



**OFFICE OF THE ATTORNEY
GENERAL**

TAXATION DIVISION

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

January 14, 2000

Table of Contents

Table of Cases	xi
Franchise Tax	1
3 Beall Brothers 3, Inc. v. Sharp, et al.	1
Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller	1
AirBorn, Inc. v. Rylander, et al.	2
Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc., Restland Funeral Home; Singing Hills Funeral Homes, Inc., Laurel Land Funeral Home of Fort Worth, Inc., Blue Bonnet Hills Funeral Home, Inc., and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al.	2
Bandag Licensing Corp. v. Sharp, et al.	2
Beef Products, Inc. v. Rylander, et al.	3
Consigned Sales Distributors, Inc. v. Sharp, et al.	3
Dana Corp. v. Sharp, et al.	4
El Paso Electric Co. v. Sharp, et al.	4
Fisher Controls International, Inc. v. Sharp, et al.	4
General Motors Corp. v. Sharp, et al.	5
Gulf Publishing Co. v. Sharp, et al.	5
H.J. Heinz Co., Inc. v. Sharp, et al.	6
H.J. Heinz Co., Inc. v. Sharp, et al.	6
H.J. Heinz Co. v. Rylander, et al.	7
Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al.	7
House of Lloyd, Inc. v. Sharp, et al.	8
House of Lloyd, Inc. v. Sharp, et al.	8
Houston Industries, Inc. v. Sharp, et al.	9
Jiffy Lube International, Inc. v. Rylander, et al.	9
Kraft Foods, Inc. v. Rylander, et al.	9
LTV Steel Co., Inc. v. Sharp, et al.	10
Lyondell Chemical Worldwide, Inc., formerly known as Arco Chemical Co. v. Rylander, et al.	10
May Department Stores Co., The v. Sharp, et al.	11
MCorp v. Sharp, et al.	11
Nabisco, Inc. and Planters/Lifesavers v. Sharp, et al.	11
Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al.	12
Nevada Asset Management Corp. v. Rylander, et al.	12
North Star Steel Texas, Inc. v. Sharp, et al.	13

Ore-Ida Foods, Inc. v. Sharp, et al.	13
Ore-Ida Foods, Inc. v. Sharp, et al.	13
Ore-Ida Foods, Inc. v. Rylander, et al.	14
Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.	14
Peter Scalamandre & Sons, Inc. et al. v. Sharp, et al.	15
Phillips Petroleum Co. v. Sharp, et al.	15
Phillips Petroleum Co. v. Sharp, et al.	15
Portion Pac, Inc. v. Sharp, et al.	16
Portion Pac, Inc. v. Sharp, et al.	16
Portion Pac, Inc. v. Rylander, et al.	17
Reliant Energy Gas Transmission Co, formerly known as Noram Gas Transmission Co. v. Rylander, et al.	17
Richland Development Corp. v. Rylander, et al.	17
Richland Development Corp. v. Comptroller, et al.	18
Saudi Refining, Inc. v. Rylander, et al.	18
Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al.	19
Sergeant Enterprises, Inc. v. Sharp, et al.	19
Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al.	20
Southern Union Co. v. Sharp, et al.	20
Southern Union Co. v. Sharp, et al.	20
Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. . Sharp	21
Southwestern Explosives, Inc. v. Bullock, et al.	21
Southwestern Bell Telephone Co. v. Sharp, et al.	22
Southwestern Gas Pipeline, Inc., Mitchell Energy Corp. & and The Woodlands Commercial Properties Co., L.P. v. Rylander, et al.	22
Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.	22
SRI Receivables, Inc. v. Rylander, et al.	23
Star-Kist Foods, Inc. v. Sharp, et al.	23
Star-Kist Foods, Inc. v. Sharp, et al.	24
Star-Kist Foods, Inc. v. Rylander, et al.	24
Tesoro Petroleum Corp. v. Sharp, et al.	25
Texaco Refining & Marketing (East), Inc. v. Rylander, et al.	25
Texas Aromatics, Inc. v. Sharp, et al.	25
Union Pacific Resources Co. v. Sharp, et al.	26
United Beverage Co. v. Rylander, et al.	26
Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al.	27
Upjohn Co., The v. Sharp, et al.	27
Weight Watchers Food Co. v. Sharp, et al.	27
Weight Watchers Gourmet Food Co. v. Rylander, et al.	28
West Texas Gas, Inc. v. Sharp, et al.	29

Westcott Communications, Inc., Law Enforcement Television Network, Inc., Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al.	29
Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al. . . .	29
Xerox Credit Corp. v. Rylander, et al.	30
Sales Tax	31
Abbassinezhad, Akbar v. Rylander, et al.	31
Alexopolous, Dimitrios P. v. Rylander, et al.	31
Alpine Industries, Inc. v. Sharp, et al.	31
American Oil Change Corp. v. Rylander, et al.	32
American Standard, Inc. v. Sharp, et al.	32
American Telephone & Telegraph Co. v. Sharp, et al.	33
Aramis Services, Inc. v. Sharp, et al.	33
Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al.	33
Bell Bottom Foundation Co. v. Rylander, et al.	34
BHC Co. v. Sharp, et al.	34
B.I. Moyle Associates, Inc. v. Rylander, et al.	34
Big Tex Air Conditioning, Inc. v. Bullock, et al.	35
Brighton Builders, Inc. v. Sharp, et al.	35
Brown, William A. d/b/a Nortex Investigative Services v. Sharp, et al.	35
Cafeteria Operators, L.P. v. Rylander, et al.	36
Capital Guidance Associates IV v. Sharp, et al.	36
Central Power & Light Co. v. Sharp, et al.	37
Chevron Chemical Co. v. Rylander, et al.	37
Cinco Hermanos, Inc. v. Sharp, et al.	37
Clinique Services, Inc. v. Sharp, et al.	38
Coastal Refining & Marketing, Inc. v. Sharp, et al.	38
Commercial Janitorial Services, Inc. v. Sharp, et al.	39
Computer Systems of America, Inc. v. Sharp, et al.	39
Dallas SMSA Partnership v. Sharp, et al.	39
Denmon's H2 Safety Services, Inc. v. Sharp	40
El Paso Silverton Construction Co., Inc. v. Sharp, et al.	40
Estee Lauder Services, Inc. v. Sharp, et al.	40
Estee Lauder Services, Inc. v. Sharp, et al.	41
Etan Industries, Inc. v. Sharp, et al.	41
F.C. Felhaber & Co., Inc. v. Sharp, et al.	42
Fiesta Texas Theme Park, Ltd. v. Sharp, et al.	42
Fleming Foods of Texas, Inc. v. Sharp, et al.	42
Garza, Lawrence v. Sharp, et al.	43
Gateway Homes, Inc. v. Sharp, et al.	43
GATX Terminals Corp. v. Sharp, et al.	44
GATX Terminals Corp. v. Sharp, et al.	44
Graybar Electric Co., Inc. v. Sharp, et al.	44
Grocers Supply Co., Inc. v. Sharp, et al.	45

Grocers Supply Co., Inc. v. Sharp, et al.	45
H.J. Wilson Co., Inc. v. Sharp, et al.	45
Haber Fabrics Corp. v. Sharp, et al.	46
Heritage Numismatic Auctions, Inc. & Heritage Capital Corp. v. Rylander, et al.	46
Herndon Marine Products, Inc. v. Sharp, et al.	47
Hoffer Furniture Rental, Inc. v. Sharp	47
Holzem, Inc. v. Sharp, et al.	47
Houston Industries Building, Inc. v. Rylander, et al.	48
Interpak Terminals, Inc. v. Sharp, et al.	48
Irv-Tex Coin Laundries, Inc. v. Sharp, et al.	48
Jett Racing and Sales, Inc. v. Sharp, et al.	49
Kandi Sue, Inc. v. Sharp, et al.	49
Kroger Co., The v. Sharp, et al.	49
Kunz Construction Co., Inc. v. Sharp, et al.	50
L. D. Brinkman & Co., Inc. v. Sharp, et al.	50
Lake Charles Yamaha, Inc. v. Sharp	51
Lake Charles Yamaha, Inc. v. Morales, et al.	51
Lake Charles Yamaha, Inc. v. Morales, et al.	51
Landgraf, Larry A. dba Landgraf & Co., Inc. v. Rylander, et al.	52
Laney, James M. v. Sharp, et al.	52
Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al.	52
Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al.	53
Lee Construction and Maintenance Co. v. Rylander, et al.	53
Leyendecker Construction, Inc. v. Sharp, et al.	53
Local Neon Co., Inc. v. Rylander, et al.	54
Lopez-Gloria Construction Services, Inc. v. Sharp, et al.	54
Lucky Lady Oil Co. v. Rylander, et al.	54
Macias, David Ronald v. Sharp	55
Mazanec Construction Co., Inc. v. Sharp, et al.	55
Medaphis Physicians Services Corp. v. Sharp, et al.	56
National Business Furniture, Inc. v. Sharp, et al.	56
Neiman Marcus Group, Inc. v. Sharp, et al.	56
North American Intelcom, Inc., et al. v. Sharp, et al.	57
North Texas Asset Management, Inc. v. Sharp, et al.	57
Norwood Homes, Inc. v. Sharp, et al.	58
Ontario Investments, Inc. v. Sharp, et al.	58
Paragon Communications v. Sharp, et al.	58
Perry Homes, A Joint Venture v. Sharp, et al.	59
Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al.	59
Petrolite Corp. v. Sharp, et al.	59
Praxair, Inc. v. Sharp, et al.	60
Praxair, Inc. v. Sharp, et al.	60

Prodigy Services Co. v. Rylander, et al.	60
R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al.	61
Reflectone Training Systems, Inc. v. Bullock, et al.	61
Ryder Truck Rental, Inc. v. Sharp, et al.	62
Samedan Oil Corp. v. Sharp, et al.	62
San Antonio SMSA\ Limited Partnership v. Sharp, et al.	62
Schmitz Industries, Inc. v. Sharp	63
Schoenborn & Doll Enterprises, Inc. v. Rylander, et al.	63
Sears Roebuck & Co. v. Rylander, et al.	64
Service Merchandise Co., Inc. v. Sharp, et al.	64
Southwest Pay Telephone Corp., Successor in Interest to Southwest Pay Telephone Systems, Inc. v. Sharp, et al.	64
Southwest Subrogation Services, Inc. v. Sharp, et al.	65
Spaw-Glass, Inc. and Spaw Glass Construction Co. v. Rylander, et al.	65
Sprint International Communications, Inc. v. Sharp, et al.	66
Steamatic of Austin, Inc., et al. v. Sharp, et al.	66
Sung Ju Choi d/b/a Sam Young Trading Co. v. Sharp	66
TCCT Real Estate, Inc. v. Rylander, et al.	67
TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al.	67
Tennessee Gas Pipeline Co. v. Sharp, et al.	68
Texas Gulf, Inc. v. Bullock, et al.	68
Transcontinental Gas Pipeline Corp. v. Rylander, et al.	68
Union Carbide Chemicals & Plastics Co., Inc. v. Sharp, et al.	69
United Services Automobile Association v. Sharp, et al.	69
U.S. On-Line Cable v. Rylander, et al.	70
Wal-Mart Stores, Inc. v. Sharp, et al.	70
Waller Hotel Group, Inc. v. Sharp, et al.	70
West Texas Pizza, Limited Partnership v. Sharp, et al.	71
Westar Hotels, Inc. v. Sharp, et al.	71
Young's Beer Barn, Inc. v. Sharp	71
Insurance Tax	73
All American Life Insurance Co., et al. v. Sharp, et al.	73
All American Life Insurance Co. v. Sharp, et al.	73
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 . . .	74
American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al.	74
American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al.	75
Dow Chemical Co. v. Rylander, et al.	75
Federal Home Life Insurance Co. v. Rylander, et al.	75
First Colony Life Insurance Co. v. Rylander, et al.	76

