AG Case #011478294

| | | |
|--|---|--|
| Sales Tax; Protest Filed: 08/01/01 Period: 04/01/90- 12/31/93 Amount: \$1,908,969.01 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|--|---|--|

Issue: Whether printing charges for catalogs are not subject to use tax because: (a) the printing services were not used in Texas, (b) the printed catalogs were gifts for which title transferred outside Texas, (c) plaintiff did not have sufficient control to be a Texas user, (d) the statute does not include distribution in the definition of use, (e) no use tax is due under the doctrine of *Morton Bldgs.*, (f) Rule 3.346(b)(3)(A) does not apply or is invalid, and/or (g) Tax Code 151.3111(a) exempts the printing service. Whether photograph retouching is (a) a sale of tangible personal property, or (b) repair, remodeling, maintenance or restoration of tangible personal property, or (c) exempt under Tax Code 151.330(e). Also, whether remodeling contracts were tax included and whether sampling was improper. Plaintiff seeks attorneys fees.

Status: Answer filed.

North American Intelcom, Inc., et al. v. Sharp, et al. Cause #97-05318
AG Case #97733563

| | | |
|--|---|---|
| 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 #94113766

| | | |
|---------------------------------|----------------------|--------------------|
| 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: Inactive. Parties are involved in informal discussions to resolve or eliminate issues currently in controversy.

Northrop Grumman Systems Corp. (Successor to Northrop Grumman Corp. and Vought Aircraft Co.) v. Rylander, et al. Cause #GN201344
AG Case #021607155

| | | |
|--|----------------------|------------------------|
| Sales Tax; Refund & Declaratory Judgment | Asst. AAG Assigned: | Jim Cloudt |
| Filed: 05/01/02 | Plaintiff's Counsel: | Gilbert J. Bernal, Jr. |
| Period: 09/01/92-11/30/95 | | Stahl & Bernal |
| Amount: \$1,600,000 | | 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 claims that collection of the tax violates the supremacy clause as a tax on the U.S. government and that the Comptroller violated the constitutional requirements of equal protection and equal taxation by denying the refund claim. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

Petrolite Corp. v. Sharp, et al. Cause #91-13885
AG Case #91149840

| | | |
|--|---|--|
| Sales Tax; Protest 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.

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

| | | |
|---|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 12/12/00 Period: 01/01/89- 12/31/93 Amount: \$297,616.32 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt David Cowling Jones Day 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: Discovery in progress. Summary Judgment hearing passed. Non-jury trial to be set prior to 03/07/05.

R.H. Salas & Associates, Inc. v. Comptroller Cause #GN403975
AG Case #042071365

| | | |
|---|---|---|
| Sales Tax; Protest & Declaratory Judgment Filed: 12/06/04 Period: 08/01/98- 04/30/02 Amount: \$66,543.64 | Asst. AAG Assigned: Plaintiff's Counsel: | Jeff Mullins Diego A. Lopez The Law Offices of Diego A. Lopez San Antonio |
|---|---|---|

Issue: Whether Plaintiff owes sales tax on purchased equipment used in the manufacturing of wood and metal products. Whether Plaintiff owes sales tax on electricity used to operate the equipment. Whether Plaintiff was denied due process of law and the right to equal protection of the law. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

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

#03-02-00346-CV

#03-0416

AG Case #011451606

Sales Tax; Refund &
Declaratory Judgment

Filed: 05/17/01

Period: 06/01/89 -
12/31/96

Amount: \$6,000,000

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: Summary Judgment hearing held 03/05/02. Partial summary judgment for plaintiff signed 03/29/02. Judgment for Raytheon granted 05/15/02. State's Notice of Appeal filed 06/04/02. Appellants' brief filed 09/20/02. Appellee's brief filed 10/18/02. Appellants' reply brief filed 11/07/02. Oral argument completed 12/04/02. Comptroller's post-submission brief filed 12/15/02. Trial court affirmed, in part, remanded, in part, 01/30/03. Motion for Rehearing and Motion for En Banc Reconsideration filed by State 03/17/03; denied 03/27/03. Petition for Review filed by State 05/12/03. Response filed 05/20/03 by Raytheon. Reply filed by State 05/30/03. Petition for Review denied 08/28/03. Motion for Rehearing filed by State 09/12/03; denied 10/24/03. Final order of the Supreme Court sent to Court of Appeals 12/09/03. Case is in discovery on remand. State's Motion for Summary Judgment granted 06/03/04. Raytheon's Motion for Summary Judgment denied 06/08/04. Order ruling that case is not final setting deadline for status report signed 06/28/04. State's Report filed 07/16/04. Judgment hearing on 10/04/04 passed to consider settlement.

Raytheon Co., as Successor in Interest to Raytheon Training, Inc. v. Rylander, et al. Cause #GN201022
AG Case #021588694

| | | |
|--|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 03/28/02 Period: 08/01/88 - 05/31/97 Amount: \$2,500,000.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman 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: Answer filed.

Raytheon Co. and Daimlerchrysler Corp. as Successors to Central Texas Airborne Systems, Inc., fka Chrysler Technologies Airborne Systems, Inc. v. Strayhorn, et al. Cause #GN302082
AG Case #031816143

| | | |
|--|---|--|
| Sales Tax; Refund Filed: 06/13/03 Period: 04/01/89- 12/31/96 Amount: \$228,368 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Doug Sigel 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: Answer filed.

Raytheon Co., as Successor to Raytheon TI Systems, Inc. v. Strayhorn, et al.

Cause #GN303643

AG Case #031853625

Sales Tax; Refund

Filed: 09/09/03

Period: 07/01/97-
12/31/98

Amount: \$3,500,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman
Ray Langenberg
Doug Sigel
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*.

Status: Answer filed.

Raytheon Co. v. Strayhorn, et al. Cause #GN303644

AG Case #031853633

Sales Tax; Refund

Filed: 09/09/03

Period: 01/01/99-
12/31/02

Amount: \$7,400,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman
Ray Langenberg
Doug Sigel
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*.

Status: Answer filed.

Raytheon Co., as Successor to Raytheon E-Systems, Inc. v. Strayhorn, et al.

Cause #GN303645

AG Case #031853641

Sales Tax; Refund

Filed: 09/09/03

Period: 01/01/97-
12/31/98

Amount: \$4,000,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman
Ray Langenberg
Doug Sigel
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*.

Status: Answer filed.

Raytheon Co., as Successor to Raytheon E-Systems, Inc. v. Strayhorn, et al.

Cause #GN304089

AG Case #031873441

Sales Tax; Protest &
Declaratory Judgment

Filed: 10/16/03

Period: 10/01/91-
12/31/96

Amount: \$389,408.28

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman
Ray Langenberg
Doug Sigel
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*.

Status: Answer filed.

Reynolds Metals Co. v. Strayhorn, et al. Cause #GN401468
AG Case #041970799

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 05/07/04 Period: 03/01/94- 12/31/00 Amount: \$828,614.08 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether conveyors and weigh-ometers are exempt as manufacturing equipment or taxable as intraplant transportation. Whether repair and replacement parts for the conveyors are exempt from sales tax as purchases of pollution control equipment used in manufacturing and purchases of environmental repairs. Whether ship unloaders qualify as rolling stock and exempt from sales tax. Plaintiff also claims violation of equal and uniform taxation and equal protection.

Status: Answer filed.

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 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: Trial setting passed. Discovery in progress.

Robbins & Myers, Inc. v. Strayhorn, et al. Cause #GN301171
AG Case #031786551

| | | |
|---|---|--|
| Sales Tax; Declaratory Judgment Filed: 04/11/03 Period: 06/01/95- 07/31/98 Amount: \$23,492.41 | Asst. AAG Assigned: Plaintiff's Counsel: | Jeff Mullins Henry Binder Porter & Hedges Houston |
|---|---|--|

Issue: Whether Plaintiff is required to pay additional tax after the Comptroller's administrative order became final. Whether Plaintiff is entitled to the manufacturing exemption for down-hole drilling equipment and whether completion of Plaintiff's facility was new construction

Status: Answer filed.

Rockwell Collins, Inc. v. Rylander, et al. Cause #GN203339
AG Case #021676788

| | | |
|---|---|---|
| Sales Tax; Refund Filed: 09/13/02 Period: 01/01/97- 12/31/98 Amount: \$591,028.39 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt David H. Gilliland Clark, Thomas & Winters Austin |
|---|---|---|

Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. Plaintiff also claims a denial of equal protection and an exemption under §151.3111.

Status: Answer filed.

Rollins & Rollins Enterprises, Inc. , dba Country Kwik Stop v. Rylander, et al.
Cause #GN202097
AG Case #021640651

| | | |
|---|---|--|
| Sales Tax; Protest Filed: 06/28/02 Period: 08/01/97- 07/31/00 Amount: \$45,059.74 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore William T. Peckham Austin |
|---|---|--|

Issue: Whether Plaintiff is liable for tax on food sold from its convenience store area.
Whether the Comptroller applied proper percentages for loss and waste.

Status: Answer filed.

Sabine Mining Co., The v. Strayhorn, et al. Cause #GN401382
AG Case #041964867

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 04/30/04 Period: 10/01/97- 09/30/01 Amount: \$905,468.12 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether replacement parts and repair services for draglines qualify as manufacturing equipment and exempt from sales tax. Plaintiff claims that the draglines directly make or cause a chemical or physical change to formations, falling within the exempt manufacturing process. Plaintiff also claims violation of equal and uniform taxation, equal rights, equal protection, due course of law and due process.

Status: Answer filed.

San Antonio Spurs, L.L.C. v. Strayhorn, et al. Cause #GN403429
AG Case #042050401

| | | |
|--|---|--|
| Sales Tax; Protest Filed: 10/15/04 Period: 06/01/97- 06/30/00 Amount: \$913,435.03 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Mark W. Eidman Curtis Osterloh Scott, Douglass & McConnico Austin |
|--|---|--|

Issue: Whether suite rental fees are exempt from sales tax as non-taxable rentals or licenses for the use of real property.

Status: Answer filed.

Schoenborn & Doll Enterprises, Inc. v. Rylander, et al. Cause #99-07605
AG Case #991187592

| | | |
|--|---|--|
| 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. Plaintiff paid tax under pay-out agreement.

