



**OFFICE OF THE ATTORNEY  
GENERAL**

**TAXATION DIVISION**

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

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## Franchise Tax

**7-Eleven, Inc. v. Strayhorn, et al.** Cause #GN501845  
AG Case #052154382

Franchise Tax; Refund &  
Declaratory Judgment  
Filed: 05/23/05  
Period: 1994-1996  
Amount: \$203,117.59

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

Issue: Whether the franchise tax requirement under Tax Code §171.110 to add back officer and director compensation to the tax base without voter approval is unconstitutional. Plaintiff claims disparate tax treatment based on the number of shareholders within a corporation, and violation of equal and uniform taxation and the Equal Protection Clause. Whether the provision also discriminates unconstitutionally between banks and other corporations and should be limited to officers with significant authority.

Status: Answer filed.

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**7-Eleven, Inc. v. Strayhorn, et al.** Cause #GN501854  
AG Case #052154390

Franchise Tax; Refund &  
Declaratory Judgment  
Filed: 05/23/05  
Period: 1997-1999  
Amount: \$169,857.71

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

Issue: Whether the franchise tax requirement under Tax Code §171.110 to add back officer and director compensation to the tax base without voter approval is unconstitutional. Plaintiff claims disparate tax treatment based on the number of shareholders within a corporation, and violation of equal and uniform taxation and the Equal Protection Clause. Whether the provision also discriminates unconstitutionally between banks and other corporations and should be limited to officers with significant authority.

Status: Answer filed.

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**7-Eleven, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002389

AG Case #062380316

Franchise Tax; Refund  
Filed: 06/29/06  
Period: 1997-1999  
Amount: \$169,847.71

Asst. AAG Assigned:

Christine Monzingo

Plaintiff's Counsel:

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

Issue: Whether add-back of officer compensation is a personal income tax requiring voter approval. Whether Section §171.110 and Rule 3.558 violate equal protection. Alternatively, whether the amount of add-back is overstated.

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  
Filed: 02/01/01  
Period: 1988-1994  
Amount: \$300,772.95  
\$204,616.25

Asst. AAG Assigned:

Paul Masters

Plaintiff's Counsel:

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

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

Status: Discovery stayed pending outcome of similar case.

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***Chevron Chemical Co., LLC, as Successor to Chevron Chemical Co. v. Strayhorn, et al.*** Cause #D-1-GN-06-000789  
AG Case #062297486

Franchise Tax; Refund Filed: 03/06/06 Period: 1994-1995 Amount: \$559,579.09	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether the Comptroller correctly applied Plaintiff's business loss carry-forward on earned surplus during years when the earned surplus surtax was computed at zero.

Status: Answer filed.

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***Chevron USA, Inc. v. Strayhorn, et al.*** Cause #GN401579  
AG Case #041972456

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

Status: Discovery in progress.

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***Chevron USA, Inc. v. Strayhorn, et al.*** Cause #GN500170  
AG Case #052091378

Franchise Tax; Refund Filed: 01/18/05 Period: 1988-1991, 1995, 1996 and 1999 Amount: \$5,000,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether abandonment costs of oil and gas properties can be excluded from surplus as contra-asset accounts for depreciation, depletion and amortization under GAAP guidelines. Whether Plaintiff may change its accounting methods used to calculate surplus within a four year period. Plaintiff also claims violation of equal and uniform taxation and equal protection.

Status: Discovery in progress.

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

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

Status: Answer filed.

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

Franchise Tax; Refund & Declaratory Judgment Filed: 03/19/03 Period: 1992-1995 Amount: \$1,646,637	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Cynthia M. Ohlenforst Tracy D. Eaton Dallas
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Issue: Whether the franchise tax requirement to add back officer and director compensation to the tax base is an unconstitutional tax on the income of natural persons. Whether the shareholder limit for the add-back is arbitrary, unreasonable and discriminatory. Whether the provision also discriminates unconstitutionally between banks and other corporations and should be limited to officers with significant authority.

Status: Answer filed.

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

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

Status: Answer filed.

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**El Paso Natural Gas Co. v. Strayhorn, et al.** Cause #GN301003  
#03-05-00144-CV  
#06-05-00059-CV  
AG Case #031778939

Franchise Tax; Refund  
Filed: 03/28/03  
Period: 1989-1991  
Amount: \$3,000,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

Issue: Whether Plaintiff may use the successful efforts method of accounting. Whether revenue should be recognized when it is billed rather than when it is booked. Whether unamortized loss on reacquired debt may be expensed. Whether certain accounts should be removed from surplus because they had zero balances. Whether Plaintiff's apportionment factor should be reduced for receipts from gas not picked up or delivered in Texas. Whether Plaintiff's refund claims were timely filed and whether some claims were precluded by an earlier hearings decision.

Status: Summary Judgment hearing held 08/24/04. Judgment entered 02/24/05; both motions granted in part and denied in part. Cross-notice of appeal filed 03/08/05. Appeals transferred from 3COA to 6COA in Texarkana, Texas by Texas Supreme Court on 04/04/05. Cross-appellants' briefs filed 05/09/05 and 05/10/05. Cross-appellees' briefs filed 06/20/05. Cross-appellants' reply briefs filed 07/08/05 and 07/11/05. Submitted on Oral Argument 04/18/06. Opinion issued 10/18/06. Partial summary judgment in favor of El Paso reversed; partial summary judgment in favor of Comptroller affirmed; one issue remanded. Motion for Rehearing filed 11/06/06.

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***El Paso Natural Gas Co. v. Strayhorn, et al.*** Cause #GN500963

AG Case #052132248

Franchise Tax; Refund  
Filed: 03/30/05  
Period: 1988  
Amount: \$446,836.60

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

Issue: Whether unamortized loss on reacquired debt may be expensed. Whether Plaintiff's apportionment factor should be reduced for receipts from gas not picked up or delivered in Texas.

Status: Discovery in progress.

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**Fairfield Industries, Inc. v. Strayhorn, et al.** Cause #GN503289  
AG Case #052214558

Franchise Tax; Protest Filed: 09/13/05 Period: 2002-2004 Amount: \$1,107,256.04	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  John D. White Jones, Walker, Waechter, Poitevent, Carrère & Denègre LLP The Woodlands
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Issue: Whether Plaintiff's gross receipts should be treated as receipts from intangibles apportioned based on the location of the payor or the location of the alleged use of data. Whether the transfer of seismic data is a "license" or the transfer of an intangible for franchise tax apportionment purposes. Plaintiff also requests that penalties be waived and recovery of attorney's fees.

Status: Discovery in progress.

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**Fairfield Industries, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-000797  
AG Case #062296884

Franchise Tax; Protest & Declaratory Judgment Filed: 03/07/06 Period: 1999-2001 Amount: \$769,839.19	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  John D. White Jones, Walker, Waechter, Poitevent, Carrère & Denègre LLP The Woodlands
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Issue: Whether Plaintiff's gross receipts should be treated as receipts from intangibles apportioned based on the location of the payor or the location of the alleged use of data. Whether the transfer of seismic data is a "license" or the transfer of an intangible for franchise tax apportionment purposes. Plaintiff also requests that penalties be waived and recovery of attorney's fees.

Status: Discovery 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:

Christine Monzingo

Plaintiff's Counsel:

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

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

Status: Discovery suspended.

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**Galland Henning Nopak, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-001409  
AG Case #062312129

Franchise Tax; Protest  
Filed: 04/21/06  
Period: 1995-2004  
Amount: \$16,751.35

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

William C. Davidson  
Law Offices of Minter  
Joseph & Thornhill, P.C.  
Austin

Issue: Whether Plaintiff had sufficient nexus in Texas to be assessed taxes under both the taxable capital component and the earned surplus component of the Texas Franchise Tax.

Status: Answer filed.

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**Home Interiors & Gifts, Inc. v. Strayhorn, et al.** Cause #GN303185  
#03-04-00660-CV  
#05-0939  
AG Case #031842420

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

Asst. AAG Assigned:  
Plaintiff's Counsel:

Christine Monzingo

Daniel L. Butcher  
Strasburger & Price  
Dallas

Farley P. Katz  
Strasburger & Price  
San Antonio

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

Status: Hearing on Cross-Motions for Summary Judgment held 09/21/04. Defendants' Motion for Summary Judgment granted 09/30/04. Notice of Appeal filed 10/20/04. Appellant's brief filed 01/24/05. Appellees' brief filed 03/25/05. Appellants' reply brief filed 04/28/05. Appellee's response to reply brief filed 05/23/05. Submitted on Oral Argument 05/25/05. Appellant filed post-submission brief 06/03/05. Motion granted 06/14/05 for Appellant to file post-submission brief. Appellees filed letter of authority 06/21/05. Appellant filed letter of authority 06/23/05. Opinion issued 07/28/05 reversing and rendering Judgment for Appellants. Motion for Rehearing filed by Appellant 08/09/05. Motion for Rehearing filed by Appellee 08/15/05; denied 09/22/05. Petition for Review filed by State in Texas Supreme Court 01/06/06. Response from Home Interiors filed 03/03/06. Briefing on the Merits requested 04/26/06. Petitioners' brief on the merits filed 06/26/06. Respondent's brief on the merits filed 07/28/06. Petitioners' reply brief filed 08/14/06. Appeal being handled by Solicitor General's Office.