GE Life and Annuity Assurance Co., fka Life Insurance Co. of Virginia v. Rylander, et al.	76
General Electric Capital Assurance Co. v. Rylander, et al.	76
Great Northern Insured Annuity Corp. v. Rylander, et al.	77
Harvest Life Insurance Co., The v. Rylander, et al.	77
Heritage Life Insurance Co. v. Rylander, et al.	77
IDS Life Insurance Co. v. Rylander, et al.	78
Liberty National Life Insurance Co. v. Martha Whitehead, et al.	78
Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.	78
Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.	79
Principal Life Insurance Co. v. Rylander, et al.	79
Redland Insurance Co. v. State of Texas, et al.	79
Southwestern Life Insurance Co. v. Philip Barnes, et al.	80
Southwestern Life Insurance Co. v. Georgia Flint, et al.	80
Southwestern Life Insurance Co. v. Sharp, et al.	80
State Farm Life Insurance Co. v. Cornyn, Rylander, et al.	81
Texas Workers' Compensation Insurance Facility v. Comptroller	81
Texas Workers' Compensation Insurance Facility v. Comptroller, et al.	82
Union Fidelity Life Insurance Co. v. Rylander, et al.	82
United American Insurance Co. v. Rylander, et al.	82
Universe Life Insurance Co. v. State of Texas	83
Warranty Underwriters Insurance Co. v. Rylander, et al.	83
Controlled Substances Tax	85
Martinez, Jesus Manuel v. Sharp, et al.	85
Oliveira, Leonel v. Rylander, et al.	85
Popp, Robert K. v. Sharp	85
Rubrecht, Henry Fred v. Bullock, et al.	86
Salih, John Douglas v. Sharp, et al.	86
Smith, Kelli Deann v. Sharp	86
Steen, Steven G. v. State of Texas, Secretary of State	87
Sternberg, Bruce Lee v. Sharp, et al.	87
Other Taxes	89
AT&T Corp. and AT&T Communications of the Southwest, Inc. v. Sharp, et al.	89
Caldwell, Marcie v. Rylander	89
Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Texas Comptroller .	90
Celadon Trucking Services, Inc. v. Sharp, et al.	90
Chevron USA, Inc. v. Sharp, et al.	90
Chevron USA, Inc. v. Sharp, et al.	91
Chrysler Financial Co., L.L.C. v. Rylander, et al.	91
Davis, Mary v. Sharp, et al.	92
El Paso Natural Gas Co. v. Sharp	92
Gant, Jesse A., Estate of v. Comptroller, et al.	93

Kerrville ISD v. Comptroller	93
Lake Worth ISD, et al. v. Texas Comptroller of Public Accounts	93
McCarty-Hull Cigar Co. v. Sharp, et al.	94
McCarty-Hull Cigar Co. v. Rylander, et al.	94
McLane Company, Inc. v. Rylander, et al.	94
Preston Motors by George L. Preston, Owner v. Sharp, et al.	95
Southwest Oil Co. of San Antonio, Inc. v. Bullock, et al.	95
Thurman, Kay G. and Merlene G. Stroud v. Sharp	96
Travis Co., et al. v. Lot 1, Baker Dale Addn.	96
Union Pacific Resources Co. v. Sharp, et al.	96
Vallado, Jan Clopton, Independent Executor of Estate of Marion Wallace Clopton, Jr. v. Sharp, et al.	97
Whitesboro ISD, et al. v. Texas Comptroller of Public Accounts	97
Closed Cases	99
American Home Assurance Co., et al. v. Texas Department of Insurance, et al.	99
Arco Chemical Co. v. Sharp, et al.	99
Arkla, Inc. v. Sharp, et al.	100
Associated Technics Co., Inc. and Olmos Abatement, Inc. v. Sharp, et al.	100
B&A Marketing Co., by and through its Successor-in-Interest, Atlantic Richfield Co. v. Sharp, et al.	101
Bethlehem Steel Corp. v. Sharp, et al.	101
Bob W. James Co., Inc. v. Sharp, et al.	101
Caterpillar, Inc. v. Sharp, et al.	102
Caterpillar, Inc. v. Sharp, et al.	102
Central Freight Lines, Inc. v. Sharp, et al.	103
Champion Spark Plug Co. v. Sharp, et al.	103
CIT Group Sales Financing, Inc. v. Sharp, et al.	103
City of Cedar Park v. Capital Metropolitan Transportation Authority and Rylander	104
Coats, Paul Harold v. Sharp, et al.	104
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.	105
Continental Drilling Co., Inc. (Now Known as Samson Natural Gas Co.) v. Sharp, et al.	105
Cooper Industries and McGraw-Edison Co. v. Sharp, et al.	106
Cooper Industries, Inc. and McGraw-Edison Co. v. Sharp, et al.	106
Cooper Industries, Inc. v. Sharp, et al.	106
Cooper CPS Corp. and Cooper Power Systems v. Sharp, et al.	107
Delco Electronics Corp. v. Sharp, et al.	107
Diaz, Benito Vasquez v. Sharp	108
Down Time Services, Inc. v. Sharp, et al.	108

E.I. Dupont Denemours & Co., Inc. v. Sharp, et al.	108
El Paso Electric Co. v. Sharp, et al.	109
Electronic Data Systems Corp. v. Sharp, et al.	109
Fina Oil and Chemical Co. v. Sharp, et al.	109
Fleming Foods of Texas, Inc. v. Sharp	110
Four G. Asphalt, d/b/a Big Buck Asphalt v. Sharp, et al.	110
Garza, Ruben Jr. v. Sharp, et al.	110
Geartech, Inc. v. Sharp, et al.	111
General Electric Co. v. Sharp, et al.	111
General Electric Co. v. Sharp, et al.	111
Grocers Supply Co., Inc. v. Sharp, et al.	112
GTE Service Corp. v. Sharp, et al.	112
Harnischfeger Corp. v. Sharp, et al.	113
Harrison, Robert v. Sharp, et al.	113
Highland Shores, Inc. v. Sharp, et al.	113
Houston Arena Theatre, Inc. v. Rylander, et al.	114
Houston Lighting and Power Co., Successor-In-Interest to Utility Fuels, Inc. v. Sharp, et al.	114
Hughes Aircraft Co. v. Sharp, et al.	114
Hughes Aircraft Co. v. Sharp, et al.	115
J.C. Penney Co., Inc. v. Sharp, et al.	115
Johnson, William E. v. Sharp, et al.	115
Kimberly-Clark Corp. v. Sharp, et al.	116
Koch Industries, Inc. v. Sharp, et al.	116
Kyle, Scott E. v. Sharp, et al.	116
Lafarge Corp. v. Sharp, et al.	117
McMinn, William A., et al. v. Sharp, et al.	117
Merico Abatement Contractors, Inc. v. Sharp, et al.	117
Minnesota Mining and Manufacturing Co. v. Sharp, et al.	118
Movie One Theatres, Inc. v. Sharp, et al.	118
Phelan Co., The v. Sharp, et al.	119
Pilgrim's Pride Corp. v. Sharp, et al.	119
Proler International Corp v. Sharp, et al.	119
Rapid Design Service-El Paso, Inc. v. Sharp	120
Reichhold Chemicals, Inc. v. Sharp, et al.	120
Residential Information Services Limited Partnership v. Sharp, et al.	120
Sabine Offshore Service, Inc. Successor in Interest to Sabine Marine Co. v. Sharp, et al.	121
Shell Oil Co. v. Sharp, et al.	121
Southern Union Co., Successor-in-Interest to Rio Grade Valley Gas Co. v. Sharp, et al.	122
Southwestern Bell Yellow Pages, Inc. v. Sharp, et al.	122
Southwestern Public Service Co. v. Sharp, et al.	122

Thermodyn Contractors, Inc. v. Sharp, et al.	123
Timken Co., The v. Sharp, et al.	123
Turnkey Construction, Inc. v. Sharp, et al.	123
Union Pacific Resources Co. v. Sharp, et al.	124
USX Corp. v. Sharp, et al.	124
Zeppa, Keating V., in his individual capacity as Executor of the Estate of Joseph Zeppa v. Sharp, et al.	124
Index	127

Table of Cases

3 Beall Brothers 3, Inc. v. Sharp, et al.	1
Abbassinezhad, Akbar v. Rylander, et al.	31
Adams Resources & Energy, Inc., Service Transport Co. and ADA Crude Oil Co. v. Comptroller	1
AirBorn, Inc. v. Rylander, et al.	2
Alexopolous, Dimitrios P. v. Rylander, et al.	31
All American Life Insurance Co. v. Sharp, et al.	73
All American Life Insurance Co., et al. v. Sharp, et al.	73
Alpine Industries, Inc. v. Sharp, et al.	31
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	74
American Bankers Insurance Co. of Florida, et al. v. Ann Richards, et al.	74
American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al.	75
American Home Assurance Co., et al. v. Texas Department of Insurance, et al.	99
American Oil Change Corp. v. Rylander, et al.	32
American Standard, Inc. v. Sharp, et al.	32
American Telephone & Telegraph Co. v. Sharp, et al.	33
Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc., Restland Funeral Home; Singing Hills Funeral Homes, Inc., Laurel Land Funeral Home of Fort Worth, Inc., Blue Bonnet Hills Funeral Home, Inc., and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al.	2
Aramis Services, Inc. v. Sharp, et al.	33
Arco Chemical Co. v. Sharp, et al.	99
Arkla, Inc. v. Sharp, et al.	100
Associated Technics Co., Inc. and Olmos Abatement, Inc. v. Sharp, et al.	100
AT&T Corp. and AT&T Communications of the Southwest, Inc. v. Sharp, et al.	89
B.I. Moyle Associates, Inc. v. Rylander, et al.	34
B&A Marketing Co., by and through its Successor-in-Interest, Atlantic Richfield Co. v. Sharp, et al.	101
Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al.	33
Bandag Licensing Corp. v. Sharp, et al.	2
Beef Products, Inc. v. Rylander, et al.	3
Bell Bottom Foundation Co. v. Rylander, et al.	34
Bethlehem Steel Corp. v. Sharp, et al.	101
BHC Co. v. Sharp, et al.	34
Big Tex Air Conditioning, Inc. v. Bullock, et al.	35
Bob W. James Co., Inc. v. Sharp, et al.	101
Brighton Builders, Inc. v. Sharp, et al.	35

