



**OFFICE OF THE ATTORNEY  
GENERAL**

**TAXATION DIVISION**

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

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## Franchise Tax

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

AG Case #001354026

Franchise Tax; Refund Filed: 09/15/00	Asst. AAG Assigned:	Christine Monzingo
Period: 1993 Amount: \$265,995	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin

Issue: Whether the franchise tax was applied retroactively to deny Plaintiff a business loss carry forward. Whether the officer and director compensation add-back is unconstitutional.

Status: Answer filed.

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### **American General Corp. v. Rylander, et al.** Cause #GN003178

AG Case #001375419

Franchise Tax; Protest Filed: 10/31/00	Asst. AAG Assigned:	Christine Monzingo
Period: 1994-1998 Amount: \$2,131,754.78	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin

Issue: Whether intercorporate receipts should be excluded from gross receipts. Whether certain obligations were debts. Whether the Comptroller's application of the debt deduction statute violates equal protection. Whether an indirect tax on post-retirement benefits violates ERISA and the supremacy doctrine. Whether interest should be waived. Whether the assessment violates equal taxation, equal protection, due process, commerce clause, the Tax Code, the Administrative Code, was in excess of statutory authority, was made through unlawful procedure, and was arbitrary and capricious.

Status: Answer filed.

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

AG Case #99-1227646

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

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

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: Plaintiff filed motion to retain 08/07/01. Discovery in progress.

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**Bank of Texas, National Association (Formerly Swiss Avenue State Bank) v. Comptroller of Public Accounts** Cause #GN103976

AG Case #01535283

Franchise Tax; Protest &  
Declaratory Judgment  
Filed: 12/03/01  
Period: 2001  
Amount: \$218,056.52

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

J. Lawrence Temple  
Temple & Temple  
Austin

Frederic Dorwart  
Tulsa, Oklahoma

Issue: Whether conversion from a state bank to a national bank is a merger for franchise tax purposes. Whether the national bank must file an initial return. Whether treatment of the conversion as a merger is preempted by federal law.

Status: Answer filed.

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

Franchise Tax; Protest & Refund	Asst. AAG Assigned:	Blake Hawthorne
Filed: 02/01/01	Plaintiff's Counsel:	Mark W. Eidman
Period: 1988-1994		Ray Langenberg
Amount: \$300,772.95		Scott, Douglass & McConnico
\$204,616.25		Austin

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

Status: Answer filed.

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

Franchise Tax; Protest	Asst. AAG Assigned:	Jim Cloudt
Filed: 3/28/96		
Period: 1988-1991	Plaintiff's Counsel:	David E. Cowling
Amount: \$804,971		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.

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

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

Status: Settlement in progress.

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**First Co. v. Rylander, et al.** Cause #GN200229  
AG Case #021556980

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

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christine Monzingo  
  
James F. Martens  
Christina A. Mondrik  
Stahl, Martens & Bernal  
Austin

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

Status: Answer filed.

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**Harcourt Brace Jovanovich Legal & Professional, HBJ Farm Publications, Psychological Corp., Drake Beam Morin, Inc. and Holt Rinehart & Winston, Inc. v. Sharp, et al.** Cause #97-03795  
AG Case #97-706290

Franchise Tax; Protest and  
Declaratory Judgment  
Filed: 03/28/97  
Period: 1987-1990  
1989-1991  
1988-1991  
Amount: \$243,469 (total of  
all)

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

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

Status: Plaintiffs presented written settlement offer.

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

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

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

Steven D. Moore  
Jackson Walker LLP  
Austin

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

Status: Answer filed.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Fred O. Marcus  
Horwood, Marcus & Braun  
Chicago

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

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

Status: Settled.

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

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

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

Fred O. Marcus  
Horwood, Marcus & Braun  
Chicago

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

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

Status: Settled.

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

Franchise Tax; Protest &  
Refund  
Filed: 01/05/00  
Period: 1992-1995  
Amount: \$48,437.57

Asst. AAG Assigned:

Blake Hawthorne

Plaintiff's Counsel:

C. Morris Davis  
McGinnis, Lochridge &  
Kilgore  
Austin

Issue: Whether receipts from access and billing charges to inter-exchange carriers and from subscriber line charges are Texas gross receipts. Whether the Comptroller failed to follow Rule 3.357 (e)(39), thereby denying due process to Plaintiff.

Status: Inactive.

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

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

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

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

Franchise Tax; Protest Filed: 12/21/95 Period: 1986-1987 Amount: \$355,619	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether acquisition debt incurred by an acquiring corporation may be pushed down to the acquired corporation to reduce taxable capital.

Status: Discovery in progress.

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**North Star Steel Texas, Inc. v. Sharp, et al.** Cause #98-12019  
AG Case #98-1071152

Franchise Tax; Refund Filed: 10/23/98 Period: 1992-1995 Amount: \$725,830	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether Comptroller properly interpreted the throw-back rule for purposes of apportioning gross receipts.

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

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**Palais Royal, Inc. and 3 Beall Brothers 3, Inc. v. Sharp, et al.** Cause #96-03719  
03-01-00224-CV  
AG Case #96-495867

Franchise Tax; Protest Filed: 04/01/96	Asst. AAG Assigned:	Christine Monzingo
Period: 1992-1993 (3 Beall) 1992-1995 (Palais)	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
Amount: \$700,974		

Issue: Whether the 1991 Franchise Tax Statute is unconstitutionally retroactive as applied to the 1992 report year of a fiscal year taxpayer. Whether the officer-director add-back statute is unconstitutional under equal taxation provisions. Whether the implementation of the earned surplus tax component violated due process.

Status: Trial court granted Plaintiffs' motion for summary judgment on the due process, retroactivity, and equal tax issues, and granted the State's Motion for Summary Judgment on the officer-director compensation add-back issue. Judgment signed 01/29/01. Appellants' brief filed 06/22/01. Appellees' brief filed 10/05/01. Oral argument held 10/17/01. Appellees' post-submission brief filed 10/29/01.

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

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

Issue: Whether franchise tax is due on gain from sale of an operating division that was capitalized, incorporated and sold. Whether receipts from sales of drugs shipped from outside Texas should be included in Texas' earned surplus gross receipts. Whether the throw-back rule applies to Michigan sales. Whether tax on income earned before the effective date of the earned surplus component is unconstitutional. Whether all penalty and interest should be waived.

Status: Cross-motions for summary judgment denied 02/06/02. Non-jury trial set 10/02/02.

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

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

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

Status: Answer filed.

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

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

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

Status: Answer filed.

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**Reliant Energy Gas Transmission Co., f/k/a Noram Gas Transmission Co. v.**

**Rylander, et al.** Cause #99-08127

AG Case #99-1187675

Franchise Tax; Refund

Filed: 07/15/99

Period: 1996

Amount: \$163,758.10

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

L.G. Skip Smith  
David H. Gilliland  
Clark, Thomas & Winters  
Austin

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

Status: Discovery in progress.

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

AG Case #99-1155755

Franchise Tax; Refund &  
Protest

Filed: 04/09/99

Period: 1994-1995

Amount: \$502,834.84 &  
\$190,000.58

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Ira A. Lipstet  
Therese L. Surprenant  
Jenkins & Gilchrist  
Austin

Issue: Whether Plaintiff may take franchise tax credit as a joint venture partner for equipment sales taxes paid by the joint venture.

Status: Motion to retain granted. Order waiving mediation granted 05/29/01. Discovery in progress.  
Trial set 09/16/02.

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**Sergeant Enterprises, Inc. v. Sharp, et al.** Cause #96-15475  
AG Case #97-652613

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

Status: Discovery in progress.

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

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

Status: First amended answer filed.

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**Southern Union Co. v. Rylander, et al.** Cause #GN003692  
AG Case #011399409

Franchise Tax; Refund Filed: 12/29/00 Period: 1994 Amount: \$549,983	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff was required to use historical cost as the basis of assets of an acquired corporation. Whether post-retirement benefit obligations are debt. Whether disallowing deduction of post-retirement benefits violates equal protection. Whether Plaintiff may use another method to account for depreciation.

Status: Partial settlement.

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

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

Status: Answer filed.

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***Specialty Retailers, Inc. v. Rylander, et al.*** Cause #GN102549  
AG Case #011479979

Franchise Tax; Refund Filed: 08/13/01 Period: 1997 Amount: \$99,182	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether the officer add-back provision violates equal and uniform taxation, equal protection, or due process.

Status: Answer filed.

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

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

Issue: Whether the 1993 franchise tax on earned surplus is a retroactive tax as applied to fiscal year taxpayers.

Status: Bankruptcy stay in effect. See *General Dynamics v. Sharp* and *3 Beall Brothers 3, Inc. v. Comptroller, et al.*

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

Franchise Tax; Refund Filed: 12/15/99	Asst. AAG Assigned:	Christopher Jackson
Period: 1994 Amount: \$1,028,616.15	Plaintiff's Counsel:	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.

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

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

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

Status: Discovery in progress.

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

Franchise Tax; Refund Filed: 02/24/95 Period: 1988-1991 Amount: \$1,432,851	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether various liabilities should be deducted from surplus as debt, including post-retirement benefits, long-term lease obligations, long-term contractual commitments, and liabilities from ongoing litigation. Also, whether the Tax Code is preempted by ERISA.

Status: Answer filed. Pending outcome of *General Motors*.