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***Kellwood Co., The v. Strayhorn, et al.*** Cause #GN500508  
AG Case #052102654

Franchise Tax; Protest  
Filed: 02/16/05  
Period: 2001-2003  
Amount: \$129,355.44

Asst. AAG Assigned:  
Plaintiff's Counsel:

Jana Kinkade

Jason Flaherty  
Jenkins & Gilchrist  
Austin

Issue: How should pension reversion gain be allocated for franchise tax apportionment purposes. Is the pension reversion gain non-unitary or unitary earned surplus income. Whether Plaintiff's pension reversion gain should be calculated with Plaintiff's Texas gross receipts. What methodology the Comptroller should apply to not distort the amount of taxable earned surplus apportionable to Texas. Plaintiff also claims violation of the Due Process and Commerce Clauses of the US Constitution and the Due Course of Law provision of the Texas Constitution.

Status: Answer filed.

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**Millennium Inorganic Chemicals, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-000655

AG Case #062295894

Franchise Tax; Protest

Filed: 02/23/06

Period: 1996-1999

Amount: \$2,862,261.31

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

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

Issue: Whether Plaintiff may deduct from its surplus the pre-acquisition negative retained earnings of a subsidiary's subsidiary. Whether Plaintiff may write-down subsidiary's investments in subsidiaries. Whether the Comptroller correctly determined Plaintiff's original cost basis in its subsidiary.

Status: Discovery in progress.

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**Owens Corning v. Strayhorn, et al.** Cause #GN503923

AG Case #052240819

Franchise Tax; Refund

Filed: 10/28/05

Period: 1992 & 1993

Amount: \$90,980.34

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

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

Issue: Whether Plaintiff is entitled to a franchise tax credit. Whether deferred tax liabilities can be offset by deferred tax assets.

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

Filed: 11/28/01

Period: 1998

Amount: \$2,581,013.52

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

L.G. Skip Smith

David H. Gilliland

Clark, Thomas & Winters

Austin

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

Status: Discovery in progress.

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***Southwestern Bell Telephone Co. v. Rylander, et al.*** Cause #GN204559

AG Case #031730666

Franchise Tax; Protest

Filed: 12/20/02

Period: 1996-1999; 2001

Amount: \$25,163,579.92

Asst. AAG Assigned:

Plaintiff's Counsel:

Christine Monzingo

Mark W. Eidman

Ray Langenberg

Scott, Douglass &

McConnico

Austin

Issue: Whether local loop access charges are Texas receipts for franchise tax purposes. Whether treating the revenues as Texas receipts violates the Comptroller's Rule on interstate calls and the due process, equal protection and commerce clauses of the Constitution. Whether other charges related to message services are Texas receipts.

Status: First Amended Original Petition adding 2001 final report filed. Discovery in progress. MSJ hearing set 02/14/07. Trial set 03/05/07.

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**TGS-NOPEC Geophysical Co. v. Strayhorn, et al.** Cause #GN500637  
AG Case #052114220

Franchise Tax; Protest Filed: 03/01/05 Period: 1997-2000 2001-2003 Amount: \$390,471.26 \$1,422,008.76	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  R. Scott Wolfrom Jones, Walker, Waechter, Poitevent, Carrère & Denègre, LLP The Woodlands
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Issue: Whether Plaintiff's gross receipts should be treated as receipts from intangibles apportioned based on the location of the payor or the location of the alleged use of data. Whether the transfer of seismic data is a "license" or the transfer of an intangible for franchise tax apportionment purposes. Plaintiff also seeks attorneys' fees.

Status: Hearing on cross-Motions for Summary Judgment set 05/01/07.

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

Franchise Tax; Refund Filed: 06/27/03 Period: 1992-1997 Amount: \$4,462,424.56	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff may re-state asset values for franchise tax purposes by using straight-line depreciation after it used accelerated depreciation to reduce asset values for federal income and franchise tax purposes before report year 1992. Whether penalty and interest should have been waived because Plaintiff's affiliates had overpayments during the audit period that could have been credited to Plaintiff's deficiencies. Amended Petition: Whether the throw-back statute violates the Commerce Clause; whether officer-director compensation add-back is constitutional.

Status: Hearing on cross-Motions for Partial Summary Judgment held 07/19/06. On 07/26/06 the district court granted Defendants' Motion for Partial Summary Judgment and denied Plaintiff's on the depreciation/basis issue.

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

Franchise Tax; Protest Filed: 07/30/04 Period: 1997-1999 Amount: \$754,178.16	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether revenue received from third-party cable television system operators is revenue earned from licensing or from the service of producing, creating, editing, packaging and transmitting 24-hour-per day network programming performed out-of-state. Should revenue from providing these services be considered Texas receipts for franchise tax purposes. Plaintiff also claims violation of due process and the Commerce Clause.

Status: Discovery in progress. Settlement negotiations in progress. Trial to be reset.

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***York International Corp. v. Strayhorn, et al.*** Cause #GN600153  
AG Case #062275193

Franchise Tax; Refund Filed: 01/13/06 Period: 1993-1996 Amount: \$362,337.18	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Doug Sigel Scott, Douglass & McConnico, LLP Austin
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Issue: Whether Plaintiff is entitled to record the assets and liabilities of previously acquired entities at their historical book values for purposes of determining taxable capital under Tax Code Section 171.109(b). Whether the Comptroller incorrectly calculated Plaintiff's push-down adjustments under Tax Code Section 171.109(m). Whether the Comptroller used the proper accounting method to value transferred assets. Whether Plaintiff's claim is barred as a second refund.

Status: Discovery in progress.

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## Sales Tax

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

AG Case #042046367

Sales Tax; Refund

Filed: 10/08/04

Period: 04/01/93-  
09/30/96

Amount: \$299,328.98

Asst. AAG Assigned:

Plaintiff's Counsel:

Jana Kinkade

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

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

Status: Discovery in progress. Defendants' hearing on Plea to the Jurisdiction and Cross-Motions for Summary Judgment set 12/12/06.

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**7-Eleven, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002424

AG Case #062380290

Sales Tax; Refund

Filed: 06/30/06

Period: 04/01/93-  
09/30/96

Amount: \$615,638.45

Asst. AAG Assigned:

Plaintiff's Counsel:

Jana Kinkade

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

Issue: Whether Plaintiff purchased non-taxable programming services rather than taxable software.

Status: Answer filed.

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**AT&T Corp.; Teleport Communications of Houston, Inc.; TCG of Dallas, Inc.; AT&T Network Procurement, L.P.; AT&T Communications of Texas, L.P.; and AT&T Communications of the Southwest, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002080  
AG Case #062365986

Sales Tax; Refund Filed: 06/07/06 Period: 01/01/95- 07/31/04 01/01/00-07/31/04 01/01/00-07/31/04 01/01/00-07/31/04 01/01/99-07/31/04 01/01/00-07/31/04 Amount: \$21,934,496 \$1,484,356 \$1,391,152 \$22,827,857 \$4,435,506 \$4,435,506	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether purchases of electricity used in a manufacturing process is exempt from sales tax. Whether the manufacturing process used by Plaintiff results in a physical change to tangible personal property being resold. Whether electricity purchased and used to process tangible personal property for sale as tangible personal property is exempt from sales tax under the manufacturing and processing exemption. Whether Plaintiffs' purchases and/or leases of tangible personal property directly used or consumed in or during a manufacturing process are exempt from sales tax.

Status: Answer filed.

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**AccuTel of Texas, L.P. v. Rylander, et al.** Cause #GN300091  
AG Case #031735236

Sales Tax; Refund Filed: 01/10/03 Period: 06/01/97- 11/30/00 Amount: \$45,658.15	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Christopher Malish Foster & Malish Austin
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Issue: Whether Plaintiff should have been assessed interest and penalty.

Status: Answer filed.

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

AG Case #011514544

Sales Tax; Protest

Filed: 10/19/01

Period: 11/01/92-  
12/31/97

Amount: \$929,964.11

Asst. AAG Assigned:

Plaintiff's Counsel:

Paul Masters

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. Settlement negotiations in progress. Trial postponed.

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***Alcatel Network Systems, Inc. v. Strayhorn, et al.*** Cause #D-1-GN-06-000104

AG Case #062271143

Sales Tax; Protest

Filed: 01/10/06

Period: 05/01/93-  
10/31/95

Amount: \$908,670.54

Asst. AAG Assigned:

Plaintiff's Counsel:

Paul Masters

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

Issue: Whether purchases of software licenses qualify as tangible personal property with a useful life in excess of six months and used or consumed in or during the manufacturing, processing, or fabrication of tangible personal property for ultimate sale so as to be exempt from sales tax. Whether display items and/or the materials used to make them are exempt from sales tax.

Status: Settlement negotiations in progress.

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**Alcatel Network Systems, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-003731  
AG Case #062412861

Sales Tax; Refund Filed: 09/29/06 Period: 05/01/93- 10/31/95 Amount: \$908,670.54	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether purchases of tangible personal property with a useful life in excess of six months and used or consumed in or during the manufacturing, processing, or fabrication of tangible personal property for ultimate sale are exempt from sales tax. Whether display items and/or the materials used to make them are exempt from sales tax.