Service Merchandise Co., Inc. v. Sharp, et al. Cause #98-11572
AG Case #981063308

| | | |
|---|---|--|
| 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 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: 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; granted 08/14/01. Motion to dismiss set 07/25/02; granted 01/16/03.

Sharper Image Corp. v. Rylander, et al. Cause #GN203645
AG Case #021686779

Sales Tax; Protest &
Declaratory Judgment
Filed: 10/09/02
Period: 07/01/94-
11/30/97
Amount: \$264,355.46

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Gilbert J. Bernal, Jr.
Stahl & Bernal
Austin

Martin I. Eisenstein
Kevin J. Beal
Brann & Isaacson
Lewiston, ME

Issue: Whether use tax imposed on catalogs shipped from out-of-state is unlawful because:
(1) plaintiff never used the catalogs in Texas; (2) the tax violates the Commerce Clause; and,
(3) Rule 3.346 is unconstitutional. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress. Trial to be reset.

Sharper Image Corp. v. Rylander, et al. Cause #GN203821
AG Case #021696851

Sales Tax; Protest &
Declaratory Judgment
Filed: 10/22/02
Period: 12/01/97-
03/31/01
Amount: \$258,205.20

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Gilbert J. Bernal, Jr.
Stahl & Bernal
Austin

Martin I. Eisenstein
Kevin J. Beal
Brann & Isaacson
Lewiston, ME

Issue: Whether use tax imposed on catalogs shipped from out-of-state is unlawful because:
(1) plaintiff never used the catalogs in Texas; (2) the tax violates the Commerce Clause; and,
(3) Rule 3.346 is unconstitutional. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Discovery in progress. Trial to be reset.

Southern Sandblasting and Coatings, Inc. v. Rylander, et al. Cause #GN103910
AG Case #011532355

| | | |
|---|---|---|
| Sales Tax; Protest & Declaratory Judgment Filed: 11/27/01 Period: 01/01/95- 12/31/98 Amount: \$219,219.35 \$47.15 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Gilbert J. Bernal, Jr. Stahl & Bernal Austin |
|---|---|---|

Issue: Whether items used in vessel repair, such as paint-gun parts, are exempt materials. Whether denial of the exemption violates equal protection. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress. Trial set 02/14/05.

Southwest Food Processing & Refrigerated Services, aka Southwest Refrigerated Warehousing Services v. Rylander, et al. Cause #GN103390
AG Case #011509668

| | | |
|--|---|--|
| Sales Tax; Protest Filed: 10/15/01 Period: 01/01/96- 12/31/99 Amount: \$188,477.57 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne H. Christopher Mott Krafsur Gordon Mott El Paso |
|--|---|--|

Issue: Whether plaintiff owes tax on electricity used to freeze food items.

Status: Inactive.

Southwestern Bell Telephone, L.P. v. Strayhorn, et al. Cause #GN402300
AG Case #041998360

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 07/22/04 Period: 06/01/05- 12/31/98 Amount: \$291,516,385.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Gene Storie Mark W. Eidman Ray Langenberg Curtis J. Osterloh Eric Hagenswold Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether equipment used to process tangible personal property for ultimate sale is exempt from sales tax under the manufacturing and processing exemption. Whether payphones purchased by Plaintiff to perform taxable telecommunications services qualify for the sale for resale exemption. Whether electricity purchased and resold as an integral part of other tangible personal property and used to perform taxable telecommunications services is exempt from sales tax. Whether stand-alone installation labor provided directly to a customer by a vendor or by a third-party installer is taxable.

Status: Answer filed.

Sprint International Communications, Inc. v. Sharp, et al. Cause #96-14298
AG Case #96637296

| | | |
|--|---|--|
| Sales Tax; Refund Filed: 11/22/96 Period: 02/01/86- 01/31/90 Amount: \$1,269,474 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin |
|--|---|--|

Issue: Whether networking services are taxable as telecommunications services.

Status: Case was set to be Dismissed for Want of Prosecution in March, 2003. Motion to Retain was filed.

Steamatic of Austin, Inc., et al. v. Rylander, et al. Cause #GN200631
AG Case #021567771

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 02/25/02 Period: 04/01/91- 04/30/94 Amount: \$103,335.27 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether plaintiff is entitled to a tax refund for repairs to tangible personal property on the grounds that such repairs were for casualty losses exempt under the Comptroller's Rule 3.357 and 3.310. Whether the claim is barred by limitations. Whether the Comptroller improperly changed the rule on casualty losses.

Status: Motion for Summary Judgment filed. Response filed. Partial Summary Judgment on limitations granted for Plaintiff 04/07/04.

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:

Blake Hawthorne

Plaintiff's Counsel:

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 Austin, Inc. v. Strayhorn, et al. Cause #GN400465
AG Case #041925850

Sales Tax; Protest
Filed: 02/17/04
Period: 05/01/98-
04/30/01
Amount: \$92,357.48

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Mark W. Eidman
Curtis Osterloh
Matthew J. Meese
Scott, Douglass &
McConnico
Austin

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

Status: Answer filed.

Sysco Food Services of Houston, L.P. (fka 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: | Christopher Jackson Judy M. Cunningham Attorney at Law 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.

Sysco Food Services of Houston, L.P. (fka Sysco Food Services of Houston, Inc.) v. Strayhorn, et al. Cause #GN302075

AG Case #031816119

| | | |
|---|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 06/13/03 Period: 07/01/94- 06/30/98 Amount: \$270,401.80 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Judy M. Cunningham Attorney at Law 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 Declaratory Judgment Filed: 10/06/99 Period: 10/01/91- 03/31/93 Amount: \$146,484.05 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne David Cowling Robert Lochridge Jones Day 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. Settlement offer submitted; case to be settled.

TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al. Cause #99-11648
AG Case #991219221

| | | |
|--|---|---|
| Sales Tax; Protest Declaratory Judgment Filed: 10/05/99 Period: 07/01/89- 12/31/91 Amount: \$479,719.44 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne David Cowling Robert Lochridge Jones Day 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. Settlement offer submitted; case to be settled.

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

Sales Tax; Refund
Filed: 02/01/01
Period: 01/01/93-
06/30/96
Amount: \$475,000

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

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

Sales Tax; Refund
Filed: 03/07/01
Period: 03/01/93-
12/31/96
Amount: \$400,000

Asst. AAG Assigned:

Natalie McLemore

Plaintiff's Counsel:

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.

Texaco, Inc. v. Rylander, et al. Cause #GN201543
AG Case #021613625

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 05/10/02 Period: 05/01/87- 12/31/90 Amount: \$157,090.20 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Plaintiff claims that interest should be offset or waived for a period before a refund was made to a subsidiary.

Status: Answer filed.

Texas Gulf, Inc. v. Bullock, et al. Cause #485,228
AG Case #90311185

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

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

Status: Nothing pending.

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: Plaintiff's Counsel: | Gene Storie 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: Settlement negotiations pending.

United Space Alliance, LLC v. Strayhorn, et al. Cause #GN401174
AG Case #041954488

| | | |
|--|---|--|
| Sales Tax; Refund Filed: 04/14/04 Period: 07/01/99- 07/31/03 Amount: \$975,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Mark W. Eidman Ray Langenberg Doug Sigel 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*.

Status: Answer filed.

Val-Pak Franchise Operations, Inc. dba Valpak of Houston v. Strayhorn, et al.
Cause #GN300267
AG Case #031746142

| | | |
|--|---|--|
| Sales Tax; Protest Filed: 01/28/03 Period: 04/01/95- 12/31/98 Amount: \$734,112.10 | Asst. AAG Assigned: Plaintiff's Counsel: | Gene Storie James A. Hemphill Graves, Dougherty, Hearon & Moody Austin |
|--|---|--|

Issue: Whether Plaintiff sells non-taxable advertising services. Whether Plaintiff purchases non-taxable proprietary information services. Whether marketing fees are non-taxable membership dues.

Status: Settled.

West Texas Pizza, Limited Partnership v. Sharp, et al. Cause #96-11751
AG Case #96611633

| | | |
|--|---|---|
| Sales Tax; Protest Filed: 09/27/96 Period: 06/01/88- 06/30/92 Amount: \$35,247 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore 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: Inactive.

White Swan, Inc. v. Strayhorn, et al. Cause #GN304767
AG Case #041904608

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 12/18/03 Period: 10/01/93- 12/31/97 Amount: \$415,185.61 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Judy M. Cunningham Attorney at Law Austin |
|---|---|--|

Issue: Whether the purchase of electricity used to lower the temperature of food products is exempt under Tax Code Sections 151.317 and 151.318. Whether the process causes a physical change to the products. Whether the decision of the Comptroller violated the statute and long-standing Comptroller policy.

Status: Discovery in progress.

Williams, Duane Everett v. Comptroller Cause #GN304667
AG Case #031899222

| | | |
|--|---|---|
| Sales Tax; Refund & Declaratory Judgment Filed: 12/10/03 Period: 2002 Amount: \$50,000 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Michael R. Cooper Salado |
|--|---|---|

Issue: Whether Plaintiff's civil rights were violated by the Comptroller's audit and whether the audit assessment should be set aside for lack of substantial evidence.

Status: Answer filed.

World Fitness Centers, Inc. v. Rylander, et al. Cause #GN201795
AG Case #021626239

| | | |
|---|---|--|
| Sales Tax; Refund Filed: 05/30/02 Period: 09/01/94- 05/31/98 Amount: \$273,005.56 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Ray Bonilla Ray, Wood & Bonilla Austin |
|---|---|--|

Issue: Whether plaintiff owes sales tax on the discount and reserve amounts of its factored contracts when plaintiff is a cash-basis taxpayer.

Status: Answer filed.

Zale Delaware, Inc. v. Rylander, et al. Cause #GN202030
AG Case #021640669

| | | |
|---|---|---|
| Sales Tax; Refund Filed: 06/24/02 Period: 08/01/92- 02/28/97 Amount: \$\$333,602.57 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|---|---|---|

Issue: Whether Plaintiff is liable for tax on items temporarily stored in Texas. Whether tax on services purchased by Plaintiff should be reduced to reflect the out-of-state benefit of those services. Whether Plaintiff should get a refund or credit for tax paid on inventory. Whether the Comptroller should be barred from off-setting debts in the period between the filing of Plaintiff's bankruptcy petition and the confirmation of its reorganization plan.