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**Universal Frozen Foods Co., its Successors-in-Interest, Conagra, Inc. and Lamb Weston, Inc., and Universal Foods Corp. v. Sharp, et al.** Cause #98-01956  
03-01-00646-CV  
AG Case #98-901683

Franchise Tax; Protest Filed: 02/23/98 Period: 01/01/98-07/31/94 Amount: \$613,229	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ira Lipstet Mary E. Haught Jenkins & Gilchrist Austin
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Issue: Whether the "Additional Tax" in §171.0011 is illegal income tax because franchise tax can be imposed only on the privilege of doing business in Texas. Whether the Additional Tax violates other constitutional provisions. Whether a gain on the sale of one Plaintiff's stock from its parent to another company was improperly included in taxable earned surplus for the purpose of calculating the Additional Tax. Whether Rule 3.557(e)(10) is beyond the scope of §171.110 and therefore exceeds the Comptroller's authority. Whether Rule 3.557 is unconstitutional.

Status: Defendants' motion for summary judgment granted and plaintiffs' denied on 10/16/01. Judgment signed 10/22/01. Notice of Appeal filed 11/20/01. Clerk's Record filed 12/13/01. Appellants' brief filed 02/13/02. Appellees' brief filed 04/03/02. Oral argument held 04/17/02.

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

Franchise Tax; Refund Filed: 10/20/00 Period: 1992 and 1993 Amount: \$46,607.88	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  D. Steven Henry Gregory A. Harwell Robert M. Reed, Jr. Gardere & Wynne Dallas
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Issue: Whether Plaintiff is entitled to write down or write off the value of its investment in bankrupt subsidiaries.

Status: Answer filed.

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***Westcott Communications, Inc., Law Enforcement Television Network, Inc.,  
Westcott ECI, Inc. and TI-IN Acquisition Corp. v. Sharp, et al.*** Cause #98-14049  
AG Case #99-1093113

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

Status: Defendants' Cross Motion for Summary Judgment filed 02/27/02. Plaintiffs' Motion for Summary Judgment set 03/21/02. Waiting for district court's decision.

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

Cause #98-00942

AG Case #98-891532

Franchise Tax; Protest

Filed: 01/23/98

Period: 1990-1993

Amount: \$38,482

\$473,678

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman  
Scott, Douglass &  
McConnico  
Austin

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

Status: Discovery in progress. Deposition of plaintiff taken 01/25/01. Deposition of defendants taken 03/22-23/01. Mediation to be scheduled. Trial scheduled 07/29/02.

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## Sales Tax

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

AG Case #011514544

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

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

Status: Discovery in progress.

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

AG Case #99-1187865

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

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

Status: Bankruptcy stay in effect. Discovery in progress. Trial set 10/15/01. Plaintiff filed bankruptcy petition 09/24/01. Bankruptcy/Collection Division has requested bankruptcy court to abstain.

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

Sales Tax; Protest Filed: 11/20/98 Period: 1994-1998 Amount: \$31,128.62	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Stephen D. Good Gregory A. Harwell Gardere & Wynne Dallas
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Issue: Whether Alpine may be regarded as a seller for direct sales made in Texas by independent dealers and whether holding Alpine liable for sales tax violates the commerce clause, due process or equal protection.

Status: Discovery in progress.

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

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

Status: Plaintiff filed motion to retain 08/13/01.

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

Sales Tax; Protest Filed: 06/15/98	Asst. AAG Assigned:	Scott Simmons
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: Trial setting passed. Settlement agreement signed.

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**Aramis Services, Inc. v. Sharp, et al.** Cause #98-03527  
AG Case #98-930349

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

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

Status: Answer filed.

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**Aramis Services, Inc. v. Rylander, et al.** Cause #0000384  
AG Case #001273051

Sales Tax; Protest Filed: 02/11/00	Asst. AAG Assigned:	Christopher Jackson
Period: 04/01/94-12/31/97 Amount: \$281,676.36	Plaintiff's Counsel:	David E. Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived.

Status: Answer filed.

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**Baldry, Ann d/b/a Annie's Housekeeping Services v. Sharp, et al.** Cause #95-02389  
AG Case #95-234990

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

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

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Answer filed.

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**Bell Bottom Foundation Co. v. Rylander, et al.** Cause #99-01092  
AG Case #99-1112186

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

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

Status: Answer filed. Change of counsel filed.

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

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

Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees and a declaration that the Comptroller disregarded controlling federal law, violated equal protection or imposed tax on the U.S. government.

Status: Answer filed.

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

Sales Tax; Protest Filed: 10/13/95 Period: 05/01/90-04/30/94 Amount: \$114,532	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Richard Flint Pearson & Price Corpus Christi
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Issue: Plaintiff contends that it is providing a single, integrated service, the management and operation of a manufacturing facility, which service is not taxable. Plaintiff contests the Comptroller's assessment of tax on maintenance charges, which Plaintiff considers to be one component of an "integrated non-taxable service."

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 6/26/90 Period: 04/01/85-07/31/88 Amount: \$181,397	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  John W. Berkel Houston
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Issue: Detrimental reliance and various allegations of unconstitutional enforcement; statute of limitations.

Status: Some discovery done. Inactive.

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**Border Steel Rolling Mills, Inc. and Border Steel, Inc., as Successor in Interest to Border Steel Rollings Mills, Inc. v. Rylander, et al.** Cause #GN002671  
AG Case #001352137

Sales Tax; Refund Filed: 09/08/00 Period: 06/01/91-08/31/95 Amount: \$76,281.34	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  Ray Bonilla Ray, Wood, Fine & Bonilla Austin
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Issue: Whether Plaintiff's rail-mounted cranes, related repair parts and labor are exempt from sales and use tax as rolling stock. Whether the Comptroller fully implemented an administrative agreement on taxation of other equipment and parts qualifying for the manufacturing exemption.

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 10/15/97 Period: 10/01/92-09/30/95 Amount: \$195,368	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Langenberg Scott Douglass & McConnico Austin
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Issue: Whether certain real property services, such as landscaping and construction site cleanup, are taxable.

Status: Discovery near completion.

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**Briscoe, Billy R. v. Rylander, et al.** Cause #GN103316  
AG Case #011509502

Sales Tax; Declaratory Judgment Filed: 10/09/01 Period: 1975-1979 Amount: \$140,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether plaintiff owes motor vehicle sales tax on trailers affixed to real property. Whether plaintiff may recover damages for harm to his credit rating caused by the Comptroller. Plaintiff seeks release of liens, economic damages and attorneys' fees.

Status: Discovery in progress. Trial set 08/19/02.

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

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

Issue: Whether Plaintiff's broadcast services are non-taxable information services under §151.0038(a). Whether Plaintiff's services are not taxable telecommunications services under §151.0103(l) or data processing under §151.0035. Whether the sale or use of Plaintiff's services occurred out-of-state. Whether Plaintiff's experts demonstrated that Plaintiff is exempt under federal law. Plaintiff also asserts limitations as to part of the liability and seeks declaratory and injunctive relief.

Status: Temporary injunction hearing held 11/29/00. Temporary injunction denied 02/08/01.

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

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

Issue: Whether Plaintiff's broadcast services are non-taxable information services under §151.0038(a). Whether Plaintiff's services are not taxable telecommunications services under §151.0103(l) or data processing under §151.0035. Whether the sale or use of Plaintiff's services occurred out-of-state. Whether Plaintiff's experts demonstrated that Plaintiff is exempt under federal law. Plaintiff asserts limitations as to part of the liability and also seeks attorneys' fees.

Status: Answer filed.

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

Sales Tax; Protest Filed: 08/18/00 Period: 04/01/94-12/31/97 Amount: \$207,454.40	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  William T. Peckham Austin
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Issue: Whether Plaintiff owes sales tax on its sales of limestone to third parties under §151.311(a). Whether Plaintiff detrimentally relied on advice from the Comptroller's Office. Whether exemption certificates covered some sales that were assessed tax. Whether Plaintiff is entitled to the manufacturing exemption under §151.318(g). Whether penalty and interest should be waived.

Status: Answer filed.

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**Cafeteria Operators, L.P. v. Rylander, et al.** Cause #99-14363  
03-01-00447-CV  
AG Case #99-1243411

Sales Tax; Refund Filed: 12/09/99 Period: 04/01/91-10/31/94 Amount: \$117,868.69	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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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: Summary judgment granted for defendants 07/05/01. Notice of appeal and request to clerk to prepare clerk's record filed 08/02/01. Docketing statement filed with Court of Appeals 08/15/01. Clerk's Record filed 09/13/01. Appellants' brief filed 10/10/01. Appellants' request for oral argument overruled on 11/27/01. Case set for submission on the briefs only on 01/14/02. Appellees' brief filed 12/18/01. Appellants' motion for oral argument filed 12/27/01; denied 01/09/02. Appellants' reply brief filed 01/11/02.

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

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

Status: Discovery in progress.

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**Choi, Sung Ju d/b/a Sam Young Trading Co. v. Sharp** Cause #95-14940  
AG Case #95-424767

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

Status: Discovery in progress.

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

Sales Tax; Refund Filed: 01/12/00 Period: 10/01/90-12/31/93 Amount: \$64,868.50	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Robert C. Alden Phillip L. Sampson, Jr. Bracewell & Patterson Austin
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Issue: Whether Plaintiff owes use tax on promotional materials shipped from out-of-state. Whether the Comptroller's imposition of use tax is invalid because Plaintiff made no use of the materials in Texas. Whether Rule 3.346(b)(3)(A) is invalid. Whether the tax violates the Commerce and Due Process Clauses of the United States Constitution.

Status: Answer filed.

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***Clinique Services, Inc. v. Sharp, et al.*** Cause #98-03533  
AG Case #98-930330

Sales Tax; Protest Filed: 04/03/98 Period: 04/01/90-03/31/94 Amount: \$519,192	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Answer filed.