Status: Answer filed.

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**Allegiance Telecom of Texas, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-000056  
AG Case #062269030

Sales Tax; Refund Filed: 01/06/06 Period: 10/01/97- 12/31/00 Amount: \$2,660,546.29	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether equipment purchased by Plaintiff is exempt from sales tax as tangible personal property used in manufacturing and processing. Whether freight charges are exempt from sales tax under the manufacturing exemption.

Status: Answer filed.

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**Amerada Hess Corp. v. Strayhorn, et al.** Cause #GN402614  
AG Case #042005314

Sales Tax; Refund Filed: 08/13/04 Period: 01/01/90- 12/31/95 Amount: \$44,500.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether submersible pumps, motors, separators, couplings and related down hole equipment are exempt from sales tax under the manufacturing exemption. Whether certain benefits of a membership fee cause the fee to be taxable.

Status: Answer filed.

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

Sales Tax; Refund Filed: 02/11/04 Period: 07/01/94- 03/31/98 Amount: \$28,353.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Mark W. Eidman Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether industrial solid waste removal is exempt as a real property service.

Status: Answer filed.

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

Sales Tax; Protest Filed: 03/19/03 Period: 10/01/91- 09/30/98 Amount: \$285,284.13	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Tom Tourtellotte Hance Scarborough Wright Woodward & Weisbart Austin
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Issue: Whether Plaintiff performed its repairs under lump-sum contracts. Plaintiff also challenges the constitutionality of Rider 11.

Status: Discovery in progress. Trial setting of 09/20/04 passed by agreement. Trial began 01/30/06; trial continued.

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

AG Case #98930349

Sales Tax; Protest Filed: 04/03/98 Period: 04/01/90- 03/31/94 Amount: \$291,196	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones Day Dallas
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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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***Aramis Services, Inc. v. Rylander, et al.*** Cause #0000384

AG Case #001273051

Sales Tax; Protest Filed: 02/11/00 Period: 04/01/94- 12/31/97 Amount: \$281,676.36	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones Day 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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**Awad, Mike v. Strayhorn, et al.** Cause #D-1-GN-06-003807  
AG Case #062419668

Sales Tax; Protest & Declaratory Judgment Filed: 10/06/06 Period: 07/01/00- 12/31/03 Amount: \$196,853.60	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  William A. Roberts Kyle Coleman The Roberts Law Firm Dallas
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Issue: Whether Plaintiff's business products are exempt as "sale for resale" items or taxable. Whether the Comptroller erred by misapplying burden of proof and whether the requirement is constitutional. Whether Tax Code §112.108 is constitutional. Plaintiff claims violation of due process, that all penalties and interest be waived, and attorneys' fees.

Status: Answer filed.

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

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

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

Sales Tax; Protest Filed: 01/29/99 Period: 01/01/91- 12/31/94 Amount: \$81,571.73	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Timothy M. Trickey The Trickey Law Firm Austin
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Issue: Whether taxpayer's sub-contract was a separated contract since the general contractor's construction contract was separated.

Status: Case dismissed for want of prosecution 06/17/03. Motion to Reinstate granted. Negotiating an agreed scheduling order.

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

Sales Tax; Refund & Declaratory Judgment Filed: 02/15/02 Period: 01/01/90- 06/30/93 07/01/93-06/30/97 Amount: \$7,280,079	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Gilbert J. Bernal, Jr. Stahl, Bernal & Davies 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 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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**Bell Helicopter Textron, Inc. v. Strayhorn, et al.** Cause #GN204437  
AG Case #041927062

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

Status: Answer filed.

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

Sales Tax; Refund Filed: 06/21/04 Period: 12/01/88- 05/31/95 Amount: \$3,750,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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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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**Blue Cross and Blue Shield of Texas, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-  
000787  
AG Case #062296876

Sales Tax; Refund Filed: 03/06/06 Period: 06/01/95- 12/31/98 Amount: \$3,029,344.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico
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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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**Boeing North America, Inc. v. Rylander, et al.** Cause #GN203340  
AG Case #021676804

Sales Tax; Refund Filed: 09/13/02 Period: 01/01/95- 12/31/96 Amount: \$343,487	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. Plaintiff also claims a denial of equal protection and an exemption under §151.3111.

Status: Answer filed.

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

Sales Tax; Refund Filed: 11/10/03 Period: 01/01/95- 12/31/99 Amount: \$500,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Plaintiff claims a sale for resale exemption on items resold to the federal government. Whether title passed to the federal government according to Plaintiff's contracts at the time Plaintiff took possession of the items, thus establishing the sale for resale exemption recognized in *Day & Zimmerman v. Calvert*.

Status: Answer filed.

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

Sales Tax; Protest Filed: 02/20/04 Period: 01/01/02- 12/31/02 Amount: \$50.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Richard C. Bonart (Pro Se) El Paso
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Issue: Whether microchips implanted in animals are exempt as health care supplies and as a therapeutic appliance or device. Plaintiff also claims a denial of equal and uniform protection.

Status: Answer filed.

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**Broadwing Corp. v. Strayhorn, et al.** Cause #D-1-GN-06-003733  
AG Case #062412879

Sales Tax; Refund Filed: 09/29/06 Period: 01/01/99- 04/30/02 Amount: \$217,355.92	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark Eidman Curtis Osterloh Scott, Douglass & McConnico, LLP Austin
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Issue: Whether finish-out work or improvements to real property is subject to tax when a part of the structure and leased space had been previously used and occupied..

Status: Answer filed.

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**Burns, Kevin D. v. Strayhorn, et al.** Cause #GN504208  
AG Case #052253457

Sales Tax; Refund & Declaratory Judgment Filed: 11/28/05 Period: 01/01/96- 10/31/00 Amount: \$1,300,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Judy M. Cunningham Austin
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Issue: Whether the transfer of certain tangible personal property from customers to Plaintiff to be leased back to customers with a purchase option are non-taxable financing transactions. Whether sales taxes previously submitted are binding within Plaintiff's bankruptcy plan. Plaintiff claims violation of equal and uniform taxation, and also seeks attorneys' fees.

Status: Discovery in progress.

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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:	Paul Masters  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: Plaintiff drafting settlement offer. Trial set 01/16/07 postponed.

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**Central Power & Light Co. v. Sharp, et al.** Cause #96-11455  
AG Case #96602037

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

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**Chapal Zenray, Inc. v. Rylander, et al.** Cause #GN204506  
AG Case #031729197

Sales Tax; Protest Filed: 12/16/02 Period: 01/01/94- 12/31/97 Amount: \$210,943.91	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Mark W. Eidman Ray Langenberg Curtis J. Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether items such as boxes, foam pads and twist ties are not subject to tax pursuant to Tex. Tax Code §151.011 (f)(2) and Rule 3.346 (c)(1)(c) when purchased by a person who uses the items to secure jewelry for shipment out-of-state.

Status: Discovery in progress. Motion for Summary Judgment to be submitted.

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

Cause #GN304712

#03-05-00449-CV

AG Case #031899016

Sales Tax; Refund

Filed: 12/12/03

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

01/01/92-09/30/97

Amount: \$683,979.99

\$220,773.61

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

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

Status: Trial held 03/23/05. Judgment for the Comptroller. Findings and Conclusions filed 06/17/05. Notice of Appeal filed by Chevron 07/12/05. Appellant's brief filed 10/26/05. Appellees' brief filed 12/07/05. Oral Argument denied. Set on briefs 12/13/05. Appellants' reply brief filed 01/27/06. Submitted on briefs 01/30/06. Opinion issued 08/04/06 affirming district court's judgment. Motion for Rehearing filed 08/21/06. Response from Appellee filed 09/21/06. Substituted Opinion issued 10/26/06 affirming district court's judgment.

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***Chevron USA, Inc. v. Strayhorn, et al.*** Cause #GN403978

AG Case #042071324

Sales Tax; Refund

Filed: 12/06/04

Period: 01/01/93-  
06/30/96

Amount: \$10,000,000.00

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

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

Status: Discovery in progress. Hearing on cross-motions for summary judgment held 06/28/06. Chevron's motion for partial summary judgment granted; Comptroller's motion denied.

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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:	Paul Masters  W. Stephen Benesh 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: Plaintiff waiting for outcome of *Estee Lauder Services, Inc.* cases. Case dismissed for want of prosecution 06/15/05. Case re-opened. Reinstated by bill of review 11/22/05.

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**Cingular Wireless of Austin, LP, formerly known as GTE Mobilnet of Austin, LP; GTE Mobilnet of South Texas, LP; GTE Mobilnet of Texas RSA #17, LP; San Antonio MTA, LP, successor in interest to GTE Mobilnet of Texas RSA #21, LP and to GTE Wireless of Houston, LLC; Cingular Wireless of Texas RSA #11, LP, formerly known as GTE Mobilnet of Texas RSA #11, LP, and Cingular Wireless of Texas RSA #16, LP, formerly known as GTE Mobilnet of Texas RSA #16, LP v. Strayhorn, et al.** Cause #GN502649  
AG Case #052186616

Sales Tax; Refund Filed: 07/29/05 Period: 01/01/93- 12/31/96 Amount: \$10,177,377.49	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether purchases of telecommunications equipment qualify as tangible personal property for ultimate sale as tangible personal property that are exempt from sales tax under the manufacturing and processing exemption. Whether electricity purchased and used in telecommunications is exempt from sales tax under the manufacturing and processing exemption.