Status: Answer filed.

Zale Delaware, Inc. v. Strayhorn, et al. Cause #GN301725
AG Case #031806045

Sales Tax; Refund &
Declaratory Judgment
Filed: 05/27/03
Period: 08/01/92-
02/28/97
Amount: \$1,170,404.64

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

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

Issue: Whether Plaintiff is entitled to exemption on items of inventory temporarily stored in-state. Whether tax was improperly assessed on services performed outside the state. Whether installation services on counters and software were readily separable from taxable tangible property. Whether the Comptroller should be enjoined from taking offsets pursuant to Plaintiff's bankruptcy plea.

Status: Answer filed.

Insurance Tax

Allstate County Mutual Insurance Co.; Allstate Insurance Co.; Allstate Indemnity Co.; Allstate Texas Lloyds; and Allstate Property and Casualty Insurance Co. v. Strayhorn, et al. Cause #GN300968

AG Case #031778947

| | | |
|--|---|---|
| Insurance Premium Tax; Protest & Declaratory Judgment Filed: 03/26/03 Period: 1995-1998 Amount: \$174,386.15 \$10,529.48 \$4,013.24 \$11,858.40 \$7,306.09 (Total: \$208,093.27) | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Steven D. Moore Fred B. Werkenthin Jackson & Walker Austin |
|--|---|---|

Issue: Whether Plaintiffs owe gross premiums tax on defaulted auto insurance premiums that are not received.

Status: Answer filed.

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

AG Case #861483

| | | |
|---|---|--|
| Gross Premium Tax; Protest & Declaratory Judgment Filed: 05/08/86 Period: 1985-1988 Amount: \$1,745,569.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Gene Storie Fred B. Werkenthin Steve Moore Jackson & Walker 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. To be dismissed.

American Fidelity Assurance Co. v. Strayhorn, et al. Cause #GN302070
AG Case #031816564

| | | |
|----------------------------------|----------------------|---|
| Insurance Premium Tax; Refund | Asst. AAG Assigned: | Christine Monzingo |
| Filed: 06/12/03 | Plaintiff's Counsel: | Michael W. Jones |
| Period: 1992 | | Kevin F. Lee |
| Amount: \$241,625.20 | | Thompson, Coe, Cousins & Irons Austin |

Issue: Whether investments in “Fannie Mae” and “Freddie Mac” mortgage pools qualify as investments in Texas mortgages. Whether Rule 3.809 (c) is invalid.

Status: Answer filed.

American International Specialty Lines Insurance Co. v. Rylander, et al. Cause #GN002666 (Consolidated with *Lexington Insurance Co. and Landmark Insurance Co. v. Rylander, et al.*, Cause #GN100569)
AG Case #001351998

| | | |
|---|----------------------|----------------------------------|
| Insurance Premium Tax; Protest & Declaratory Judgment | Asst. AAG Assigned: | Gene Storie |
| Filed: 09/08/00 | Plaintiff's Counsel: | Cynthia Hollingsworth |
| Period: 1995 | | Curtis L. Frisbie, Jr. |
| Amount: \$362,975.97 | | Randy D. Gordon |
| | | Samuel E. Joyner |
| | | Gardere Wynne & Sewell Dallas |

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: See *Lexington Insurance Co. and Landmark Insurance Co. v. Rylander, et al.*, Cause #GN100569.

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: | Gene Storie 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 American Title Insurance Co. v. Strayhorn, et al. Cause #GN301692
#03-04-00342-CV
AG Case #031806011

| | | |
|---|---|--|
| Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/23/03 Period: 1998 through 2002 Amount: \$1,432,580.76 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Ron K. Eudy Sneed, Vine & Perry Austin |
|---|---|--|

Issue: Whether the Comptroller properly used "split" premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller's interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller's policy change violated Due Process and the APA. Plaintiff also seeks attorneys' fees.

Status: The State's motion for summary judgment was granted 05/18/04 and Plaintiff's was denied. Notice of Appeal filed 06/17/04. Clerk's Record filed 07/06/04. Supplement Clerk's Records filed 07/22/04 and 07/29/04. Motion to Consolidate cases granted 07/29/04 (*Old Republic National Title Insurance Co. v. Strayhorn, et al.*, Cause #GN401630). Appellants' brief filed 08/30/04. Appellees' brief filed 10/26/04. Oral Argument set 01/19/05.

First American Title Insurance Co. v. Strayhorn, et al. Cause #GN401631
AG Case #041976440

| | | |
|---|---|--|
| Retaliatory Tax; Protest Filed: 05/21/04 Period: 2003 Amount: \$1,490,029.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Ron K. Eudy Sneed, Vine & Perry Austin |
|---|---|--|

Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA.

Status: Answer filed.

Lexington Insurance Co., Landmark Insurance Co. v. Rylander, et al. Cause
#GN100569
#03-03-00169-CV
#04-0429
AG Case #011417896

| | | |
|--|---|---|
| Insurance Premium 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: | Gene Storie Curtis L. Frisbie, Jr. Cynthia C. Hollingsworth Jeremy Martin Gardere Wynne Sewell LLP Dallas |
|--|---|---|

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: Summary Judgment motions held 08/01/02; Summary Judgment granted for insurers. Notice of Appeal filed 03/21/03. Appellants' brief filed 08/15/03. Appellee's brief filed 11/10/03. Appellants' reply brief filed 12/05/03. Oral argument held 01/07/04. Third Court of Appeals reversed and remanded trial court's judgment 02/20/04. Appellees filed Motion for Consideration En Banc and Motion for Rehearing 03/08/04; overruled 03/25/04. Petition for Review filed 06/24/04. Waiver of Response filed 07/06/04. Case forwarded to Court 07/13/04. Response to Petition for Review filed by Respondent 08/26/04. Petitioner's Reply filed 09/17/04. Court requested briefs on the merits. Petitioners' brief filed 11/18/04. Respondents' brief filed 01/07/05. Petitioner's reply brief on the merits due 01/24/05.

Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. Cause #484,745
AG Case #90304512

| | | |
|---|---|--|
| 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 Fred B. Werkenthin Steve Moore Breck Harrison Jackson & Walker 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. Plaintiffs have made settlement offer on remainder of case.

Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al. Cause #484,796
AG Case #90304503

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

Old Republic Title Insurance Co. v. Strayhorn, et al. Cause #GN301693
#03-04-003472-CV
(Consolidated with *First American Title Insurance Co. v. Strayhorn, et al.*, Cause #GN301692, #03-04-00342-CV)
AG Case #031806029

| | | |
|---|---|--|
| Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/23/03 Period: 2002 Amount: \$219,626.40 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Ron K. Eudy Sneed, Vine & Perry Austin |
|---|---|--|

Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA. Plaintiff also seeks attorneys’ fees.

Status: The State’s motion for summary judgment was granted 05/17/04 and Plaintiff’s was denied. Notice of Appeal filed 06/17/04; dismissed 07/29/04 due to Motion for Consolidation. See *First American Title Insurance Co. v. Strayhorn, et al.*, Cause #GN301692, #03-04-00342-CV.

Old Republic National Title Insurance Co. v. Strayhorn, et al. Cause #GN401630
AG Case #041976416

| | | |
|--|---|--|
| Retaliatory Tax; Refund Filed: 05/21/04 Period: 2003 Amount: \$289,403.85 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Ron K. Eudy Sneed, Vine & Perry Austin |
|--|---|--|

Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA. Plaintiff also seeks attorneys’ fees.

Status: Answer filed.

STP Nuclear Operating Co. v. Strayhorn, et al. Cause #GN301053
AG Case #031808371

| | | |
|--|---|---|
| Insurance Premium Tax; Protest Filed: 06/11/03 Period: 2002 Amount: \$115,287.80 | Asst. AAG Assigned: Plaintiff's Counsel: | Gene Storie Howard P. Newton Rene D. Ruiz Cox Smith Matthews Inc. San Antonio |
|--|---|---|

Issue: Whether the independently procured insurance tax may be collected from a Texas corporation despite the decisions in *Todd Shipyards* and *Dow Chemical*. Whether imposition of the tax violates equal protection or is pre-empted by federal law governing the operation of nuclear plants.

Status: Discovery in progress.

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: | Gene Storie Jay A. Thompson Thompson, Coe, Cousins & Irons 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: Cross-motion for Summary Judgment filed. MSJ hearing held 12/14/04. Judgment granted for Plaintiff.

St. Paul Surplus Lines Co. v. Rylander, et al. Cause #GN102788
AG Case #011490877

Insurance Premium Tax;
Protest & Declaratory
Judgment
Filed: 08/24/01
Period: 01/01/95-
12/31/98
Amount: \$163,021.27

Asst. AAG Assigned:
Plaintiff's Counsel:

Gene Storie
Michael W. Jones
Kevin F. Lee
Thompson, Coe, Cousins
& Irons
Austin
Richard S. Geiger
Thompson, Coe, Cousins
& Irons
Dallas

Issue: Whether Plaintiff, an eligible surplus lines insurer, is liable for unauthorized insurance tax. Plaintiff also seeks declaratory relief and attorney's fees.

Status: To be determined by *Lexington Insurance Co., Landmark Insurance Co., et al. v. Strayhorn, et al.*

Universe Life Insurance Co. v. State of Texas Cause #97-05106
#03-98-00110-CV
AG Case #97727302

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 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. To be consolidated with Cause #GN002605, *The Universe Life Insurance Co. v. Strayhorn, et al.* Settled.

Universe Life Insurance Co., The v. Cornyn, et al. Cause #GN002605
AG Case #001348580

| | | |
|-------------------------------------|----------------------|---|
| Insurance Premium 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: Comptroller to make partial refund awarded in administrative hearing. Court issued a dismissal notice. Plaintiff filed Motion to Retain. Trial was set 01/18/05. Plaintiff made a settlement offer. Case settled.

