



**OFFICE OF THE ATTORNEY  
GENERAL**

**TAXATION DIVISION**

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

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## Franchise Tax

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

Franchise Tax; Refund  
Filed: 05/12/97  
Period: 1993  
Amount: \$732,559

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

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

Status: Hearing on Cross-Motions for Summary Judgment heard 05/14/98. Plaintiff's Motion granted 05/26/98. Judgment signed 06/25/98. Notice of Appeal filed 09/18/98. Third Court of Appeals reversed and rendered judgment for the Comptroller; the opinion is dated 08/25/99. Taxpayer filed a petition for review 10/07/99. Supreme Court requested briefs on the merits.

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

Franchise Tax; Refund  
Filed: 08/05/98  
Period: 1993-1996  
Amount: \$77,428

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christopher Jackson  
  
Philip P. Sudan, Jr.  
Mark F. Elvig  
Ryan & Sudan  
Houston

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

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

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

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

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

Status: Answer filed.

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

Franchise Tax; Protest Filed: 06/29/98	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 1990-1993 Amount: \$274,831	Plaintiff's Counsel:	Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin

Issue: Whether Plaintiff has nexus with Texas for franchise tax purposes because it holds a certificate of authority.

Status: Judgment for plaintiff. Appeal in progress. Appellants' brief filed.

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

Franchise Tax; Protest Filed: 02/01/99	Asst. AAG Assigned:	Christine Monzingo
Period: 1992 and 1993 Amount: \$331,040.60	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin

Issue: Whether the Comptroller properly applied the throwback rule to apportion gross receipts under the pre-amended statute. Whether the throwback rule violates the commerce clause. Whether the rule as applied is unconstitutionally retroactive and violates due process.

Status: Answer filed.

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

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

Status: Related case set for cross-motions summary judgment 01/31/00.

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

Franchise Tax; Protest Filed: 3/28/96 Period: 1988-1991 Amount: \$804,971	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas
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Issue: Whether certain reserve accounts, including post-retirement benefits, are debt for franchise tax purposes. Whether Tax Code §171.109 (j)(1) is preempted by ERISA.

Status: Answer filed.

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

Franchise Tax; Refund Filed: 06/09/96 Period: 1988-1989 Amount: \$36,289	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether unfunded pension liability is a debt that should be deducted from taxable surplus.

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

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

Franchise Tax; Protest Filed: 08/11/98 Period: 1992-1993 Amount: \$1,209,209	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Gilbert J. Bernal, Jr. James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether the "throw-back" rule applies to Plaintiff's sales to foreign states; whether the "throw-back" rule is constitutional; whether the rule should have been applied retroactively after the 01/01/94 legislative changes.

Status: Non-jury trial 12/13/99 at 9:00 a.m.

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

Franchise Tax; Refund Filed: 10/31/97 Period: 1991-1994 Amount: \$18,788,858	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether post-retirement benefits, if included in surplus by the Comptroller, violate the preemption provision of ERISA? Operating lease obligations--Whether amounts due under fixed term leases are excludable from surplus as debt.

Status: Discovery in progress. Plaintiff challenges the decision in *Sharp v. Caterpillar*, 923 S.W. 2d (Tex.App., Austin, 1996, writ denied).

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

Franchise Tax; Refund Filed: 04/22/98 Period: 1992-1995 Amount: \$218,713	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether all of Gulf Publishing Company's magazine advertising revenue should be allocated to Texas receipts or should be allocated according to location of subscriber.

Status: Discovery in progress.

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

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

Status: Answer filed.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

Franchise Tax; Refund  
Filed: 05/19/99  
Period: 1994 & 1995  
Amount: \$384,530 &  
\$381,167

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 06/05/95	Plaintiff's Counsel:	Fred O. Marcus
Period: 1989-1991		Horwood, Marcus & Braun
Amount: \$19,825		Chicago
		David E. Cowling
		Jones, Day, Reavis & Pogue
		Dallas

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

Status: Hearing on cross-motions for summary judgment 02/24/00.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Fred O. Marcus  
Horwood, Marcus & Braun  
Chicago

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

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

Status: Hearing on cross-motions for summary judgment 02/24/00.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Gerard A. Desrochers  
Baker & Botts  
Houston

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

Status: Inactive.

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

Franchise Tax; Protest &  
Declaratory Judgment  
Filed: 05/12/99  
Period: 1994  
Amount: \$1,257,944.51

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Issue: Whether imposition of the additional tax after Plaintiff's merger violates the commerce clause, due process, equal protection or equal taxation. Whether Plaintiff may recover attorneys' fees.

Status: Answer filed.

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

Franchise Tax; Refund Filed: 03/07/97 Period: 1988-1991 Amount: \$337,869	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Michael V. Powell Locke Purnell Rain Harrell Dallas
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Issue: Whether a liability payable to the Pension Benefit Guaranty Corp. pursuant to ERISA is a debt for franchise tax purposes. Whether §171.109 (a) of the Tax Code is preempted by ERISA.

Status: Discovery in progress.

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

Franchise Tax; Refund Filed: 06/26/98 Period: 1991-1995 Amount: \$207,375	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether Plaintiff's officer and director compensation should be added to taxable surplus for franchise tax purposes.

Status: Inactive.

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

Franchise Tax; Refund Filed: 09/28/93 Period: 1985 & 1986 Amount: \$489,667	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Cynthia M. Ohlenforst Jill B. Scott Hughes & Luce Dallas & Austin
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Issue: Whether Plaintiff may deduct from its surplus the pre-acquisition earnings of certain acquired subsidiaries.

Status: Inactive. Plaintiff in bankruptcy.

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

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

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

Status: Trial held 06/08/98. Court ruled for State 06/23/98. Notice of Appeal filed. Court of Appeals affirmed 05/06/99. Petition for review filed in Supreme Court 06/18/99. Without granting the petition, the Court requested briefs on the merits. Petitioners' brief due 10/11/99; Respondents' due 11/04/99; Petitioners' reply due 11/16/99.

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

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

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

Status: Inactive.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

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

Status: Discovery in progress.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

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

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

Franchise Tax; Protest  
Filed: 4/1/96  
Period: 1992-1993 (3 Beall)  
1992-1995 (Palais)  
Amount: \$700,974

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Mark W. Eidman  
Scott, Douglass &  
McConnico  
Austin

Issue: Whether the 1991 Franchise Tax Statute is unconstitutionally retroactive.

Status: Inactive.

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

Franchise Tax; Protest Filed: 01/31/95 Period: 06/92-12/94 Amount: \$2,465	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Susan E. Potts Brown & Potts Dallas  Mark Gibbons Olson, Gibbons, Sartain, Nicoud, Birne & Sussman Dallas
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Issue: Whether Plaintiff is exempt from franchise tax as a "corporation engaged solely in the business of recycling sludge" per §171.085 of the Tax Code.

Status: Inactive.

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

Franchise Tax; Refund Filed: 07/30/92 Period: 1988 - 1989 Amount: \$1,161,407	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Write-down v. write-off of investment in subsidiaries and exclusion of loss from surplus.

Status: Discussing settlement.

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

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

Status: Inactive.

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***Pilgrim's Pride Corp. v. Sharp, et al.*** Cause #96-07172

Franchise Tax; Refund  
Filed: 06/19/96  
Period: 1989-1991  
Amount: \$345,156

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

Tom Tourtellotte  
Tourtellotte & Kennon  
Austin

Issue: Whether passed audit adjustments should be deducted from taxable surplus; whether amounts due under fixed term leases are excludable from surplus as debt; whether certain other liabilities were incorrectly categorized by the Comptroller as contingent; and whether shorter service lives of depreciable assets should be used in calculating franchise tax.

Status: Discovery in progress. Motion to Retain and Objection to Motion to Retain filed. Waiting for court's order.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

Franchise Tax; Refund  
Filed: 05/19/99  
Period: 1994 & 1995  
Amount: \$1,625 & \$13,750

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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**Reichhold Chemicals, Inc. v. Sharp, et al.** Cause #96-03504

Franchise Tax; Protest Filed: 3/26/96 Period: 1989-1991 Amount: \$193,007	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Kenneth M. Horwitz Vial, Hamilton, Koch & Knox Dallas
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Issue: Whether certain liability accounts that Plaintiff states were established in accordance with FASB No. 38 were erroneously included in taxable surplus by the Comptroller.

Status: Non-jury trial on 02/22/00 at 9:00 a.m.

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

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

Status: Answer filed.

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

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

Status: Inactive.

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

Franchise Tax; Refund/Protest Filed: 04/09/99 Period: 1994-1995 Amount: \$502,834.84 & \$190,000.58	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ira A. Lipstet Therese L. Surprenant Jenkins & Gilchrist Austin
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Issue: Whether Plaintiff may take franchise tax credit as a joint venture partner for equipment sales taxes paid by the joint venture.

Status: Answer filed.