Brown, William A. d/b/a Nortex Investigative Services v. Sharp, et al.	35
Cafeteria Operators, L.P. v. Rylander, et al.	36
Caldwell, Marcie v. Rylander	89
Capital Guidance Associates IV v. Sharp, et al.	36
Castleberry ISD; Ennis ISD; Canyon ISD; La Porte ISD v. Texas Comptroller	90
Caterpillar, Inc. v. Sharp, et al.	102
Caterpillar, Inc. v. Sharp, et al.	102
Celadon Trucking Services, Inc. v. Sharp, et al.	90
Central Freight Lines, Inc. v. Sharp, et al.	103
Central Power & Light Co. v. Sharp, et al.	37
Champion Spark Plug Co. v. Sharp, et al.	103
Chevron Chemical Co. v. Rylander, et al.	37
Chevron USA, Inc. v. Sharp, et al.	90
Chevron USA, Inc. v. Sharp, et al.	91
Chrysler Financial Co., L.L.C. v. Rylander, et al.	91
Cinco Hermanos, Inc. v. Sharp, et al.	37
CIT Group Sales Financing, Inc. v. Sharp, et al.	103
City of Cedar Park v. Capital Metropolitan Transportation Authority and Rylander	104
Clinique Services, Inc. v. Sharp, et al.	38
Coastal Refining & Marketing, Inc. v. Sharp, et al.	38
Coats, Paul Harold v. Sharp, et al.	104
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.	105
Commercial Janitorial Services, Inc. v. Sharp, et al.	39
Computer Systems of America, Inc. v. Sharp, et al.	39
Consigned Sales Distributors, Inc. v. Sharp, et al.	3
Continental Drilling Co., Inc. (Now Known as Samson Natural Gas Co.) v. Sharp, et al.	105
Cooper CPS Corp. and Cooper Power Systems v. Sharp, et al.	107
Cooper Industries and McGraw-Edison Co. v. Sharp, et al.	106
Cooper Industries, Inc. v. Sharp, et al.	106
Cooper Industries, Inc. and McGraw-Edison Co. v. Sharp, et al.	106
Dallas SMSA Partnership v. Sharp, et al.	39
Dana Corp. v. Sharp, et al.	4
Davis, Mary v. Sharp, et al.	92
Delco Electronics Corp. v. Sharp, et al.	107
Denmon's H2 Safety Services, Inc. v. Sharp	40
Diaz, Benito Vasquez v. Sharp	108
Dow Chemical Co. v. Rylander, et al.	75
Down Time Services, Inc. v. Sharp, et al.	108
E.I. Dupont Denemours & Co., Inc. v. Sharp, et al.	108
El Paso Electric Co. v. Sharp, et al.	4
El Paso Electric Co. v. Sharp, et al.	109

El Paso Natural Gas Co. v. Sharp	92
El Paso Silverton Construction Co., Inc. v. Sharp, et al.	40
Electronic Data Systems Corp. v. Sharp, et al.	109
Estee Lauder Services, Inc. v. Sharp, et al.	41
Estee Lauder Services, Inc. v. Sharp, et al.	40
Etan Industries, Inc. v. Sharp, et al.	41
F.C. Felhaber & Co., Inc. v. Sharp, et al.	42
Federal Home Life Insurance Co. v. Rylander, et al.	75
Fiesta Texas Theme Park, Ltd. v. Sharp, et al.	42
Fina Oil and Chemical Co. v. Sharp, et al.	109
First Colony Life Insurance Co. v. Rylander, et al.	76
Fisher Controls International, Inc. v. Sharp, et al.	4
Fleming Foods of Texas, Inc. v. Sharp	110
Fleming Foods of Texas, Inc. v. Sharp, et al.	42
Four G. Asphalt, d/b/a Big Buck Asphalt v. Sharp, et al.	110
Gant, Jesse A., Estate of v. Comptroller, et al.	93
Garza, Lawrence v. Sharp, et al.	43
Garza, Ruben Jr. v. Sharp, et al.	110
Gateway Homes, Inc. v. Sharp, et al.	43
GATX Terminals Corp. v. Sharp, et al.	44
GATX Terminals Corp. v. Sharp, et al.	44
GE Life and Annuity Assurance Co., fka Life Insurance Co. of Virginia v. Rylander, et al.	76
Geartech, Inc. v. Sharp, et al.	111
General Electric Capital Assurance Co. v. Rylander, et al.	76
General Electric Co. v. Sharp, et al.	111
General Electric Co. v. Sharp, et al.	111
General Motors Corp. v. Sharp, et al.	5
Graybar Electric Co., Inc. v. Sharp, et al.	44
Great Northern Insured Annuity Corp. v. Rylander, et al.	77
Grocers Supply Co., Inc. v. Sharp, et al.	112
Grocers Supply Co., Inc. v. Sharp, et al.	45
Grocers Supply Co., Inc. v. Sharp, et al.	45
GTE Service Corp. v. Sharp, et al.	112
Gulf Publishing Co. v. Sharp, et al.	5
H.J. Heinz Co., Inc. v. Sharp, et al.	6
H.J. Heinz Co., Inc. v. Sharp, et al.	6
H.J. Heinz Co. v. Rylander, et al.	7
H.J. Wilson Co., Inc. v. Sharp, et al.	45
Haber Fabrics Corp. v. Sharp, et al.	46
Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al.	7
Harnischfeger Corp. v. Sharp, et al.	113
Harrison, Robert v. Sharp, et al.	113

Harvest Life Insurance Co., The v. Rylander, et al.	77
Heritage Life Insurance Co. v. Rylander, et al.	77
Heritage Numismatic Auctions, Inc. & Heritage Capital Corp. v. Rylander, et al.	46
Herndon Marine Products, Inc. v. Sharp, et al.	47
Highland Shores, Inc. v. Sharp, et al.	113
Hoffer Furniture Rental, Inc. v. Sharp	47
Holzem, Inc. v. Sharp, et al.	47
House of Lloyd, Inc. v. Sharp, et al.	8
House of Lloyd, Inc. v. Sharp, et al.	8
Houston Arena Theatre, Inc. v. Rylander, et al.	114
Houston Industries Building, Inc. v. Rylander, et al.	48
Houston Industries, Inc. v. Sharp, et al.	9
Houston Lighting and Power Co., Successor-In-Interest to Utility Fuels, Inc. v. Sharp, et al. . .	114
Hughes Aircraft Co. v. Sharp, et al.	114
Hughes Aircraft Co. v. Sharp, et al.	115
IDS Life Insurance Co. v. Rylander, et al.	78
Interpak Terminals, Inc. v. Sharp, et al.	48
Irv-Tex Coin Laundries, Inc. v. Sharp, et al.	48
J.C. Penney Co., Inc. v. Sharp, et al.	115
Jett Racing and Sales, Inc. v. Sharp, et al.	49
Jiffy Lube International, Inc. v. Rylander, et al.	9
Johnson, William E. v. Sharp, et al.	115
Kandi Sue, Inc. v. Sharp, et al.	49
Kerrville ISD v. Comptroller	93
Kimberly-Clark Corp. v. Sharp, et al.	116
Koch Industries, Inc. v. Sharp, et al.	116
Kraft Foods, Inc. v. Rylander, et al.	9
Kroger Co., The v. Sharp, et al.	49
Kunz Construction Co., Inc. v. Sharp, et al.	50
Kyle, Scott E. v. Sharp, et al.	116
L. D. Brinkman & Co., Inc. v. Sharp, et al.	50
Lafarge Corp. v. Sharp, et al.	117
Lake Charles Yamaha, Inc. v. Morales, et al.	51
Lake Charles Yamaha, Inc. v. Sharp	51
Lake Charles Yamaha, Inc. v. Morales, et al.	51
Lake Worth ISD, et al. v. Texas Comptroller of Public Accounts	93
Landgraf, Larry A. dba Landgraf & Co., Inc. v. Rylander, et al.	52
Laney, James M. v. Sharp, et al.	52
Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al.	52
Lebaron Hotel Corp., d/b/a The Lebaron Hotel v. Sharp, et al.	53
Lee Construction and Maintenance Co. v. Rylander, et al.	53
Leyendecker Construction, Inc. v. Sharp, et al.	53
Liberty National Life Insurance Co. v. Martha Whitehead, et al.	78

Local Neon Co., Inc. v. Rylander, et al.	54
Lopez-Gloria Construction Services, Inc. v. Sharp, et al.	54
LTV Steel Co., Inc. v. Sharp, et al.	10
Lucky Lady Oil Co. v. Rylander, et al.	54
Lyondell Chemical Worldwide, Inc., formerly known as Arco Chemical Co. v. Rylander, et al.	10
Macias, David Ronald v. Sharp	55
Martinez, Jesus Manuel v. Sharp, et al.	85
May Department Stores Co., The v. Sharp, et al.	11
Mazanec Construction Co., Inc. v. Sharp, et al.	55
McCarty-Hull Cigar Co. v. Rylander, et al.	94
McCarty-Hull Cigar Co. v. Sharp, et al.	94
McLane Company, Inc. v. Rylander, et al.	94
McMinn, William A., et al. v. Sharp, et al.	117
MCorp v. Sharp, et al.	11
Medaphis Physicians Services Corp. v. Sharp, et al.	56
Merico Abatement Contractors, Inc. v. Sharp, et al.	117
Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.	78
Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.	79
Minnesota Mining and Manufacturing Co. v. Sharp, et al.	118
Movie One Theatres, Inc. v. Sharp, et al.	118
Nabisco, Inc. and Planters/Lifesavers v. Sharp, et al.	11
National Business Furniture, Inc. v. Sharp, et al.	56
Neiman Marcus Group, Inc. v. Sharp, et al.	56
Network Security Acceptance Corp., as Successor in Interest to Network Security Corp. v. Sharp, et al.	12
Nevada Asset Management Corp. v. Rylander, et al.	12
North American Intelcom, Inc., et al. v. Sharp, et al.	57
North Star Steel Texas, Inc. v. Sharp, et al.	13
North Texas Asset Management, Inc. v. Sharp, et al.	57
Norwood Homes, Inc. v. Sharp, et al.	58
Oliveira, Leonel v. Rylander, et al.	85
Ontario Investments, Inc. v. Sharp, et al.	58
Ore-Ida Foods, Inc. v. Sharp, et al.	13
Ore-Ida Foods, Inc. v. Sharp, et al.	13
Ore-Ida Foods, Inc. v. Rylander, et al.	14
Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.	14
Paragon Communications v. Sharp, et al.	58
Perry Homes, A Joint Venture v. Sharp, et al.	59
Peter Piper, Inc. and L & H Pacific, L.L.C. v. Sharp, et al.	59
Peter Scalamandre & Sons, Inc. et al. v. Sharp, et al.	15
Petrolite Corp. v. Sharp, et al.	59
Phelan Co., The v. Sharp, et al.	119