Warranty Underwriters Insurance Co. v. Rylander, et al. Cause #99-12271
AG Case #991226739

| | | |
|--|----------------------|--------------------------------------|
| Insurance Tax; Protest & Declaratory Judgment | Asst. AAG Assigned: | Blake Hawthorne |
| Filed: 10/20/99 | Plaintiff's Counsel: | Raymond E. White |
| Period: 1993-1997 1993-1997 | | Daniel Micciche |
| Amount: \$416,462.73 \$214,893.74 | | 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: Discovery in progress.

Other Taxes

Alpine ISD v. Strayhorn Cause #GV402237
AG Case #041999202

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 07/27/04 Period: 2003 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Ray Bonilla Ray, Wood & Bonilla Austin |
|---|---|---|

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Discovery in progress.

Armelin, John M. v. City of Houston Cause #200316037
AG Case #042046375

| | | |
|--|---|---|
| Declaratory Judgment Tax; Declaratory Judgment Filed: 09/10/04 Period: Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Arturo G. Michel Jaqueline I. Leguizamon City of Houston |
|--|---|---|

Issue: Whether county court fees collected from persons who are not convicted of any criminal offense are constitutional. Plaintiffs seek class action declaratory relief from the Comptroller. Plaintiff also seeks attorney's fees.

Status: Trial to be set 10/10-29/05.

Arnold, Jessamine J., Estate of, Deceased, and Jim Arnold, Jr., Independent Executor v. Rylander, et al. Cause #GN203255
AG Case #021670484

| | | |
|---|---|---|
| Inheritance Tax; Protest Filed: 09/09/02 Period: Amount: \$161,956 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson James F. Martens Christina A. Mondrik James F. Martens & Associates Austin |
|---|---|---|

Issue: Whether the IRS erred in increasing the value of the estate's assets and disallowing expenses and gifts.

Status: Answer filed.

Barbers Hill ISD v. Comptroller Cause #GV303127
AG Case #031831688

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 07/28/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Robert Mott Joseph Longoria Sandra Griffin Karen Evertson Perdue, Brandon, Fielder, Collins & Mott Houston |
|---|---|---|

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Settled.

Bay City ISD v. Comptroller Cause #GV303229
AG Case #031835200

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 08/01/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott Houston |
|---|---|---|

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Settled.

CarMax Auto Superstores, Inc. v. Strayhorn, et al. Cause #GN400433
AG Case #041921990

| | | |
|--|---|---|
| Motor Vehicle Sales Tax; Declaratory Judgment Filed: 02/12/04 Period: Amount: \$0.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Jim Cloudt Lara L. Reenan Henry Oddo Austin & Fletcher Dallas |
|--|---|---|

Issue: Whether Plaintiff's tax collection and financing activities are legal under the Tax Code, Finance Code and Constitution.

Status: Co-defendant's Motion to Dismiss granted 06/21/04.

Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Comptroller Cause #96-08010
AG Case #96599817

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

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. Inactive.

Chevron USA, Inc. v. Strayhorn, et al. Cause #GN304320
AG Case #031880487

| | | |
|---|---|---|
| Gas Production Tax; Refund & Declaratory Judgment Filed: 11/05/03 Period: 07/01/88- 12/31/90 Amount: \$225,194.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin |
|---|---|---|

Issue: Whether Plaintiff owes gas production tax on "Order 94 Payments." Plaintiff also seeks declaratory judgment and attorneys' fees.

Status: To be settled.

Comfort ISD v. Comptroller Cause #GV402302
AG Case #042000315

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 08/02/04 Period: 2003 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott |
|---|---|---|

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Answer filed.

Commerce ISD v. Comptroller Cause #GV402275
AG Case #042000299

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 07/29/04 Period: 2003 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott |
|---|---|---|

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Answer filed.

ConocoPhillips Co. v. Strayhorn, et al. Cause #GN403149
AG Case #042035626

| | | |
|---|---|--|
| Gas Production Tax; Refund Filed: 09/22/04 Period: 01/01/95- 11/30/97 Amount: \$539,224.78 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Jamie Nielson Austin |
|---|---|--|

Issue: Whether Plaintiff's refund claim fell within the statute of limitations deadline once the high-cost gas exemption or reduction was applied. Whether the high-cost gas refund claim involves the same type of tax as the marketing cost deduction claim which was the basis for the Section 111.207(d) tolling.

Status: Answer filed.

Cypress-Fairbanks ISD, et al. v. Troy G. Rountree, et al. Cause #2004-54335
AG Case #042056796

| | | |
|------------------------------------|----------------------|------------------------|
| Property Tax; Declaratory Judgment | Asst. AAG Assigned: | Natalie McLemore |
| Filed: | Plaintiff's Counsel: | Walter E. Spears |
| Period: | | Stephen K. Hamilton |
| Amount: \$N/A | | Neil H. McLaurin, IV |
| | | Bartley & Spears, P.C. |
| | | Houston |

Issue: Whether Tax Code §32.05(c), which subordinates the liens of property owners' associations, is unconstitutional.

Status: Answer filed.

El Paso Natural Gas Co. v. Sharp Cause #91-6309
AG Case #9178237

| | | |
|--|----------------------|----------------------|
| Gas Production Tax; Declaratory Judgment | Asst. AAG Assigned: | Blake Hawthorne |
| Filed: 05/06/91 | Plaintiff's Counsel: | Alfred H. Ebert, Jr. |
| Period: 01/01/87 - 12/31/87 | | Andrews & Kurth |
| Amount: \$3,054,480.60 | | 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 Worth's PR's, Inc. v. Rylander, et al. Cause #GN200711
AG Case #021573480

| | | |
|--|---|---|
| Mixed Beverage Gross Receipts Tax; Protest & Declaratory Judgment Filed: 03/04/02 Period: 03/01/99-06/30/99 Amount: \$36,177.36 | Asst. AAG Assigned: Plaintiff's Counsel: | Jeff Mullins John L. Gamboa Acuff, Gamboa & White Fort Worth |
|--|---|---|

Issue: Whether the Comptroller used a non-representative sample to determine plaintiff's tax liability. Whether depletion and error rates were calculated correctly.

Status: Discovery extended until 05/15/05. Plea to the Jurisdiction and Motion for Summary Judgment submitted.

Gilani, Fred v. Progressive Amusement, Inc., Craig Byler and Comptroller
Cause #2004-10090-16
AG Case #041948720

| | | |
|---|---|---|
| Property Tax; Injunction & Declaratory Judgment Filed: 03/30/04 Period: Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Jeff Mullins Stephen D. Stephens Lewisville |
|---|---|---|

Issue: Whether Plaintiff's claim of complying with contract terms results in ownership of personal property. Whether the defendants' enforcement actions are arbitrary. Plaintiff seeks injunctive relief and a temporary restraining order.

Status: Answer filed. Will be dismissed due to bankruptcy filing.

Glen Rose ISD v. Comptroller Cause #GV402292
AG Case #042000307

| | | |
|--|---|---|
| Property Tax; Administrative Appeal Filed: 07/30/04 Period: 2003 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott |
|--|---|---|

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Answer filed.

Greenville ISD v. Comptroller Cause #GV402276
AG Case #041999350

| | | |
|---|---|--|
| Property Tax; Administrative Appeal Filed: 07/29/04 Period: 2003 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott Austin |
|---|---|--|

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Answer filed.

Harris County, et al. v. John W. Adams, et al. Cause #2004-54306
AG Case #042056804

| | | |
|--|---|--|
| Property Tax; Declaratory Judgment Filed: Period: Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Walter E. Spears Stephen K. Hamilton Neil H. McLaurin, IV Bartley & Spears, P.C. Houston |
|--|---|--|

Issue: Whether Tax Code §32.05(c), which subordinates the liens of property owners' associations, is unconstitutional.

Status: Answer filed.

Huntsville ISD v. Comptroller Cause #GV303124
AG Case #031831696

Property Tax;
Administrative Appeal
Filed: 07/28/03
Period: 2002
Amount: \$

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Robert Mott
Joseph Longoria
Sandra Griffin
Karen Evertson
Perdue, Brandon, Fielder,
Collins & Mott
Houston

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Settled.

Lake Austin Spa Investors, Ltd. v. Rylander, et al. Cause #GN203899
AG Case #021703913

Hotel Occupancy Tax;
Protest, Injunction &
Declaratory Judgment
Filed: 10/28/02
Period: 03/01/97-
11/30/00
12/01/00-03/31/02
Amount: \$193,629.45
\$59,232.72

Asst. AAG Assigned:

Plaintiff's Counsel:

Natalie McLemore

Kirk R. Manning
Stephen L. Phillips
Julie K. Lane
Cantey & Hanger
Austin

Issue: Whether Plaintiff's service charges are subject to the hotel tax. Whether the charges are gratuities under the Comptroller's rule. Plaintiff also seeks injunctive relief and attorneys' fees.

Status: Discovery in progress. Discussions in progress with opposing counsel.

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

| | | |
|--|----------------------|--|
| Motor Vehicle Sales Tax; Refund | Asst. AAG Assigned: | Jim Cloudt |
| Filed: 09/07/00 Period: 01/01/96- 12/31/98 Amount: \$5,533,079.80 | Plaintiff's Counsel: | 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: Trial setting passed. Discovery in progress.

Marathon ISD v. Strayhorn Cause #GV402238
AG Case #041999236

| | | |
|---|----------------------|--|
| Property Tax; Administrative Appeal | Asst. AAG Assigned: | Natalie McLemore |
| Filed: 07/27/04 Period: 2003 Amount: \$ | Plaintiff's Counsel: | Ray Bonilla Ray, Wood & Bonilla Austin |

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Discovery in progress.

McLane Co., Inc. and McLane Foodservice-Lubbock, Inc. v. Rylander, et al.
Cause #GN104253
#03-03-00502-CV
#04-1066
AG Case #021547393

Protest Tax; Protest,
Injunction & Declaratory
Judgment
Filed:
Period:
Amount: \$1,173.83 &
\$3,690.00

Asst. AAG Assigned:
Plaintiff's Counsel:

Gene Storie
Gilbert J. Bernal, Jr.
David J. Sewell
Stahl & Bernal
Austin

Issue: Whether the Comptroller must accept a letter of credit as security for Plaintiff's participation in the cigarette tax trust fund.