Status: Answer filed.

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***City of Webster and the Webster Economic Development Corp. v. Strayhorn***

Cause #D-1-GV-06-001823

AG Case #062409446

Sales Tax; Declaratory  
Judgment

Filed: 09/15/06

Period: 05/01/02 -  
01/31/06

Amount: \$502,620.70

Asst. AAG Assigned:

Plaintiff's Counsel:

Natalie Maloney

David M. Feldman  
Robert W. Cowan  
Feldman & Rogers, LLP  
Houston

Dick H. Gregg, Jr.  
Gregg & Gregg, PC  
Houston

Issue: Whether the Comptroller's repayment request violates the procedural and substantive due course of law provisions of the Texas Constitution. Whether the Comptroller should have granted Plaintiffs notice or a hearing prior to making the repayment request. Whether the Comptroller's interpretation of Tax Code §321.002(a)(3) is constitutional. Plaintiffs also request attorneys' fees.

Status: Discovery in progress.

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

AG Case #98930330

Sales Tax; Protest

Filed: 04/03/98

Period: 04/01/90-  
03/31/94

Amount: \$519,192

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

David E. Cowling  
Jones Day  
Dallas

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

Status: 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 Jones Day 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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***Clinique Services, Inc. v. Strayhorn, et al.*** Cause #GN500049

AG Case #052085933

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

Status: Answer filed.

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**Coca-Cola Co., The v. Strayhorn, et al.** Cause #GN504213  
AG Case #052253473

Sales Tax; Refund

Filed: 11/28/05

Period: 07/01/97-  
03/31/02

Amount: \$2,060,883.03

Asst. AAG Assigned:

Plaintiff's Counsel:

Jana Kinkade

Mark W. Eidman  
Curtis Osterloh  
Eric Hagenswold  
Scott, Douglass &  
McConnico, LLP  
Austin

Issue: Whether replacement parts and the repair of fountain drink machines leased to customers by Plaintiff are exempt from sales tax as manufacturing equipment and the sale for resale exemption.

Status: Answer filed.

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

Sales Tax; Protest &  
Declaratory Judgment

Filed: 06/09/03

Period: 07/01/96-  
12/31/98

Amount: \$1,322,536.67

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

David Cowling  
Jones Day  
Dallas

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

Status: Answer filed.

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***Creative Closets, Inc. v. Strayhorn, et al.*** Cause #D-1-GN-06-000172  
AG Case #062275755

Sales Tax; Protest & Declaratory Judgment Filed: 01/17/06 Period: 08/01/99- 03/31/03 Amount: \$115,276.86	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  W. Thomas Finley M. Seth Sosolik Bell Nunnally & Martin LLP Dallas
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Issue: Whether Plaintiff owes sales and use tax as a franchisee doing retail business in the State of Texas. Plaintiff requests that penalty and interest should be waived, and seeks attorneys' fees.

Status: Plaintiff intends to non-suit.

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***Crown Central Petroleum Corp. v. Strayhorn, et al.*** Cause #GN504190  
AG Case #052260197

Sales Tax; Refund Filed: 11/22/05 Period: 12/01/96- 12/31/99 Amount: \$136,903.16	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether charges of contractors for erecting, moving and dismantling scaffolding are exempt from sales and use tax as a non-taxable service, or taxable as rental of tangible personal property. Whether certain work performed by contractors is new construction under a lump sum contract and thus not taxable.

Status: Answer filed.

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**Day Cruises Maritime, LLC v. Strayhorn, et al.** Cause #D-1-GN-063567  
AG Case #062410139

Sales Tax; Protest Filed: 09/21/06 Period: 12/01/01- 12/31/03 Amount: \$243,910.85	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Patrick L. Beam Attorney at Law Aransas Pass
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Issue: Whether Plaintiff's charter of a vessel is leased property subject to sales and use tax. Whether the vessel was used or received within the state. Plaintiff claims that the Comptroller does not have legal authority to collect the assessed tax.

Status: Answer filed.

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

Sales Tax; Refund Filed: 02/13/04 Period: 02/01/93- 12/31/96 Amount: \$1,642,267.15	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff's purchases of janitorial and building maintenance services being resold under a lease agreement are exempt under the sale for resale exemption. Whether Plaintiff's purchases of mechanical maintenance services were exempt as taxable services purchased in the performance of a real property contract for an exempt entity.

Status: Answer filed.

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**Design Masterpiece Landscaping, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-001691  
AG Case #062337985

Sales Tax; Protest Filed: 05/12/06 Period: 06/01/99- 12/31/02 Amount: \$68,630.03	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Tom Tourtellotte Hance Scarborough Wright Woodward & Weisbart, LLP Austin
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Issue: Whether landscaping services sold under lump-sum contracts by Plaintiff to homeowners are exempt as real property services. Whether a homeowner can contract with a homebuilder and still act as a contractor. Plaintiff requests that interest be waived. Plaintiff also claims violation of due process, equal protection, and equal and uniform taxation.

Status: Answer filed.

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

Sales Tax; Protest Filed: 10/30/02 Period: 07/01/93- 01/31/96 02/01/96-11/30/96 Amount: \$1,100,000+	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff's sewing machines and other property used to alter clothing qualify for the manufacturing exemption. Whether Plaintiff is entitled to a refund of tax on packaging supplies, non-taxable services, and industrial solid waste disposal. Whether the Comptroller improperly applied a franchise tax credit to the assessed amount.

Status: Discovery in progress. Plaintiff's Motion for Partial Summary Judgment filed 06/20/05. Hearing passed. Settlement negotiations in progress. Hearing on Partial Motion for Summary Judgment set 11/20/06.

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

Sales Tax; Refund Filed: 12/23/03 Period: 07/01/93- 01/31/96 02/01/96-11/30/96 Amount: \$1,172,784.29	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff's sewing machines and other property used to alter clothing qualify for the manufacturing exemption. Whether Plaintiff is entitled to a refund of tax on packaging supplies, non-taxable services, industrial solid waste disposal, and sale for resale items.

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

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**Dupont Photomasks, Inc. v. Strayhorn, et al.** Cause #GN303695

#03-04-00822-CV

AG Case #031855117

Sales Tax; Protest &  
Declaratory Judgment  
Filed: 09/12/03  
Period: 01/01/96-  
10/31/97  
Amount: \$299,987.35

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Larry F. York  
Susan F. Gusky  
York, Keller & Field  
Austin

Jennifer K. Patterson  
Austin

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

Status: Motion for Summary Judgment hearing held 09/23/04. Rule upheld. Both motions denied. Trial Judgment entered 11/29/04. Notice of Appeal filed by Plaintiff 12/17/04. Appellant's brief filed 03/07/05. Appellees' brief filed 04/13/05. Appellant's reply brief filed 05/03/05. Oral Argument held 09/14/05. Letter brief filed by Appellant 09/15/05. Post-submission brief filed by Appellee 09/16/05.

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

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

Asst. AAG Assigned:

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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**EFW, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-000058  
AG Case #062269022

Sales Tax; Refund  
Filed: 01/09/06  
Period: 04/01/98-  
08/31/04  
Amount: \$600,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

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

Status: Answer filed.

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

Sales Tax; Protest & Declaratory Judgment Filed: 09/26/02 Period: 01/01/98-12/31/00 Amount: \$284,508.69	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David Cowling Jones Day 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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**ELC Beauty, LLC, as Successor-in-Interest to Origins Services Inc. v. Strayhorn, et al.** Cause #GN500047  
AG Case #052085966

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

Status: Answer filed.

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

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Christopher Jackson
Filed: 01/06/05	Plaintiff's Counsel:	David Cowling
Period: 07/01/99-06/30/01		Jones Day
Amount: \$586,255.47		Dallas

Issue: Whether written and other promotional materials incurred use tax when delivered into Texas to retailers. Issue of when and where ownership rights existed. Whether Rule 3.346(b)(3)(A) is invalid and whether the Comptroller has authority to change its long-standing policy. Alternatively, whether penalty should be waived. Plaintiff also claims violation of rights under the Commerce and Due Process Clauses, and right to equal and uniform taxation. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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**Ebrahim, Suleiman S. v. Strayhorn, et al.** Cause #GN500567  
AG Case #052113388

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jana Kinkade
Filed: 02/22/05	Plaintiff's Counsel:	Lynn Hamilton Butler
Period: 01/01/96-02/25/02		Robert L. Spurck
Amount: \$43,847.15		Brown McCarroll, LLP
		Austin

Issue: Whether Plaintiff is liable for sales tax assessed against his father's business. Plaintiff also seeks attorneys' fees.

Status: Counterclaim filed.