Phillips Petroleum Co. v. Sharp, et al.	15
Phillips Petroleum Co. v. Sharp, et al.	15
Pilgrim's Pride Corp. v. Sharp, et al.	119
Popp, Robert K. v. Sharp	85
Portion Pac, Inc. v. Sharp, et al.	16
Portion Pac, Inc. v. Sharp, et al.	16
Portion Pac, Inc. v. Rylander, et al.	17
Praxair, Inc. v. Sharp, et al.	60
Praxair, Inc. v. Sharp, et al.	60
Preston Motors by George L. Preston, Owner v. Sharp, et al.	95
Principal Life Insurance Co. v. Rylander, et al.	79
Prodigy Services Co. v. Rylander, et al.	60
Proler International Corp v. Sharp, et al.	119
R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al.	61
Rapid Design Service-El Paso, Inc. v. Sharp	120
Redland Insurance Co. v. State of Texas, et al.	79
Reflectone Training Systems, Inc. v. Bullock, et al.	61
Reichhold Chemicals, Inc. v. Sharp, et al.	120
Reliant Energy Gas Transmission Co, formerly known as Noram Gas Transmission Co. v. Rylander, et al.	17
Residential Information Services Limited Partnership v. Sharp, et al.	120
Richland Development Corp. v. Comptroller, et al.	18
Richland Development Corp. v. Rylander, et al.	17
Rubrecht, Henry Fred v. Bullock, et al.	86
Ryder Truck Rental, Inc. v. Sharp, et al.	62
Sabine Offshore Service, Inc. Successor in Interest to Sabine Marine Co. v. Sharp, et al.	121
Salih, John Douglas v. Sharp, et al.	86
Samedan Oil Corp. v. Sharp, et al.	62
San Antonio SMSA\ Limited Partnership v. Sharp, et al.	62
Saudi Refining, Inc. v. Rylander, et al.	18
Schlumberger Technology Corp., for and on behalf of Geoquest Systems, Inc. v. Rylander, et al.	19
Schmitz Industries, Inc. v. Sharp	63
Schoenborn & Doll Enterprises, Inc. v. Rylander, et al.	63
Sears Roebuck & Co. v. Rylander, et al.	64
Sergeant Enterprises, Inc. v. Sharp, et al.	19
Service Merchandise Co., Inc. v. Sharp, et al.	64
Shaklee Corp. d/b/a Shaklee U.S., Inc. v. Sharp, et al.	20
Shell Oil Co. v. Sharp, et al.	121
Smith, Kelli Deann v. Sharp	86
Southern Pacific Transportation Co. and St. Louis Southwestern Railway Co. v. Sharp	21
Southern Union Co. v. Sharp, et al.	20
Southern Union Co., Successor-in-Interest to Rio Grade Valley Gas Co. v. Sharp, et al.	122

Southern Union Co. v. Sharp, et al.	20
Southwest Oil Co. of San Antonio, Inc. v. Bullock, et al.	95
Southwest Pay Telephone Corp., Successor in Interest to Southwest Pay Telephone Systems, Inc. v. Sharp, et al.	64
Southwest Subrogation Services, Inc. v. Sharp, et al.	65
Southwestern Bell Telephone Co. v. Sharp, et al.	22
Southwestern Bell Yellow Pages, Inc. v. Sharp, et al.	122
Southwestern Explosives, Inc. v. Bullock, et al.	21
Southwestern Gas Pipeline, Inc., Mitchell Energy Corp. & and The Woodlands Commercial Properties Co., L.P. v. Rylander, et al.	22
Southwestern Life Insurance Co. v. Philip Barnes, et al.	80
Southwestern Life Insurance Co. v. Sharp, et al.	80
Southwestern Life Insurance Co. v. Georgia Flint, et al.	80
Southwestern Public Service Co. v. Sharp, et al.	122
Spaw-Glass, Inc. and Spaw Glass Construction Co. v. Rylander, et al.	65
Specialty Retailers, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.	22
Sprint International Communications, Inc. v. Sharp, et al.	66
SRI Receivables, Inc. v. Rylander, et al.	23
Star-Kist Foods, Inc. v. Sharp, et al.	23
Star-Kist Foods, Inc. v. Rylander, et al.	24
Star-Kist Foods, Inc. v. Sharp, et al.	24
State Farm Life Insurance Co. v. Cornyn, Rylander, et al.	81
Steamatic of Austin, Inc., et al. v. Sharp, et al.	66
Steen, Steven G.v. State of Texas, Secretary of State	87
Sternberg, Bruce Lee v. Sharp, et al.	87
Sung Ju Choi d/b/a Sam Young Trading Co. v. Sharp	66
TCCT Real Estate, Inc. v. Rylander, et al.	67
TCCT Real Estate, Inc. as Successor to TCC Austin Industrial Overhead v. Rylander, et al. ...	67
Tennessee Gas Pipeline Co. v. Sharp, et al.	68
Tesoro Petroleum Corp. v. Sharp, et al.	25
Texaco Refining & Marketing (East), Inc. v. Rylander, et al.	25
Texas Aromatics, Inc. v. Sharp, et al.	25
Texas Gulf, Inc. v. Bullock, et al.	68
Texas Workers' Compensation Insurance Facility v. Comptroller	81
Texas Workers' Compensation Insurance Facility v. Comptroller, et al.	82
Thermodyn Contractors, Inc. v. Sharp, et al.	123
Thurman, Kay G. and Merlene G. Stroud v. Sharp	96
Timken Co., The v. Sharp, et al.	123
Transcontinental Gas Pipeline Corp. v. Rylander, et al.	68
Travis Co., et al. v. Lot 1, Baker Dale Addn.	96
Turnkey Construction, Inc. v. Sharp, et al.	123
U.S. On-Line Cable v. Rylander, et al.	70
Union Carbide Chemicals & Plastics Co., Inc. v. Sharp, et al.	69

Union Fidelity Life Insurance Co. v. Rylander, et al.	82
Union Pacific Resources Co. v. Sharp, et al.	26
Union Pacific Resources Co. v. Sharp, et al.	96
Union Pacific Resources Co. v. Sharp, et al.	124
United American Insurance Co. v. Rylander, et al.	82
United Beverage Co. v. Rylander, et al.	26
United Services Automobile Association v. Sharp, et al.	69
Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al.	27
Universe Life Insurance Co. v. State of Texas	83
Upjohn Co., The v. Sharp, et al.	27
USX Corp. v. Sharp, et al.	124
Vallado, Jan Clopton, Independent Executor of Estate of Marion Wallace Clopton, Jr. v. Sharp, et al.	97
Wal-Mart Stores, Inc. v. Sharp, et al.	70
Waller Hotel Group, Inc. v. Sharp, et al.	70
Warranty Underwriters Insurance Co. v. Rylander, et al.	83
Weight Watchers Food Co. v. Sharp, et al.	27
Weight Watchers Gourmet Food Co. v. Rylander, et al.	28
West Texas Gas, Inc. v. Sharp, et al.	29
West Texas Pizza, Limited Partnership v. Sharp, et al.	71
Westar Hotels, Inc. v. Sharp, et al.	71
Westcott Communications, Inc., Law Enforcement Television Network, Inc., Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al.	29
Wheelabrator Corp., The and Swindell Dressler Leasing Co. v. Sharp, et al.	29
Whitesboro ISD, et al. v. Texas Comptroller of Public Accounts	97
Xerox Credit Corp. v. Rylander, et al.	30
Young's Beer Barn, Inc. v. Sharp	71
Zeppa, Keating V., in his individual capacity as Executor of the Estate of Joseph Zeppa v. Sharp, et al.	124

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:

Christine Monzingo

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: 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; Comptroller responded at the Supreme Court's request.

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:

Christopher Jackson

Plaintiff's Counsel:

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*.

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

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

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.

Anderson-Clayton Bros. Funeral Home, Inc.; Restland of Dallas, Inc., Restland Funeral Home; Singing Hills Funeral Homes, Inc., Laurel Land Funeral Home of Fort Worth, Inc., Blue Bonnet Hills Funeral Home, Inc., and Blue Bonnet Hills Memorial Park, Inc. v. Rylander, et al. Cause #99-12183

Franchise Tax; Refund Filed: 10/18/99 Period: 1993-1996 Amount: \$407,212.91 \$107,861.97	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Michael Rubenstein Locke, Liddell & Sapp Houston
---	---	---

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

Status: Answer filed.

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

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

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

Status: Judgment for plaintiff. Appeal in progress. Oral argument set for 02/02/00.

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. See *Fisher Controls International, Inc. v. Sharp, et al.*

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

Franchise Tax; Refund Filed: 06/05/95	Asst. AAG Assigned:	Christine Monzingo
Period: 1989-1992 Amount: \$723	Plaintiff's Counsel:	Fred O. Marcus Horwood, Marcus & Braun Chicago, Illinois
		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: Related case set for cross-motions summary judgment 01/31/00.

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
--	---	---

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.

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
---	---	---

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.

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
---	---	---

Issue: Whether the phrase "is not subject to taxation" means the same thing in the earned surplus throwback statute as it does in the taxable capital throwback statute; whether the "throw-back" statute is constitutional; whether the Comptroller retroactively applied an amendment .

Status: Non-jury trial held 12/13/99. Judgment for Plaintiff 12/21/99 on the statutory construction issue. Constitutional issue was not reached. Request for Findings of Fact and Conclusions filed 01/06/00.

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

Franchise Tax; Refund Filed: 10/31/97	Asst. AAG Assigned:	Christine Monzingo
Period: 1991-1994 Amount: \$18,788,858	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

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: Hearing on Motions for Summary Judgment on 03/23/00. Plaintiff challenges the decision in *Sharp v. Caterpillar*, 932 S.W. 2d (Tex.App.-Austin 1996, writ denied).

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

Franchise Tax; Refund Filed: 04/22/98	Asst. AAG Assigned:	Blake Hawthorne
Period: 1992-1995 Amount: \$218,713	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether all of Gulf Publishing Company's magazine advertising revenue should be allocated to Texas receipts or should be allocated according to location of subscriber.

Status: Discovery in progress.

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

Franchise Tax; Protest Filed: 09/28/98	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1995 Amount: \$534,056	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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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

Franchise Tax; Protest Filed: 11/12/98 Period: 1992-1995 Amount: \$29,244	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
--	---	--

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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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: Plaintiff's Counsel:	Cecilia Gonzalez L.G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
---	---	---

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether 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.

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

Franchise Tax; Protest and
Declaratory Judgment

Filed: 03/28/97

Period: 1987-1990

1989-1991

1988-1991

Amount: \$243,469 (total of
all)

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

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

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

Status: Discovery in progress.

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

Franchise Tax; Refund

Filed: 06/05/95

Period: 1989-1991

Amount: \$19,825

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Fred O. Marcus
Horwood, Marcus & Braun
Chicago

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

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

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

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

Franchise Tax; Refund Filed: 06/05/95 Period: 1992 Amount: \$106,136	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Fred O. Marcus Horwood, Marcus & Braun Chicago David E. Cowling Jones, Day, Reavis & Pogue Austin
---	---	--

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.

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: Plaintiff's Counsel:	Christine Monzingo 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. See *3 Beall Brothers 3, Inc. v. Sharp, et al.*

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

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

Issue: Whether the Comptroller's assessment of additional franchise tax is untimely and void. Alternatively, whether Plaintiff's post retirement benefits should be considered wages under Section 171.109(j)(1) whether disparate treatment of contingent assets such as Plaintiff's net negative deferred income tax liability is unconstitutional, and whether a portion of the assessed interest should have been waived.

Status: Discovery in progress.

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: Plaintiff's Counsel:	Christine Monzingo 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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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
--	---	---

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.

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

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

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

Status: Answer filed.

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

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

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

Status: Inactive.

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

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

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

Status: Inactive. Plaintiff in bankruptcy.

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. Briefs were filed and the Court denied Nabisco's petition for review.

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.