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***Clinique Services, Inc. v. Rylander, et al.*** Cause #GN000376  
AG Case #001273069

Sales Tax; Protest Filed: 02/11/00 Period: 04/01/94-03/31/98 Amount: \$650,361.82	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived.

Status: Answer filed.

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

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

Status: Discovery in progress.

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

Sales Tax; Refund & Declaratory Judgment Filed: 03/09/01 Period: 01/01/95-03/31/99 Amount: \$645,193.40	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Marilyn A. Wethekam Horwood Marcus & Berk Chartered Chicago, Illinois  David E. Cowling Charolette Noel Gregory E. Perry Jones, Day, Reavis & Pogue Dallas
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Issue: Whether Plaintiff is entitled to refund of sales tax on "hostess free goods," because Plaintiff paid use tax on the goods. Whether sales tax collected from its hostesses on hostess free goods can be refunded to them by a credit for merchandise. Whether Rule 3.325(b)(2) is invalid. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

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**D&D Recycling, Inc. v. Rylander, et al.** Cause #GN002278  
AG Case #001339886

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

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

Status: Settlement agreement finalized. Awaiting taxpayer's completion of payment schedule in 06/2002.

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

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

Issue: Whether sales of grocery bags and sacks are not taxable when sold to grocery stores who have provided a blanket sale for resale certificate. Plaintiff also complains of audit calculation errors.

Status: Discovery in progress.

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

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jana Kinkade
Filed: 03/19/02	Plaintiff's Counsel:	Mark W. Eidman Ray Langenberg Doug Sigel Curtis J. Osterloh Scott, Douglass & McConnico Austin
Period: 04/94-03/31/98		
Amount: \$123,440.25		

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

Status: Answer filed.

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***El Paso Natural Gas Co. v. Rylander, et al.*** Cause #GN103408  
AG Case #011509676

Sales Tax; Refund Filed: 10/16/01 Period: 01/01/96-01/31/96 Amount: \$288,750	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ron Patterson Edward Kliewer, III Scott E. Breen Kliewer, Breen, Garatoni, Patterson & Malone, Inc. San Antonio
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Issue: Whether plaintiff, a common carrier pipeline owner, owes use tax on an aircraft used in its business.

Status: Answer filed.

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***El Paso Natural Gas Co. v. Rylander, et al.*** Cause #GN103409  
AG Case #011509650

Sales Tax; Refund Filed: 10/16/01 Period: 10/01/93-07/31/96 Amount: \$16,290.85	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ron Patterson Edward Kliewer, III Scott E. Breen Kliewer, Breen, Garatoni, Patterson & Malone, Inc. San Antonio
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Issue: Plaintiff contends that because it operates a common-carrier pipeline and is a certificated or licensed carrier of property it may avoid sales tax on repair, remodeling, and maintenance services purchased in connection with the maintenance and repair of aircraft Plaintiff owns and uses in operating its common-carrier pipeline.

Status: Answer filed.

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

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

Status: Settlement offer pending.

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

Sales Tax; Protest Filed: 04/03/98 Period: 10/01/92-03/31/96 Amount: \$748,773	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement offer pending.

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

Sales Tax; Protest Filed: 05/01/01 Period: 04/01/96-06/30/99 Amount: \$614,814.78	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Robert Lochridge Jones, Day, Reavis & Pogue Dallas
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Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed.

Status: Settlement offer pending.

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***FXI Corp. v. Rylander, et al.*** Cause #GN102724  
AG Case #011492857

Sales Tax; Refund Filed: 08/22/01 Period: 10/01/94-06/30/98 Amount: \$51,832.31	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff's boxes and packing materials are exempt as items shipped out-of-state. Whether denial of the exemption violates equal protection.

Status: Answer filed.

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***F M Express Food Mart, Inc., and Fouad Hanna Mekdessi v. Rylander, et al.***  
Cause #GN002724  
AG Case #001353960

Sales Tax; Injunction Filed: 09/15/00 Period: 12/01/90-11/30/97 Amount: \$360,671.05	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Percy L. "Wayne" Isgitt Houston
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Issue: Whether Comptroller's "estimated audit" is invalid. Whether Plaintiffs are entitled to an injunction of collection and of cancellation of their sales tax permits. Whether Tax Code §§112.051, 112.052, 112.101 and 112.108 are unconstitutional violations of the open courts provision. Plaintiffs seek a re-audit and a refund of money paid under protest in excess of the re-audited amount.

Status: Discovery in progress. Plaintiffs currently preparing settlement offer.

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***Fiesta Texas Theme Park, Ltd. v. Sharp, et al.*** Cause #98-02407  
AG Case #98-914152

Sales Tax; Refund Filed: 03/05/98 Period: 10/01/90-04/30/93 Amount: \$328,829	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Jasper G. Taylor, III Fulbright & Jaworski Houston
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Issue: Whether prizes awarded by Plaintiff to successful contestants of coin-operated as well as non-coin operated games are purchased for resale. Whether sales tax constitutes double taxation on machines on which occupation tax is paid and on non-coin games, admission to which is taxed. Advertising and sewing services are not taxable.

Status: Discovery in progress. Plaintiff filed unopposed motion to retain and will consolidate case with pending administrative matters when they are concluded. Motion to retain granted. Scheduling order filed. Trial set 11/12/02.

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

Sales Tax; Refund Filed: 02/20/02 Period: 05/01/93-03/01/96 03/01/96-02/28/98 Amount: \$592,759.97 \$349,933.08	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Jasper G. Taylor III Jay M. Chadha Fulbright & Jaworski Houston
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Issue: Whether prizes awarded by Plaintiff to successful contestants of coin-operated as well as non-coin operated games are purchased for resale. Whether sales tax constitutes double taxation on machines on which occupation tax is paid and on non-coin games, admission to which is taxed. Advertising and sewing services are not taxable. Whether the assessment against Fiesta was outside limitations.

Status: Discovery in progress. Consolidated with Cause No. 98-02407 04/23/02.

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

Sales Tax; Refund & Declaratory Judgment Filed: 08/09/00 Period: 1993-1994 Amount: \$349,084.33	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Gerard A. Desrochers Houston
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Issue: Whether correction of original construction defects is new construction or real property repair and remodeling. Whether Comptroller Rule 3.357 conflicts with legislative intent. Whether the Comptroller's application of the statute and rule violate due process and equal protection. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

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

Status: Discovery in progress. Trial set 12/16/02.

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

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

Status: Answer filed.

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**GATX Terminals Corp. v. Sharp, et al.** Cause #96-10815  
03-01-00537-CV  
AG Case #96-595679

Sales Tax; Refund Filed: 09/06/96	Asst. AAG Assigned:	Jim Cloudt
Period: Amount: \$698,491	Plaintiff's Counsel:	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: Trial rescheduled for 05/15/01. Court ordered judgment for defendants 05/29/01. Notice of appeal filed 09/07/01. Appellants' brief due 12/31/01. Appellees' brief filed 01/25/02. Appellants' response filed 01/25/02. Oral argument held 02/27/02. Appellants' post-submission brief filed 03/12/02. Appellees' post-submission brief filed 03/14/02. Judgment for Comptroller affirmed 04/18/02.

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**GATX Terminals Corp. v. Sharp, et al.** Cause #98-13414  
AG Case #98-1085483

Sales Tax; Protest Filed: 12/02/98	Asst. AAG Assigned:	Jim Cloudt
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: Consolidated with *GATX Terminals Corp. v. Sharp, et al.*, Cause No. 96-10815.

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

Sales Tax; Refund Filed: 04/22/02 Period: 09/01/88-11/30/91 Amount: \$7,000,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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

Sales Tax; Refund Filed: 04/22/02 Period: 12/01/91-02/28/93 Amount: \$4,500,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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

Sales Tax; Protest Filed: 09/05/01 Period: 10/91-03/97 Amount: \$359,929.22	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist Austin
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Issue: Whether additional resale certificates should have been accepted for Plaintiff's sales of boxes and packaging materials.

Status: Answer filed.

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

AG Case #97-682966

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

Status: Settlement negotiations pending.

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

AG Case #98-1063332

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

Status: Answer filed. On hold. Plaintiff filed bankruptcy in Tennessee 03/25/99. Motion to dismiss by court set 05/07/01. Plaintiff filed motion to retain 04/25/01.

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**Heritage Numismatic Auctions, Inc. and Heritage Capital Corp. v. Rylander, et al.**

Cause #99-06186

AG Case #99-1175282

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

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

Status: Negotiations in progress.

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

AG Case #91-164788

Sales Tax; Refund Filed: 10/18/91	Asst. AAG Assigned:	Jim Cloudt
Period: 01/01/87 - 03/31/90	Plaintiff's Counsel:	John D. Bell Wood, Boykin & Wolter Corpus Christi
Amount: \$62,465		

Issue: Whether predominant use of electricity from Plaintiff's meter is exempt. Whether burden of proof in administrative hearing should be clear and convincing evidence or preponderance of the evidence.

Status: Special exceptions and answer filed.

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**Hines Interests Limited Partnership v. Rylander, et al.** Cause #GN003245

AG Case #001381680

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

Issue: Whether correction of original construction defects is new construction or real property repair and remodeling. Whether Comptroller Rule 3.357 conflicts with legislative intent. Whether the Comptroller's application of the statute and rule violate due process and equal protection. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

AG Case #96-457827

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

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

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

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**House of Lloyd, Inc. v. Rylander, et al.** Cause #GN000111

AG Case #001261478

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

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

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

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

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

Status: Amended Petition filed. Discovery in progress.

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

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

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

Status: Discovery in progress.