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**El Paso Merchant Energy-Petroleum Co. v. Strayhorn, et al.** Cause #D-1-GN-06-003071  
AG Case #062403696

Sales Tax; Refund  
Filed: 08/23/06  
Period: 01/01/92-  
06/30/96  
Amount: \$1,416,604.28

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

Issue: Whether Plaintiff is entitled to a refund of sales and use tax on services provided by contract labor, certain manufacturing equipment, services performed on manufacturing equipment, materials needed for machinery and equipment used in the manufacturing process, maintenance of real property, new construction, non-taxable services, programming services, manufacturing equipment with a useful life of six months or less, property shipped out-of-state, repair of real or tangible personal property resulting in a casualty loss, hazardous and industrial waste removal services, safety supplies, items and materials used for quality control purposes, pollution control equipment, and other non-taxable items.

Status: Answer filed.

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

Sales Tax; Protest  
Filed: 04/03/98  
Period: 01/01/89-  
09/30/92  
Amount: \$472,225

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christopher Jackson  
  
David E. Cowling  
Kirk Lyda  
Jones Day  
Dallas

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

Status: Answer filed.

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***Estee Lauder Services, Inc. v. Sharp, et al.*** Cause #98-03524  
AG Case #98930367

Sales Tax; Protest  
Filed: 04/03/98  
Period: 10/01/92-  
03/31/96  
Amount: \$748,773

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christopher Jackson  
  
David E. Cowling  
Kirk Lyda  
Jones Day  
Dallas

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

Status: Discovery in progress.

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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 Kirk Lyda Jones Day 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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***Ethicon, Inc. v. Strayhorn, et al.*** Cause #GN304779  
AG Case #041904616

Sales Tax; Refund Filed: 12/18/03 Period: 01/01/96- 12/31/99 01/01/94-12/31/95 Amount: \$52,616.94	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Mark W. Eidman Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff leased real property not subject to the sales and use tax.

Status: Motion for Summary Judgment hearing held 04/19/06. Settlement negotiations in progress.

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

Cause #GN002724

AG Case #001353960

Sales Tax; Injunction

Asst. AAG Assigned:

Paul Masters

Filed: 09/15/00

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

Plaintiff's Counsel:

Percy L. "Wayne" Isgitt  
Law Offices of Percy L.  
"Wayne" Isgitt, P.C.  
Houston

Amount: \$360,671.05

Issue: Whether Comptroller's "estimated audit" is invalid. Whether Plaintiffs are entitled to an injunction of collection and of cancellation of their sales tax permits. Whether Tax Code §§112.051, 112.052, 112.101 and 112.108 are unconstitutional violations of the open courts provision. Plaintiffs seek a re-audit and a refund of money paid under protest in excess of the re-audited amount.

Status: Discovery in progress. Summary judgment hearing postponed.

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***GSC Enterprises, Inc. v. Strayhorn, et al.*** Cause #GN501091

AG Case #052132271

Sales Tax; Refund &  
Declaratory Judgment

Asst. AAG Assigned:

Christopher Jackson

Filed: 04/07/05

Period: 02/01/97-  
04/30/00

Plaintiff's Counsel:

Judy M. Cunningham  
Attorney at Law  
Austin

Amount: \$241,656.28

Issue: Whether electricity used to lower the temperature of food products is exempt as electricity used in processing. Whether the Comptroller violated the rules of statutory construction. Plaintiff claims violation of equal and uniform taxation. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

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**GTE Mobilnet of the Southwest, LLC v. Strayhorn, et al.** Cause #GN501921  
AG Case #052163441

Sales Tax; Protest

Filed: 05/27/05

Period: 10/01/91-  
12/31/94

Amount: \$130,801.55

Asst. AAG Assigned:

Plaintiff's Counsel:

Jana Kinkade

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

Issue: Whether Plaintiff used the proper sampling method to determine the amount of credit/reimbursement due on bad debt deductions. Plaintiff seeks waiver of penalty assessed in the audit. Plaintiff also claims violation of due course of law, due process, equal and uniform taxation, equal rights, equal protection, and other provisions of the Texas Tax Code, Rules, Texas and U.S. Constitutions.

Status: Answer filed.

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**GTE Mobilnet of the Southwest, LLC v. Strayhorn, et al.** Cause #D-1-GN-06-  
000649  
AG Case #062295480

Sales Tax; Refund

Filed: 02/23/06

Period: 10/01/91-  
12/31/94

Amount: \$1,193,519.44

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

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

Issue: Whether tangible personal property used or consumed in providing telecommunications is exempt from sales tax. Whether electricity is exempt because of use in a manufacturing area.

Status: Answer filed.

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**GTE Southwest, Inc. v. Strayhorn, et al.** Cause #GN501139  
AG Case #052132818

Sales Tax; Refund  
Filed: 04/11/05  
Period: 01/01/95-  
02/28/98  
Amount: \$22,847,194

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

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

Issue: Whether equipment purchased by Plaintiff to provide customers-subscribers telecommunications products is exempt as tangible personal property used in manufacturing and processing or as tangible personal property that was resold. Whether penalty should be waived because Plaintiff had substantial overpayment during the audit period.

Status: Answer filed.

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**GTE Southwest, Inc. v. Strayhorn, et al.** Cause #GN501829  
AG Case #052154143

Sales Tax; Refund  
Filed: 05/19/05  
Period: 10/01/93-  
02/28/98  
03/01/98-12/31/02  
Amount: \$14,000,000  
\$72,000,000

Asst. AAG Assigned:

Gene Storie

Plaintiff's Counsel:

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

Issue: Whether equipment purchased by Plaintiff to provide customers-subscribers telecommunications products is exempt as tangible personal property used in manufacturing and processing or as tangible personal property that was resold. Whether penalty should be waived because Plaintiff had substantial overpayment during the audit period.

Status: Answer filed.

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**GTE Southwest, Inc. v. Strayhorn, et al.** Cause #GN502330  
AG Case #052177326

Sales Tax; Refund

Filed: 07/06/05

Period: 05/01/91-  
02/28/98

Amount: \$2,615,825.26

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

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

Issue: Whether equipment purchased by Plaintiff to provide customers-subscribers telecommunications products is exempt as tangible personal property used in manufacturing and processing or as tangible personal property that was resold. Whether penalty should be waived because Plaintiff had substantial overpayment during the audit period.

Status: Answer filed.

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**GTE Southwest, Inc. v. Strayhorn, et al.** Cause #GN504191  
AG Case #052252699

Sales Tax; Refund

Filed: 11/22/05

Period: 01/01/96-  
02/28/98

Amount: \$260,489.27

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

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

Issue: Whether equipment purchased by Plaintiff to provide customers-subscribers telecommunications products is exempt as tangible personal property used in manufacturing and processing or as tangible personal property that was resold.

Status: Answer filed.

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**GTE Southwest, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002468  
AG Case #062380522

Sales Tax; Refund Filed: 07/06/06 Period: 01/01/95- 02/28/98 Amount: \$22,847,194.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether tangible personal property used or consumed in providing telecommunications is exempt from sales tax.

Status: Answer filed.

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**GTE Southwest, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-003732  
AG Case #062412887

Sales Tax; Refund Filed: 09/29/06 Period: 03/01/98- 12/31/02 Amount: \$2,900,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether electricity purchased by Plaintiff to perform telecommunications services is exempt as tangible personal property that was resold. Whether tangible personal property used or consumed in providing telecommunications is exempt from sales tax. Whether electricity is exempt because of use in a manufacturing area.

Status: Answer filed.

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

Sales Tax; Protest Filed: 07/17/98 Period: 01/01/93- 09/30/95 Amount: \$83,910	Asst. AAG Assigned:  Plaintiff's Counsel:	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: Trial setting passed by agreement. Inactive.

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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  Mark W. Eidman 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*.

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  Mark W. Eidman 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*.

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:	Paul Masters  Ira A. Lipstet DuBois, Bryant Campbell & Schwartz, LLP Austin
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Issue: Whether additional resale certificates should have been accepted for Plaintiff's sales of boxes and packaging materials.

Status: Case reinstated. Plaintiff to make settlement offer.

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

Sales Tax; Protest Filed: 02/13/97 Period: 01/01/88- 12/31/91 Amount: \$107,667	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  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 in progress.

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

Sales Tax; Refund & Declaratory Judgment Filed: 03/20/03 Period: 06/01/95-05/31/98 Amount: \$79,688.23	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Judy M. Cunningham Attorney at Law Austin
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Issue: Whether Plaintiff's purchase of electricity used to lower the temperature of food products is exempt as electricity used in processing.

Status: Discovery in progress.

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

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

Status: Special exceptions and answer filed.

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**Home & Garden Party, Ltd. v. Strayhorn, et al.** Cause #D-1-GN-06-001392  
AG Case #062311402

Sales Tax; Refund & Declaratory Judgment Filed: 04/21/06 Period: 01/01/98-05/31/04 Amount: \$791,634.49	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Richard E. Brophy, Jr. Mark C. Hobbs Beard Kultgen Brophy Bostwick & Dickson, L.L.P. Waco
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Issue: Whether packaging materials and supplies used in the manufacturing of tangible personal property for sale are exempt under the sale for resale exemption. Plaintiff claims unconstitutional administrative discrimination and violation of due process and equal protection under the U.S. and Texas Constitutions.

Status: Answer filed.