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

Franchise Tax; Refund & Declaratory Judgment Filed: 09/08/99 Period: 01/01/93-12/31/93 Amount: \$345,393	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Gerard A. Desrochers Baker & Botts Houston  Jennifer K. Patterson Baker & Botts Austin
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Issue: Whether the additional tax was owed by a corporation that merged out of existence. Whether imposition of the additional tax on the non-surviving corporation of a merger violated due process, equal protection or the commerce clause. Alternatively, whether the income from the sale of intangibles was properly attributed to Texas. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

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

Status: Discovery in progress.

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

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

Status: Hearing on cross-motions for summary judgment on 01/31/00.

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

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

Status: Inactive.

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

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

Status: Inactive.

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

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

Status: Discovery in progress.

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

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

Issue: Must a dividend be declared to be deductible from surplus? Is Rule 3.405 unconstitutional?

Status: Inactive.

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

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

Issue: Whether officer and director compensation should be added back to earned surplus before calculating franchise tax. Whether the franchise tax statute requires that depreciation be calculated based on the IRS Code of 1986 in effect for calendar year 1990.

Status: Inactive.

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

Franchise Tax; Refund Filed: 02/06/98	Asst. AAG Assigned:	Christine Monzingo
Period: 1993 Amount: \$250,488	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether the 1992 franchise tax on earned surplus is a retroactive tax.

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Answer filed.

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

Franchise Tax; Protest  
Filed: 11/12/98  
Period: 1992-1995  
Amount: \$18,789

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

Franchise Tax; Refund  
Filed: 05/19/99  
Period: 1994  
Amount: \$689

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

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

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

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

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

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

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

Status: On hold pending outcome of *3 Beall Brothers 3, Inc. v. Sharp*.

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**Union Pacific Resources Co. v. Sharp, et al.** Cause #94-06275

Franchise Tax; Refund Filed: 5/25/94	Asst. AAG Assigned:	Gene Storie
Period: 1979-1980 Amount: \$4,504,137	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: *Sage/Samedan*--every issue. Whether Tax Code statutes of limitations bar refund claims for report years 1979-80.

Status: Amended answer with affirmative defense of limitations filed. Settlement agreed to.

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

Franchise Tax; Refund  
Filed: 02/24/95  
Period: 1988-1991  
Amount: \$1,432,851

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

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

Issue: Whether various liabilities should be deducted from surplus as debt, including post-retirement benefits, long-term lease obligations, long-term contractual commitments, and liabilities from ongoing litigation. Also, whether the Tax Code is preempted by ERISA.

Status: Answer filed. Settlement negotiations ongoing.

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

Franchise Tax; Protest  
Filed: 03/01/99  
Period: 01/01/98-12/31/98  
Amount: \$1,077,434

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Glen A. Rosenbaum  
James D. Penny  
Tobey D. Blanton  
Wade Anderson  
Vinson & Elkins  
Houston

Issue: Whether the additional tax under 171.0011 is an unconstitutional violation of the commerce clause, due process, due course of law, equal protection, equal taxation and is an unconstitutional retroactive income tax.

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Discovery in progress. Hearing on Cross Motions for Summary Judgment set for 11/23/99.

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

Franchise Tax; Protest  
Filed: 09/28/98  
Period: 1992-1995  
Amount: \$122,677

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

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

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

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

Marilyn A. Wethekam  
Horwood Marcus & Berk  
Chicago

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

Status: Answer filed.

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

Franchise Tax; Protest Filed: 02/02/93 Period: 1988 - 1990 Amount: \$111,761	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Jasper G. Taylor, III Robert F. Corrigan, Jr. Fulbright & Jaworski Houston
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Issue: Whether the difference between an advance to the sole shareholder and the amount of a promissory note could be deducted from surplus as a reduction in stockholder's equity. In the alternative, was it a write-off of a permanent decline in value of an asset or a write-down?

Status: Discussing settlement.

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

Franchise Tax; Protest Filed: 12/17/98 Period: 01/01/92-12/31/94 Amount: \$1,182,242.67	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark W. Eidman Ray Langenberg Steve Wingard Scott, Douglass & McConnico Austin
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Issue: Whether apportionment of satellite service gross receipts to Texas violates the commerce, due process or equal protection clauses of the Constitution or the Tax Code and Comptroller rules apportioning receipts to the state where a service is performed. Alternatively, whether interest should be waived.

Status: Discovery in progress.

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

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

Status: Discovery in progress.

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

Franchise Tax; Protest Filed: 05/28/99 Period: 1992-1999 Amount: \$2,290,821.39	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether inter-company receivables were improperly allocated to Texas contrary to the "location of payor" rule. Whether the receivables should have been treated as a loan. Whether non-Texas capital gains were improperly offset by capital losses inconsistently with apportionment provisions of the franchise tax. Whether taxpayer had constitutional nexus with Texas. Whether taxpayer was denied equal protection. Whether interest and penalty should be waived. Taxpayer also seeks declaratory judgment and attorneys' fees.

Status: Answer filed.

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## Sales Tax

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

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

Issue:

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 06/03/99 Period: 1992-1993 Amount: \$467,142.31	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Gerard A. Desrochers Baker & Botts Houston  Jennifer K. Patterson Baker & Botts Austin
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Issue: Whether materials are provided by Plaintiff to its customers in the course of its motor vehicle repairs under lump sum contracts, requiring Plaintiff to pay tax on the cost of materials. If Plaintiff's contracts are lump sum, whether Plaintiff is entitled to credit for tax collected from its customers and remitted to the Comptroller. Whether software services are taxable when the seller of the services contributes rather than sells the software itself. Whether software services are exempt under §151.346 as sales between affiliated entities of previously exempt services. Whether interest should have been waived. Whether any of the above issues result in a denial of equal protection, equal and uniform taxation or due process under the federal and state constitutions.

Status: Answer filed.

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

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

Status: Answer filed.

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

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

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

Status: Answer filed.

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

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

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

Status: Answer filed.

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**Arco Chemical Co. v. Sharp, et al.** Cause #96-01027

Sales Tax; Refund Filed: 01/26/96	Asst. AAG Assigned:	Christopher Jackson
Period: 1990 Amount: \$240,160	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

Issue: Whether piping, electric equipment, and concrete stands are exempt as manufacturing equipment in the manufacture of propylene oxide, tertiary butyl alcohol and styrene monomer.

Status: Settlement agreed to.

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

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

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

Status: Inactive.

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

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

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

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Some discovery done. Inactive.

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

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

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

Status: Discovery near completion.

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

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

Status: Answer and plea to the jurisdiction filed. Discovery in progress. Motion for Summary Judgment heard and granted 02/25/99.

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

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

Status: Discovery in progress.

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

Sales Tax; Refund Filed: 09/20/96 Period: 07/01/86-12/31/89 Amount: \$32,788	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether utility pole replacement services are non-taxable maintenance or taxable repair labor.

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Trial set for 12/13/99.

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

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

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

Status: Answer filed.

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

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

Status: Discovery in progress.

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

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

Status: Discovery in progress.

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

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

Issue: Whether penalty and interest should have been waived by the Comptroller on the audit liability.

Status: Discovery in progress.

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

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

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

Status: Summary Judgment for Plaintiff signed 01/20/99. Appellate briefs filed. Oral argument held 10/27/99.

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

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

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

Status: Discovery in progress.

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

Sales Tax; Refund Filed: 01/15/97 Period: 01/01/92-06/30/93 Amount: \$6,762	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Judy M. Cunningham Attorney at Law Austin
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Issue: Whether §151.311 of the Tax Code, as it existed during the audit period, discriminated against the federal government because it did not exempt purchases of contractors improving federal property while it did exempt purchases by contractors improving state property.

Status: Possible settlement pending.

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

Sales Tax; Protest Filed: 04/03/98 Period: 01/01/89-09/30/92 Amount: \$472,225	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Answer filed.

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

Sales Tax; Protest Filed: 04/03/98 Period: 10/01/98-03/31/96 Amount: \$748,773	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

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

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

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

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

Status: Discovery in progress.

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

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

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

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

Sales Tax; Protest Filed: 07/17/98 Period: 01/01/93-09/30/95 Amount: \$83,910	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  Stephen P. Dillon Lindeman & Dillon Houston
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Issue: Whether the Comptroller used the proper sampling procedure and whether Plaintiff was correctly notified of the procedure to be used.

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 12/22/98 Period: 01/01/91-09/30/95 Amount: \$133,146.26	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Mark W. Eidman Ray Langenberg Paige Arnette Scott, Douglass & McConnico Austin
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Issue: Whether various service activities such as landscaping, cleaning and waste removal are taxable real property services. Whether any tax due is owed by independent contractor service providers under a tax-included contract. Whether tax was assessed on non-taxable new construction. Whether the assessment violates equal protection and whether interest should be waived.

Status: Answer filed.