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***John Hancock Mutual Life Insurance Co., The v. Rylander, et al.*** Cause

#GN001612

AG Case #001316520

Sales Tax; Refund

Filed: 06/05/00

Period: 01/01/94-12/31/98

Amount: \$345,377.95

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

James D. Blume

Jennifer S. Stoddard

Blume & Stoddard

Dallas

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

Status: Answer filed.

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

AG Case #95-289583

Sales Tax; Protest

Filed: 05/18/95

Period: 07/01/90-02/28/94

Amount: \$226,413

Asst. AAG Assigned:

Plaintiff's Counsel:

Steve Rodriguez

Charles L. Perry

Arter & Hadden

Dallas

Issue: Plaintiff contends that inventory samples should not have been taxed because they were ultimately sold and tax was collected. Also, whether cardboard rolls and plastic wrapping are exempt under the manufacturing exemption.

Status: Summary judgment pending.

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**LabOne, Inc. v. Rylander, et al.** Cause #GN002190  
AG Case #001335645

Sales Tax; Protest & Declaratory Judgment Filed: 08/02/00 Period: 1991-1997 Amount: \$520,983.95	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  James F. Martens Kirk R. Lyda Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff has nexus in Texas for tax on performance of lab tests in Kansas. Whether Plaintiff's activities are taxable insurance services in Texas. Whether Plaintiff's services and sales of supplies are exempt by rule and statute. Whether tax on Plaintiff violates due process and equal taxation. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Plaintiff's motion for summary judgment hearing set 06/24/02.

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**Lake Charles Yamaha, Inc. v. Morales, et al.** Cause #95-3802  
AG Case #95-325883

Sales Tax; Declaratory Judgment Filed: 07/11/95 Period: 04/01/91-03/31/95 Amount: \$150,214	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Russell J. Stutes, Jr. Scofield, Gerard, Veron, Singletary & Pohorelsky Lake Charles, Louisiana
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Issue: Plaintiff asserts that it has no nexus with Texas and cannot be assessed sales tax, although it concedes that it delivers merchandise into Texas in its own trucks. Plaintiff asks for a declaratory judgment and damages/attorneys fees under 42 USC §§1983 and 1988.

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

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**Laredo Country Club, Inc., A Texas Corp. v. Sharp, et al.** Cause #98-11834  
AG Case #98-1064363

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

Status: Discovery in progress.

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

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

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**Lee Construction and Maintenance Co. v. Rylander, et al.** Cause #99-01091  
AG Case #99-1112160

Sales Tax; Protest Filed: 01/29/99	Asst. AAG Assigned:	Scott Simmons
Period: 01/01/92-12/31/95	Plaintiff's Counsel:	Timothy M. Trickey
Amount: \$31,830.47		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: Settling discovery issue and proceeding towards final resolution. Trial set 06/25/02.

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**Leyendecker Construction, Inc. v. Sharp, et al.** Cause #98-08076  
AG Case #98-1007248

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

Status: Discovery on hold.

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

Sales Tax; Protest & Declaratory Judgment Filed: 12/31/99 Period: Amount: \$34,390.24	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  James D. Blume Jennifer S. Stoddard Blume & Stoddard Dallas  Judy M. Cunningham Austin
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Issue: Whether Plaintiff was doing business in Texas by delivering and installing its signs that were sold under contract negotiated outside of Texas. Whether Plaintiff is entitled to declaratory judgment and attorneys' fees.

Status: Discovery in progress.

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

Sales Tax; Refund &  
Declaratory Judgment

Filed: 10/24/01

Period: 09/01/92-11/30/95

Amount: \$2,680,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

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

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

Status: Answer filed.

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

Sales Tax; Refund

Filed: 03/26/02

Period: 01/01/96-09/30/97

Amount: \$3,500,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

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

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

Status: Answer filed.

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

Sales Tax; Refund Filed: 03/26/02 Period: 03/01/93-01/31/96 Amount: \$7,000,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Ira A. Lipstet Matthew G. Grimmer Jenkins & Gilchrist Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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

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

Status: Inactive.

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

Sales Tax; Declaratory Judgment Filed: 07/28/00 Period: 1998 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mitzi T. Shannon Kemp Smith, P.C. El Paso
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Issue: Plaintiff contests the suspension of its Texas Customs Broker License and disagrees with the Comptroller's policy on goods being exported.

Status: Answer filed.

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**Melek Corp. v. Rylander** Cause #GN100441

AG Case #011410511

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

Issue: Plaintiff contests the suspension of its Texas Customs Broker License and disagrees with the Comptroller's policy on goods being exported.

Status: Answer filed.

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**Mitchell, Christia Parr v. Rylander, et al.** Cause #GN201330

AG Case #021604541

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

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

Status: Answer filed.

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

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.

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**Neiman Marcus Group, Inc. v. Sharp, et al.** Cause #93-10279-A  
AG Case #93-340549

Sales Tax; Protest, Refund & Declaratory Judgment	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 remodeling issues and the attorneys' fees. Cause renumbered 93-10279-A. State filed a plea to jurisdiction on attorneys' fees on 10/06/93. Settlement offer pending.

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

Sales Tax; Protest Filed: 08/01/01 Period: 04/01/90-12/31/93 Amount: \$1,908,969.01	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether printing charges for catalogs are not subject to use tax because: (a) the printing services were not used in Texas, (b) the printed catalogs were gifts for which title transferred outside Texas, (c) plaintiff did not have sufficient control to be a Texas user, (d) the statute does not include distribution in the definition of use, (e) no use tax is due under the doctrine of *Morton Bldgs.*, (f) Rule 3.346(b)(3)(A) does not apply or is invalid, and/or (g) Tax Code 151.3111(a) exempts the printing service. Whether photograph retouching is (a) a sale of tangible personal property, or (b) repair, remodeling, maintenance or restoration of tangible personal property, or (c) exempt under Tax Code 151.330(e). Also, whether remodeling contracts were tax included and whether sampling was improper. Plaintiff seeks attorneys fees.

Status: Answer filed.

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

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

Status: Inactive.

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

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

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

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

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

Sales Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Gilbert J. Bernal, Jr.
Filed: 05/01/02	Plaintiff's Counsel:	Kirk R. Lyda
Period: 09/01/92-11/30/95		Stahl, Martens & Bernal
Amount: \$1,600,000		Austin

Issue:

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

AG Case #97-825189

Sales Tax; Protest

Filed: 09/25/97

Period: 02/01/87-08/31/90

Amount: \$393,497

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Curtis J. Osterloh  
Scott, Douglass &  
McConnico  
Austin

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

Status: Discovery in progress.

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

AG Case #99-1093170

Sales Tax; Protest

Filed: 12/22/98

Period: 10/01/91-09/30/93

Amount: \$550,978.17

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

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

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

Status: Discovery in progress. Motion for Summary Judgment set 06/13/02.

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

Sales Tax; Protest Filed: 09/27/96 Period: 08/01/89-06/30/92 Amount: \$155,404	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Richard L. Rothfelder Craig Estlinbaum Kirkendall, Isgur & Rothfelder Houston
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Issue: Whether prizes obtained by collecting tickets from amusement machines in a restaurant are “purchased” by the customer as part of the price of the food.

Status: Discovery in progress.

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**Petrolite Corp. v. Sharp, et al.** Cause #91-13885  
AG Case #91-149840

Sales Tax; Protest and Refund Filed: 09/27/91 Period: 04/01/84 - 03/31/88 Amount: \$432,105	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Resale certificates; taxable maintenance services; taxability of various chemicals and other tangible personal property used in oil well services.

Status: Inactive.

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

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

Status: Answer filed.

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***Praxair, Inc. v. Sharp, et al.*** Cause #97-03919 (consolidated with Cause No. 95-00690, *Praxair, Inc. v. Sharp, et al.*)  
AG Case #97-706272

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

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

Status: See Cause No. 95-00690, *Praxair, Inc. v. Sharp, et al.*

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

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

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

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

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

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

Asst. AAG Assigned:  
Plaintiff's Counsel:

Christopher Jackson  
Gilbert J. Bernal, Jr.  
Stahl, Martens & Bernal  
Austin  
Martin I. Eisenstein  
Brann & Isaacson  
Lewiston, Maine

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

Status: Motion to dismiss set 05/14/01. Plaintiff filed motion to retain. Trial set 06/24/02.

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***R Communications, Inc. f/k/a RN Communications, Inc. v. Sharp, et al.*** Cause #91-4893  
#03-91-00390CV  
AG Case #91-62355

Sales Tax; Declaratory  
Judgment  
Filed: 04/08/91  
Period: 10/01/80 - 11/02/84  
Amount: \$None (Plaintiff  
was assessed \$67,836 tax  
but did not pay)

Asst. AAG Assigned:  
Plaintiff's Counsel:

Gene Storie  
Mark How  
Short, How, Frels &  
Tredoux  
Dallas

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

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

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

Sales Tax; Refund & Declaratory Judgment Filed: 12/12/00 Period: 01/01/89-12/31/93 Amount: \$297,616.32	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David Cowling Gregory E. Perry Jones, Day, Reavis & Pogue Dallas
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Issue: Whether Plaintiff lacks nexus for collection of use tax on accounts receivable that were factored to it. Whether Plaintiff is a "seller" or "retailer" engaged in business in Texas. Whether Plaintiff is liable under §111.016 as a person who received tax. Whether imposition of tax denies equal protection. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

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

Sales Tax; Declaratory Judgment and Refund Filed: 05/17/01 Period: 06/01/89 - 12/31/96 Amount: \$6,000,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Curtis J. Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress. Summary Judgment hearing held 03/05/02. Partial summary judgment for plaintiff signed 03/29/02. Trial scheduled for 05/16/02.

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

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

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

Status: Answer filed.