Status: Summary Judgment hearing held 07/30/03. Pleas to the jurisdiction granted in part and Summary Judgment granted for the Comptroller. McLane filed Notice of Appeal 08/19/03. Appellants' brief filed 01/15/04. Appellees' brief filed 03/16/04. Submitted on Oral Argument 04/07/04. On 10/14/04 the Court of Appeals affirmed in part and dismisses entire case for lack of jurisdiction. McLane filed a Petition for Review in the Texas Supreme Court 11/29/04. Response to Petition for Review waived 12/08/04. Case forwarded to Court 12/14/04. On 01/11/05 Court requested response to the Petition for Review. Response due 02/10/05.

Mirage Real Estate, Inc., et al. v. Richard Durbin, et al. Cause #92-16485
AG Case #92190294

Alcoholic Beverage Gross
Receipts Tax; Declaratory
Judgment
Filed: 12/03/92
Period:
Amount: \$

Asst. AAG Assigned:
Plaintiff's Counsel:

Blake Hawthorne
Jim Mattox
Lowell Lasley
Michael D. Mosher

Issue: Whether the TABC and Comptroller were allowed to use inventory depletions analysis to determine amount of gross receipts tax owed. Plaintiffs seek class certification.

Status: Answer filed. Inactive.

Petro Express Management, L.L.C. v. Rylander, et al. Cause #GN204123
AG Case #021705918

Fuels Tax; Injunction and
Declaratory Judgment
Filed: 11/14/02
Period: 2002
Amount: \$450,000

Asst. AAG Assigned:
Plaintiff's Counsel:

Blake Hawthorne
Percy L. "Wayne" Isgitt
C. Zan Turcotte
Law Offices of Percy L.
"Wayne" Isgitt, P.C.
Houston

Issue: Whether the Comptroller's collection actions are arbitrary, contrary to statute, and unconstitutional. Plaintiff seeks injunctive relief and a return of seized property.

Status: Temporary Restraining Order denied. Inactive.

Preston Motors by George L. Preston, Owner v. Sharp, et al. Cause #91-11987
AG Case #91133170

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

Quinlan ISD v. Strayhorn Cause #GV402239
AG Case #041999251

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 07/27/04 Period: 2003 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Ray Bonilla Ray, Wood & Bonilla Austin |
|---|---|---|

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties and whether the Comptroller failed to consider local modifiers, sales and market information. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Discovery in progress.

Texas RSA 15B2 Limited Partnership v. Strayhorn, et al. Cause #GN403954
AG Case #042073783

| | | |
|---|---|--|
| Telecommunications Infrastructure Fund (TIF) Tax; Protest Filed: 12/03/04 Period: 02/01/99- 10/31/02 Amount: \$293,223.67 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether TIF charges which Plaintiff passed on and collected from its customers are allowable reimbursements as TIF assessment. Whether Plaintiff is liable for “interest on the amount collected” or “accrued” interest on the amount collected.

Status: Discovery in progress.

Ranger Fuels & Maintenance , L.L.C. v. Rylander, et al. Cause #GN204124
AG Case #021705900

| | | |
|---|---|---|
| Fuels Tax; Declaratory Judgment & Injunction Filed: 11/14/02 Period: Amount: \$115,000.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Percy L. “Wayne” Isgitt C. Zan Turcotte Law Offices of Percy L. “Wayne” Isgitt, P.C. Houston |
|---|---|---|

Issue: Whether fuels tax is actually owed by an unrelated company. Whether the Comptroller abused its discretion and violated Plaintiff’s constitutional rights. Plaintiff seeks injunctive and declaratory relief.

Status: Temporary Restraining Order denied. Inactive.

Ranger Fuels & Maintenance, Inc., LLC v. Alon USA, LP Cause #3-03CV1535D
AG Case #042049338

| | | |
|---|---|--|
| Fuels Tax; Subpoena Filed: 10/06/04 Period: 01/01/02 to Present Amount: \$N/A | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Robert J. Clary Owens, Clary & Aiken, LLP Dallas |
|---|---|--|

Issue: Creditor seeks tax and communication information.

Status: Answer filed.

Robinson, Barbara Cooke, Estate of v. Strayhorn, et al. Cause #GN300338

AG Case #031758915

| | | |
|---|---|---|
| Declaratory Judgment Tax; Declaratory Judgment Filed: 02/03/03 Period: 1990 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Arne M. Ray Houston |
|---|---|---|

Issue: Whether the Comptroller's lien should be nullified as expired or invalid on its face.

Status: Cross-Motions for Summary Judgment and Defendant's Plea to the Jurisdiction filed 02/13/04.

San Vicente ISD v. Strayhorn Cause #GV402240

AG Case #041999194

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 07/27/04 Period: 2003 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Ray Bonilla Ray, Wood & Bonilla Austin |
|---|---|---|

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Discovery in progress.

State Farm Fire and Casualty Co. and State Farm Mutual Automobile Insurance Co. v. Strayhorn, et al. Cause #GN401383

AG Case #041964826

| | | |
|---|---|---|
| Hotel Occupancy Motor Vehicle Tax; Refund Filed: 04/30/04 Period: 12/01/97- 08/31/01 Amount: \$2,000,000.00 | Asst. AAG Assigned: Plaintiff's Counsel: | Gene Storie Mark W. Eidman Ray Langenberg R. Eric Hagenswold Scott, Douglass & McConnico Austin |
|---|---|---|

Issue: Whether plaintiffs are exempt from hotel occupancy and motor vehicle sales taxes because of Tex. Ins. Code arts. 4.10 and 4.11. Plaintiff also claims violation of equal and uniform taxation, equal rights and protection, due course of law and process.

Status: Answer filed.

Terlingua Common ISD v. Comptroller Cause #GV302967
AG Case #031833064

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 07/17/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Ray Bonilla Ray, Wood & Bonilla Austin |
|---|---|---|

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties that involved creative financing and by misapplying burden of proof.

Status: Answer filed.

Texaco Exploration & Production, Inc. Cause #GN400440
AG Case #041925843

| | | |
|---|---|--|
| Gas Production Tax; Refund Filed: 02/13/04 Period: 01/01/97- 05/31/02 Amount: \$456,608.80 | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Mark W. Eidman Ray Langenberg Matthew J. Meese Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether Plaintiff's initial refund claim, still pending administrative review at the time of filing a second claim, fell within the statute of limitations deadline.

Status: Answer filed.

That's Entertainment - San Antonio, LLC dba Park Place v. Strayhorn, et al.

Cause #GN400781

AG Case #041937228

| | | |
|---|---|--|
| Mixed Beverage Gross Receipts Tax; Protest Filed: 03/09/04 Period: 05/01/96-09/30/98 Amount: \$211,145.65 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Curtis J. Osterloh Matthew J. Meese Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether door charges should be taxed by both the mixed beverage gross receipts tax and sales tax. Plaintiff claims that the application of both taxes is in violation of equal and uniform taxation, and equal protection under the law. Plaintiff also claims violation of due process and the commerce clause.

Status: Discovery in progress. Trial set 04/05/05.

Willow Creek Resources, Inc. v. Strayhorn, et al. Cause #GN303805

#03-04-00629

AG Case #031859812

| | | |
|---|---|--|
| Gas Production Tax; Refund Filed: 09/23/03 Period: 01/01/97-12/31/99 Amount: \$1,160,682.81 | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Mark W. Eidman Ray Langenberg Doug J. Dashiell Scott, Douglass & McConnico Austin |
|---|---|--|

Issue: Whether plaintiff is entitled to a natural gas production tax refund on gas which plaintiff claims qualifies for the exemption for high cost gas under §201.057.

Status: Summary Judgment granted for Plaintiff 06/15/04. Notice of Appeal filed by State 10/12/04. Appellant's brief filed 11/09/04. Appellees' brief filed 12/09/04. Appellants' reply brief filed 01/12/05. Oral Argument set 02/02/05.

Yantis ISD v. Comptroller Cause #GV402274
AG Case #041999244

Property Tax;
Administrative Appeal
Filed: 07/29/04
Period: 2003
Amount: \$

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Robert Mott
Joseph Longoria
Perdue, Brandon, Fielder,
Collins & Mott

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Answer filed.

Closed Cases

6S-B, Inc. v. Strayhorn, et al. Cause #GN304345
AG Case #031881436

| | | |
|------------------------------------|----------------------|--|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 11/07/03 | Plaintiff's Counsel: | Mark D. Hopkins |
| Period: 12/01/97- 08/31/99 | | Savrick, Schumann, Johnson & McGarr |
| Amount: \$84,562.70 | | Austin |

Issue: Whether Plaintiff owes sales tax on vending machine items for those items sold or severed by schools. Whether the sample audit was invalid. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Plea to Abate filed. Motion to Dismiss granted 02/17/04.

Akin, Ted M. v. State of Texas, Dallas County Appraisal District, et al. Cause
#04-08191-H
AG Case #042015149

| | | |
|---------------------------------------|----------------------|----------------------------------|
| Property Tax; Declaratory Judgment | Asst. AAG Assigned: | Gene Storie |
| Filed: 08/20/04 | Plaintiff's Counsel: | M.M. Halpern |
| Period: 2004 | | Attorney and Counselor at Law |
| Amount: \$ | | Dallas |

Issue: Plaintiff claims that defendants overvalued and unequally appraised his various properties in Dallas County. Plaintiff claims that Defendants failed to recognize the character and condition of his properties and also seeks declaratory judgment and attorney's fees.

Status: Non-suited 09/23/04.

Alexopolous, Dimitrios P. v. Rylander, et al. Cause #99-08096
AG Case #991187865

| | | |
|---------------------------------|----------------------|----------------------------|
| 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: Bankruptcy stay in effect. Trial was set 10/15/01. Plaintiff filed bankruptcy petition 09/24/01. Bankruptcy/Collection Division has requested bankruptcy court to abstain. Case tried in Bankruptcy Court 11/08/02. Judgment in favor of Comptroller entered by Bankruptcy Court.