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

Sales Tax; Refund Filed: 09/06/96 Period: Not Stated Amount: \$698,491	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Various real property issues, including: whether repainting operations were repair and remodeling or periodic maintenance; whether the statute of limitations ran on a refund claim, where the statute had run on the vendor; whether work on a metering system was remodeling or new construction; whether Plaintiff is entitled to a refund of city taxes paid to Houston.

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Discovery in progress.

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

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

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 10/13/98 Period: 07/01/90-12/31/93 Amount: \$1,076,019	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether the purchase of sales catalogs printed out of state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

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

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

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

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

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

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

Status: Answer and Plea to the Jurisdiction filed.

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

Sales Tax; Refund Filed: 10/18/91 Period: 01/01/87 - 03/31/90 Amount: \$62,465	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  John D. Bell Wood, Boykin & Wolter Corpus Christi
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Issue: Whether predominant use of electricity from Plaintiff's meter is exempt. Whether burden of proof in administrative hearing should be clear and convincing evidence or preponderance of the evidence.

Status: Special Exceptions and Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

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

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

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

Issue: Whether removal of asbestos is an exempt service.

Status: Settlement pending in accordance with *Associated Technics*.

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

Sales Tax; Protest Filed: 12/07/95 Period: 04/01/89-06/19/95 Amount: \$14,125	Asst. AAG Assigned:  Plaintiff's Counsel:	Walter Dean  Paul Price Tom Wheat Pearson & Price Corpus Christi
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Issue: Whether Plaintiff is entitled to the exemption for wrapping and packaging materials it uses to package plastic pellets sent to it by the manufacturer of the pellets.

Status: Discovery in progress.

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

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

Status: Inactive.

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

Sales Tax; Declaratory Judgment Filed: 04/25/96 Period: 05/01/88-02/29/92 Amount: \$105,491	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Judy M. Cunningham James D. Blume Dallas
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Issue: Whether the purchase of an airplane was exempt as a sale for resale.

Status: Discovery in progress.

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

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

Status: Discovery in progress.

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

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

Status: Discovery in progress.

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

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

Status: Possible settlement pending.

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

Sales Tax; Protest Filed: 05/18/95 Period: 07/01/90-02/28/94 Amount: \$226,413	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Charles L. Perry Arter & Hadden Dallas
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Issue: Plaintiff contends that inventory samples should not have been taxed because they were ultimately sold and tax was collected. Also, whether cardboard rolls and plastic wrapping are exempt under the manufacturing exemption.

Status: Summary Judgment pending.

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

Sales Tax; Declaratory Judgment Filed: 05/13/97 Period: 04/01/91-03/31/95 Amount: \$150,214	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Russell J. Stutes, Jr. Scofield, Gerard, Veron, Singletary & Pohorelsky Lake Charles, Louisiana
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Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks.

Status: Plaintiff's discovery responses overdue.

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

Sales Tax; Declaratory Judgment Filed: 11/13/95 Period: 04/01/91-03/31/95 Amount: \$150,214	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Russell J. Stutes, Jr. Scofield, Gerard, Veron, Singletary & Pohorelsky Lake Charles, Louisiana
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Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks. Plaintiff asks for a declaratory judgment and damages/attorneys fees under 42 USC §§1983 and 1988.

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

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

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

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

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

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

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

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

Status: Answer filed.

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

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

Issue: Whether the Comptroller complied with the law governing sample audits. Whether the agreement extending the statute of limitations was timely signed.

Status: Judgment for Defendants.

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

Sales Tax; Protest; Declaratory Judgment Filed: 10/20/98 Period: 08/1-30/98 Amount: \$2,054	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  John Christian Foster, Malish & Hill Austin
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Issue: Whether sales tax is due on the portion of country club membership fees designated as "capital improvement fees" and "gratuities."

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

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

Sales Tax; Protest Filed: 12/13/91 Period: 10/01/87 - 06/30/90 Amount: \$22,326	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Robert C. Cox Dallas
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Issue: Whether Comptroller could tax an arbitrary percentage of ingredients in complimentary mixed drinks and whether ingredients are exempt because they are taxed elsewhere. Is tax due on repairs to parking lot? Whether purchase of items from Ramada Inn is exempt as entire operating assets of a business or identifiable segment.

Status: Answer filed.

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

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

Status: Discovery in progress. Trial set for 02/07/00.

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

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

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

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

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

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

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

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

Status: Discovery in progress.

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

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

Issue: Plaintiff contests the suspension of his Texas Customs Broker License and disagrees with the Comptroller's policy that brokers must actually see goods being exported before affixing their stamps.

Status: State's motion for summary judgment heard 06/10/98. Court ruled for State, upholding license suspension and finding standard of review to be substantial evidence. Notice of appeal filed. Oral Argument occurred 03/24/99. Third Court of Appeals reversed substantial evidence determination and remanded for further proceedings. Summary Judgment on Macias' license suspension 12/99. If successful, trial on suspension period in early 2000.

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

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

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

Status: Summary Judgment to be filed. Possible settlement pending.

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

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

Status: On hold pending conclusion of the audit.

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

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

Status: Answer filed.

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

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

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

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

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

Status: Discovery in progress.

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

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

Status: Answer filed; inactive.

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

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

Status: Discovery in progress.

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

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

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 09/25/97 Period: 02/01/87-08/31/90 Amount: \$393,497	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Curtis J. Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether municipal franchise fees paid by Plaintiff and passed on to its customers should be included in taxable cable services. Whether certain services, labor to lay new lines, purchased by Plaintiff were taxable repair and remodeling or were exempt new construction.

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Inactive.

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

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 04/01/97	Plaintiff's Counsel:	Gerard A. Desrochers
Period: 01/01/90-12/31/90		Jennifer Patterson
Amount: \$57,815		Baker & Botts
		Houston

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

Status: See Cause No. 95-00690

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

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

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

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

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

Sales Tax; Protest Filed: 03/05/99 Period: 01/01/93-06/30/96 Amount: \$206,971.88	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin  Martin I. Eisenstein Brann & Isaacson Lewiston, Maine
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Issue: Whether use tax is owed on catalogs mailed from out of state. Whether imposition of use tax violates the commerce clause, equal protection and equal taxation. Whether taxpayer may recover attorneys' fees under the Uniform Declaratory Judgments Act.

Status: Answer filed.

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

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

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

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

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

Status: Inactive.

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**Residential Information Services Limited Partnership v. Sharp, et al.** Cause #97-10302

Sales Tax; Refund  
Filed: 09/08/97  
Period: 1996  
Amount: \$914,667

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

Issue: Whether a payment ("lease termination charge") made to the lessor to extinguish the lessee's obligations under an equipment lease is part of the taxable lease amount.

Status: State's Motion for Summary Judgment granted 03/31/98. Plaintiff has appealed. Parties' briefs filed in 07/98. Oral Argument held 12/09/98. Decision affirming judgment for Comptroller issued 04/08/99. Petition for review due filed; denied. Motion for Rehearing filed.

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

Sales Tax; Protest  
Filed: 11/22/96  
Period: 07/01/89-09/30/92  
Amount: \$270,217

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

Paul O. Price  
Richard E. Flint  
The Kleberg Law Firm  
Corpus Christi

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

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

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

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

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

Status: Discovery in progress.

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

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

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

Status: See *Dallas SMSA*.

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

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

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

Status: Answer filed.

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

Sales Tax; Protest & Declaratory Judgment Filed: 07/01/99 Period: 07/01/95-05/31/97 Amount: \$140,936.92	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Kevin W. Morse Blazier, Christensen & Bigelow Austin
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Issue: Whether the portion of Plaintiff's gym membership fee allocated to aerobic training is included in Plaintiff's taxable amusement services. Whether the Comptroller improperly disregarded the rule addressing non-taxable aerobic and tanning services under the amusement services tax. Whether the Comptroller should have applied its detrimental reliance policy.

Status: Summary Judgment set for 10/26/99. Discovery ongoing.

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

Sales Tax; Refund Filed: 04/08/99 Period: 10/01/88-12/31/91 Amount: \$1,792,421.59	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether use tax is owed on catalogs printed and shipped from out-of-state. Whether any taxable use was made or any consideration received by plaintiff. Whether "distribution" is a taxable use and whether the Comptroller's rule identifying it as such is valid. Whether imposition of the tax violates the due process, commerce, or equal protection clauses. Alternatively, whether calculation of the tax as on the correct cost basis, whether tax should not be collected because the catalogs are "books," and whether penalty should be waived.

Status: Answer filed.

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

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

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

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

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

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

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

Status: Discovery in progress.

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

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

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

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

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

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

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

Status: Answer filed.

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

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

Issue: Whether networking services are taxable as telecommunications services.

Status: Answer filed.

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

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

Status: Summary Judgments to be filed.

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

Sales Tax; Injunction Filed: 11/30/95 Period: 01/01/88-12/31/91 Amount: \$54,068	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Kenneth Thomas Attorney at Law Dallas
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Issue: Whether certain resale certificates should have been accepted by the Comptroller during the audit. Whether an injunction to suspend all collection activity should be granted.

Status: Discovery in progress.