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

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

Issue: Whether various equipment used by the Plaintiff with its trucks is exempt from use tax as tangible personal property sold to a common carrier for use outside the state. Alternatively, whether the equipment had been taxed as vehicle components under the interstate motor carrier tax and could not be taxed as "accessories." Alternatively, whether taxing 100% of the value of the equipment violates the Commerce Clause because of a lack of substantial nexus and of fair apportionment. Whether all tax was paid on Plaintiff's repair and remodeling contracts and capital assets. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Answer filed.

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

Sales Tax; Refund Filed: 04/13/00 Period: 10/01/93-04/30/95 Amount: \$43,025.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether Plaintiff's purchase of "totalizator" services, which provide betting information to accompany live pari-mutuel and simulcasts of pari-mutuel races, is not taxable as a data processing service. Whether totalizator services, if they are taxable, are exempt for resale as an integral part of Plaintiff's taxable amusement service.

Status: Answer filed.

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**Sanchez, Hector and Sidney Fernald, et al. v. Southwestern Bell Telephone Co.**  
Cause #M-00-146  
AG Case #011527892

Sales Tax; Class Action Filed: 11/13/01 Period: Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  William J. Tinning Portland
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Issue: Whether SWBT is liable to class action plaintiffs for over-collection of tax. Comptroller to provide testimony on tax.

Status: Comptroller to provide testimony on tax.

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**Schmitz Industries, Inc. v. Sharp** Cause #95-15485  
AG Case #96-436841

Sales Tax; Protest Filed: 12/15/95 Period: 04/01/89-12/31/92 Amount: \$4,418	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Charles E. Klein Attorney at Law Dallas
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Issue: Plaintiff alleges that the audit assessment is wrong because some of the transactions in the sample period are not representative of Plaintiff's business, and some transactions include tax exempt molds, dies and patterns with a useful life of six months or less.

Status: Answer filed.

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**Schoenborn & Doll Enterprises, Inc. v. Rylander, et al.** Cause #99-07605  
AG Case #99-1187592

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

Status: Inactive. Plaintiff paying tax under pay-out agreement.

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

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

Status: Answer filed.

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

Sales Tax; Protest Filed: 10/13/98 Period: 01/01/92-12/31/93 Amount: \$413,569	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones, Day, Reavis & Pogue Dallas
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Issue: Whether the purchase of sales catalogs printed out-of-state and shipped to Plaintiff's customers in Texas (at no charge to the customer) incur sales tax.

Status: Answer filed. On hold. Plaintiff filed bankruptcy in Tennessee on 03/25/99. Motion to dismiss set 05/07/01. Plaintiff filed motion to retain 04/25/01.

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

Sales Tax; Protest & Declaratory Judgment Filed: 11/27/01 Period: 01/01/95-12/31/98 Amount: \$219,219.35 \$47.15	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Gilbert J. Bernal, Jr. Kirk R. Lyda Stahl, Martens & Bernal Austin
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Issue: Whether plaintiff's grit, used in sandblasting vessels, and materials such as paint-gun parts, are exempt as materials used in repairing vessels. Whether denial of the exemption violates equal protection. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

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

Sales Tax; Protest Filed: 10/15/01 Period: 01/01/96-12/31/99 Amount: \$188,477.57	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  H. Christopher Mott Krafsur Gordon Mott El Paso
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Issue: Whether plaintiff owes tax on electricity used to freeze food items.

Status: Answer filed.

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

AG Case #97-662434

Sales Tax; Refund

Filed: 01/17/97

Period: 03/01/91-12/31/94

Amount: \$117,600

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Mary S. Dietz

Fulbright & Jaworski  
Houston

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

Status: Inactive.

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

AG Case #99-1177965

Sales Tax; Protest & Refund

Filed: 06/11/99

Period: 04/01/93-03/31/96

10/01/93-06/30/96

Amount: \$134,067.87

\$34,469.19

Asst. AAG Assigned:

Plaintiff's Counsel:

Scott Simmons

Jasper G. Taylor, III

C. Rhett Shaver

Fulbright & Jaworski  
Houston

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: Finalizing settlement agreement.

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**Sprint International Communications, Inc. v. Sharp, et al.** Cause #96-14298  
AG Case #96-637296

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

Status: Answer filed.

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

Sales Tax; Refund Filed: 02/25/02 Period: 04/01/91-04/30/94 Amount: \$103,335.27	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether plaintiff is entitled to a tax refund for repairs to tangible personal property on the grounds that such repairs were for casualty losses exempt under the Comptroller's Rule 3.357 and 3.310. Whether the claim is barred by limitations. Whether the Comptroller improperly changed the rule on casualty losses.

Status: Answer filed.

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**Summit Photographix, Inc. v. Rylander, et al.** Cause #GN001808  
AG Case #001323633

Sales Tax; Declaratory  
Judgment

Filed: 06/23/00

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

Amount: \$6,532,000

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Mark D. Hopkins  
Fields & Hopkins  
Austin

Hilary Thomas  
Kondos & Kondos Law  
Offices  
Richardson

Issue: Whether Plaintiff is a direct sales company and may be regarded as a retailer for sales made by independent retailers of business start-up kits. Whether the Comptroller's rule defining direct sales organizations violates due process. Whether §151.024 was applied retroactively. Whether the items at issue are not taxable tangible personal property. Whether the Comptroller erred in basing the assessment on the suggested retail price of all issued items. Whether penalty and interest should be waived. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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***Sysco Food Services of Houston, L.P. (f/k/a Sysco Food Service of Houston, Inc.) v. Rylander, et al.*** Cause #GN100633

AG Case #011420734

Sales Tax; Refund &  
Declaratory Judgment

Filed: 03/01/01

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

Amount: \$196,492.74

Asst. AAG Assigned:

Plaintiff's Counsel:

Nicole Galwardi

Judy M. Cunningham  
Austin

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

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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

Sales Tax; Refund Filed: 02/01/01 Period: 01/01/93-06/30/96 Amount: \$475,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether conversion of drilling rigs to self-propelled, deep water rigs is manufacturing under the statute and Comptroller rules. Whether dredging is non-taxable maintenance of real property. Alternatively, whether interest should be waived.

Status: Answer filed.

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**Telecable Associates, Inc.; Teleservice Corp. of America; Texas Telecable, Inc.; TCA Cable of Amarillo, Inc.; and Texas Community Antennas, Inc. v. Rylander, et al.** Cause #GN100705  
AG Case #011422482

Sales Tax; Refund Filed: 03/07/01 Period: 03/01/93-12/31/96 Amount: \$400,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether cable equipment on the customer's premises qualifies for the sale for resale exemption for property used to provide a taxable service.

Status: Discovery in progress.

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**Tennessee Gas Pipeline Co. v. Sharp, et al.** Cause #98-09521  
03-02-00029-CV  
AG Case #98-1022296

Sales Tax; Refund Filed: 08/25/98	Asst. AAG Assigned:	Christopher Jackson
Period: 01/01/94-04/03/96 Amount: \$85,430	Plaintiff's Counsel:	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: Summary Judgment granted in Comptroller's favor 10/04/01. Plaintiff filed Motion for New Trial 11/05/01. Plaintiff has filed an appeal. Appellee's brief filed 03/22/02. Oral argument set 05/08/02.

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**Texas Gulf, Inc. v. Bullock, et al.** Cause #485,228  
AG Case #90-311185

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

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

Status: State's plea to the jurisdiction denied. Discovery and settlement negotiations in progress.

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

Sales Tax; Refund &  
Declaratory Judgment

Filed: 10/24/01

Period: 07/01/87-12/31/90

Amount: \$27,000,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

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

Status: Answer filed.

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

Sales Tax; Refund &  
Declaratory Judgment

Filed: 10/24/01

Period: 01/01/91-07/31/97

Amount: \$102,000,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

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

Status: Answer filed.

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**Transcontinental Gas Pipeline Corp. v. Rylander, et al.** Cause #99-06997  
AG Case #99-1178526

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

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

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

Michael R. Garatoni  
Kliewer, Breen, Garatoni,  
Patterson & Malone  
San Antonio

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

Status: Answer filed.

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**Union Carbide Corp. v. Rylander, et al.** Cause #GN000580  
AG Case #001261452

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

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

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

Issue: Whether Plaintiff is entitled to an exemption on labor charges for installing floating roofs on tanks at its chemical plant because: (1) the roofs are exempt pollution control equipment, (2) the labor was for non-taxable new construction, or (3) the labor was for remodeling of tangible personal property.

Status: Answer filed.

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

Sales Tax; Protest Filed: 07/03/00 Period: 07/01/93-12/31/96 Amount: \$44,519.03	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  H. Christopher Mott Krafsur Gordon Mott Davis & Woody El Paso
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Issue: Whether Plaintiff's initial finish-out work is non-taxable new construction.

Status: Discovery in progress. Negotiations in progress. Reviewing plaintiff's offer of settlement.

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**United Services Automobile Association v. Sharp, et al.** Cause #97-02927  
AG Case #97-694793

Sales Tax; Refund Filed: 03/10/97 Period: 02/01/91-07/31/94 Amount: \$656,667	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether certain professional and leak detection services are taxable. Whether tax is due on material printed out-of-state and mailed directly to Texas customers.

Status: Partial settlement.

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**United Services Automobile Association & USAA Life Insurance Co. v. Rylander, et al.** Cause #GN103414  
AG Case #011509643

Sales Tax; Refund Filed: 10/16/01 Period: 02/01/91-12/31/99 Amount: \$200,000,000+	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether plaintiffs are exempt from sales taxes because of Tex. Ins. Code arts. 4.10 and 4.11.