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**Home Depot, USA, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002463  
AG Case #062380324

Sales Tax; Refund Filed: 07/06/06 Period: 01/01/95- 12/31/99 Amount: \$2,595,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff may take bad debt credit under private label credit agreement.

Status: Answer filed.

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**Houston Wire & Cable Co. v. Strayhorn, et al.** Cause #GN500581  
AG Case #052113057

Sales Tax; Refund Filed: 02/23/05 Period: 08/01/97- 12/31/01 Amount: \$160,596.03	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Jerry L. Starkey Houston
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Issue: Whether wire, cable and reels purchased, customized and sold to wholesalers as non-returnable are exempt from sales tax under the manufacturing exemption and sale-for-resale exemption.

Status: Trial held 10/09/06.

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

Sales Tax; Protest Filed: 09/20/02 Period: 01/01/93- 08/31/99 Amount: \$1,046,033.09	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  W. Stephen Benesh Bracewell & Patterson Austin
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Issue: Whether the Comptroller assessed tax on transactions that were sales for resale or on which use tax had already been paid.

Status: Discovery in progress. Settlement negotiations in progress.

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

Sales Tax; Refund & Declaratory Judgment Filed: 03/19/03 Period: 01/01/91- 03/31/93 Amount: \$951,802.17	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David Cowling Robert Lochridge Jones Day Dallas
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Issue: Whether Plaintiff owes use tax on paper, ink and the printing of catalogs printed out-of-state. Whether local use tax in McAllen, Texas applies to Plaintiff's aircraft. Alternatively, whether the printing service is performed outside Texas. Whether a sales and use tax on the catalogs violates the Commerce Clause, due process or equal protection. Plaintiff also seeks declaratory relief and attorney's fees.

Status: Answer filed.

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**J.C. Penney Co., Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002496  
AG Case #062381678

Sales Tax; Refund & Declaratory Judgment Filed: 07/07/06 Period: 04/01/93- 06/30/97 Amount: \$4,007,735	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David Cowling David J. Schenck Kirk Lyda Jones Day Dallas
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Issue: Whether Plaintiff owes sales or use tax on paper, ink and printing labor of catalogs printed out-of-state; on unidentified transactions used in the CAMS sample; on duplicated software licenses distributed to users outside of Texas; on catalogs and promotional materials mailed and distributed into Texas; and wrapping and packaging supplies used to package goods for delivery to customers. Plaintiff claims violation of the Commerce Clause and the Due Process Clauses, and equal and uniform protection. Plaintiff also seeks declaratory relief and attorney's fees.

Status: Answer filed.

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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  
Period: 12/01/92 through  
03/31/97  
Amount: \$43,121.45

Asst. AAG Assigned:

Natalie Maloney

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. Plaintiff's Motion to Retain filed 07/13/05. Trial set 02/12/07. Settlement negotiations in progress.

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***Kroger Co., The v. Strayhorn, et al.*** Cause #GN403582

AG Case #042058032

Sales Tax; Refund  
Filed: 10/28/04  
Period: 01/01/94-  
06/30/97  
Amount: \$366,142.79

Asst. AAG Assigned:

Jana Kinkade

Plaintiff's Counsel:

Judy M. Cunningham  
Attorney at Law  
Austin

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

Status: Discovery in progress.

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

Sales Tax; Refund Filed: 02/21/03 Period: 05/01/93- 06/30/96 10/01/91-06/30/96 01/01/90-12/31/92 07/01/91-06/30/96 Amount: \$6,726 \$591,086	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether post-mix machines qualify for manufacturing tax exemption. Whether some of the machines also qualify for the sale for resale exemption, because Plaintiff received consideration even if not valued in money.

Status: Plaintiff filed a Motion for Summary Judgment 04/23/05. Plaintiff to withdraw motion for summary judgment and refile.

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

Sales Tax; Refund Filed: 04/30/04 Period: 05/01/93- 06/30/96 10/01/91-06/30/96 01/01/90-12/31/92 07/01/91-06/30/96 Amount: \$18,579.66 \$443,299.77	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff owes sales tax on the purchase of money validators due to the integration of the validators into the final product, the vending machine.

Status: Discovery in progress.

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

Sales Tax; Protest & Declaratory Judgment Filed: 10/20/98 Period: 08/1-30/98 Amount: \$2,054	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Gilbert J. Bernal, Jr. Stahl, Bernal & Davies 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: Dismissed for want of prosecution 07/25/02. Reopened, as Plaintiff filed a Motion for Reinstatement; granted 10/31/02. Order entered 06/09/05 granting motion to withdraw and substitute new counsel. Settlement negotiations in progress.

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

Sales Tax; Protest Filed: 05/12/04 Period: 07/01/92- 08/31/95 Amount: \$34,965.35	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Richard L. Rothfelder Michael C. Falick Rothfelder & Falick, LLP Houston
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Issue: Whether prizes awarded by Plaintiff to successful contestants of amusement machines were purchased for resale and exempt from sales tax. Whether the sale of food, beverage and party packages is taxable as food and beverage or non-taxable as amusement services. Whether assets transferred from one subsidiary to another are exempt from sales tax as an "occasional sale."

Status: Defendants' First Amended Original Answer, Plea to the Jurisdiction and Special Exception filed 06/27/05.

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

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

Status: Settlement negotiations pending. Trial to be reset.

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**Levy, Tara, et al. v. OfficeMax, Inc. and Best Buy Stores, L.P.** Cause #GN201252  
#03-06-00391-CV  
AG Case #041926635

Sales Tax; Declaratory Judgment Filed: Period: Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark L. Perlmutter C. Brooks Schuelke Perlmutter & Schuelke, LLP Austin
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Issue: Plaintiff claims a refund for the class of persons who paid sales tax on rebates. Plaintiff seeks declaratory judgment interpreting Texas Tax Code Sections pertaining to cash discounts and exemption from sales tax.

Status: Class-action suit. Comptroller named defendant. Comptroller's Plea to the Jurisdiction and Plaintiffs' Motion for Declaratory Judgment heard 10/19/04. Plea granted. Court requested briefs to address whether any part of case survives the Amended Order dismissing all claims against the Comptroller. Court signed order of severance and Notice of Appeal filed by Plaintiffs 07/06/06 to include all parties. Clerk's Record filed 08/07/06. Appellants' brief due 10/30/06. Appellees' brief due 11/29/06. Appellants will dismiss appeal against Comptroller.

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**Liberty Vending Services, Inc. v. Strayhorn, et al.** Cause #GN502836  
AG Case #052198108

Sales Tax; Protest & Declaratory Judgment Filed: 08/11/05 Period: 10/01/98- 06/30/02 Amount: \$9,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  James F. Martens Christina A. Mondrik James F. Martens & Associates Austin
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Issue: Whether Plaintiff is liable for sales and use tax on sales of food items, soft drinks and candy sold through contracted vending machines located at exempt locations. Whether the Comptroller improperly categorized certain food item purchases as taxable. Plaintiff seeks injunctive relief and release of all state tax liens. Plaintiff claims violation of constitutional rights and equal protection and equal taxation. Plaintiff also claims violation of the Commerce Clause and the Supremacy Clause.

Status: Answer filed.

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

Sales Tax; Protest & Declaratory Judgment Filed: 12/31/99 Period: 01/01/88- 03/31/95 Amount: \$34,390.24	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Doug Sigel Scott, Douglass & McConnico 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: Plea to the Jurisdiction granted to State 04/07/04. Notice of Appeal filed 04/29/04. Appellant's brief filed 07/01/04. Appellees' brief filed 08/02/04. Submitted on briefs 12/06/04. Opinion issued 06/16/05 affirming trial court's Judgment in part, reversing the Judgment in part, and remanding the case. State's Motion for Rehearing filed 06/30/05. Court requested response 08/01/05. Appellant's response filed 08/11/05. Appellees' response filed 08/19/05. Motion for Rehearing overruled 11/01/05.

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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 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: Case settled.

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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  Mark W. Eidman 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*.

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  Mark W. Eidman 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*.

Status: Answer filed.

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

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

Status: Case settled.

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

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

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

Sales Tax; Refund Filed: 02/26/04 Period: 01/01/99- 12/31/00 Amount: \$1,025,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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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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**Lone Star Steel Co. v. Strayhorn, et al.** Cause #D-1-GN-06-000500  
AG Case #062286174

Sales Tax; Refund Filed: 02/09/06 Period: 12/01/97- 11/30/01 Amount: \$350,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  L.G. Skip Smith David H. Gilliland Clark, Thomas & Winters Austin
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Issue: Whether Plaintiff's horizontal rollers used to alter steel strips qualify for the manufacturing exemption. Whether the horizontal rollers are consumed and become an ingredient or component part of the steel strip during the production process and exempt under the sale for resale exemption. Whether the Comptroller used the proper calculation method for interest applied to tax overpayments.

Status: Answer filed.

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**Macy's TX I, LP, Successor in Interest to the May Department Stores Co. v. Strayhorn, et al.** Cause #D-1-GN-06-003122  
AG Case #062403712

Sales Tax; Refund Filed: 08/24/06 Period: 04/01/96- 03/31/99 Amount: \$275,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico, LLP Austin
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Issue: Whether Plaintiff is entitled to a refund of tax on industrial solid waste removal services, purchases of wrapping and packaging supplies, installation labor, purchases for sale for resale, and temporary storage of tangible personal property.