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

Sales Tax; Protest Declaratory Judgment Filed: 10/06/99 Period: 10/01/91-03/31/93 Amount: \$146,484.05	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  David Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas
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Issue: Whether Plaintiff sold electricity for commercial use when it obtained electrical service under a management agreement for another company which used the electricity in manufacturing or processing. Whether the exemption for electricity used in manufacturing requires the purchaser of electricity to be the user. Whether Plaintiff can be held as a seller of electricity in violation of the TPURA. Whether Plaintiff's right to equal and uniform taxation has been violated. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

Sales Tax; Protest Declaratory Judgment Filed: 10/05/99 Period: 07/01/89-12/31/91 Amount: \$479,719.44	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  David Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas
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Issue: Whether Plaintiff sold electricity for commercial use when it obtained electrical service under a management agreement for another company which used the electricity in manufacturing or processing. Whether the exemption for electricity used in manufacturing requires the purchaser of electricity to be the user. Whether Plaintiff can be held as a seller of electricity in violation of the TPURA. Whether Plaintiff's right to equal and uniform taxation has been violated. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

Sales Tax; Refund Filed: 08/25/98 Period: 01/01/94-04/03/96 Amount: \$85,430	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  Ron Patterson Kliwer, Breen, Garaton, Patterson & Malone, Inc. Austin  Michael R. Garatoni Guaranty Center San Antonio
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Issue: Plaintiff contends that because it operates a common-carrier pipeline and is a certificated or licensed carrier of property it may avoid sales tax on repair, remodeling, and maintenance services purchased in connection with the maintenance and repair of aircraft Plaintiff owns and uses in operating its common-carrier pipeline.

Status: Discovery in progress.

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

Sales Tax; Refund Filed: 06/05/90 Period: 01/01/85 - 06/30/88 Amount: \$294,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  Ira A. Lipstet Jenkins & Gilchrist Austin
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Issue: Are pipes exempt as manufacturing equipment or taxable as intra plant transportation?

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

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

Sales Tax; Protest Filed: 06/17/99 Period: 03/93-05/95 Amount: \$112,684.43	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  Ron Patterson Kliewer, Breen, Garatoni, Patterson & Malone Austin  Michael R. Garatoni Kliewer, Breen, Garatoni, Patterson & Malone San Antonio
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Issue: Whether Plaintiff, a common carrier gas pipeline operator, may claim a sales and use tax exemption on its purchase of an airplane. Whether airplane repair and replacement parts are exempt.

Status: Answer filed.

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**Turnkey Construction, Inc. v. Sharp, et al.** Cause #98-12767

Sales Tax; Protest Filed: 11/13/98	Asst. AAG Assigned:	Jim Cloudt
Period: 10/01/91-10/31/95 Amount: \$172,292	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether the addition of Vapor Recovery System to serve station fuel storage tanks is new construction or real property repair and remodeling.

Status: Discovery in progress. Judgment for taxpayer 07/21/99. Findings of Fact and Conclusions of Law filed 08/11/99.

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

Sales Tax; Protest Filed: 05/18/93	Asst. AAG Assigned:	Blake Hawthorne
Period: 01/01/85 - 12/31/88 Amount: \$419,382	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

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

Status: Discovery in progress.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Discovery answered by Plaintiff.

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## Insurance Tax

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

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

Status: Trial set 01/18/00.

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

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

Status: Trial set 01/18/00.

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

Maintenance Tax; Refund &  
Declaratory Judgment

Filed: 05/27/99

Period: 1998

1998

1998

1998

Amount: \$2,036.27

\$17,389.16

\$43,339.45

\$32.41

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Stephen L. Phillips

Julie K. Lane

Roan & Autrey

Austin

Issue: Whether the workers' compensation maintenance tax surcharge should be calculated on premiums actually written or premiums including deductible amounts.

Status: Should be non-suited.

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

Gross Premium Tax; Protest

Filed: 05/08/86

Period: 1985-1988

Amount: \$1,745,569

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

Fred B. Werkenthin

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.

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

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

Status: Trial set 01/18/00.

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

Independently Procured Insurance Tax; Protest Filed: 05/17/99 Period: 1991-1997 Amount: \$427,148.80	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether statute levying tax on independently procured insurance is unconstitutional under the *Todd Shipyards* case.

Status: Plaintiff's summary judgment motion filed. Hearing set 02/09/00.

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

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$9,328.01	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

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

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

Status: Answer filed.

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

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

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

Status: Answer filed.

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

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

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

Status: Answer filed.

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

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$8,459.31	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$26,640.79	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

Retaliatory Tax; Protest Filed: 05/26/99 Period: 1998 Amount: \$10,987.86	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether retaliatory insurance tax was improperly assessed because there is no similar Texas insurance company licensed and actually doing business in plaintiff's home state which paid more aggregate taxes than plaintiff. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

Retaliatory Tax; Protest Filed: 07/15/93 Period: 1990-1992 Amount: \$54,511	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Ron Eudy Sneed, Vine & Perry Austin
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Issue: Whether art. 21.46 retaliatory tax has been properly applied to Plaintiff's tax rates in Texas and Alabama, and whether the tax violates equal taxation and equal protection. (Also Plaintiff seeks recovery under the Declaratory Judgments Act and 42 U.S.C. §1983 including attorneys' fees.)

Status: Conference with opposing counsel held.

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

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

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

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

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

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

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

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

Status: Answer filed.

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

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

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

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

Gross Premium Tax; Protest Filed: 04-05-91 Period: 1990 Amount: \$231,114	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  L. G. "Skip" Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether an insurance taxpayer may take a credit for examination and valuation fees paid to Texas in one year against a later year's insurance taxes.

Status: Inactive.

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

Gross Premium Tax; Protest Filed: 05-28-92 Period: 1990 Amount: \$183,719	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  L. G. "Skip" Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether an insurance taxpayer may take a credit for examination and valuation fees paid to Texas in one year against a later year's insurance taxes.

Status: Discovery in progress. Motion for summary judgment set 09/22/99. Summary judgment granted for Defendants.

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

Gross Premium Maintenance Tax; Protest Filed: 10/22/98 Period: 01/01/92-12/31/95 Amount: \$392,737	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Answer filed.

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

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

Status: Answer filed.

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

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

Status: Inactive. Court set on dismissal docket.

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

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

Status: Motion for summary judgment set 08/17/99. Passed. Plaintiff to seek refund from TWCI Fund pursuant to recent legislation.

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

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

Status: Answer filed.

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

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

Status: Answer filed.

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

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

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

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## Controlled Substances Tax

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

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

Status: Plaintiff's Motion for Summary Judgment pending.

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

Controlled Substances Tax; Not stated Filed: 11/03/95 Period: 1992 Amount: \$12,793	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Paul J. Goeke Attorney at Law San Antonio
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Issue: Plaintiff urges that "the evidence was insufficient as a matter of law to support the judgment." Plaintiff also asserts that the assessment of the drug tax violates the double jeopardy provisions of the Fifth Amendment.

Status: Answer filed.

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

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

Status: Inactive.

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

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

Status: Motion to Retain and Objection to Motion to Retain filed. Waiting for court's order.

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

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

Status: Answer filed.

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

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

Status: Plaintiff filed Motion to Non-Suit.

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

Controlled Substances Tax;  
Protest & Declaratory  
Judgment  
Filed: 10-23-92  
Period: 05/24/90  
Amount: \$5,253

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Charles O. Grigson  
Austin

Issue: Constitutionality of Controlled Substances Tax Act.

Status: Some discovery completed. Inactive.

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## Other Taxes

***AT&T Corp. and AT&T Communications of the Southwest, Inc. v. Sharp, et al.***  
Cause #97-02005

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

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

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

Property Tax; Declaratory Judgment Filed: 07/11/96 Period: 1994 Amount: \$Not stated	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Robert Mott Joseph Longoria Perdue, Brandon, Fielder, Collins & Mott Houston
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Issue: Various issues concerning the validity of the Comptroller's property value study.

Status: Answer and Special Exception filed. Inactive. Settlement reached with Canyon ISD. Only La Porte ISD is now pending.

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

Interstate Motor Carrier Sales Tax; Protest Filed: 01/22/97 Period: 02/88-02/92 Amount: \$1,151,784	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the residual value of leased vehicles should be deducted from the lease price that is taxed, when the vehicles are sold back to the lessors at the end of the lease. Whether the tax is fairly apportioned given the amount of business Plaintiff conducts in Mexico.

Status: Discovery in progress.

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

Motor Fuels Tax; Refund Filed: 05/15/97 Period: 04/01/90-03/31/94 Amount: \$316,460	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Plaintiff is a petroleum refiner and a diesel fuel bonded supplier. The Comptroller denied refund claims because they were barred by the one-year statute of limitations in §153.224. Plaintiff contends that the statute of limitations in §111.104 (c) is applicable; that an agreement to extend the statute of limitations applied to Plaintiff's refund request; that the one-year statute does not apply because the refund claim is not made pursuant to Chapter 153 (Motor Fuels Tax); that the Comptroller's guidelines apply the four-year statute in circumstances similar to Plaintiff's; and that, in the alternative, the one-year statute is unconstitutional. There is also a detrimental reliance claim.