Status: Defendants' plea to the jurisdiction set 05/01/02. Hearing on Summary Judgment Motions set 05/13/02. Trial, if needed, set 07/15/02.

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

Sales Tax; Protest Filed: 12/01/00 Period: 01/01/94-03/31/97 Amount: \$14,016.28	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether steam cleaning done for Plaintiff's customers by a third party is a sale for resale as an integral part of Plaintiff's taxable waste removal services.

Status: Discovery initiated.

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**Waller Hotel Group, Inc. v. Sharp, et al.** Cause #98-03990  
AG Case #98-939849

Sales Tax; Refund Filed: 04/16/98 Period: 03/01/91-08/31/94 Amount: \$51,614	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin  Mark Cohen Attorney at Law Austin
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Issue: Whether purchases of gas and electricity at Plaintiff's hotel were exempt as residential use, based on a utility study conducted by Plaintiff's expert.

Status: Discovery in progress. Case on hold.

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

Sales Tax; Protest Filed: 09/27/96 Period: 06/01/88-06/30/92 Amount: \$35,247	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Richard L. Rothfelder Milissa M. Magee Kirkendall, Isgur & Rothfelder Houston
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Issue: Whether prizes obtained by collecting tickets from amusement machines in a restaurant are “purchased” by the customer as part of the price of the food.

Status: Discovery in progress.

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**Westar Hotels, Inc. v. Sharp, et al.** Cause #97-06182  
AG Case #97-743945

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

Status: Discovery in progress.

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# Insurance Tax

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

#03-00-427-CV

AG Case #98-880394

Insurance Premium &  
Insurance Maintenance Tax;

Protest

Filed: 01/07/98

Period: 1991-1994

Amount: \$276,151

(Premium)

\$4,804 (Maintenance)

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Barry K. Bishop  
Clark, Thomas & Winters  
Austin

Dudley D. McCalla  
Heath, Davis & McCalla  
Austin

Jay A. Thompson  
Thompson, Coe, Cousins &  
Irons  
Austin

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

Status: Trial set 01/18/00. Judgment for State signed 03/22/00. Plaintiff's filed request for findings of fact and conclusions of law 04/06/00. Plaintiffs filed notice of appeal. Appellants' brief filed 09/29/00. Appellees' brief due 12/01/00. Oral argument held 01/24/01. Reversed and remanded 08/30/01. State filed petition for review with Texas Supreme Court 10/15/01. The Comptroller's brief on the merits filed 02/19/02. Respondents' brief on the merits and Comptroller's reply brief filed.

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**All American Life Insurance Co. v. Sharp, et al.** Cause #98-07917 (Consolidated with Cause #98-00195, *All American Life Insurance Co., et al. v. Sharp, et al.*)

AG Case #98-1001902

Gross Premium Tax; Protest

Filed: 07/24/98

Period: 1994-1996

Amount: \$29,169

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

Dudley D. McCalla  
Heath, Davis & McCalla  
Austin

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

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

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**Allianz Underwriters Insurance Co. v. Rylander, et al.** Cause #GN000663  
AG Case #001280114

Insurance Premium Tax; Protest, Injunction & Declaratory Judgment Filed: 03/02/00 Period: 01/01/90-12/31/95 Amount: \$365,506.54	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Stephen L. Phillips Brian C. Newby Julie K. Lane Cantey & Hanger, Roan & Autrey Austin
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Issue: Whether Plaintiff, an eligible surplus lines insurer, owes tax for unauthorized insurance. Whether tax should have been collected from the surplus lines agent or from the insured. Whether the Comptroller's assessment is contrary to the McCarran-Ferguson Act and constitutional due process. Whether the Comptroller has authority to assess taxes due before 09/01/93. Whether the Comptroller's rule on penalty and interest is arbitrary and capricious. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress. Settlement negotiations pending.

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**Allmerica Financial Life Insurance Co. and Annuity Co. v. Rylander, et al.** Cause  
#GN001378  
AG Case #001304807

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 05/10/00 Period: 1992-1995 Amount: \$190,352.89 \$43,715.28	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Steven D. Moore Jackson Walker L.L.P. Austin
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Issue: Whether premium taxes are owed on internal rollover transactions. Plaintiff also seeks declaratory judgment under the UDJA and APA and attorneys' fees.

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

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

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

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

Status: Inactive.

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**American General Life Insurance Co., American National Life Insurance Co., and American National Insurance Co. v. Sharp, et al.** Cause #98-13996 (Consolidated with Cause #98-00195, *All American Life Insurance Co., et al. v. Sharp, et al.*)  
AG Case #99-1093402

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

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

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

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

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

Issue: Whether an authorized surplus lines insurer is required to pay unauthorized insurance tax when the Comptroller is unable to verify payment of tax by the agent. Whether the Comptroller wrongfully relied on another hearings decision as precedent. Plaintiff also seeks injunctive and declaratory relief and attorneys' fees.

Status: Discovery in progress. Consolidated with *Lexington Insurance Co. and Landmark Insurance Co. v. Rylander, et al.*

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

AG Case #001348606

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

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

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

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

Status: Parties will file Agreed Judgment for plaintiff.

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

AG Case #99-1173279

Retaliatory Tax; Protest &  
Declaratory Judgment  
Filed: 05/26/99  
Period: 1998  
Amount: \$9,328.01

Asst. AAG Assigned:

Steve Rodriguez

Plaintiff's Counsel:

Ron K. Eudy  
Sneed, Vine & Perry  
Austin

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

Status: Settled.

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

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 06/20/01 Period: 1992-1998 Amount: \$439,074.12	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Stephen L. Phillips Brian C. Newby Julie K. Lane Cantey & Hanger, Roan & Autry Austin
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Issue: Whether Plaintiff, an authorized surplus lines insurer, is liable for unauthorized insurance premiums tax. Whether the Comptroller lacks authority to determine that Plaintiff is an unauthorized insurer, and whether the Texas Department of Insurance is required to make that determination. Whether the Comptroller engaged in selective and improper enforcement. Whether the assessment violates Due Process and the McCarran-Ferguson Act. Alternatively, whether penalty should be waived. Plaintiff also seeks injunctive relief and attorneys' fees.

Status: Answer filed.

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

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

Status: Settled.

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

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

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

Status: Settled.

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

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

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

Status: Settled.

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

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$8,459.31		Austin

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

Status: Settled.

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

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$26,640.79		Austin

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

Status: Settled.

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

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$10,987.86		Austin

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

Status: Settled.

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**IDS Life Insurance Co. v. Rylander, et al.** Cause #99-13368 (*Consolidated with Cause #98-00195, All American Life Insurance Co., et al. v. Sharp, et al.*)  
AG Case #99-1238965

Insurance Tax; Protest Filed: 11/16/99	Asst. AAG Assigned:	Gene Storie
Period: 1995-1998	Plaintiff's Counsel:	Jay A. Thompson
Amount: \$234,383.82 \$2,039.79		Thompson, Coe, Cousins & Irons Austin

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

Status: Consolidated with Cause #98-00195, All American Life Insurance Co, et al. v. Sharp, et al.

**Lexington Insurance Co., Landmark Insurance Co. v. Rylander, et al.** Cause #GN100569  
AG Case #011417896

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

Issue: Whether an authorized surplus lines insurer is required to pay unauthorized insurance tax when the Comptroller is unable to verify payment of tax by the agent. Whether the Comptroller wrongfully relied on another hearings decision as precedent. Plaintiff also seeks injunctive and declaratory relief and attorneys' fees.

Status: Discovery in progress.

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

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

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

Status: Settled.

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

Gross Premium Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 05/24/90	Plaintiff's Counsel:	Fred B. Werkenthin
Period: 1985-1986		Jackson & Walker
1989-1992		Austin
Amount: \$1,848,606		

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

Status: 9th Amended Petition filed. Settlement discussed, and partial settlement agreed to. Final judgment signed on paid-up additions issue. Renewal premium issue severed and retained on docket.

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

Maintenance Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 05-23-90	Plaintiff's Counsel:	Fred B. Werkenthin
Period: 1989-1991		Jackson & Walker
Amount: \$1,616,497		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.

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***Philadelphia Life Insurance Co. v. Rylander, et al.*** Cause #GN101330

AG Case #011439866

Insurance Premium & Gross Premium Tax; Protest Filed: 05/02/01 Period: 1992-1996 Amount: \$466,381.65	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  Kevin F. Lee Michael W. Jones Thompson, Coe, Cousins & Irons Austin
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Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

Status: Answer filed.

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

AG Case #99-1173105

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

Status: Settled.

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**Security National Insurance Co. v. Rylander, et al.** Cause #GN001503  
AG Case #001310820

Insurance Premium Tax; Protest	Asst. AAG Assigned:	Blake Hawthorne
Filed: 05/23/00	Plaintiff's Counsel:	Jay A. Thompson Thompson, Coe, Cousins & Irons Austin
Period: 1995-1998		
Amount: \$1,226,220.50		Barry K. Bishop Clark, Thomas & Winters Austin

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

Status: Answer filed.

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**Southwestern Life Insurance Co. v. Sharp, et al.** Cause #98-11945  
AG Case #98-1065840

Gross Premium Maintenance Tax; Protest	Asst. AAG Assigned:	Gene Storie
Filed: 10/22/98	Plaintiff's Counsel:	L.G. Skip Smith Clark, Thomas & Winters Austin
Period: 01/01/92-12/31/95		
Amount: \$392,737		

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

Status: Answer filed. Will be determined as for *All American Life Insurance Co, et al. v. Sharp, et al.*

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**Southwestern Life Insurance Co. v. Rylander, et al.** Cause #GN000875  
AG Case #001288869

Gross Premium Maintenance Tax; Protest & Refund Filed: 03/24/00 Period: 01/01/96-12/31/98 Amount: \$384,446.75	Asst. AAG Assigned:  Plaintiff's Counsel:	Blake Hawthorne  L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether certain transactions called "internal rollover" by Plaintiffs, consisting of substituting one insurance policy for a prior policy and transferring funds, result in gross premiums subject to tax.