Status: Answer filed.

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

Sales Tax; Refund Filed: 04/29/04 Period: 01/01/94- 09/30/97 Amount: \$726,024	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Ray Langenberg R. Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff's purchases of certain equipment and related items are exempt from sales tax under the manufacturing exemption. Whether Plaintiff's purchases of installation labor are exempt as purchases of non-taxable stand-alone installation services.

Status: Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Inactive.

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

Sales Tax; Refund Filed: 05/02/97 Period: 04/01/91- 05/31/95 Amount: \$2,029,180	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  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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**Northrop Grumman Systems Corp. (Successor to Northrop Grumman Corp.  
and Vought Aircraft Co.) v. Rylander, et al.** Cause #GN201344  
AG Case #021607155

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

Status: Answer filed.

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**Northwestern Resources Co. v. Strayhorn, et al.** Cause #GN500768  
AG Case #052118247

Sales Tax; Refund Filed: 03/11/05 Period: 10/01/97- 03/31/01 Amount: \$825,300.33	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico, LLP Austin
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Issue: Whether parts, consumables and repair services that Plaintiff purchased for draglines used in its coal mining operations are exempt from sales tax under the manufacturing exemption. Plaintiff claims that the use of a dragline is to remove overburden, which results in a physical change. Plaintiff also claims violation of equal and uniform taxation, equal rights clause, equal protection clause, due course of law and due process clause.

Status: Answer filed.

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**Office Depot, Inc., successor to Office Depot Business Services Division (aka Office Depot Business Services, Inc.) and Office Depot of Texas, Inc. v. Strayhorn, et al.** Cause #GN503442

AG Case #052217601

Sales Tax; Protest Filed: 09/22/05 Period: 01/01/94- 07/31/98 01/01/94-12/31/95 07/01/92-12/31/93 Amount: \$1,552,785.55	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico, LLP Austin
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Issue: Whether transactions for which customer identities are unavailable are taxable. Whether the Comptroller used the proper sampling procedure. Whether the proper error rate for assessed sales transactions with missing customer information was used. Plaintiff also claims violation of equal and uniform taxation, the equal rights clause, the equal protection clause, due course of law and due process clause.

Status: Answer filed.

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**Office Depot, Inc., successor to Office Depot Business Services Division (aka Office Depot Business Services, Inc.) and Office Depot of Texas, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-000041

AG Case #062269014

Sales Tax; Refund Filed: 01/05/06 Period: 01/01/94- 07/31/98 01/01/94-12/31/95 07/01/92-12/31/93 Amount: \$1,552,785.55	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico, LLP Austin
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Issue: Whether transactions for which customer identities are unavailable are taxable. Whether the Comptroller improperly extrapolated the error rate associated with tax-exempt copier lease payments over an under-valued population base.

Status: Answer filed.

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

Sales Tax; Refund Filed: 05/07/04 Period: 03/01/94- 12/31/00 Amount: \$828,614.08	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether conveyors and weigh-ometers are exempt as manufacturing equipment or taxable as intraplant transportation. Whether repair and replacement parts for the conveyors are exempt from sales tax as purchases of pollution control equipment used in manufacturing and purchases of environmental repairs. Whether ship unloaders qualify as rolling stock and exempt from sales tax. Plaintiff also claims violation of equal and uniform taxation and equal protection.

Status: Discovery in progress.

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

Sales Tax; Protest & Declaratory Judgment Filed: 09/25/00 Period: 04/01/88- 05/31/92 Amount: \$713,686.05 \$206,053.87	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  David Cowling Robert Lochridge Jones Day Dallas
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Issue: Whether various equipment used by the Plaintiff with its trucks is exempt from use tax as tangible personal property sold to a common carrier for use outside the state. Alternatively, whether the equipment had been taxed as vehicle components under the interstate motor carrier tax and could not be taxed as “accessories.” Alternatively, whether taxing 100% of the value of the equipment violates the Commerce Clause because of a lack of substantial nexus and of fair apportionment. Whether all tax was paid on Plaintiff’s repair and remodeling contracts and capital assets. Plaintiff also seeks declaratory relief and attorneys’ fees.

Status: Trial setting passed. Discovery in progress.

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

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

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

Status: Answer filed.

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

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

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

Status: Answer filed.

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**Rollins & Rollins Enterprises, Inc. , dba Country Kwik Stop v. Rylander, et al.**

Cause #GN202097

AG Case #021640651

Sales Tax; Protest

Filed: 06/28/02

Period: 08/01/97-  
07/31/00

Amount: \$45,059.74

Asst. AAG Assigned:

Plaintiff's Counsel:

Natalie Maloney

William T. Peckham  
Austin

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

Status: Answer filed.

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**SC Kiosks, Inc. v. Strayhorn, et al.** Cause #GN500795

AG Case #052126810

Sales Tax; Protest

Filed: 03/15/05

Period: November 2004  
Filing Period  
December 2004 Filing  
Period

January 2005 Filing  
Period

Amount: \$146,909.55

\$66,251.85

\$59,268.75

Asst. AAG Assigned:

Plaintiff's Counsel:

Jim Cloudt

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

Issue: Whether telephones purchased by Plaintiff, and subsequently sold to customers who contract for telephone service with a carrier associated with the Plaintiff, are exempt from sales tax under the sale for resale exemption.

Status: Answer filed.

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**Sabine Mining Co., The v. Strayhorn, et al.** Cause #GN401382  
#03-06-00293-CV  
#13-06-00330-CV  
AG Case #041964867

Sales Tax; Refund Filed: 04/30/04 Period: 10/01/97- 09/30/01 Amount: \$905,468.12	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether replacement parts and repair services for draglines qualify as manufacturing equipment and exempt from sales tax. Plaintiff claims that the draglines directly make or cause a chemical or physical change to formations, falling within the exempt manufacturing process. Plaintiff also claims violation of equal and uniform taxation, equal rights, equal protection, due course of law and due process.

Status: Trial held 04/10/06. District court rendered Judgment in favor of State. Notice of Appeal filed by Plaintiff 05/25/06. Clerk's Record filed 08/02/06. Exhibits filed 08/25/06. Court Reporter's Record filed 08/25/06. Appellant's brief filed 10/25/06. Appellees' brief due 11/23/06. Appellant's reply brief due 12/13/06.

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

Sales Tax; Protest Filed: 10/15/04 Period: 06/01/97- 06/30/00 Amount: \$913,435.03	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether suite rental fees are exempt from sales tax as non-taxable rentals or licenses for the use of real property.

Status: Answer filed.

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**Sanford, Gerald L. and Clara Krueger Sanford dba Gerald's Manufacturing, a Sole Proprietorship v. Strayhorn** Cause #2005-CI-10903  
AG Case #052185733

Sales Tax; Declaratory Judgment	Asst. AAG Assigned:	Jana Kinkade
Filed: 07/05/05	Plaintiff's Counsel:	Dennis Sagebiel
Period:		Attorney at Law
Amount: \$N/A		Seguin

Issue: Plaintiff claims that the defendant established a tax account for Plaintiff's company without Plaintiff's knowledge or request. Plaintiff claims his business, which contracts for, installs and repairs residential roofs, is exempt from sales and use tax. Plaintiff requests declaratory relief and attorneys' fees.

Status: Venue hearing held 04/26/06; case transferred to Travis County. Discovery in progress.

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

Sales Tax; Protest & Declaratory Judgment	Asst. AAG Assigned:	Jim Cloudt
Filed: 10/09/02	Plaintiff's Counsel:	Gilbert J. Bernal, Jr.
Period: 07/01/94-11/30/97		Stahl, Bernal & Davies
Amount: \$264,355.46		Austin
		Martin I. Eisenstein
		Kevin J. Beal
		Brann & Isaacson
		Lewiston, ME

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

Status: Discovery in progress. Trial to be reset.

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

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

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

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

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

Status: Discovery in progress. Trial to be reset.

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**Southern Plastics, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-000047  
AG Case #062270459

Sales Tax; Refund  
Filed: 01/06/06  
Period: 11/01/99-  
10/31/02  
Amount: \$4,872.78

Asst. AAG Assigned:

Natalie Maloney

Plaintiff's Counsel:

Ray Bonilla  
Ray, Wood & Bonilla,  
LLP  
Austin

Issue: Whether Petitioner's waste from its manufacturing plant qualifies as industrial solid waste and thus exempt from sales tax when removed as industrial solid waste.

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:

Paul Masters

Plaintiff's Counsel:

H. Christopher Mott  
Krafsur Gordon Mott  
El Paso

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

Status: Discovery stayed. Settlement offer to be made by Plaintiff. Trial to be set 10/31/07 or after.