Status: Inactive.

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

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

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

Status: Discussions in progress.

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

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

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

Status: Discovery in progress.

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

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

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

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

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

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

Issue: Whether penalty should be waived.

Status: On dismissal docket.

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**Kerrville ISD v. Comptroller** Cause #98-08168

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

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

Status: Settlement discussions in progress.

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**Kyle, Scott E. v. Sharp, et al.** Cause #97-00066

Inheritance Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 01/03/97	Plaintiff's Counsel:	Pro Se
Period: DOD 07/22/83		
Amount: \$99,018		

Issue: Whether the Comptroller's assessment of inheritance tax is barred by the statute of limitations. Whether the value placed on the estate by the Comptroller is correct.

Status: Settlement reached. Agreed judgment signed.

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

Property Tax; Substantial Evidence Review Filed: 08/05/97 Period: 1996 Amount: \$Not stated	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Russell R. Graham Calame, Linebarger, Graham & Pena Austin
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Issue: Whether the Comptroller's property value study is incorrect in that it misstates the market value of the subject property and causes the estimate of market value for Category F to exceed the actual market value of the School District's 1996 tax base, depriving it of state aid to which it is legally entitled.

Status: Discovery in progress.

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

Protest Tax; Refund Filed: 12/22/98 Period: 09/01/93-06/30/96 Amount: \$33,582.58	Asst. AAG Assigned:  Plaintiff's Counsel:	Walter Dean  Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether tax base for cigar and tobacco tax was properly calculated for inventory bought for reduced prices or on a "two-for-one" basis.

Status: Answer filed.

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

Protest Tax; Refund Filed: 02/19/99 Period: 09/01/93-06/30/96 Amount: \$40,404.49	Asst. AAG Assigned:  Plaintiff's Counsel:	Walter Dean  Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Whether promotional allowances or two-for-one sales were "ongoing" or "uniform price" transactions rather than trade discount, special discount or deal for purposes of determining the manufacturer's list price.

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Inactive.

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

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

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

Status: Inactive.

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

Inheritance Tax; Injunction Filed: 06/11/97	Asst. AAG Assigned:	Gene Storie
Period: DOD 11/14/82 Amount: \$279,420.77 plus interest	Plaintiff's Counsel:	Robert W. Swanson Von Kreisler & Swanson Austin

Issue: Whether beneficiaries of an estate owe the balance of inheritance tax not paid by the estate.  
Statute of Limitations question.

Status: Answer filed.

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

Property Tax; Ad Valorem Filed: 08/04/99	Asst. AAG Assigned:	James Parsons
Period: 1994-1998 Amount: \$112,123.6	Plaintiff's Counsel:	Carol V.M. Garcia Assistant Travis County Attorney Austin

Issue: Whether properties in which the University of Texas System owns an interest may be foreclosed  
for payment of property taxes.

Status: Discovery in progress.

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

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

Issue: Plaintiff requests that monies in escrow with the Comptroller's Office be applied to an audit  
liability.

Status: Discovery in progress. Settlement negotiations ongoing.

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

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

Status: Answer filed.

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

Property Tax; Substantial Evidence Review Filed: 08/08/97 Period: 1996 Amount: \$Not stated	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  E. Jeannie Navarro Attorney at Law Austin
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Issue: Whether the Comptroller's property value study is incorrect in that it exceeds the market value of the subject property and causes the estimate of market value for various categories to exceed the actual market value of the School Districts' 1996 tax base, depriving it of state aid to which it is legally entitled. Plaintiffs also assert that the burden of proof is on the State to prove that Plaintiffs' valuations are incorrect.

Status: Cross-Motions for Summary Judgment heard on 06/25/98. Judgment granted to Plaintiff on all but one issue.

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## Closed Cases

### ***American Home Assurance Co., et al. v. Texas Department of Insurance, et al.***

Cause #95-06353

Maintenance Tax; Protest,  
Declaratory Judgment &  
Injunction  
Filed: 05/19/95  
Period: 1995-1997  
Amount: \$8,693,301

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Anthony Icenogle  
Joseph C. Boggins  
DeLeon & Boggins  
Austin

Issue: Whether the maintenance tax should be calculated on the actual premiums collected or the amount of premiums that would have been collected had they not been lowered by applying higher deductibles.

Status: Cross Motions for Summary Judgment heard on 02/17/98. Judgment for Plaintiff signed 06/12/98. State filed motion for new trial. New trial granted on issue of attorneys' fees, only, and amended judgment for Plaintiff signed 09/10/98. State's notice of appeal filed 10/12/98 under the caption of *Commerce & Industry Insurance Co., et al. v. Texas Department of Insurance, et al.* Principal briefs filed. State's Reply brief filed 04/19/99. Argued 05/05/99. Decision pending. Court of Appeals affirms 07/29/99.

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### ***Arkla, Inc. v. Sharp, et al.*** Cause #93-02966

Franchise Tax; Refund  
Filed: 3/12/93  
Period: 1988-1990  
Amount: \$806,476

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

David H. Gilliland  
Clark, Thomas & Winters  
Austin

Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated?

Status: Nonsuited.

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**Associated Technics Co., Inc. and Olmos Abatement, Inc. v. Sharp, et al.** Cause #96-04152

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 04/11/96	Plaintiff's Counsel:	Ann del Llano
Period: 07/01/91-06/30/95 (ATC)		The Trickey Law Firm
01/01/90-09/30/93 (Olmos)		Austin
Amount: \$23,009.88 w/P&I (ATC);		
\$49,179.32 w/P&I (Stacliff);		
\$24,400.13 w/o P&I (Olmos)		

Issue: Whether removal of asbestos is an exempt service.

Status: Trial held 01/05/98. Ruling for Taxpayer, but court upheld State's claim of privilege for legal memoranda. Court of Appeals affirmed Trial Court's Judgment. Comptroller filed Motion for Rehearing. Motion for Rehearing denied.

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**B&A Marketing Co., by and through its Successor-in-Interest, Atlantic Richfield Co. v. Sharp, et al.** Cause #97-01522

Franchise Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 02/07/97	Plaintiff's Counsel:	R. David Wheat
Period: 1992		Emily A. Parker
Amount: \$2,125,372		Thompson & Knight
		Dallas

Issue: Whether Plaintiff is subject to the "additional tax" imposed by Tax Code §171.0011 for the report year in which it dissolved.

Status: Hearing on Cross Motions for Summary Judgment was held 04/27/98. Court granted Plaintiff's Motion for Summary Judgment 08/27/98 and denied the State's MSJ. Comptroller has appealed and Oral Argument was heard 04/14/99. Appeals Court ruled in Defendants' favor.

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***Bethlehem Steel Corp. v. Sharp, et al.*** Cause #96-10644

Franchise Tax; Protest Filed: 09/03/96 Period: 1988-1991 Amount: \$608,029	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether certain liability accounts are excludable from surplus as debt. Whether post-retirement benefits are "debt." If included in surplus, is the preemption provision of ERISA violated?

Status: Non-suit.

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***Bob W. James Co., Inc. v. Sharp, et al.*** Cause #96-07406

Sales Tax; Protest Filed: 06/25/96 Period: 07/01/92-12/31/92 Amount: \$25,546	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Ira A. Lipstet Jenkins & Gilchrist Austin
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Issue: Whether certain services are taxable as real property services or are part of new construction of real property.

Status: Comptroller's Motion for Summary Judgment granted and taxpayer's Motion denied 12/14/98. Defendants' Motion to Modify Judgment filed 12/21/98.

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***Caterpillar, Inc. v. Sharp, et al.*** Cause #93-11176-A

Franchise Tax; Filed: 09/17/93 Period: 1992-1994 Amount: \$2,126,608	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  R. James George, Jr. James F. Martens Austin
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Issue: Whether vacation pay liabilities and other accrued expenses are franchise tax debt. Issues severed from post-retirement benefit issues (Cause No. 93-11176-A).

Status: Inactive. Agreed Judgment.

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**Caterpillar, Inc. v. Sharp, et al.** Cause #93-11176  
Appeals Court No. 03-95-00272-CV

Franchise Tax; Protest  
Filed: 09/17/93  
Period: 1988-1991  
Amount: \$2,473,179

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christine Monzingo  
  
R. James George, Jr.  
James F. Martens  
Austin

Issue: Whether unfunded post-retirement benefit obligations should be excluded from taxable surplus as debt and whether failure to exclude them is preempted by ERISA.