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

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

Insurance Premium Tax; Refund, Protest & Declaratory Judgment Filed: 08/24/01 Period: 01/01/95-12/31/98 Amount: \$163,021.27	Asst. AAG Assigned:  Plaintiff's Counsel:	Steve Rodriguez  Michael W. Jones Kevin F. Lee Austin  Richard S. Geiger Dallas  Thompson, Coe, Cousins & Irons
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Issue: Whether Plaintiff, an eligible surplus lines insurer, is liable for unauthorized insurance tax. Plaintiff also seeks declaratory relief and attorney's fees.

Status: Answer filed.

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

Gross Premium Tax; Protest, Refund & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 07/13/99	Plaintiff's Counsel:	Michael W. Jones
Period: 1990		Thompson, Coe, Cousins & Irons
1992		Austin
1994		
Amount: \$1,027,067.59		
\$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.

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

Retaliatory Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Steve Rodriguez
Filed: 05/26/99	Plaintiff's Counsel:	Ron K. Eudy
Period: 1998		Sneed, Vine & Perry
Amount: \$147,554.42		Austin

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

Status: Settled.

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

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

Status: Answer filed.

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**Universe Life Insurance Co. v. State of Texas** Cause #97-05106  
AG Case #97-727302

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

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

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

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

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

Status: Answer filed.

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

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

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

Status: Informal discovery in progress. Case will go to mediation. On dismissal docket. Plaintiff filed Motion to Retain. Jury trial scheduled 08/12/02.

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## Other Taxes

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

AG Case #001376227

Property Tax; Administrative Appeal & Injunction	Asst. AAG Assigned:	Nicole Galwardi
Filed: 06/23/00	Plaintiff's Counsel:	Roy L. Armstrong
Period: 1999		Robert L. Meyers
Amount: \$		McCreary, Veselka, Bragg & Allen
		Austin

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

Status: Discovery in progress.

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### **Caldwell, Marcie v. Rylander** Cause #99-13088

AG Case #99-1234329

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

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

Status: Plea to Jurisdiction denied 01/06/00. Preparing Interlocutory Appeal. Oral argument set 04/26/00. Trial court decision holding jurisdiction affirmed. Plaintiff waived all rights to refund of court costs. Summary Judgment filed. County Association Amicus brief filed.

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

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

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

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

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

Property Tax; Administrative Appeal & Injunction	Asst. AAG Assigned:	Nicole Galwardi
Filed: 06/23/00	Plaintiff's Counsel:	Roy L. Armstrong
Period: 1999		Robert L. Meyers
Amount: \$		McCreary, Veselka, Bragg & Allen Austin/Waco

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

Status: Discovery in progress. Trial scheduled 07/08/02.

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

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

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

Status: Discussions in progress.

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

AG Case #99-1238189

Motor Vehicle Tax; Refund

Filed: 11/12/99

Period: 10/01/90-11/30/96

Amount: \$3,405,494.49

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

Mark W. Eidman  
Scott, Douglass &  
McConnico  
Austin

David E .Otero  
Akerman, Senterfitt &  
Eidson  
Florida

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

Status: Answer filed.

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**Cockrill, Charles T. v. Comptroller of Public Accounts, et al.** Cause #CJ-00-308

AG Case #001368513

Property Tax; Declaratory

Judgment

Filed: 10/12/00

Period:

Amount: \$99,425.50

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

Douglas L. Jackson  
Vance T. Nye  
Gungoll, Jackson, Collins,  
Box & Devoll  
Enid, Oklahoma

Issue: Whether the Comptroller asserts any interest in art works that were sold by a taxpayer subject to a tax lien.

Status: Comptroller disclaims interest.

---

**Dekalb ISD v. Comptroller** Cause #GV102002  
AG Case #011479961

Property Tax; Administrative Appeal & Injunction Filed: 07/25/01 Period: 2001 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Kirk Swinney Harvey M. Allen McCreary, Veselka, Bragg & Allen Austin
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Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties.

Status: Agreed Judgment signed 04/23/02.

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**DeSoto ISD v. Comptroller of Public Accounts** Cause #GV102073  
AG Case #011474624

Property Tax; Administrative Appeal Filed: 07/27/01 Period: 2000 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Nicole Galwardi  Ray Bonilla Ray, Wood, Fine & Bonilla Austin
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Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties.

Status: Discovery in progress.

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**Deweyville ISD v. Rylander** Cause #GV001637  
AG Case #001335355

Property Tax; Declaratory Judgment Filed: 07/14/00 Period: 1999 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Nicole Galwardi  John H. Wofford Law Office of John H. Wofford Austin
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Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties. Whether the Comptroller failed to acknowledge local economic conditions, to timely provide a “clerical errors” report, and to accept additional information.

Status: Discovery in progress.

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***El Paso Natural Gas Co. v. Sharp*** Cause #91-6309  
AG Case #91-78237

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

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

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***Fort Davis ISD v. Comptroller*** Cause #GV001764  
AG Case #001339852

Property Tax; Declaratory Judgment Filed: 07/28/00 Period: 1999 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Nicole Galwardi  James R. Evans, Jr. Linebarger Heard Goggan Blair Graham Pena & Sampson Austin
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Issue: Whether the Comptroller erred by not properly selecting and inspecting sample properties. Whether the Comptroller failed to acknowledge local economic conditions, to timely provide a “clerical errors” report, and to accept additional information.

Status: Answer filed.

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**Fort Worth PR's, Inc. v. Rylander, et al.** Cause #GN200711  
AG Case #021573480

Mixed Beverage Gross Receipts Tax; Protest & Declaratory Judgment Filed: 03/04/02 Period: 03/01/99-06/30/99 Amount: \$36,177.36	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  John L. Gamboa Acuff, Gamboa & White Fort Worth
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Issue: Whether the Comptroller used a non-representative sample to determine plaintiff's tax liability. Whether depletion and error rates were calculated correctly.

Status: Answer filed.

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**Gainesville ISD v. Comptroller of Public Accounts** Cause #GV102071  
AG Case #011474574

Property Tax; Administrative Appeal Filed: 07/27/01 Period: 2000 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Ray Bonilla Ray, Wood, Fine & Bonilla Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties that involved creative financing.

Status: Discovery in progress.

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**Hernandez, Juan Luis v. Rylander, et al.** Cause #C-294-00-G  
AG Case #001365550

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

Status: Set for dismissal for want of prosecution by court's motion on 03/19/02. Case retained by district court. Plaintiff filed Motion for Summary Judgment on 04/10/02. Defendants filed a Plea to the Jurisdiction and Cross-Motion for Motion for Summary Judgment on 04/17/02.

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

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

Issue: Whether Plaintiff is entitled to tax credit and refund as provided under the sales tax bad debt statute for motor vehicle taxes on installment sales where the purchaser defaulted. Whether the refusal to allow a refund violates equal taxation because there is no rational basis to treat installment sellers of vehicles differently than vehicle renters and other retailers.

Status: Answer filed.

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**MFN Financial Corp. v. Rylander, et al.** Cause #GN002650  
AG Case #001352129

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

Issue: Whether Plaintiff is entitled to tax credit and refund as provided under the sales tax bad debt statute for motor vehicle taxes on installment sales where the purchaser defaulted. Whether the refusal to allow a refund violates equal taxation because there is no rational basis to treat installment sellers of vehicles differently than vehicle renters and other retailers.

Status: Answer filed.

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

Gas/Oil Production Tax; Refund & Declaratory Judgment Filed: 01/10/00 Period: 1994-1997 Amount: \$1,363,482.60	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Hal K. Dickenson Marathon Oil Co. Houston
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Issue: Whether the market value of oil for the production tax must be reduced by Plaintiff's marketing and processing costs. Whether taxing oil and gas production differently violates equal protection and uniform taxation. Whether the Comptroller's policy on allowable deductions is arbitrary and denies due process. Whether the Comptroller's policy is invalid because it was not adopted as a rule.

Status: Discovery in progress.

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**McLane Co., Inc. and McLane Foodservice-Lubbock, Inc. v. Rylander, et al.**  
Cause #GN104253  
AG Case #021547393

Protest Tax; Protest, Injunction & Declaratory Judgment Filed: Period: Amount: \$1,173.83 & \$3,690.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Gilbert J. Bernal, Jr. Kirk R. Lyda David J. Sewell Stahl, Martens & Bernal Austin
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Issue: Whether the Comptroller must accept a letter of credit as security for Plaintiff's participation in the cigarette tax trust fund.

Status: Discovery in progress.

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**Mineola ISD v. Comptroller of Public Accounts** Cause #GV102070  
AG Case #011474616

Property Tax; Administrative Appeal	Asst. AAG Assigned:	Nicole Galwardi
Filed: 07/27/01	Plaintiff's Counsel:	Ray Bonilla
Period: 2000		Ray, Wood, Fine & Bonilla
Amount: \$		Austin

Issue: Whether the Comptroller erred by not properly valuing commercial personal properties.

Status: Discovery in progress.

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**Mirage Real Estate, Inc., et al. v. Richard Durbin, et al.** Cause #92-16485  
AG Case #92-190294

Alcoholic Beverage Gross Receipts Tax; Declaratory Judgment	Asst. AAG Assigned:	Blake Hawthorne
Filed: 12/03/92	Plaintiff's Counsel:	Jim Mattox
Period:		Lowell Lasley
Amount: \$		Michael D. Mosher

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

Status: Answer filed.