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

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

Issue: Whether Rule 3.549, applying a 15.78% apportionment factor to receipts from GNMA securities, is invalid under the Commerce Clause. Whether the rule violates equal protection, equal taxation and due process. Whether the Comptroller lacks statutory authority to impose the 15.78% factor. Alternatively, whether calculation of the tax is correct even if the rule validly applies.

Status: Answer filed.

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

Franchise Tax; Refund Filed: 10/23/98 Period: 1992-1995 Amount: \$725,830	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
--	---	---

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

Status: Discovery in progress.

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

Franchise Tax; Protest Filed: 09/28/98 Period: 1992-1995 Amount: \$744,167	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
---	---	--

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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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

Franchise Tax; Protest Filed: 11/12/98 Period: 1992-1994 Amount: \$14,050	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
--	---	--

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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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: Plaintiff's Counsel:	Cecilia Gonzalez L.G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
--	---	---

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

Status: Answer filed.

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

Franchise Tax; Protest Filed: 4/1/96	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1993 (3 Beall) 1992-1995 (Palais)	Plaintiff's Counsel:	Mark W. Eidman Scott, Douglass & McConnico Austin
Amount: \$700,974		

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

Status: Inactive.

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

Franchise Tax; Protest Filed: 01/31/95	Asst. AAG Assigned:	Gene Storie
Period: 06/92-12/94	Plaintiff's Counsel:	Susan E. Potts Brown & Potts Dallas
Amount: \$2,465		Mark Gibbons Olson, Gibbons, Sartain, Nicoud, Birme & Sussman Dallas

Issue: Whether Plaintiff is exempt from franchise tax as a "corporation engaged solely in the business of recycling sludge" per §171.085 of the Tax Code.

Status: Inactive.

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

Franchise Tax; Refund Filed: 07/30/92	Asst. AAG Assigned:	Christopher Jackson
Period: 1988 - 1989	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin
Amount: \$1,161,407		

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

Status: Discussing settlement.

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
--	---	---

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

Status: Inactive.

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: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
---	---	--

Issue: Whether Plaintiffs are entitled to a deduction from 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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
---	---	--

Issue: Whether Plaintiffs are entitled to a deduction from 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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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: Plaintiff's Counsel:	Cecilia Gonzalez L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
---	---	--

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

Status: Answer filed.

**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
--	---	---

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

Status: Answer filed.

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

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

Issue: Whether the Comptroller's assessment of additional franchise tax is untimely and void. Alternatively, whether Plaintiff's post retirement benefits should be considered wages under Section 171.109 (j)(1), whether disparate treatment of contingent assets such as Plaintiff's net negative deferred income tax liability is unconstitutional, and whether a portion of the assessed interest should have been waived.

Status: Answer filed.

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

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
---	---	--

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.

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
--	---	---

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.

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:

Christine Monzingo

Plaintiff's Counsel:

Gerard A. Desrochers
Baker & Botts
Houston

Jennifer K. Patterson
Baker & Botts
Austin

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.

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:

Jim Cloudt

Plaintiff's Counsel:

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

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.

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
--	---	--

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

Status: Inactive.

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
--	---	---

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.

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
---	---	---

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.

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
--	---	--

Issue: Whether push-down accounting may be used.

Status: Discovery in progress.

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

Franchise Tax; Protest Filed: 09/04/87 Period: 01/01/81 - 12/31/84 Amount: \$40,324	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne 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.

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

Franchise Tax; Refund Filed: 06/24/98 Period: 1991-1994 Amount: \$1,300,000	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo 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.

Southwestern Gas Pipeline, Inc., Mitchell Energy Corp. & and The Woodlands Commercial Properties Co., L.P. v. Rylander, et al. Cause #99-14209

Franchise Tax; Refund Filed: 12/06/99 Period: 1993-1998 Amount: \$13,150,923.27	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo Jasper G. Taylor, III Fulbright & Jaworski Houston
--	---	--

Issue: Whether imposition of the additional tax after mergers of the Plaintiff corporations and other corporations violates constitutional guarantees of equal and uniform taxation or equal protection and due process under the Texas and United States Constitutions.

Status: Answer filed.

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

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

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

Status: Inactive.

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

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

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.

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

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

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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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

Franchise Tax; Protest Filed: 11/12/98 Period: 1992-1995 Amount: \$18,789	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
--	---	--

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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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

Franchise Tax; Refund Filed: 05/19/99 Period: 1994 Amount: \$689	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez L.G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
---	---	---

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.

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

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

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.

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

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

Issue: Whether Plaintiff is entitled to a franchise tax credit for sales tax on manufacturing equipment purchased by a joint venture that it co-owned.

Status: Answer filed.

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

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

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 final disposition of *3 Beall Brothers 3, Inc. v. Sharp*.

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

Franchise Tax; Refund Filed: 02/24/95 Period: 1988-1991 Amount: \$1,432,851	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
--	---	---

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.

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

Franchise Tax; Protest Filed: 03/01/99	Asst. AAG Assigned:	Christine Monzingo
Period: 01/01/98-12/31/98 Amount: \$1,077,434	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. See *3 Beall Brothers 3, Inc. v. Sharp, et al.*

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 its parent to another company was improperly included in taxable earned surplus for the purpose of calculating the Additional Tax. Whether Rule 3.557(e)(10) is beyond the scope of §171.110 and therefore exceeds the Comptroller's authority. Whether Rule 3.557 is unconstitutional.

Status: Inactive.

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

Franchise Tax; Protest Filed: 04/10/98 Period: 1991-1994 Amount: \$1,391,740	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez 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 held 11/23/99.
Judgment for Defendants on 12/29/99.

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: Plaintiff's Counsel:	Christine Monzingo L. G. "Skip" Smith Clark, Thomas & Winters Austin Marilyn A. Wethekam Horwood Marcus & Berk Chicago
---	---	--

Issue: Whether Plaintiffs are entitled to a deduction from 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. See *Nabisco, Inc. & Planters/Lifesavers v. Sharp, et al.*

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:

Plaintiff's Counsel:

Cecilia Gonzalez

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

Marilyn A. Wethekam
Horwood Marcus & Berk
Chicago

Issue: Whether gross receipts from sale of food products should be included in calculating the earned surplus component of the franchise tax. Whether 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.

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

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: Preparing discovery.

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

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.

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

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

Status: Discovery in progress.

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

Franchise Tax; Protest
Filed: 05/28/99
Period: 1992-1999
Amount: \$2,290,821.39

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

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

Issue: Whether 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.

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.

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.

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.

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
--	---	---

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.

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
---	---	---

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

Status: Answer filed.

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.

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.

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

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

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

Status: Inactive.

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

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

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

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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. Preparing Motion for Summary Judgment.

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.

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.

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	Asst. AAG Assigned:	James Parsons
Period: 01/01/90-12/31/93 Amount: \$30,992	Plaintiff's Counsel:	Gary L. Waite Attorney at Law Paris

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.

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

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

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

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 06/03/97	Asst. AAG Assigned:	Blake Hawthorne
Period: 07/01/90-03/31/94 Amount: \$39,882	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin

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.

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

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

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

Status: Discovery in progress.

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

Sales Tax; Refund Filed: 06/09/99	Asst. AAG Assigned:	Cecilia Gonzalez
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: Discovery in progress. Trial set for 02/08/00.

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: Answer filed. Preparing for trial.

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.

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
--	---	--

Issue: Whether certain work performed by Plaintiff is new construction under a lump sum contract and thus not taxable.

Status: Discovery in progress.

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

Sales Tax; Declaratory Judgment and Injunction Filed: 3/17/95 Period: 10/89 - 06/93 Amount: \$115,160	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Samuel Downing McDaniel Attorney at Law Austin Sam Passman Passman & Jones Dallas
---	---	---

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

Status: Discovery in progress.

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. Trial set for 05/01/00.

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. Court of Appeals rendered decision for taxpayers 01/06/00. State will file a Motion for Rehearing.

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.

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
--	---	--

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.

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
---	---	---

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

Status: Answer filed.

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

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
---	---	---

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.

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 completed. Preparing Motion for Summary Judgment.

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*.

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.

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
---	---	---

Issue: Whether both the taxpayer and its vendor must timely waive the statute of limitations in order to have it kept open for the taxpayer to claim a refund of, or credit for, sales tax paid to the vendor. Also, Plaintiff contends the Comptroller did not initially enforce a new rule concerning tax on janitorial services and that tax voluntarily paid by the taxpayer should be refunded.

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

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
--	---	---

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

Status: Discovery in progress. Trial to be held in 05/00.

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
--	---	--

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

Status: Answer filed.

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

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
---	---	--

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.

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.

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.

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.

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
---	---	---

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

Status: Discovery in progress.

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
---	---	---

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.

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
--	---	--

Issue: Whether wrapping and packaging and purchases of natural gas and electricity were exempt as being used in manufacturing.

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

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

Sales Tax; Refund Filed: 05/27/99 Period: 1993-1995 10/92-03/96 Amount: \$41,549.31 \$80,179.86	Asst. AAG Assigned: Plaintiff's Counsel:	Scott Simmons Brett B. Flagg Brett B. Flagg & Associates Dallas
--	---	--

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. Plea to Jurisdiction dropped. Plaintiff to file amended petition to include audit from later period.

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
---	---	---

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.

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.

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.

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*.

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

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

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

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 02/04/93	Asst. AAG Assigned:	Gene Storie
Period: 01/88-10/91 Amount: \$25,931	Plaintiff's Counsel:	Jimmy L. Heisz & W. Wade Porter Haynes & Boone Dallas and Austin

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.

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

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

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

Status: Discovery in progress.

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
--	---	---

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.

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
--	---	---

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.

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
---	---	---

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.

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
---	---	---

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.

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
---	---	---

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.

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
---	---	---

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.

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.

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

Sales Tax; Injunction	Asst. AAG Assigned:	Blake Hawthorne
Filed: 06/30/99	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.

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.

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
---	---	---

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.

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
--	---	--

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

Status: Answer filed.

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

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
---	---	--

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.

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
--	---	---

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.

Local Neon Co., Inc. v. Rylander, et al. Cause #99-15042

Sales Tax; Protest & Declaratory Judgment Filed: 12/31/99 Period: Amount: \$34,390.24	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne James D. Blume Jennifer S. Stoddard Blume & Stoddard Dallas Judy M. Cunningham Austin
---	---	---

Issue: Whether Plaintiff was doing business in Texas by delivering and installing its signs that were sold under contract negotiated outside of Texas. Whether Plaintiff is entitled to declaratory judgment and attorneys' fees.

Status: Answer filed.

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

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

Issue: Plaintiff doesn't owe the tax, and if it does, the Comptroller abused its discretion in not settling under Tax Code §111.102.

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

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

Sales Tax; Protest	Asst. AAG Assigned:	Jim Cloudt
Filed: 02/12/99		
Period: 06/01/88-12/31/91	Plaintiff's Counsel:	Timothy M. Trickey
Amount: \$402,951.08		The Trickey Law Firm Austin

Issue: Whether taxpayer's liability for diesel fuels tax was properly computed. Whether the Comptroller should waive penalty and interest.

Status: Discovery in progress. Trial set for 02/22/00.

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. Partial Summary Judgment on Macias' license suspension 02/06/00. If successful, trial on suspension period in Spring 2000.