Status: Plaintiff's Motion for Summary Judgment granted. State appealed. Appellate argument heard 01/10/96. Court of Appeals issued an opinion on 09/18/96: (1) reversing Caterpillar's Motion for Summary Judgment on each ground, (2) rendering judgment for the Comptroller on debt, ERISA preemption, and facial equal protection issues, and (3) remanding the equal taxation "as applied" issue for trial. Plaintiff's Motion for Rehearing overruled 11/20/96. Plaintiff's Application for Writ filed 01/17/97. Respondents' brief filed 03/20/97. ERISA preemption is the only issue before the Supreme Court. Writ denied 03/13/98. Case remanded for trial on the equal taxation as-applied claim. Set for 04/05/99. Nonsuit.

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**Central Freight Lines, Inc. v. Sharp, et al.** Cause #96-10645

Franchise Tax; Refund  
Filed: 09/03/96  
Period: 1988-1992  
Amount: \$488,575

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated? Also, whether the 1991 franchise tax amendment is unconstitutionally retroactive.

Status: Non-suit.

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**Champion Spark Plug Co. v. Sharp, et al.** Cause #97-09417

Franchise Tax; Protest Filed: 08/18/97 Period: 1992-1995 Amount: \$7,689	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated? Whether certain reserve accounts were erroneously included in surplus.

Status: Non-suit.

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**CIT Group Sales Financing, Inc. v. Sharp, et al.** Cause #92-01467

Sales Tax; Refund Filed: 02/05/92 Period: 04/01/84-02/28/87 Amount: \$167,123	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  David E. Cowling Joe Garcia, Jr. Jones, Day, Reavis & Pogue Dallas
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Issue: Whether lease contracts separately state finance charges to the customer. Has Comptroller assessed sales tax on top of sales tax?

Status: Plaintiff filed notice of nonsuit.

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**City of Cedar Park v. Capital Metropolitan Transportation Authority and Rylander** Cause #99-180-C26

MTA Tax; Local MTA Filed: 05/21/99 Period: 1999 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  John L. Foster Minton, Burton, Foster & Collins Austin  Leonard B. Smith City Attorney Cedar Park
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Issue: What amounts of local tax are due to Cedar Park and Capital Metro?

Status: Capital Metro's motion to transfer venue set 07/06/99. Comptroller's answer deferred by agreement pending further discussion with Plaintiff. Comptroller non-suited.

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**Coats, Paul Harold v. Sharp, et al.** Cause #96-04420

Controlled Substances Tax; Injunction	Asst. AAG Assigned:	Blake Hawthorne
Filed: 04/18/96	Plaintiff's Counsel:	Brantley Pringle
Period: 07/15/92		Attorney at Law
Amount: \$12,000		Fort Worth

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

Status: Answer filed. Summary Judgment granted for Plaintiff.

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**Commerce & Industry Co., AIU Insurance Co., New Hampshire Insurance Co., Granite State Insurance Co. and Illinois National Insurance Co. v. Texas Department of Insurance, et al.** Cause #97-02617

Maintenance Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 05/23/97	Plaintiff's Counsel:	Joseph C. Boggins
Period: 1996		Anthony Icenogle
Amount: \$158,199		DeLeon, Boggins & Icenogle Austin

Issue: Whether the maintenance tax paid by companies selling workers compensation insurance is disproportionately higher for some insurers because "gross insurance premiums," used to calculate the tax, does not take into account discounts on policies containing deductibles. The tax is based on the premium cost before the discount, and Plaintiff alleges that it receives less in actual premium dollars than an insurer selling policies with discounts for deductibles.

Status: Consolidated with *American Home Assurance*. All original *Commerce & Industry* Plaintiffs non-suited prior to judgment.

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**Continental Drilling Co., Inc. (Now Known as Samson Natural Gas Co.) v. Sharp, et al.** Cause #94-12881

Sales Tax; Protest Filed: 10/13/94 Period: 04/01/88-03/31/91 Amount: \$502,859	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Sales tax was assessed on the sales of twelve drilling rigs. Plaintiff contends the sales were occasional sales and/or sales for resale; also, Plaintiff alleges that the assessments were outside the statute of limitations.

Status: Settled.

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**Cooper Industries and McGraw-Edison Co. v. Sharp, et al.** Cause #96-03563

Franchise Tax; Refund Declaratory Judgment Filed: 3/29/96 Period: 1988-1991 Amount: \$551,348	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether post-retirement benefits can be deducted from surplus as debt. Whether Tax Code §171.109 (j)(1) is being applied retroactively to report years 1988 through 1991. Whether §§171.109 (a) and (j) (1) are preempted by ERISA. Whether certain other estimated liabilities were erroneously included in surplus by the Comptroller.

Status: Dismissed for want of prosecution 06/29/99.

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**Cooper Industries, Inc. and McGraw-Edison Co. v. Sharp, et al.** Cause #96-12365

Franchise Tax; Protest Filed: 10/15/96 Period: 1988-1991 Amount: \$1,346,957	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether post-retirement benefits are a “debt.” If included in surplus, is preemption provision of ERISA violated? Whether certain other estimated liabilities were erroneously included in surplus by the Comptroller. Whether §171.109 (j) (1) is retroactive.

Status: Non-suit.

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**Cooper Industries, Inc. v. Sharp, et al.** Cause #96-08531

Franchise Tax; Protest Filed: 07/22/96 Period: 1992-93 Amount: \$472,589	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff's obligations under its ERISA deferred compensation plan are debt for franchise tax purposes. Whether Tax Code §§171.109(a) and (j)(1) are preempted by ERISA. Whether certain other accruals are “debt.”

Status: Non-suit.

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**Cooper CPS Corp. and Cooper Power Systems v. Sharp, et al.** Cause #95-13734

Franchise Tax; Refund Filed: 11/01/95 Period: 1988, 1990-1991 Amount: \$112,536	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Are post-retirement benefits debt? Does ERISA preempt Tax Code §§171.109(a)(3) and (j)(1)? Denial of equal protection? Was §171.109(j)(1) applied retroactively in contravention of the U.S. and State Constitutions?

Status: Non-suit.

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

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

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

Status: Non-suit.

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***Diaz, Benito Vasquez v. Sharp*** Cause #95-07842

Controlled Substances Tax; Appeal	Asst. AAG Assigned:	Blake Hawthorne
Filed: 06/23/95	Plaintiff's Counsel:	Benito Vasquez Diaz, Pro
Period: 06/22/93		Se
Amount: \$35,114		Huntsville

Issue: Whether the Drug Tax is constitutional.

Status: Case resolved by Summary Judgment.

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***Down Time Services, Inc. v. Sharp, et al.*** Cause #96-03202

Sales Tax; Refund	Asst. AAG Assigned:	Steve Rodriguez
Filed: 03/18/96	Plaintiff's Counsel:	Tom Tourtellotte
Period: 1988-1992		Tourtellotte & Kennon
Amount: \$32,076		Austin

Issue: Whether machinery Plaintiff purchased was acquired for resale in the form of a lease. Whether Plaintiff relied to its detriment on erroneous information from the Comptroller.

Status: Judgment for Plaintiff granted 03/22/99. Judgment not appealed.

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***E.I. Dupont Denemours & Co., Inc. v. Sharp, et al.*** Cause #97-06340

Franchise Tax; Protest & Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 05/28/97	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 1989-1993 1988-1994		James F. Martens
Amount: \$2,347,781 \$11,046,447		Stahl, Martens & Bernal Austin

Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated? Operating lease obligations--Whether amounts due under fixed term leases are excludable from surplus as debt. Whether certain other reserve accounts were erroneously included in surplus.

Status: Non-suit.

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***El Paso Electric Co. v. Sharp, et al.*** Cause #96-03552-A

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 03/27/96	Plaintiff's Counsel:	David H. Gilliland
Period: 1991		Clark, Thomas & Winters
Amount: \$39,835.42		Austin

Issue: Whether unfunded pension liabilities for report year 1991 should be deducted from surplus.

Status: Non-suit.

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***Electronic Data Systems Corp. v. Sharp, et al.*** Cause #92-15381

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 11/04/92	Plaintiff's Counsel:	Cynthia M. Ohlenforst
Period: 1985 - 1986		Hughes & Luce
Amount: \$311,137		Dallas

Issue: Whether minimum operating lease obligations may be deducted from surplus as debt. Whether Comptroller is liable under 42 USC §1983.

Status: Nonsuited.

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***Fina Oil and Chemical Co. v. Sharp, et al.*** Cause #96-06321

Severance Tax; Refund Filed: 05/31/96	Asst. AAG Assigned:	Steve Rodriguez
Period: 01/01/88-08/31/92 Amount: \$141,330	Plaintiff's Counsel:	L. G. "Skip" Smith David H. Gilliland Clark, Thomas & Winters Austin

Issue: Whether certain expenses incurred between the well and point of sale may be deducted as marketing costs.

Status: Non-suited.