Alvarado ISD v. Comptroller Cause #GV303208
AG Case #031833056

| | | |
|-------------------------------------|----------------------|---------------------------|
| Property Tax; Administrative Appeal | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 07/31/03 | Plaintiff's Counsel: | Ray Bonilla |
| Period: 2002 | | Ray, Wood, Fine & Bonilla |
| Amount: \$ | | Austin |

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties that involved creative financing and by misapplying burden of proof.

Status: Agreed Judgment signed 09/09/04.

Avery ISD v. Comptroller Cause #GV303141
AG Case #031833155

| | | |
|---|---|--|
| Property Tax; Administrative Appeal Filed: 07/30/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Susan Feller Heiligenthal Linebarger, Goggan, Blair & Sampson Austin |
|---|---|--|

Issue: Whether the Comptroller's order on the value study is arbitrary and unreasonable. Whether the Comptroller violated equal protection and due process, and exceeded the rule-making authority granted by the Legislature. Plaintiff also seeks a declaration regarding the validity of the Comptroller's rules and hearings process.

Status: Agreed Judgment signed 03/30/04.

Bailiff, Michael W. and Sylvia S. Bailiff v. Bexar County Appraisal District, et al.
Cause #2002-CI-147689
AG Case #021691704

| | | |
|--|---|--|
| Property Tax; Declaratory Judgment Filed: 10/10/02 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Natalie McLemore Christopher J. Weber Christopher J. Weber, L.L.C. San Antonio |
|--|---|--|

Issue: Plaintiff claims that defendants overvalued and unequally appraised his various properties in Bexar County. Plaintiff claims that Defendants failed to meet their burden of proof and also seeks declaratory judgment and attorneys' fees.

Status: Agreed Judgment signed 02/11/03.

Bandas, David v. Rylander, et al. Cause #GN201236
AG Case #021598024

| | | |
|--|---|---|
| Sales Tax; Refund Filed: 04/16/02 Period: 05/01/96- 04/30/00 Amount: \$24,178.86 | Asst. AAG Assigned: Plaintiff's Counsel: | Scott Simmons Tom Tourtellotte Hance Scarborough Wright Woodward & Weisbart Austin |
|--|---|---|

Issue: Whether plaintiff is entitled to a sale for resale exemption on data processing services used in preparing tax returns.

Status: Final Judgment for Plaintiff entered 09/25/03.

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

AG Case #011442035

| | | |
|---------------------------------|----------------------|----------------------|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 05/10/01 | Plaintiff's Counsel: | Timothy M. Trickey |
| Period: 06/01/92-01/31/96 | | The Trickey Law Firm |
| Amount: \$64,552.33 | | 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: Case dismissed 06/04/04.

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

AG Case #90322672

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

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

Status: Case dismissed 05/18/04.

Broaddus ISD v. Comptroller Cause #GV303142

AG Case #31833080

| | | |
|-------------------------------------|----------------------|--------------------------------------|
| Property Tax; Administrative Appeal | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 07/30/03 | Plaintiff's Counsel: | James R. Evans |
| Period: 2002 | | Susan Feller Heiligenthal |
| Amount: \$ | | Linebarger, Goggan, Blair, & Sampson |
| | | Austin |

Issue: Whether the Comptroller's order on the value study is arbitrary and unreasonable. Whether the Comptroller violated equal protection and due process, and exceeded the rule-making authority granted by the Legislature. Plaintiff also seeks a declaration regarding the validity of the Comptroller's rules and hearings process.

Status: Agreed Judgment signed 08/25/04.

Caddo Mills ISD v. Comptroller Cause #GV303143
AG Case #031833114

| | | |
|---|---|--|
| Property Tax; Administrative Appeal Filed: 07/30/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Susan Feller Heiligenthal Linebarger, Goggan, Blair & Sampson Austin |
|---|---|--|

Issue: Whether the Comptroller's order on the value study is arbitrary and unreasonable. Whether the Comptroller violated equal protection and due process, and exceeded the rule-making authority granted by the Legislature. Plaintiff also seeks a declaration regarding the validity of the Comptroller's rules and hearings process. Whether sale prices for residential property were not properly adjusted.

Status: Agreed Judgment signed 09/01/04.

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

| | | |
|---|---|---|
| Sales Tax; Refund & Declaratory Judgment Filed: 03/09/01 Period: 01/01/95- 03/31/99 Amount: \$645,193.40 | Asst. AAG Assigned: Plaintiff's Counsel: | Gene Storie Marilyn A. Wethekam Horwood Marcus & Berk Chartered Chicago, Illinois David E. Cowling Charolette Noel Jones Day 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: To be resolved with *House of Lloyd*. Settled.

Columbia-Brazoria ISD v. Comptroller Cause #GV303144
AG Case #031833106

| | | |
|---|---|--|
| Property Tax; Administrative Appeal Filed: 07/30/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Susan Feller Heiligenthal Linebarger, Goggan, Blair & Sampson Austin |
|---|---|--|

Issue: Whether the Comptroller’s order on the value study is arbitrary and unreasonable. Whether the Comptroller violated equal protection and due process, and exceeded the rule-making authority granted by the Legislature. Plaintiff also seeks a declaration regarding the validity of the Comptroller’s rules and hearings process. Whether sale prices for residential property were not properly adjusted.

Status: Agreed Judgment signed 08/30/04.

Comstock ISD v. Comptroller Cause #GN302662
AG Case #031831670

| | | |
|---|---|--|
| Property Tax; Administrative Appeal Filed: 07/28/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Jana Kinkade Kirk Swinney Javier B. Gutierrez McCreary, Veselka, Bragg & Allen Austin |
|---|---|--|

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

Status: Agreed Judgment signed 12/05/03.

Dorinco Insurance Co. v. Rylander, et al. Cause #GN203924
AG Case #021700380

| | | |
|--|---|---|
| Gross Premium Insurance and Maintenance Tax; Protest Filed: 10/29/02 Period: 1991-1997 Amount: \$1,411,505.77 | Asst. AAG Assigned: Plaintiff's Counsel: | Gene Storie Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin |
|--|---|---|

Issue: Whether tax was improperly assessed because Texas has no nexus with plaintiff or with the transactions in issue. Whether tax was also improperly assessed on premiums that did not cover Texas risks.

Status: Motion for Summary Judgment hearing held 11/18/03. Plaintiff's Motion granted. Defendants' Motion denied. Judgment signed 07/29/04. Defendants filed a motion for new trial; set 10/19/04. Hearing passed. Final Judgment signed 09/27/04. Defendants will not appeal.

Forney ISD v. Comptroller Cause #GV303155
AG Case #031833049

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 07/30/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Jana Kinkade Ray Bonilla Ray, Wood, Fine & Bonilla Austin |
|---|---|---|

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties that involved creative financing and by misapplying burden of proof.

Status: Agreed Judgment signed 12/04/03.

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

| | | |
|--|---|--|
| Sales Tax; Protest 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: Dismissed for Want of Prosecution 02/12/04.

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

| | | |
|--|---|---|
| Sales Tax; Protest Filed: 01/21/00 Period: 06/01/92- 12/31/96 Amount: \$597,281.67 | Asst. AAG Assigned: Plaintiff's Counsel: | Gene Storie Marilyn A. Wethekam Horwood Marcus & Berk Chartered Chicago, Illinois L.G. (Skip) Smith Clark, Thomas & Winters Austin |
|--|---|---|

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

Status: Settled.

Inova Diagnostics, Inc. v. Rylander, et al. Cause #GN201829
AG Case #021626213

| | | |
|---|---|--|
| Franchise Tax; Refund & Declaratory Judgment Filed: 06/03/02 Period: 1997 & 1998 Amount: \$275 \$347 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo Gilbert J. Bernal, Jr. Stahl & Bernal Austin |
|---|---|--|

Issue: Whether taxpayer has nexus with Texas. Whether the capital-based franchise tax is measured by net income for purposes of P.L. 86-272. Whether the Comptroller wrongfully forfeited plaintiff's corporate privileges. Plaintiff also seeks attorneys' fees.

Status: Non-suited 03/12/03.

JHS Enterprises, Inc. v. Rylander, et al. Cause #GN201357
AG Case #021613591

| | | |
|---------------------------------|----------------------|-----------------------------|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 04/25/02 | Plaintiff's Counsel: | Arne M. Ray |
| Period: 01/01/97-09/30/99 | | Ray & Associates Houston |
| Amount: \$77,774.37 | | |

Issue: Whether Plaintiff owes tax for storage of abandoned vehicles later sold by the City of Houston. Plaintiff also seeks attorneys' fees.

Status: Dismissal with Prejudice granted 04/06/04.

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

| | | |
|---------------------------|----------------------|----------------------------|
| Sales Tax; Refund | Asst. AAG Assigned: | Blake Hawthorne |
| Filed: 06/05/00 | Plaintiff's Counsel: | James D. Blume |
| Period: 01/01/94-12/31/98 | | Jennifer S. Stoddard |
| Amount: \$345,377.95 | | 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: Motion for Summary Judgment filed. Case stayed pending the outcome of *USAA v. Strayhorn*, Cause No. 03-02-00747-CV in the Third Court of Appeals. Final Judgment entered against Plaintiff 11/08/04.

Lebaron Hotel Corp., dba The Lebaron Hotel v. Sharp, et al. Cause #91-17399
AG Case #9210477

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

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

Status: Non-suited 11/25/03.

Lubbock-Cooper ISD v. Comptroller Cause #GV303125
AG Case #031831654

| | | |
|---|---|--|
| Property Tax; Administrative Appeal Filed: 07/28/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Jana Kinkade Robert Mott Joseph Longoria Sandra Griffin Karen Evertson Perdue, Brandon, Fielder, Collins & Mott Houston |
|---|---|--|

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Agreed Judgment granted 01/28/04.

Lynch, Michael J. II, Assignee of Estrella Sola, Inc. v. Strayhorn Cause #2003755
AG Case #031771124

| | | |
|---|---|---|
| Mixed Beverage Gross Receipts Tax; Protest & Declaratory Judgment Filed: 02/26/03 Period: 1996-2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Blake Hawthorne Michael J. Lynch II (Pro Se) El Paso |
|---|---|---|

Issue: Whether separate classification of mixed beverage and wine and beer permit holders is unreasonable and in violation of equal taxation. Plaintiff also seeks declaratory relief.

Status: Non-suited 12/22/03.