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

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

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

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

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
--	---	--

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.

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

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 04/15/98	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 01/01/93-07/31/95		Stahl, Martens & Bernal
Amount: \$68,398		Austin

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

Status: Answer filed.

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

Sales Tax; Protest and Refund	Asst. AAG Assigned:	Christopher Jackson
Filed: 08/26/93	Plaintiff's Counsel:	David E. Cowling
Period: 01/01/87-03/31/90		Charles Herring
Amount: \$1,046,465		Jones, Day, Reavis & Pogue Dallas

Issue: Plaintiff's customers buy gifts from Plaintiff outside Texas and have the gifts delivered by common carrier to Texas "donees." Should the Comptroller have assessed use tax on these "gift sends" ?
Second issue: whether tax is due on certain remodeling services. Plaintiff asks for attorneys fees under 42 USC §§1983 and 1988.

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

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

Sales Tax; Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 05/02/97	Plaintiff's Counsel:	Jasper G. Taylor, III
Period: 04/01/91-05/31/95		Fulbright & Jaworski
Amount: \$2,029,180		Houston

Issue: Whether care, custody, and control of Plaintiff's public telephone equipment passed to their customers, so that Plaintiff could buy the equipment tax free for resale.

Status: Discovery in progress.

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

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

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

Status: Answer filed; inactive.

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

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

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

Status: Discovery in progress.

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

Sales Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 09/29/98	Plaintiff's Counsel:	Samuel E. Long
Period: 08/01/89-04/30/92		Moseley & Standerfer
Amount: \$24,142		Dallas

Issue: Whether sales tax on equipment leases should have been accelerated when the leases were pledged as collateral.

Status: Discovery in progress.

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

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

Issue: Whether municipal franchise fees paid by Plaintiff and passed on to its customers should be included in taxable cable services. Whether certain services, labor to lay new lines, purchased by Plaintiff were taxable repair and remodeling or were exempt new construction.

Status: Discovery in progress.

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

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.

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.

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.

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

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

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

Status: See Cause No. 95-00690

Praxair, Inc. v. Sharp, et al. 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.

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

Sales Tax; Protest	Asst. AAG Assigned:	Christopher Jackson
Filed: 03/05/99		
Period: 01/01/93-06/30/96	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Amount: \$206,971.88		Stahl, Martens & Bernal Austin
		Martin I. Eisenstein Brann & Isaacson Lewiston, Maine

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

Status: Answer filed.

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

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

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

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

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
--	---	--

Issue: Taxability of lease payments reimbursed by U.S. Navy. Resale certificates and government exemption.

Status: Inactive.

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

Sales Tax; Protest Filed: 11/22/96 Period: 07/01/89-09/30/92 Amount: \$270,217	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez 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*.

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

Sales Tax; Protest Filed: 12/18/98 Period: 01/01/90-12/31/93 Amount: \$19,652.35	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez 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.

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*.

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.

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
--	---	--

Issue: Whether the portion of Plaintiff's gym membership fee allocated to aerobic training is included in Plaintiff's taxable amusement services. Whether the Comptroller improperly disregarded the rule addressing non-taxable aerobic and tanning services under the amusement services tax. Whether the Comptroller should have applied its detrimental reliance policy.

Status: Negotiation of stipulated facts in progress. Parties to file cross-motions for summary judgment.

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
---	---	--

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

Status: Answer filed.

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

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

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

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

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

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

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.

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

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

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:	Scott Simmons
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.

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.

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

Sales Tax; Protest Filed: 03/05/97	Asst. AAG Assigned:	Steve Rodriguez
Period: 04/01/91-04/30/94	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
Amount: \$166,148		

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.

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

Sales Tax; Injunction Filed: 11/30/95	Asst. AAG Assigned:	Steve Rodriguez
Period: 01/01/88-12/31/91 Amount: \$54,068	Plaintiff's Counsel:	Kenneth Thomas Attorney at Law Dallas

Issue: Whether certain resale certificates should have been accepted by the Comptroller during the audit. Whether an injunction to suspend all collection activity should be granted.

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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
--	---	--

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

Status: Discovery in progress.

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 Kliewer, Breen, Garaton, Patterson & Malone, Inc. Austin Michael R. Garatoni Guaranty Center San Antonio
---	---	--

Issue: Plaintiff contends that because it operates a common-carrier pipeline and is a certificated or licensed carrier of property it may avoid sales tax on repair, remodeling, and maintenance services purchased in connection with the maintenance and repair of aircraft Plaintiff owns and uses in operating its common-carrier pipeline.

Status: Discovery in progress.

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

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

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.

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

Sales Tax; Protest Filed: 06/17/99	Asst. AAG Assigned:	Cecilia Gonzalez
Period: 03/93-05/95	Plaintiff's Counsel:	Ron Patterson Kliwer, Breen, Garatoni, Patterson & Malone Austin
Amount: \$112,684.43		Michael R. Garatoni Kliwer, Breen, Garatoni, Patterson & Malone San Antonio

Issue: Whether Plaintiff, a common carrier gas pipeline operator, may claim a sales and use tax exemption on its purchase of an airplane. Whether airplane repair and replacement parts are exempt.

Status: Answer filed.

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	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin
Amount: \$419,382		

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

Status: Discovery in progress.

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.

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

Sales Tax; Refund Filed: 08/05/99	Asst. AAG Assigned:	Scott Simmons
Period: 10/01/94-07/31/98 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.

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.

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.

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.

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.

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

Sales Tax; Injunction

Asst. AAG Assigned:

Steve Rodriguez

Filed: 11/17/94

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

Plaintiff's Counsel:

Kenneth Thomas

Amount: \$144,608

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.

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
---	---	--

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.

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
--	---	--

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.

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
Amount: \$2,036.27
\$17,389.16
\$43,339.45
\$32.41

Asst. AAG Assigned:
Plaintiff's Counsel:

Gene Storie
Stephen L. Phillips
Julie K. Lane
Roan & Autrey
Austin

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.

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:
Plaintiff's Counsel:

Steve Rodriguez
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.

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

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

Status: Trial set 01/18/00.

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
--	---	---

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

Status: Plaintiff's summary judgment motion filed.

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
---	---	---

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.

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

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

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

Status: Answer filed.

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 Period: 1998 Amount: \$59,574.64	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez Ron K. Eudy Sneed, Vine & Perry Austin
--	---	---

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

Status: Answer filed.

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

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

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

Status: Answer filed.

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
---	---	---

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.

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
--	---	---

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.

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
--	---	---

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.

IDS Life Insurance Co. v. Rylander, et al. Cause #99-13368

Insurance Tax; Protest Filed: 11/16/99	Asst. AAG Assigned:	Gene Storie
Period: Amount: \$234,383.82 \$2,039.79	Plaintiff's Counsel:	Jay A. Thompson Clark, Thomas & Winters Austin

Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Consolidated with All American Life Insurance, et al. Trial set 01/18/00.

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

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

Issue: Whether art. 21.46 retaliatory tax has been properly applied to Plaintiff's tax rates in Texas and Alabama, and whether the tax violates equal taxation and equal protection. (Also Plaintiff seeks recovery under the Declaratory Judgments Act and 42 U.S.C. §1983 including attorneys' fees.)

Status: Conference with opposing counsel held.

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

Gross Premium Tax; Protest Filed: 05-24-90	Asst. AAG Assigned:	Gene Storie
Period: 1985-1986 1989-1992 Amount: \$1,848,606	Plaintiff's Counsel:	Mary K. Wolf Austin

Issue: Whether insurance taxes are owed by insurance companies on dividends applied to paid-up additions and renewal premiums.

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

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
---	---	---

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.

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
--	---	---

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.

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
--	---	---

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.

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
--	---	--

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.

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
--	---	--

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: Summary Judgment granted for Defendants. Notice of Appeal filed. Appellant's brief due 02/01/00.

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
--	---	--

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.

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

Gross Premium Tax; Protest & Refund	Asst. AAG Assigned:	Christine Monzingo
Filed: 07/13/99	Plaintiff's Counsel:	Michael W. Jones
Period: 1990		Jeff D. Otto
1992		Loyd R. Earley
1994		Thompson, Coe, Cousins & Irons
Amount: \$1,027,067.59		Dallas
\$395,949.71		
\$294,607.28		

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

Status: Answer filed.

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

Maintenance Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 07/09/96	Plaintiff's Counsel:	Frank Stenger-Castro
Period: 1992-1995		Fred Lewis
Amount: \$Not Stated		Texas Workers' Compensation Insurance Facility Austin

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

Status: Inactive. Court set on dismissal docket.

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

Maintenance Tax; Refund Filed: 03/25/97 Period: 1992-1995 Amount: \$23,623,585	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Larry Parks Long, Burner, Parks & Sealey Austin
---	---	---

Issue: Whether the Facility may recover from the State the maintenance tax surcharge which it reimbursed to insurers.

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

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
---	---	---

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.

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
--	---	---

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

Status: Answer filed.

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

Insurance Tax; Protest Filed: 04/29/97 Period: 1993 Amount: \$56,958	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Larry Parks Long, Burner, Parks & Sealey Austin
---	---	---

Issue: Whether plaintiff should be given credit against tax due for examination fees paid to the state in connection with a market conduct examination report ordered by the Texas Department of Insurance. Plaintiff also asks for penalty and interest waiver.

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

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

Insurance Tax; Protest & Declaratory Judgment Filed: 10/20/99 Period: 1993-1997 1993-1997 Amount: \$416,462.73 \$214,893.74	Asst. AAG Assigned: Plaintiff's Counsel:	Cecilia Gonzalez Nanette K. Beard Raymond E. White Daniel Micciche Akin, Gump, Strauss, Hauer & Feld Austin
---	---	---

Issue: Whether the Comptroller improperly included amounts not received by Plaintiff in Plaintiff's gross premiums tax base. Whether any maintenance tax is payable on Plaintiff's business of home warranty insurance. Whether the Comptroller is bound by the prior actions and determinations of the Texas Department of Insurance. Whether the assessments of tax violate due process and equal taxation. Whether penalty and interest should have been waived.

Status: Answer filed.

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
--	---	--

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

Status: Plaintiff's Motion for Summary Judgment pending.

Oliveira, Leonel v. Rylander, et al. Cause #99-14679

Controlled Substances Tax; Declaratory Judgment Filed: 12/20/99 Period: 11/22/94 Amount: \$503,433.87	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Horacio Pena, Jr. Law Office of Horacio Pena, Jr. Mission
---	---	---

Issue: Whether Plaintiff may remove controlled substances tax lien on grounds of double jeopardy when Plaintiff has previously been convicted for possession of the same controlled substances by a federal district court.

Status: Answer filed.

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

Controlled Substances Tax; Filed: 11/03/95 Period: 1992 Amount: \$12,793	Asst. AAG Assigned: Plaintiff's Counsel:	Blake Hawthorne Paul J. Goeke Attorney at Law San Antonio
---	---	--

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.

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

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

Issue: Is the Controlled Substances Tax Act unconstitutional?

Status: Plaintiff is deceased. Heirs to appear and enter suggestion of death.