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***Fleming Foods of Texas, Inc. v. Sharp*** Cause #95-07405

Interstate Motor Carrier Tax; Protest Filed: 06/14/95	Asst. AAG Assigned:	Steve Rodriguez
Period: 07/01/89-03/31/92 Amount: \$204,809	Plaintiff's Counsel:	J. Scott Morris Attorney at Law Austin

Issue: Whether a taxpayer that already owns and operates a fleet of interstate highway trucks that has a mileage factor of .8374 for the prior year must use the same mileage factor in calculating the interstate motor vehicle tax on a newly acquired fleet of trucks that, under a previous owner, had a lower mileage factor.

Status: Duplicate case to one decided in favor of Comptroller.

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***Four G. Asphalt, d/b/a Big Buck Asphalt v. Sharp, et al.*** Cause #94-13567

Sales Tax; Declaratory Judgment and Injunction Filed: 10/27/94	Asst. AAG Assigned:	James Parsons
Period: 02/01/90-09/30/91 Amount: \$24,660.87 plus accrued penalties & interest	Plaintiff's Counsel:	Donato D. Ramos Person, Whitworth, Ramos, Borchers & Morales Laredo

Issue: Plaintiff asserts that the fraud penalty should not have been assessed.

Status: Agreed Judgment entered.

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**Garza, Ruben Jr. v. Sharp, et al.** Cause #95-01078

Controlled Substances Tax; Declaratory Judgment and Injunction Filed: 01/26/95 Period: 11/10/93 Amount: \$32,556	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  James Stafford Houston
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Issue: Plaintiff contends: Drug tax violates double jeopardy; it constitutes a Bill of Attainder; violates due course of law; violates the Texas self-incrimination clause; it authorizes unreasonable searches and seizures; it deprives Plaintiff of equal protection; and it authorizes revenues from an illegal source.

Status: Plaintiff's Motion for Summary Judgment served 01/21/99.

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**Geartech, Inc. v. Sharp, et al.** Cause #96-12176

Sales Tax; Protest Filed: 10/08/96 Period: 01/01/90-10/31/93 Amount: \$217,070	Asst. AAG Assigned:  Plaintiff's Counsel:	Cecilia Gonzalez  Sharon K. Steckler Attorney at Law Sugar Land
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Issue: Whether the rental of "hobs" should be exempt under the manufacturing exemption and whether the purchase of certain gear machinery and equipment is exempt as an occasional sale.

Status: Order on Notice of Dismissal with Prejudice filed by plaintiff signed on 03/18/99.

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**General Electric Co. v. Sharp, et al.** Cause #97-08149

Franchise Tax; Refund Filed: 07/16/97 Period: 1990-1991 Amount: \$3,552,416	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether post-retirement and other post-employment benefits are a "debt." If included in surplus, is the preemption provision of ERISA violated?

Status: Nonsuited.

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**General Electric Co. v. Sharp, et al.** Cause #98-08687

Franchise Tax; Refund Filed: 08/06/98 Period: 1988-1989 Amount: \$2,303,554	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated?

Status: Nonsuited.

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**Grocers Supply Co., Inc. v. Sharp, et al.** Cause #96-13035

Sales Tax; Refund Filed: 10/25/96 Period: 01/88-07/90 Amount: \$17,857	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Tom Tourtellotte Tourtellotte & Kennon Austin
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Issue: Claim for refund under prior contract exemption and Rule 3.319, as it was in effect between 1984 and 1992. Whether the Comptroller could pass a rule contrary to Rule 3.319 and apply it retroactively. Issue involves exemption for two-party vs. three-party contracts and a policy change.

Status: Cross-motions for Summary Judgment heard 10/23/97. Court ruled for State. Plaintiff appealed. Oral argument heard 05/27/98. Judgment for State affirmed 08/13/98. Plaintiff's Motion for Rehearing overruled 11/30/98. Plaintiff's Petition for Review denied. Motion for Rehearing denied.

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**GTE Service Corp. v. Sharp, et al.** Cause #95-09438

Franchise Tax; Protest Filed: 08/01/95 Period: 1990-1991 Amount: \$193,377	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff's obligations under its Deferred Executive Incentive Plan and Deferred Long Term Incentive Plan qualify as debt for franchise tax purposes.

Status: Agreed Judgment signed.

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**Harnischfeger Corp. v. Sharp, et al.** Cause #95-15706

Franchise Tax; Protest Filed: 12/21/95 Period: 1989-1991 Amount: \$19,045	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether Plaintiff's obligation to pay its employees post-retirement benefits is "debt" for franchise tax purposes.

Status: Non-suit.

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**Harrison, Robert v. Sharp, et al.** Cause #95-12846

Sales Tax; Refund Filed: 10/09/95 Period: 01/01/89-12/31/92 Amount: \$34,742	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  John McDuff Attorney at Law Austin
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Issue: Whether the auditor correctly estimated the liability when Plaintiff's records were totally destroyed by fire.

Status: Non-suited.

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**Highland Shores, Inc. v. Sharp, et al.** Cause #97-00612

Franchise Tax; Refund Filed: 01/16/97 Period: 1991 Amount: \$44,602	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  L. G. "Skip" Smith Clark, Thomas & Winters Austin
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Issue: Whether the 1992 franchise tax on earned surplus is a retroactive tax.

Status: Nonsuited.

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**Houston Arena Theatre, Inc. v. Rylander, et al.** Cause #99-03549

Sales Tax; Injunction Filed: 03/24/99	Asst. AAG Assigned:	Blake Hawthorne
Period: 02/01/93-02/29/96 Amount: \$77,736.94	Plaintiff's Counsel:	Wendle Van Smith Anderson & Smith Houston

Issue: Whether taxpayer owes sales tax on shows put on by exempt organizations when tickets indicate that tax is included. Whether taxpayer is entitled to injunctive relief.

Status: Temporary Injunction Hearing held 04/05/99. Denied. Case resolved by Agreed Judgment.

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**Houston Lighting and Power Co., Successor-In-Interest to Utility Fuels, Inc. v. Sharp, et al.** Cause #95-15014

Franchise Tax; Refund Filed: 12/01/95	Asst. AAG Assigned:	Christine Monzingo
Period: 1988-1990 Amount: \$2,608,946	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

Issue: Whether Plaintiff should be allowed to deduct from surplus as "debt" obligations under four contracts, including a mining agreement.

Status: Nonsuited.

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**Hughes Aircraft Co. v. Sharp, et al.** Cause #94-14021

Franchise Tax; Refund Filed: 11/7/94	Asst. AAG Assigned:	Christine Monzingo
Period: 1989-90 Amount: \$96,287	Plaintiff's Counsel:	Cynthia M. Ohlenforst Paul J. Van Osselaer Hughes & Luce Dallas and Austin

Issue: Whether Plaintiff should be allowed to exclude from surplus certain operating lease obligations.

Status: Nonsuited.

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**Hughes Aircraft Co. v. Sharp, et al.** Cause #97-05387

Franchise Tax; Protest Filed: 05/05/97 Period: 1991-1994 Amount: \$30,697	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Cynthia M. Ohlenforst Barbara Whiten Balliette Hughes & Luce Dallas and Austin
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Issue: Whether Plaintiff should be allowed to exclude from surplus certain operating lease obligations.

Status: Nonsuited.

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**J.C. Penney Co., Inc. v. Sharp, et al.** Cause #94-14979

Franchise Tax; Refund Filed: 12/2/94 Period: 1987-1990 Amount: \$692,280	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether vacation pay, deferred compensation of directors, post-retirement health benefits, cost of living pension pay, supplemental retirement benefits, and corporate relocation expenses are debts for franchise tax purposes. Also, whether the inclusion in surplus of Plaintiff's liability for post-retirement medical benefits violates the federal preemption provision of ERISA.

Status: Nonsuited.

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**Johnson, William E. v. Sharp, et al.** Cause #98-11397

Controlled Substances Tax; Refund Filed: 10/09/98 Period: 7/14/98 Amount: \$65,832	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  C. Wayne Huff Attorney at Law Dallas
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Issue: Whether tax paid under protest to release a lien on property assigned to Plaintiff in lieu of attorneys' fees should be refunded.

Status: Plaintiff's proposed Motion for Summary Judgment submitted. Case resolved by Summary Judgment.

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**Kimberly-Clark Corp. v. Sharp, et al.** Cause #96-14023

Franchise Tax; Protest & Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 11/15/96	Plaintiff's Counsel:	John J. Herson
Period: 1988-1991		Kimberly-Clark Corp.
Amount: \$704,320		Neenah, WI
\$307,280		

Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated? Whether certain other estimated liabilities were erroneously included in surplus by the Comptroller.

Status: Nonsuited.

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**Koch Industries, Inc. v. Sharp, et al.** Cause #98-08011

Franchise Tax; Protest	Asst. AAG Assigned:	Christine Monzingo
Filed: 07/24/98	Plaintiff's Counsel:	L. G. "Skip" Smith
Period: 1992-1995		David H. Gilliland
Amount: \$393,330		Clark, Thomas & Winters
		Austin

Issue: Whether post-retirement benefits are a "debt." Whether certain reserve accounts, including "shadow stock," were erroneously included in surplus.

Status: Nonsuited.