Marfa ISD v. Comptroller Cause #GV303146
AG Case #031833163

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 07/30/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson James R. Evans Susan Feller Heiligenthal Linebarger, Goggan, Blair, & Sampson Austin |
|---|---|---|

Issue: Whether the Comptroller's order on the value study is arbitrary and unreasonable. Whether the Comptroller violated equal protection and due process, and exceeded the rule-making authority granted by the Legislature. Plaintiff also seeks a declaration regarding the validity of the Comptroller's rules and hearings process. Whether the Comptroller failed to properly use local modifiers and sampling techniques.

Status: Agreed Judgment signed 09/07/04.

Mineral Wells ISD v. Comptroller Cause #GV303209
AG Case #031833031

| | | |
|---|---|--|
| Property Tax; Administrative Appeal Filed: 07/31/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Ray Bonilla Ray, Wood, Fine & Bonilla Austin |
|---|---|--|

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties that involved creative financing and by misapplying burden of proof.

Status: Agreed Judgment signed 09/09/04.

National Business Furniture, Inc. v. Sharp, et al. Cause #98-03927
AG Case #98932766

| | | |
|--|---|--|
| 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: | Jim Cloudt Gilbert J. Bernal, Jr. Stahl & Bernal Austin |
|--|---|--|

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

Status: Stipulation of Dismissal signed 03/05/04.

Point Isabel ISD v. Comptroller Cause #GV303014
AG Case #031829617

| | | |
|--|---|--|
| Property Tax; Administrative Appeal Filed: 07/21/03 Period: Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Jana Kinkade C. Richard Fine Kevin O'Hanlon O'Hanlon & Associates Austin |
|--|---|--|

Issue: Whether the Comptroller incorrectly estimated the market value of single family residences.

Status: Agreed Judgment signed 12/04/03.

Praxair, Inc. v. Sharp, et al. Cause #97-03919 (consolidated with Cause No. 95-00690, *Praxair, Inc. v. Sharp, et al.*)
AG Case #97706272

| | | |
|---|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 04/01/97 Period: 01/01/90- 12/31/90 Amount: \$57,815 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson 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.* Dismissed for Want of Prosecution 03/29/2000.

Praxair, Inc. v. Sharp, et al. Cause #95-00690
AG Case #95214921

| | | |
|--|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 01/18/95 Period: 1990 Amount: \$74,608 | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson 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: Dismissed for Want of Prosecution 03/29/2000.

Presidio ISD v. Comptroller Cause #GV303152
AG Case #031835192

| | | |
|---|---|---|
| Property Tax; Administrative Appeal Filed: 07/30/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Ray Bonilla Ray, Wood & Bonilla Austin |
|---|---|---|

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

Status: Settled. Agreed Judgment signed 09/09/04.

R Communications, Inc. fka RN Communications, Inc. v. Sharp, et al. Cause
#91-4893
#03-91-00390CV
AG Case #9162355

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

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

Status: District Court granted State's plea to the jurisdiction. State won the appeal. Supreme Court reversed and remanded on 04/27/94. State's motion for rehearing denied. Motion to Dismiss granted 07/14/04.

R.G.V. Vending, Inc. v. Strayhorn, et al. Cause #GN304344
AG Case #031881428

| | | |
|---------------------------------|----------------------|-------------------------------------|
| Sales Tax; Declaratory Judgment | Asst. AAG Assigned: | Christopher Jackson |
| Filed: 11/07/03 | Plaintiff's Counsel: | Mark D. Hopkins |
| Period: 09/01/99-12/31/01 | | Savrick, Schumann, Johnson & McGarr |
| Amount: \$233,847.27 | | Austin |

Issue: Whether Plaintiff owes sales tax on vending machine items for those items sold or severed by schools. Whether the sample audit was invalid. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Plaintiff filed Application for Temporary Restraining Order 01/22/04. Defendant filed Response to Plaintiff's TRO application 01/22/04. TRO application denied 01/22/04. Tax case transferred to Bankruptcy/Collections Division. Received notice of Final Summary Judgment signed 07/08/04.

Rahmes, Todd W., Individually and on Behalf of All Similarly Situated Consumers v. Louis Shanks of Texas, Inc., Strayhorn, et al. Cause #GN201766
#03-04-00298-CV
AG Case #031851256

| | | |
|--|----------------------|---------------------|
| MTA Tax; Refund & Declaratory Judgment | Asst. AAG Assigned: | Gene Storie |
| Filed: 08/29/03 | Plaintiff's Counsel: | George Y. Nino |
| Period: 05/30/00 | | The Nino Law Firm |
| Amount: \$101.86 | | Houston |
| | | Ray Bonilla |
| | | Buck Wood |
| | | Ray, Wood & Bonilla |
| | | Austin |

Issue: Plaintiff claims a refund and injunctive relief for the class of persons who overpaid local MTA tax. Plaintiff also claims DTPA and fraud violations against the retailer, and seeks attorneys' fees.

Status: Pleas to jurisdiction heard 01/21/04. All Defendants' pleas granted 02/12/04. Plaintiff filed motion to amend judgment. Comptroller dismissed by amended petition. Trial court granted Defendant's Pleas to the Jurisdiction 04/22/04. Notice of Appeal filed 05/10/04. Appellant's brief filed 07/13/04; Oral Argument requested. Motion for Dismissal filed 07/09/04; denied 08/05/04 as moot. Comptroller will not be a party on the appeal.

Shelton, James M., Estate of, Deceased, and Carroll A. Maxon, Independent Co-Executor v. Rylander, et al. Cause #GN104094

AG Case #021542261

Inheritance Tax; Protest
Filed: 12/14/01
Period:
Amount: \$1,616,018

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

James F. Martens
James F. Martens &
Associates
Austin

Issue: Whether the IRS and Comptroller failed to give proper credit against the estate value for a pending lawsuit and administrative expenses.

Status: Agreed Judgment signed.

Stephenville ISD v. Comptroller Cause #271703

AG Case #031818958

Property Tax;
Administrative Appeal
Filed: 06/30/03
Period:
Amount: \$

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

Robert Mott
Joseph Longoria
Perdue, Brandon, Fielder,
Collins & Mott
Houston

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Non-suited 11/26/03.

Stephenville ISD v. Comptroller Cause #GN302542
AG Case #031829542

| | | |
|--|---|--|
| Property Tax; Administrative Appeal Filed: 07/21/03 Period: Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Jana Kinkade Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott Houston |
|--|---|--|

Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties.

Status: Agreed Judgment granted 12/05/03.

Tarkington ISD v. Comptroller Cause #GV303148
AG Case #031833098

| | | |
|---|---|--|
| Property Tax; Administrative Appeal Filed: 07/30/03 Period: 2002 Amount: \$ | Asst. AAG Assigned: Plaintiff's Counsel: | Christopher Jackson Susan Feller Heiligenthal Linebarger, Goggan, Blair & Sampson Austin |
|---|---|--|

Issue: Whether the Comptroller's order on the value study is arbitrary and unreasonable. Whether the Comptroller violated equal protection and due process, and exceeded the rule-making authority granted by the Legislature. Plaintiff also seeks a declaration regarding the validity of the Comptroller's rules and hearings process. Whether sale prices for residential property were not properly adjusted.

Status: Agreed Judgment signed 08/23/04.

Texas Instruments, Inc. v. Rylander, et al. Cause #GN102799
AG Case #011496635

| | | |
|--|---|--|
| Franchise Tax; Protest & Declaratory Judgment Filed: 08/27/01 Period: 1987-1990 Amount: \$6,683,563.48 | Asst. AAG Assigned: Plaintiff's Counsel: | Christine Monzingo David Cowling Todd Wallace Jones Day Dallas |
|--|---|--|

Issue: Whether delivering goods to plaintiff's customers in plaintiff's "bond rooms" for eventual shipment out-of-state were sales that generated Texas receipts. Whether Plaintiff's long-term contracts were properly characterized as service contracts. Whether treatment of Plaintiff's cost-plus contracts as service contracts violated equal protection or equal and uniform taxation. Whether all interest should have been waived. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Agreed Judgment signed 03/24/04.

Texas Instruments, Inc. v. Rylander, et al. Cause #GN103526
AG Case #011523420

| | | |
|---|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 10/24/01 Period: 07/01/87- 12/31/90 Amount: \$27,000,000 | 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: Agreed Judgment signed 12/08/04.

Texas Instruments, Inc. v. Rylander, et al. Cause #GN103527
AG Case #011523438

| | | |
|--|---|--|
| Sales Tax; Refund & Declaratory Judgment Filed: 10/24/01 Period: 01/01/91- 07/31/97 Amount: \$102,000,000 | 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: Agreed Judgment signed 12/08/04.

USA Waste Services of Houston, Inc. v. Rylander, et al. Cause #GN003453
#03-03-00515-CV
#04-0419
AG Case #001388065

| | | |
|---|---|--|
| Sales Tax; Protest Filed: 12/01/00 Period: 01/01/94- 03/31/97 Amount: \$14,016.28 | Asst. AAG Assigned: Plaintiff's Counsel: | Scott Simmons Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin |
|---|---|--|

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: Motion for Summary Judgment hearing held 07/14/03; Summary Judgment granted for Comptroller. Notice of Appeal filed 08/25/03. Appellant's brief filed 10/13/03. Appellees' brief filed 11/13/03. Appellant's reply brief filed 12/03/03. Appellees' amended brief filed 12/12/03. Submitted on Oral Argument 02/04/04. Third Court of Appeals affirmed trial court's Judgment in favor of Comptroller 03/18/04. Petition for Review filed 05/03/04. Respondent waived response 05/20/04. Case forwarded to Court 05/25/04. Petitioner's response was due 07/21/04. Response to Petition for Review filed by Respondent 07/21/04. Petition for Review denied 09/03/04.

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

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

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

Status: Dismissed for Want of Prosecution 12/12/03.

United Services Automobile Association & USAA Life Insurance Co. v. Rylander, et al. Cause #GN103414
#03-02-00747-CV
#03-1172
AG Case #011509643

Sales Tax; Refund

Filed: 10/16/01

Period: 02/01/91-
12/31/99

Amount: \$200,000,000+

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

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

Issue: Whether plaintiffs are exempt from sales taxes because of Tex. Ins. Code arts. 4.10 and 4.11.