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

Controlled Substances Tax; Declaratory Judgment & Injunction	Asst. AAG Assigned:	Blake Hawthorne
Filed: 04/11/96	Plaintiff's Counsel:	Charles O. Grigson
Period: 09/95		Attorney at Law
Amount: \$304,110		Austin

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.

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

Controlled Substances Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 12/04/95	Plaintiff's Counsel:	Craig A. Stokes
Period: 01/27/93		Oppenheimer, Blend, Harrison & Tate
Amount: \$17,222		San Antonio

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.

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

Controlled Substances Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 08/12/99	Plaintiff's Counsel:	David L. Pritchard Fort Worth
Period: 03/26/92		
Amount: \$15,430.34		

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.

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

Controlled Substances Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 10-23-92	Plaintiff's Counsel:	Charles O. Grigson Austin
Period: 05/24/90		
Amount: \$5,253		

Issue: Constitutionality of Controlled Substances Tax Act.

Status: Some discovery completed. Inactive.

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
---	---	--

Issue: Whether taxpayers similarly situated to AT&T were not required to pay gross receipts tax and PUC assessments, as AT&T was, resulting in discrimination against Plaintiff under the equal and uniform taxation clause of the Texas Constitution and the equal protection clause of the U.S. Constitution.

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

Caldwell, Marcie v. Rylander Cause #99-13088

Declaratory Judgment Tax; Declaratory Judgment Filed: 11/08/99 Period: 1992-Present Amount: \$	Asst. AAG Assigned: Plaintiff's Counsel:	Christopher Jackson Joe K. Crews Diane S. Jacobs Ivy, Crews & Elliott Austin
--	---	--

Issue: Whether county court fees collected from persons who are convicted of any criminal offense are constitutional. Plaintiff seeks class action declaratory and injunctive relief to prevent Comptroller from collecting fees. Plaintiff also seeks attorneys' fees.

Status: Plea to Jurisdiction denied 01/06/00. Preparing Interlocutory Appeal. Plaintiff conducting discovery. Motion to certify class set 02/02/00.

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

Property Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 07/11/96	Plaintiff's Counsel:	Robert Mott
Period: 1994		Joseph Longoria
Amount: \$Not stated		Perdue, Brandon, Fielder, Collins & Mott Houston

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

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

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

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

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.

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

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

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.

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.

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

Motor Vehicle Tax; Refund	Asst. AAG Assigned:	Jim Cloudt
Filed: 11/12/99	Plaintiff's Counsel:	Mark W. Eidman
Period: 10/01/90-11/30/96		Scott, Douglass & McConnico Austin
Amount: \$3,405,494.49		David E .Otero Akerman, Senterfitt & Eidson Florida

Issue: Whether Plaintiff, as assignee of installment contracts with Chrysler dealers, is entitled to a refund under the bad debt credit provision in the sales tax for taxes on motor vehicles that were not paid by defaulting vehicle purchasers. Whether there is any rational basis to distinguish between vehicle sales and other sales or between vehicle rental receipts and vehicle sales receipts for purposes of bad debt relief.

Status: Answer filed.

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

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

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.

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

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

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.

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.

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

Property Tax; Substantial Evidence Review	Asst. AAG Assigned:	Christine Monzingo
Filed: 08/05/97	Plaintiff's Counsel:	Russell R. Graham
Period: 1996		Calame, Linebarger, Graham & Pena
Amount: \$Not stated		Austin

Issue: Whether the Comptroller's property value study is incorrect in that it misstates the market value of the subject property and causes the estimate of market value for Category F to exceed the actual market value of the School District's 1996 tax base, depriving it of state aid to which it is legally entitled.

Status: Inactive.

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

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

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

Status: Answer filed.

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

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

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

Status: Defendant's First Amended Original Answer and Plea to Jurisdiction filed.

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. Trial set for 06/12/00.

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.

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.

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.

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.

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.

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
--	---	--

Issue: Whether penalty should be waived.

Status: Answer filed.

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
---	---	---

Issue: Whether the Comptroller's property value study is incorrect in that it exceeds the market value of the subject property and causes the estimate of market value for various categories to exceed the actual market value of the School Districts' 1996 tax base, depriving it of state aid to which it is legally entitled. Plaintiffs also assert that the burden of proof is on the State to prove that Plaintiffs' valuations are incorrect.

Status: Cross-Motions for Summary Judgment heard on 06/25/98. Final Judgment for Comptroller signed 12/09/99.

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.

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

Sales Tax; Refund
Filed: 01/26/96
Period: 1990
Amount: \$240,160

Asst. AAG Assigned:

Christopher Jackson

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.

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: Plaintiff's Counsel:	Christine Monzingo 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.

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

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

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.

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

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

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
---	---	---

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.

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
--	---	--

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.

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
---	---	--

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.

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.

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.

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
---	---	---

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.

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
--	---	---

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.

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
---	---	---

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.

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

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

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

Status: Answer filed. Summary Judgment granted for Plaintiff.

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 Filed: 05/23/97 Period: 1996 Amount: \$158,199	Asst. AAG Assigned: Plaintiff's Counsel:	Gene Storie Joseph C. Boggins Anthony Icenogle 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.

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
---	---	---

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.

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
---	---	---

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.

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
---	---	---

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.

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
---	---	---

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.

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
--	---	---

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.

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.

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.

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

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

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

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

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

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

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

Status: Non-suit.

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

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

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

Status: Nonsuited.

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

Severance Tax; Refund Filed: 05/31/96 Period: 01/01/88-08/31/92 Amount: \$141,330	Asst. AAG Assigned: Plaintiff's Counsel:	Steve Rodriguez 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.

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

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

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 Period: 02/01/90-09/30/91 Amount: \$24,660.87 plus accrued penalties & interest	Asst. AAG Assigned: Plaintiff's Counsel:	James Parsons 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.

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
---	---	--

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.

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
---	---	---

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.

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

Franchise Tax; Refund Filed: 07/16/97	Asst. AAG Assigned:	Christine Monzingo
Period: 1990-1991 Amount: \$3,552,416	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

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.

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

Franchise Tax; Refund Filed: 08/06/98	Asst. AAG Assigned:	Christine Monzingo
Period: 1988-1989 Amount: \$2,303,554	Plaintiff's Counsel:	L. G. "Skip" Smith Clark, Thomas & Winters Austin

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

Status: Nonsuited.

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

Sales Tax; Refund Filed: 10/25/96	Asst. AAG Assigned:	Blake Hawthorne
Period: 01/88-07/90 Amount: \$17,857	Plaintiff's Counsel:	Tom Tourtellotte Tourtellotte & Kennon Austin

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.

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
---	---	--

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.

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
--	---	---

Issue: Whether Plaintiff's obligation to pay its employees post-retirement benefits is "debt" for franchise tax purposes.

Status: Non-suit.

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
---	---	---

Issue: Whether the auditor correctly estimated the liability when Plaintiff's records were totally destroyed by fire.

Status: Non-suited.

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
--	---	---

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

Status: Nonsuited.

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

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

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 Period: 1988-1990 Amount: \$2,608,946	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo 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.

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

Franchise Tax; Refund Filed: 11/7/94 Period: 1989-90 Amount: \$96,287	Asst. AAG Assigned: Plaintiff's Counsel:	Christine Monzingo 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.

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
--	---	---

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

Status: Nonsuited.

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
---	---	---

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.

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

Controlled Substances Tax; Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 10/09/98	Plaintiff's Counsel:	C. Wayne Huff
Period: 7/14/98		Attorney at Law
Amount: \$65,832		Dallas

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.

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.

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.

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.

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.

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.

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

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

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

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

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

Status: Nonsuited.

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

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

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

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

Asst. AAG Assigned:

Cecilia Gonzalez

Plaintiff's Counsel:

Rick Harrison
Harrison & Rial
Austin

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

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

Status: Judgment for Plaintiff.

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: Resolved by Agreed Judgment.

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.

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.

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

Franchise Tax; Protest	Asst. AAG Assigned:	Christine Monzingo
Filed: 3/26/96	Plaintiff's Counsel:	Kenneth M. Horwitz
Period: 1989-1991		Vial, Hamilton, Koch & Knox
Amount: \$193,007		Dallas

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: Agreed Judgment signed 11/16/99.

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: Plaintiff's Counsel:	Jim Cloudt 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.

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
---	---	---

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.

Shell Oil Co. v. Sharp, et al. Cause #94-02717

Franchise Tax; Protest Filed: 3/17/94	Asst. AAG Assigned:	Christine Monzingo
Period: 1988-1990 Amount: \$891,777	Plaintiff's Counsel:	Robert H. Hobbs Shell Oil Co. Houston

Issue: Whether amounts due under operating lease obligations are excludable from surplus as debt.

Status: Nonsuited.

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	Asst. AAG Assigned:	Christine Monzingo
Period: 1991-1993 Amount: \$27,385	Plaintiff's Counsel:	David H. Gilliland Clark, Thomas & Winters Austin

Issue: Whether post-retirement benefits should be excluded from taxable surplus as a debt.

Status: Nonsuited.

Southwestern Bell Yellow Pages, Inc. v. Sharp, et al. Cause #95-15015

Franchise Tax; Protest & Refund Filed: 12/01/95	Asst. AAG Assigned:	Christine Monzingo
Period: 1989-1991 Amount: \$397,682	Plaintiff's Counsel:	David H. Gilliland Clark, Thomas & Winters 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.

Southwestern Public Service Co. v. Sharp, et al. Cause #93-01752

Franchise Tax; Refund Filed: 02/12/93	Asst. AAG Assigned:	Christine Monzingo
Period: 1988-1991 Amount: \$1,215,015	Plaintiff's Counsel:	David H. Gilliland Clark, Thomas & Winters 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.

Thermodyn Contractors, Inc. v. Sharp, et al. Cause #97-02947

Sales Tax; Protest Filed: 03/11/97	Asst. AAG Assigned:	Christopher Jackson
Period: 01/01/92-12/31/94 Amount: \$191,757	Plaintiff's Counsel:	H. Christopher Mott Krafsur Gordon Mott 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.

Timken Co., The v. Sharp, et al. Cause #97-09594

Franchise Tax; Protest Filed: 08/21/97	Asst. AAG Assigned:	Christine Monzingo
Period: 1990-1991 Amount: \$326,609	Plaintiff's Counsel:	David E. Cowling Sheryl S. Scovell Jones, Day, Reavis & Pogue Dallas

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.

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

Sales Tax; Protest Filed: 11/13/98 Period: 10/01/91-10/31/95 Amount: \$172,292	Asst. AAG Assigned: Plaintiff’s Counsel:	Jim Cloudt 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.

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

Franchise Tax; Refund Filed: 5/25/94 Period: 1979-1980 Amount: \$4,504,137	Asst. AAG Assigned: Plaintiff’s Counsel:	Gene Storie 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.

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
--	---	---

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

Status: Non-suit.

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
---	---	---

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.