---

**New Boston ISD v. Comptroller** Cause #GV102003  
AG Case #011479953

Property Tax; Administrative Appeal & Injunction	Asst. AAG Assigned:	Jana Kinkade
Filed: 07/25/01	Plaintiff's Counsel:	Kirk Swinney
Period: 2001		Harvey M. Allen
Amount: \$		McCreary, Veselka, Bragg & Allen
		Austin

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

Status: Discovery in progress. Motion for Summary Judgment hearing set 06/12/02. Trial set 07/22/02.

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

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

Issue: Whether audit incorrectly assessed mixed beverage tax by failing to consider changes in inventory and periods of business closures. Whether 50% fraud penalty was incorrectly assessed where some of the Plaintiff's books and records were destroyed by fire. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress. Plaintiff has submitted several settlement offers. Collection action to be taken by Comptroller. Plaintiff filed Chapter 7 bankruptcy. Bankruptcy stay in effect.

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

Property Tax; Administrative Appeal & Injunction	Asst. AAG Assigned:	Nicole Galwardi
Filed: 06/23/00	Plaintiff's Counsel:	Roy L. Armstrong
Period: 1999		Robert L. Meyers
Amount: \$		McCreary, Veselka, Bragg & Allen

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

Status: Discovery in progress. Trial scheduled 07/08/02.

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**P.W. Jones Oil Co., Inc. v. Sharp, et al.** Cause #96-02941  
AG Case #96-485280

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

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

Status: Inactive.

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

Motor Vehicle Tax; Protest Filed: 08/26/91 Period: 12/01/86 - 09/30/89 Amount: \$21,796	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  George L. Preston Paris
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Issue: Whether motor vehicle tax should fall on dealer/seller rather than the purchaser under §152.044. Related constitutional issues.

Status: Inactive.

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***Shelton, James M., Estate of, Deceased, and Carroll A. Maxon, Independent Co-Executor v. Rylander, et al.*** Cause #GN104094  
AG Case #021542261

Inheritance Tax; Protest & Refund Filed: 12/14/01 Period: Amount: \$1,616,018	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  James F. Martens Jessica Scott Stahl, Martens & Bernal Austin
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Issue: Whether the IRS and Comptroller failed to give proper credit against the estate value for a pending lawsuit and administrative expenses.

Status: Answer filed.

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**Uvalde ISD v. Comptroller of Public Accounts** Cause #GV102072  
AG Case #011474582

Property Tax; Administrative Appeal	Asst. AAG Assigned:	Jana Kinkade
Filed: 07/27/01	Plaintiff's Counsel:	Ray Bonilla
Period: 2000		Ray, Wood, Fine & Bonilla
Amount: \$		Austin

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

Status: Discovery in progress.

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

Property Tax; Administrative Appeal	Asst. AAG Assigned:	Nicole Galwardi
Filed: 07/28/00	Plaintiff's Counsel:	James R. Evans, Jr.
Period: 1999		Linebarger Heard Goggan
Amount: \$		Blair Graham Pena & Sampson
		Austin

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

Status: Answer filed.

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**West Orange-Cove CISD, Coppell ISD, La Porte ISD, Port Neches-Groves ISD v. Rylander, et al.** Cause #GV-100528  
AG Case #011433026

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

Asst. AAG Assigned:

Nicole Galwardi

Plaintiff's Counsel:

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

W. Wade Porter  
Haynes and Boone  
Austin

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

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

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## Closed Cases

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

AG Case #92-165918

Sales Tax; Refund Filed: 10/13/92	Asst. AAG Assigned:	Jana Kinkade
Period: 01/01/90-12/31/90 Amount: \$17,486	Plaintiff's Counsel:	Judy M. Cunningham Attorney at Law Austin

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

Status: Agreed judgment - case settled.

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

AG Case #99-1112061

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

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

Status: Agreed Judgment to be entered per *Comptroller v. Fisher Controls International, Inc.*

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

AG Case #99-1108499

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

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

Status: Cross-motion for summary judgment filed. Settled. Dismissed with Prejudice 04/11/02.

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

AG Case #011431293

Franchise Tax; Refund Filed: 03/30/01 Period: 1987-1993 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether inclusion of unfunded post-retirement benefits (OPEBs) in franchise tax surplus violates ERISA. Whether Comptroller violated equal protection by allowing some to deduct OPEBs. Whether OPEBs are debt and whether their treatment in Section 171.109 is discriminatory.

Status: Agreed take-nothing judgment 12/18/01.

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

AG Case #98-1047269

Sales Tax; Refund Filed: 09/09/98 Period: 07/01/92-01/31/96 Amount: \$67,366	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Judy M. Cunningham Attorney at Law Austin
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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: Agreed Judgment granted 11/26/01.

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

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

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

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

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

Status: Plaintiff's summary judgment motion filed. State's motion for summary judgment granted 04/06/00. Plaintiff filed notice of appeal. Dow's brief filed. Comptroller's brief filed. Argued 11/15/00. Reversed and rendered 01/25/01. Comptroller's petition filed 03/12/01. Response to petition filed 05/16/01. Comptroller's reply filed 05/31/01. Petition denied 06/07/01. Comptroller's petition for writ of certiorari filed 09/05/01. Cert. denied 10/29/01.

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

Sales Tax; Declaratory  
Judgment  
Filed: 06/12/01  
Period: 02/01/96-03/31/98  
Amount: \$21,074.28

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

Mark Eidman  
Ray Langenberg  
Curtis Osterloh  
Scott, Douglass &  
McConnico  
Austin

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

Status: Agreed judgment.

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

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

Issue: Whether reimbursements to a subsidiary for services procured by the sub for the parent from third parties should be included in gross receipts. Whether post-retirement benefits should be deducted from surplus.

Status: Dismissed for Want of Prosecution 03/21/02.

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**Schlumberger Technology Corp. v. Rylander, et al.** Cause #GN002484  
AG Case #001348614

Franchise Tax; Refund & Declaratory Judgment	Asst. AAG Assigned:	Christine Monzingo
Filed: 08/23/00	Plaintiff's Counsel:	Gerard A. Desrochers Houston
Period: 1991		
Amount: \$35,537		

Issue: Whether Plaintiff's wage reserve accounts are debt for purposes of the franchise tax. Whether §171.109 is unconstitutional on its face and as applied on grounds of equal protection, equal taxation and due process. Plaintiff also seeks attorneys' fees.

Status: Dismissed for Want of Prosecution 03/21/02.

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**Texas Workers' Compensation Insurance Facility v. Comptroller** Cause #96-07940  
AG Case #96-555551

Maintenance Tax; Declaratory Judgment	Asst. AAG Assigned:	Gene Storie
Filed: 07/09/96	Plaintiff's Counsel:	Frank Stenger-Castro Fred Lewis Texas Workers' Compensation Insurance Facility Austin
Period: 1992-1995		
Amount: \$		

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

Status: Inactive. Dismissed.

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

AG Case #97-700580

Maintenance Tax; Refund  
Filed: 03/25/97

Period: 1992-1995  
Amount: \$23,623,585

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

Larry Parks  
Long, Burner, Parks &  
Sealey  
Austin

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

Status: Plaintiff's amended motion for summary judgment filed. Hearing on cross motions held 03/07/01. Summary Judgment granted for defendants 05/25/01. Plaintiff filed notice of appeal. Record filed. Facility's brief filed 08/24/01. Argued 11/14/01. Affirmed for Appellee 01/10/02.

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

AG Case #011395308

Insurance Premium Tax;  
Protest

Filed: 12/13/00  
Period: 01/01/93-12/31/96  
Amount: \$216,572.39

Asst. AAG Assigned:

Plaintiff's Counsel:

Blake Hawthorne

Jim Shawn  
Ron K. Eudy  
Sneed, Vine & Perry  
Austin

Issue: Whether "cash fund investments" are Texas investments under the property and casualty insurance premium tax in effect during the audit period. Whether the property and casualty insurance premium tax should be interpreted like the life insurance premium tax. Whether Plaintiff is entitled to detrimental reliance relief because its qualified investment was not challenged by the Department of Insurance. Alternatively, whether Plaintiff should recover interest because of delay by the Comptroller in reaching a decision.

Status: Agreed Judgment granted 04/15/02.

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**U.S. On-Line Cable v. Rylander, et al.** Cause #99-09021  
AG Case #99-1198896

Sales Tax; Refund Filed: 08/05/99 Period: 10/01/94-07/31/98 Amount: \$115,958.69	Asst. AAG Assigned:  Plaintiff's Counsel:	Scott Simmons  James F. Martens Stahl, Martens & Bernal Austin
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Issue: Whether Plaintiff is entitled to a sale for resale exemption on cable equipment it purchases from out-of-state vendors and users to provide cable service to apartment dwellers.

Status: Agreed Judgment granted 08/14/01.

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**Xerox Credit Corp. v. Rylander, et al.** Cause #99-06232  
AG Case #99-1172602

Franchise Tax; Protest Filed: 05/28/99 Period: 1992-2000 Amount: \$2,290,821.39	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  James F. Martens Gilbert J. Bernal, Jr. Stahl, Martens & Bernal Austin
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Issue: Whether transfers of accounts receivables were sales or pledges for federal income and franchise tax apportionment purposes. Whether non-Texas capital gains were improperly offset by capital losses inconsistently with apportionment provisions of the franchise tax. Whether taxpayer had constitutional nexus with Texas. Whether taxpayer was denied equal protection. Whether interest and penalty should be waived. Taxpayer also seeks declaratory judgment and attorneys' fees.

Status: Settled. Dismissed with Prejudice 04/04/02.

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