Status: Defendants' plea to the jurisdiction set 05/01/02. Summary Judgment for Defendants granted 05/13/02. Plaintiffs filed motion for new trial to extend deadline for appeal. Notice of Appeal filed by Plaintiff 11/27/02. USAA's brief filed 04/07/03. Comptroller's brief filed 06/13/03. Oral argument completed 09/10/03. Appellee's post-submission brief filed 09/16/03. Opinion issued 11/06/03 affirming trial court's Summary Judgment in favor of Comptroller. Petition for Review filed in Tx. Supreme Court 12/19/03. Respondents filed Waiver of Response 01/12/04. Court requested response, filed 02/12/04. Petitioner's reply filed 02/27/04. Briefing on the merits requested 03/25/04. Petitioners' brief filed 04/26/04. Respondents' brief filed 05/28/04. Petitioners' reply brief filed 06/14/04. Petition for Review denied 09/10/04.

Westcott Communications, Inc., Law Enforcement Television Network, Inc., Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al. Cause #98-14049
#03-02-00351-CV
#03-0480
AG Case #991093113

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

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

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

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: Court granted Defendants' Motion for Summary Judgment 05/20/02. Notice of Appeal filed 06/11/02. Clerk's Record filed 07/11/02. Appellants' brief filed 08/23/02. Appellees' brief filed 09/23/02. Appellants' reply brief filed 11/08/02. Submitted on oral argument 11/13/02. Appellees' letter brief filed 11/21/02; post-submission brief filed 12/09/02. Third COA affirmed trial court's judgment 03/20/03. Appellants' Motion for Rehearing filed 04/11/03; Third COA overruled Westcott's Motion for Rehearing 04/24/03. Petition for Review filed in the Supreme Court 06/02/03. Response waived by State 06/17/03. Supreme Court requested a response to the petition; filed by Respondent 08/19/03. Case forwarded to higher court 10/02/03. Supreme Court requested briefs on the merits. Petitioners' brief filed 10/31/03. Respondents' brief filed 11/20/03. Petitioners' reply brief filed 12/22/03. Petition for Review denied 01/30/04.

Index

- Administrative hearing, 90
 - constitutional and statutory requirements, 103, 105, 106, 111, 116
 - finality, 60
- Amusement Tax
 - amusement tax v. sales tax, 43
 - business interference, 90
 - coin operated machines and non-coin operated games, 34
 - Fitness & aerobic training services, 62
 - real property services, 61
 - sale for resale, 43
- Assessment
 - double taxation, 49
 - export items, 49
 - inconsistency with hearing decision, 17
- Audit
 - double taxation, 49
 - procedure, 73
 - Software Services, 49
- Business loss carryforward
 - limitations, 5
 - merger, 9, 10
- Catalogs
 - nexus, 62
 - nexus, taxable use, 37, 63
 - printing, 50
 - use tax--printed out of state, 39, 52
- Cigarette Tax Trust Fund
 - security, 94
- Class Action
 - constitutional and statutory requirements, 85
 - injunctive relief, 115
 - refund suit against vendor, 115
 - sales tax, 44
- Coin operated machines and non-coin operated games
 - amusement tax v. sales tax, 34
- Construction contract
 - lump sum or separated contract, 18, 26
- Country Club fees
 - sales tax, 43
- Credit for Overpaid Tax
 - inventory or bankruptcy, 73, 74
- Creditor
 - payments by distribution, 97
- Data processing, 50
- Debt collection services, 50
- Depreciation
 - straight line or accelerated, 12
- Detrimental reliance, 104
- Direct Marketing
 - advertising materials, 71
- Direct Sales
 - Definition and application, 66
 - nexus, 14
 - refund of tax collected from independent contractor, 106
 - taxable use, sampling, 108
- Domestic Insured
 - constitutional limits on tax, 81
- Electricity
 - insurer exemption, 109
 - manufacturing exemption, 40
 - processing, 37, 55, 64, 67, 68, 72
- Estate Credits
 - claim value of pending lawsuit, 115
- Estate Values
 - taxable gifts, 86
- Factored Contracts
 - cash-basis accounting, 73
- Financing Lease
 - sample audit, 14
- Food Products
 - convenience store/deli, 61
 - mall vendor, 40
- Fraud Audit, 40
- Games
 - amusement tax v. sales tax, 34
- Gross Premiums
 - defaulted auto policies, 75
 - paid-up additions, 79
 - renewal premiums, 79
 - split premium to agent, 77, 78, 80
- Gross receipts
 - apportionment of accounts receivables receipts, 5
 - apportionment of satellite service receipts, 120
 - double taxation, 99
 - interstate telephone charges, 4, 11
 - inventory depletion, 94
 - out-of-state sales, 117
 - severance pay and merger expenses, 6
 - shipping from out of state, 11
- Gross Taxable Sales
 - estimated audit, 51
 - Inadequate Records, 102
- Health Care Supplies
 - sales tax, 21
- High Cost Gas
 - limitations, 89, 99
- Inaccurate Certification
 - burden of proof, 88, 91, 92, 115, 116
 - sampling method, 85, 86, 93, 95, 97, 98,

100, 102, 107, 110, 111, 113
 Independent contractors
 maid service, 18
 Installation Labor
 telecommunications equipment, 65
 Installment Sales
 vehicle financing, 87
 Insurance services, 50
 market value estimate, 83
 out-of-state lab tests, 41
 Insurer Exemption
 limitations, 98, 119
 Interest Offset
 refund to subsidiary, 70
 Intraplant transportation
 manufacturing exemption, 70
 Jeopardy Determination
 business interference, 95
 Joint venture
 Sales tax credits, 12
 Labor
 sales tax, 24
 Leased Property
 gas generation system, 32
 Lien
 community liability, 51
 homeowners' associations, 89, 92
 nullification, 97
 Limitations
 administrative proceedings, 99
 subsequent refund claim, 66
 Lump Sum Motor Vehicle Repairs
 double taxation, 17, 38
 estimates separated, 16
 Software Services, 15
 Maid services
 real property services, 18
 Maintenance
 utility poles, 22
 Manufacturing exemption, 112, 113
 alteration property, 27, 28
 burden of proof, 55
 candy manufacturing, 49
 electricity, 40
 intraplant transportation, 15, 59, 70
 non-taxable services, 23
 packaging, 27, 28
 pipe, 70
 pollution control, 59
 post-mix machines, 42
 rolling stock, 59
 sale for resale, 28, 65
 Mixed drinks, 99
 complimentary, sales tax, 110
 unreasonable classification, 110
 Motor Vehicle Property
 nexus, 59
 Motor Vehicle Seller
 liability for tax, 95
 New construction
 drilling rigs, 69
 labor, 24
 lump sum or separated contract, 26
 original defects, 108
 tax credits, 44
 Nexus
 accounts receivable, 54
 catalogs printed out of state, 37, 62
 delivery and installation of goods, 45
 out-of-state insurer, 107
 promotional materials, 16, 25, 30, 31, 32
 regional salesman, 8, 108
 shipping from out of state, 112
 Occasional sales, 110
 Officer and director compensation
 add-back to surplus, 2, 6
 significant policy-making authority, 2, 3, 4
 Oil well services, 54
 manufacturing exemption, 15
 Open Courts
 prepayment of tax, 114
 Packaging
 sale for resale, 36
 shipment out-of-state, 22, 33
 Parking lot
 repairs, 110
 Penalty
 waiver, 13, 90
 Pipe
 manufacturing exemption, 70
 Pipeline Services
 new construction or maintenance, 23
 Post Production Costs
 order 94 payments, 88
 Predominant use
 electricity, 38
 Premiums
 home warranty insurance, 83
 Prepayment of tax
 Open Courts, 114
 Prizes
 amusement tax v. sales tax, 34
 cost of taxable, 72
 Promotional materials
 nexus, 16, 24, 25, 30, 31, 32
 ownership of, 17, 25, 26, 30, 31
 Proof
 burden in administrative hearing, 38
 Push-down accounting
 depreciation, 10
 merger, 5
 Real Property Appraisal

- ARB appeal, 101
 - burden of proof, 103
- Real Property Repair and Remodeling, 52
 - new construction, pollution control, 71
 - vs. maintenance, 22
- Real property service
 - maid service, 18
- Remodeling
 - ships, 64
- Repair
 - parking lot, 110
- Residential Property
 - market value estimate, 112
- Rule making
 - authority of Comptroller, 50
- S Corporation
 - exempt shareholder, 8
- Sale for resale
 - blanket resale certificates, 29
 - cable equipment, 69
 - computer software, 13
 - data processing, 104
 - detrimental reliance, 22
 - double taxation, 38
 - federal contractor, 19, 20, 30, 35, 36, 41, 45, 46, 47, 48, 53, 55, 56, 57, 58, 60, 71, 117, 118
 - incidental lease, 29
 - telecommunications equipment, 65
- Sample audits
 - compliance with procedures, 33, 35
 - timely exemption certificates, 48
- Sampling technique
 - validity, 35, 36, 90
- Service Charges
 - gratuities, 92
- Successor liability, 53
 - business interference, 96
 - retroactive application, 104
- Surplus Lines Insurer
 - unauthorized insurance tax, 76, 77, 79, 82
- Taxable Surplus
 - impairment calculation, 5
 - natural gas company, 7
- Taxable Value
 - presumption, 87
- Telecommunication Services
 - accounts receivable, 12
 - liability for tax, 96
 - networking services, 12, 65
 - satellite broadcasting, 21
 - TIF assessment, 96
- Telecommunications equipment
 - transfer of care, custody, and control of equipment, 53
- Temporary Workers
 - computer services, 44
- Texas investments, 75
 - bank balances, 81
 - mortgage pools, 76
- Third Party Administration
 - ERISA, 80
- Throwback Rule
 - P.L. 86-272, 7, 8
- Vehicle Storage
 - abandoned vehicle sales, 109
- Vending Machine Sales
 - money validators, 42
 - school sales, 101, 114
- Waste Removal
 - real property services, 15
 - sale for resale, 118
- Write-off
 - investment in subsidiaries, 119