Index

- Accounting Method for Joint Venture Investments
 - gross receipts, 120
- Additional Tax
 - franchise tax, 27, 101
 - franchise tax imposed after merger, 1, 9, 10, 26
 - franchise tax; income tax?, 27
 - imposed after merger, 22
 - merger, 19
 - nexus, 26
- Administrative Hearing, 92
- Advertising Receipts
 - allocation for franchise tax, 5
- Aircraft
 - maintenance, repair & remodeling, 68
 - repair & replacement parts, 69
 - sale for resale, 49
- Allocation
 - advertising receipts, 5
- Amusement Tax
 - coin operated machines and non-coin operated games, 42
 - fitness & aerobic training services, 63
- Asbestos
 - removal, 48, 100, 118
- Attorneys' Fees, 74
- Audit Adjustments
 - deductible from surplus, 119
- Automotive Items, resale, 48
- Business Loss Carry Forward
 - merger, 17, 19
- Cable Services
 - municipal franchise fees, 58
- Catalogs
 - use tax--printed out of state, 45, 64
- Coin Operated Machines and Non-Coin Operated Games
 - amusement tax v. sales tax, 42
- Construction
 - 1984 amendment to Tex. Tax Code § 151.311, 40
 - government facility, 55
- Contract
 - lump sum or separated, 34, 123
 - lump sum or separated contract, 34, 38, 65
- Conveyor Belts
 - manufacturing exemption, 32
- Country Club Fees
 - sales tax, 52
- County Court Fees
 - punishment, 89
- Customs Broker License
 - export of goods, 42, 55
- Data Processing, 56
 - intercompany transactions, 46
- Debt
 - deduction from surplus, 26
 - deferred compensation plan, 107
 - Deferred Executive Incentive Plan, 112
 - intercompany payable account, 7, 30
 - liabilities and reserve accounts, 101, 106, 108, 116, 117
 - liability to Pension Benefit Guaranty Corporation under ERISA, 10
 - mining agreement, 114
 - operating lease obligations, 5, 107, 109, 114, 115, 117, 119, 121, 122
 - post-retirement benefits, 4, 8, 18, 21, 25, 26, 100, 101, 102, 103, 106, 107, 108, 109, 111, 112, 113, 115, 116, 117, 118, 122, 123, 124
 - shadow stock, 116
 - vacation pay, 102
 - write-off, 117
- Debt Collection Services, 56, 65
- Deferred Compensation Plan
 - debt, 107
 - ERISA, 107
- Depreciation
 - service lives, 20, 119
- Depreciation Methods
 - 1986 IRS Code applicable to 1990, 22
 - franchise tax, 21, 117
- Detrimental Reliance, 35, 91, 108
- Diesel Fuel
 - penalty, 55
 - rebuttable presumption, 95
- Dividends
 - declared, 21
- Doing Business
 - franchise tax, 3, 8
 - sales tax, 51
- Double Jeopardy, 86, 111
 - federal conviction, 85
- Electricity
 - processing, 36, 62, 67
 - use in hotels, 71
- Engineering Services
 - part of sale of tangible personal property, 40, 63

- Equal Protection, 74
- ERISA
 - deferred compensation plan, 107
 - liability to Pension Benefit Guaranty Corporation under ERISA, 10
 - post-retirement benefits, 4, 5, 21, 100, 101, 102, 103, 106, 107, 108, 111, 112, 115, 116, 117, 118, 123, 124
 - Texas Insurance Code, 79
- Export of Goods
 - customs broker license, 55
 - validity of export certificates, 38
- FASB No. 38, 120
- Finance Charge, separately stated, 104
- Franchise Fees, Municipal
 - cable services, 58
- Fraud
 - penalty, 39
- Games
 - amusement tax v. sales tax, 42
- Gas and Electricity Purchases
 - manufacturing exemption, 46
 - residential use, 71
- Gas Production Tax
 - Order 94 payments, 91
- Government Facility
 - construction, 55
- Gross Receipts
 - accounting method for joint venture investments, 120
 - apportionment of GNMA securities' interest, 12
 - apportionment of satellite service receipts, 29
 - constitutionality, 89
 - deduction for food shipped in from out of state, 6, 7, 12, 13, 14, 16, 17, 23, 24, 28
 - inter-company receipts, 30
 - method of computation, 123
 - nexus, 30
 - reimbursement for services, 18
 - section 338 sale, 10
 - throwback rule, 2, 3
- Gross Taxable Sales
 - inadequate records, 31
- Health Care Supplies
 - exclusion from franchise tax receipts, 27
- Independent Contractors
 - maid service, 34
- Independently Procured Insurance, 75
 - information services
 - interstate oil and gas information, 121
- Inheritance Tax
 - individual liability of executor, 125
- Injunctive Relief
 - collection of tax, 52, 67, 72
 - money represented to be tax, 114
- Insurance Contracts
 - sales tax, 47
- Insurance Services, 56
- Internal Rollover
 - gross premiums, 78
 - insurance gross premiums tax, 73, 75, 78
 - insurance tax, 73, 80
- Intra plant Transportation
 - manufacturing exemption, 68
- Inventory Samples
 - sale for resale, 50
- Janitorial Services, 43
 - new construction, 58, 102
- Joint Venture
 - sales tax credits, 18, 25
- Lease
 - lease termination charge, 121
 - pledge of collateral/acceleration of sales tax, 58
 - reimbursement by U.S. Navy, 61
 - sale for resale, 108
 - vs. joint venture agreement, 120
- Liability Account
 - debt, 101, 117
- Lien
 - drug tax, 87, 115
- Limitations
 - contingent assets, 9, 18
- Local Sales Tax
 - MTA, 104
- Lump Sum Motor Vehicle Repairs
 - software services, 32
- Maid Services
 - real property services, 34
- Maintenance
 - aircraft owned by certificated carrier (pipeline), 68
 - utility poles, 37
 - workers compensation, 74
- Maintenance Charges
 - manufacturing facility, 34
 - vs. repair, 44, 50
- Maintenance Tax
 - workers compensation, 81, 82, 99
- Manufacturing Exemption, 60
 - "hobs", 111
 - "pan glazing", 50
 - conveyor belts, 32
 - gas and electricity, 46
 - Intra plant transportation, 68

- packaging, 46, 48, 50
- pipe, 68, 99
- Manufacturing Facility
 - management and operation, 34
- Marketing Costs
 - severance tax, 109
- Mining Agreement
 - debt, 114
- Mixed Drinks
 - complimentary, sales tax, 53
- Motor Carrier Tax
 - apportionment, 90
 - residual value of leased vehicles, 90
- Motor Vehicle Tax
 - bad debt collection, 92
 - exemption for orthopedically handicapped, 92
 - liability for, 95
 - method of computation, 110
- New Construction, 47
 - janitorial services, 58, 102
 - lump sum or separated contract, 38
 - real property services, 124
 - tax credits, 53
 - vs. real property repair and remodeling, 58, 118
- Nexus
 - certificate of authority, 3
 - delivery and installation of goods, 54
 - licensed software, 35
 - nexus, 32
- Occasional Sales, 53
 - drilling rigs, 105
 - gear machinery, 111
 - shrimp trawler, 49
- Officer and Director Compensation
 - add-back to surplus, 1, 11, 20, 22
- Oil Well Services, 60
- Open Courts
 - prepayment of tax, 47, 61
- Operating Lease Obligations
 - debt, 5, 107, 109, 114, 115, 117, 119
- Order 94 Payments
 - gas production tax, 91
- Packaging
 - manufacturing exemption, 45, 46, 48, 50
- Paid-up Additions
 - insurance tax, 78
- Parking Lot
 - repairs, 53
- Penalty
 - fraud, 39, 65, 110
 - waiver, 39, 92, 97
- Pension Benefit Guaranty Corporation , 10
- Pipe
 - manufacturing exemption, 68, 99
- Pollution Control, 118
- Post-Retirement Benefits, 8
 - debt, 3, 4, 8, 21, 25, 100, 101, 102, 103, 106, 107, 108, 109, 111, 112, 113, 115, 116, 117, 118, 122, 123, 124
 - ERISA, 4, 5, 21, 100, 101, 102, 103, 106, 107, 108, 111, 112, 115, 116, 117, 118, 123, 124
- Pre-Acquisition Earnings
 - deduction from surplus, 11
- Predominant Use
 - electricity, 47
- Premiums
 - home warranty insurance, 84
 - workers compensation, 99
- Prepayment of Tax, 65
 - gas production tax, 96
 - open courts, 47, 61
- Printing
 - out-of-state printer, 70
- Prior Contract Exemption, 36, 69, 70, 112
- Prizes
 - amusement tax v. sales tax, 42
 - cost of taxable, 59, 71
- Promotional Materials
 - use tax, 33, 38, 41
- Proof
 - burden in administrative hearing, 47
 - burden in property tax case, 97
- Property Tax
 - state university, 96
- Property Value Study
 - property tax, 90, 93, 94, 97
- Public Law 86-272
 - franchise tax, 3, 8
- Public Telephone Service
 - transfer of care, custody, and control of equipment, 65
- Push-Down Accounting, 12, 21
- Real Property Repair and Remodeling
 - vs. new construction, 37, 58, 118
- Real Property Service
 - landscaping, waste removal, 35, 43, 59
 - maid service, 32
 - property damaged in disaster area, 66
 - taxable price, 43
- Recycling, Sludge
 - franchise tax, 15
- Remodeling, 47, 57
 - aircraft owned by certificated carrier (pipeline), 68
 - v. maintenance, 37

- Renewal Premiums
 - insurance tax, 78
- Rental of Equipment
 - inclusion of related services in taxable price, 40
- Repair, 47
 - aircraft owned by certificated carrier (pipeline), 68
 - parking lot, 53
 - vs. maintenance, 44, 50
- Resale Certificates
 - incomplete taxpayer number, 121
 - U.S. government, 61
- Retaliatory Tax
 - insurance tax, 78
 - similar insurance company, 75, 76, 77, 79, 82
- Retroactivity of Tax
 - franchise tax statute, 14, 23, 103, 106, 107, 113
 - Section 171.109(j), 117, 123
- Rule Making
 - authority of Comptroller, 56
- Sage, 124
- Sale for Resale
 - airplane, 49
 - debt collection services, 41
- Sample Audits
 - compliance with procedures, 43, 52
- Sampling Technique
 - validity, 43, 45, 63, 119
- Severance Tax
 - marketing costs, 109
- Shadow Stock
 - debt, for franchise tax purposes, 116
- Small Business Administration
 - lump sum or separated contract, 123
- Statute of Limitations, 25, 96, 124
 - inheritance tax assessment, 116
 - motor fuels tax; one-year statute, 91
 - tax paid to vendors, 43, 44
 - waiver, 43
- Stockholder Equity, 29
- Successor Liability, 57
- Telecommunication Services
 - networking services, 66
- Telecommunications Equipment
 - transfer of care, custody, and control of equipment, 57, 70
- Telecommunications Services
 - private line services, 33
- Texas Franchise Tax Receipts
 - health care supplies, 27
- Texas Investments, 74
 - bond & cash investments, 81
 - debt, 81
 - limited partnership holdings, 83
 - partnership, 81
- Throwback Rule, 13
- Tobacco
 - tax base, 95
 - taxable price, 94
- U.S. Government
 - resale certificates, 61
- Use Tax
 - "gift sends", 57
 - catalogs printed out of state, 45, 61, 64
 - promotional materials, 33, 38, 41
 - shipping from out of state, 56
- Vacation Pay
 - debt, 102
- Waste Removal
 - asbestos, 100
 - industrial solid waste vs. garbage, 50
- Write-Off
 - of assets, deductible from surplus, 15, 16, 29, 117