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**Lafarge Corp. v. Sharp, et al.** Cause #96-10664

Franchise Tax; Protest and Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 09/03/96	Plaintiff's Counsel:	Sam Long
Period: 1988-1991		Cassell & Stone
Amount: \$608,913		Dallas

Issue: Whether a write-off of a cement plant should have been added back to surplus. Operating lease obligations--Whether amounts due under fixed term leases are excludable from surplus as debt. Whether certain liability accounts are excludable from surplus as debt. Whether §171.109(j) is unconstitutionally retroactive. Whether post-retirement benefits are a "debt." If included in surplus, is the preemption provision of ERISA violated? Whether Plaintiff should be allowed to use alternative depreciation methods.

Status: Agreed Judgment signed 06/99.

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**McMinn, William A., et al. v. Sharp, et al.** Cause #93-01523

Inheritance Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 02/10/93	Plaintiff's Counsel:	Michael R. Tibbetts
Period: 09/24/83		Delange, Hudspeth & Pitman
Amount: \$236,904		Houston

Issue: Whether certain property is subject to liens filed to insure collection of inheritance tax.

Status: Cross-motions for summary judgment heard on 08/10/98. Ruling for Plaintiff. Judgment being drafted.

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**Merico Abatement Contractors, Inc. v. Sharp, et al.** Cause #93-15460

Sales Tax; Protest	Asst. AAG Assigned:	Jim Cloudt
Filed: 12/17/93	Plaintiff's Counsel:	Ira Lipstet
Period: 10/01/87-03/31/91		Jenkins & Gilchrist
Amount: \$75,379		Austin

Issue: Whether items used for asbestos abatement are exempt from tax. Whether the items are actually resold to Plaintiff's customers and whether they qualify as items used in a pollution control process.

Status: Judgment entered for the State.

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**Minnesota Mining and Manufacturing Co. v. Sharp, et al.** Cause #96-00424

Franchise Tax; Protest and Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 01/11/96	Plaintiff's Counsel:	L. G. "Skip" Smith
Period: 1988-1991		Clark, Thomas & Winters
Amount: \$289,201		Austin

Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated?

Status: Nonsuited.

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**Movie One Theatres, Inc. v. Sharp, et al.** Cause #97-05483

Sales Tax; Protest and Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 05/07/97	Plaintiff's Counsel:	Steven C. Jones
Period: 01/01/94-12/31/94		Steven C. Jones &
09/01/91-12/31/94		Associates
Amount: \$258,945		El Paso

Issue: Plaintiff constructed a twelve-screen theater. The Comptroller assessed tax on the labor, which it considered to be real property repair and remodeling. Plaintiff urges that the labor is tax exempt new construction.

Status: Agreed Judgment 10/12/99.

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

Sales Tax; Protest and Declaratory Judgment	Asst. AAG Assigned:	Cecilia Gonzalez
Filed: 01/15/98	Plaintiff's Counsel:	Rick Harrison
Period: 1988-1992		Harrison & Rial
Amount: \$60,587		Austin
		Gilbert J. Bernal, Jr.
		Stahl, Martens & Bernal
		Austin

Issue: Whether the sample audit resulted in an incorrect assessment because it did not represent actual business conditions. Whether the audit was conducted in accordance with generally recognized sampling techniques.

Status: Judgment for Plaintiff.

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***Proler International Corp v. Sharp, et al.*** Cause #94-06272

Franchise Tax; Protest and Refund	Asst. AAG Assigned:	Christopher Jackson
Filed: 5/25/94	Plaintiff's Counsel:	Mark W. Eidman
Period: 1988-1991		Ray Langenberg
Amount: \$524,326		Scott, Douglass & McConnico
		Austin

Issue: Whether Plaintiff's gross receipts must be based on the cost or equity method of accounting for its joint venture investments, rather than Plaintiff's share of the gross receipts. Equal protection and other constitutional arguments.

Status: Inactive. Nonsuited by Plaintiff 01/28/99.

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***Rapid Design Service-El Paso, Inc. v. Sharp*** Cause #97-02341

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 02/27/97	Plaintiff's Counsel:	H. Christopher Mott
Period: 01/01/90-03/31/94		Krafsur Gordon Mott
Amount: \$55,624		El Paso

Issue: Whether payments from Plaintiff to a limited partnership are taxable lease payments or are non-taxable transfers of amounts collected by Plaintiff as billing agent for a joint venture between Plaintiff and the limited partnership.

Status: Resolved by Agreed Judgment.

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**Sabine Offshore Service, Inc. Successor in Interest to Sabine Marine Co. v. Sharp, et al.** Cause #97-07698

Sales Tax; Refund Filed: 07/03/97 Period: 01/01/90-09/30/93 Amount: \$27,151	Asst. AAG Assigned:  Plaintiff's Counsel:	Walter Dean  Bruce M. Partain Wells, Peyton, Greenberg & Hunt Beaumont
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Issue: Whether sales tax is due on the sale of a vessel where the seller received a resale certificate with a 9-digit taxpayer number. Numbers are supposed to be 11 digits.

Status: Summary Judgment granted for Comptroller. Plaintiff has indicated he will not appeal.

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**Shell Oil Co. v. Sharp, et al.** Cause #94-02717

Franchise Tax; Protest Filed: 3/17/94 Period: 1988-1990 Amount: \$891,777	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Robert H. Hobbs Shell Oil Co. Houston
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Issue: Whether amounts due under operating lease obligations are excludable from surplus as debt.

Status: Nonsuited.

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**Southern Union Co., Successor-in-Interest to Rio Grade Valley Gas Co. v. Sharp, et al.** Cause #95-09417

Franchise Tax; Protest Filed: 07/31/95 Period: 1991-1993 Amount: \$27,385	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether post-retirement benefits should be excluded from taxable surplus as a debt.

Status: Nonsuited.

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**Southwestern Bell Yellow Pages, Inc. v. Sharp, et al.** Cause #95-15015

Franchise Tax; Protest & Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 12/01/95	Plaintiff's Counsel:	David H. Gilliland
Period: 1989-1991		Clark, Thomas & Winters
Amount: \$397,682		Austin

Issue: Whether Plaintiff's operating lease obligations for report year 1991 should be excluded from surplus. Whether Plaintiff's liabilities for employee bonus and incentive awards and post-retirement health, dental, life, and telephone benefits should be excluded from surplus as "debt."

Status: Non-suit.

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**Southwestern Public Service Co. v. Sharp, et al.** Cause #93-01752

Franchise Tax; Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 02/12/93	Plaintiff's Counsel:	David H. Gilliland
Period: 1988-1991		Clark, Thomas & Winters
Amount: \$1,215,015		Austin

Issue: Whether minimum operating lease obligations may be deducted from surplus as debt. Whether Plaintiff may exclude from surplus AFUDC accounts (equity capital to finance construction projects). Does GAAP require different accounting for regulated and non-regulated companies, leading to a *Sage* issue?

Status: Non-suit.

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**Thermodyn Contractors, Inc. v. Sharp, et al.** Cause #97-02947

Sales Tax; Protest	Asst. AAG Assigned:	Christopher Jackson
Filed: 03/11/97	Plaintiff's Counsel:	H. Christopher Mott
Period: 01/01/92-12/31/94		Krafsur Gordon Mott
Amount: \$191,757		El Paso

Issue: Whether Plaintiff, a subcontractor to the Small Business Administration, has a separated or lump sum contract with that agency.

Status: Trial held 08/16/99. Agreed Judgment signed.

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**Timken Co., The v. Sharp, et al.** Cause #97-09594

Franchise Tax; Protest Filed: 08/21/97 Period: 1990-1991 Amount: \$326,609	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas
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Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated? Whether §171.109(j) is unconstitutionally retroactive. Whether certain reserve accounts were erroneously included in surplus. Whether the Comptroller erroneously computed Plaintiff's gross receipts using a method other than GAAP.

Status: Nonsuited.

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**USX Corp. v. Sharp, et al.** Cause #94-04991

Franchise Tax; Refund Filed: 04/28/94 Period: 1988-1991 Amount: \$2,594,285	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Glen A. Rosenbaum Vinson & Elkins Houston
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Issue: Whether post-retirement benefits are a "debt." If included in surplus, is preemption provision of ERISA violated?

Status: Non-suit.

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**Zeppa, Keating V., in his individual capacity as Executor of the Estate of Joseph Zeppa v. Sharp, et al.** Cause #97-09797

Inheritance Tax; Declaratory Judgment Filed: 08/26/97 Period: 07/10/92 Amount: \$399,587.17	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Jasper G. Taylor, III Marcy Hogan Greer Fulbright & Jaworski Houston & Austin
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Issue: Whether Plaintiff is individually liable for inheritance tax. Statute of limitations question.

Status: Hearing on State's Motion for Summary Judgment granted 12/22/97. Judgment affirmed by Third Court of Appeals 12/10/98. Plaintiff's Motion for Rehearing denied. Plaintiff's Petition for Review denied 05/20/99.

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