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

Sales Tax; Refund Filed: 07/22/04 Period: 06/01/05- 12/31/98 Amount: \$291,516,385.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Mark W. Eidman Ray Langenberg Curtis J. Osterloh Eric Hagenswold Scott, Douglass & McConnico Austin
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Issue: Whether equipment used in telecommunications is exempt from sales tax under the manufacturing and processing exemption. Whether payphones purchased by Plaintiff to perform taxable telecommunications services qualify for the sale for resale exemption. Whether electricity purchased and resold as an integral part of other tangible personal property and used to perform taxable telecommunications services is exempt from sales tax. Whether stand-alone installation labor provided directly to a customer by a vendor or by a third-party installer is taxable.

Status: Answer filed.

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**Spacenet Services, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002437  
AG Case #062380332

Sales Tax; Protest Filed: 07/03/06 Period: 09/01/95- 12/31/98 Amount: \$650,940.41	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff owes no tax because it accepted resale certificates in good faith. Whether all penalty and interest should be waived.

Status: Answer filed.

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**Stantrans Partners, LP v. Strayhorn, et al.** Cause #GN502648  
AG Case #052186624

Sales Tax; Refund Filed: 07/29/05 Period: 07/01/93- 06/30/97 Amount: \$326,813.49	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether purchases of tangible personal property for ultimate sale as tangible personal property are exempt from sales tax under the manufacturing and processing exemption. Whether gas and electricity purchased and used to process tangible personal property for sale as tangible personal property is exempt from sales tax under the manufacturing and processing exemption.

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:	Natalie Maloney  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: Motion for Summary Judgment filed. Response filed. Partial summary judgment on limitations granted for Plaintiff 04/07/04.

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**Sysco Food Services of Austin, Inc. v. Strayhorn, et al.** Cause #GN400465  
AG Case #041925850

Sales Tax; Protest Filed: 02/17/04 Period: 05/01/98- 04/30/01 Amount: \$92,357.48	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Mark W. Eidman Curtis Osterloh Scott, Douglass & McConnico Austin
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Issue: Whether electricity used to lower the temperature of food products is exempt as electricity used in processing.

Status: Discovery in progress. Hearing on Motion to Exclude set 11/07/06 passed.

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**Sysco Food Services of Houston, L.P. (fka Sysco Food Service of Houston, Inc.) v. Rylander, et al.** Cause #GN100633  
AG Case #011420734

Sales Tax; Refund & Declaratory Judgment Filed: 03/01/01 Period: 01/01/94- 12/31/96 Amount: \$196,492.74	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Judy M. Cunningham Attorney at Law Austin  James Blume Blume & Studdard Dallas
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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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**Sysco Food Services of Houston, L.P. (fka Sysco Food Services of Houston, Inc.) v. Strayhorn, et al.** Cause #GN302075  
AG Case #031816119

Sales Tax; Refund &  
Declaratory Judgment  
Filed: 06/13/03  
Period: 07/01/94-  
06/30/98  
Amount: \$270,401.80

Asst. AAG Assigned:

Christopher Jackson

Plaintiff's Counsel:

Judy M. Cunningham  
Attorney at Law  
Austin

James Blume  
Blume & Studdard  
Dallas

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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***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:

Natalie Maloney

Plaintiff's Counsel:

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

Issue: Whether conversion of drilling rigs to self-propelled, deep water rigs is manufacturing under the statute and Comptroller rules. Whether dredging is non-taxable maintenance of real property. Alternatively, whether interest should be waived.

Status: DWOP notice sent by court 03/29/05. Order retaining case entered 08/04/05. Discovery in progress. Scheduling order entered. Non-jury trial set 07/16/07. Settlement negotiations pending.

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***Target Corp. v. Strayhorn, et al.*** Cause #GN502440  
AG Case #052184538

Sales Tax; Refund  
Filed: 07/14/05  
Period: 02/01/96-  
07/31/99  
Amount: \$591,242.98

Asst. AAG Assigned:  
Plaintiff's Counsel:

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

Issue: Whether charges for labor under separated contracts and charges under lump sum contracts constitute non-taxable new construction. Whether charges for assembly and installation of display items in retail stores are non-taxable third party installation services. Whether components purchased outside the state and used outside the state to construct other items, including assembly labor charges, are taxable. Whether installation charges for purchases of tangible personal property are non-taxable as separable charges.

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:

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

Issue: Whether cable equipment on the customer's premises qualifies for the sale for resale exemption for property used to provide a taxable service.

Status: Discovery in progress. Was set 04/15/05 for dismissal for want of prosecution. Plaintiff's Motion to Retain granted 04/13/05. Trial set 02/20/07. Settlement negotiations pending.

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**Texaco Grand Prix of Houston, LLC v. Strayhorn, et al.** Cause #D-1-GN-06-002510  
AG Case #062381686

Sales Tax; Refund Filed: 07/10/06 Period: 1998-2001 Amount: \$48,129.01	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether rental furniture and similar items provided in hospitality suites are exempt under the sale for resale exemption. Whether additional parking space provided in a parking lot for motorcoaches is taxable as motor vehicle parking and storage service or exempt as real property.

Status: Plaintiff to file MSJ.

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

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

Status: Inactive.

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**Texas Westmoreland Coal Co. v. Strayhorn, et al.** Cause #D-1-GN-06-001312  
AG Case #062309455

Sales Tax; Refund Filed: 04/14/06 Period: 04/01/01- 12/31/02 Amount: \$1,007,126.65	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether replacement parts and repair services for draglines and bucketwheels qualify as manufacturing equipment and exempt from sales tax. Plaintiff claims that the draglines and bucketwheels directly make or cause a chemical or physical change to lignite by removing the overburden, falling within the exempt manufacturing process.

Status: Answer filed.

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***Tree of Life, Inc. v. Strayhorn, et al.*** Cause #D-1-GN-06-002103  
AG Case #062367701

Sales Tax; Refund & Declaratory Judgment Filed: 06/09/06 Period: 01/01/97- 12/31/00 Amount: \$200,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Judy M. Cunningham Attorney at Law Austin
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Issue: Whether electricity used to lower the temperature of food products is exempt as electricity used in processing. Whether the process causes a physical change to the products. Whether packing supplies and replacement parts of processing equipment qualify as manufacturing equipment and exempt from sales tax. Whether the Comptroller violated the rules of statutory construction. Plaintiff claims violation of equal and uniform taxation. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

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***USCOC of Texahoma, Inc., Successor to USCOC of Corpus Christi, Inc. v. Strayhorn, et al.*** Cause #D-1-GN-06-002388  
AG Case #062380266

Sales Tax; Protest Filed: 06/29/06 Period: 01/01/97- 06/30/01 Amount: \$110,668.91	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff owes use tax on telecommunications equipment components shipped out of state by a vendor and manufactured into site base stations which are then shipped back into Texas.

Status: Answer filed.

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**United Scaffolding, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002270  
AG Case #062375514

Sales Tax; Protest & Declaratory Judgment Filed: 06/21/06 Period: 10/01/97- 04/30/01 Amount: \$897,633.51	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Cynthia M. Ohlenforst Hughes & Luce Dallas  Richard D. Villa Hughes & Luce Austin
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Issue: Whether scaffolding services provided by Plaintiff are taxable rentals of tangible personal property in regard to certain lump sum contracts, or exempt as non-taxable services. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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

Sales Tax; Refund Filed: 04/14/04 Period: 07/01/99- 07/31/03 Amount: \$975,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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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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**United Space Alliance, LLC v. Strayhorn, et al.** Cause #GN501793  
AG Case #052151891

Sales Tax; Protest Filed: 05/17/05 Period: 03/01/00- 06/30/03 Amount: \$881,264.71	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mark W. Eidman Ray Langenberg Doug Sigel 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*.

Status: Discovery in progress.

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**United Space Alliance, LLC v. Strayhorn, et al.** Cause #GN504467  
AG Case #062267356

Sales Tax; Protest Filed: 12/16/05 Period: 03/01/00- 06/30/03 Amount: \$297,739.30	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether security services provided to Plaintiff in connection with services to the federal government qualify for the sale for resale exemption. Whether tax on tangible personal property should be refunded pursuant to the Raytheon case. Whether electricity used to produce software qualifies for the manufacturing and processing exemptions. Whether certain software maintenance is a non-taxable service.

Status: Answer filed.

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**Uretek U.S.A., Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-003268  
AG Case #062405964

Sales Tax; Protest & Refund	Asst. AAG Assigned:	Paul Masters
Filed: 08/31/06	Plaintiff's Counsel:	L.G. Skip Smith
Period: 07/01/02- 10/31/05		Clark, Thomas & Winters Austin
01/01/99-06/30/02		
Amount: \$35,436.95		Marilyn A. Wethekam
\$21,939.96		Horwood Marcus & Berk Chartered Chicago, Illinois

Issue: Whether Plaintiff is entitled to an exemption on drill bits because the bits are incorporated into realty for exempt organizations. Whether consumable supplies and equipment qualify as tangible personal property used in the performance of a contract to improve real property and, therefore, tax exempt. Whether tangible personal property purchased outside of Texas, temporarily stored in Texas, and then used in the performance of contracts located outside of Texas are tax exempt. Plaintiff seeks waiver of all penalty and interest.

Status: Answer filed.

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

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

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

Status: Discovery in progress.

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**Verizon North, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-001295  
AG Case #062309349

Sales Tax; Refund Filed: 04/13/06 Period: 06/01/96- 02/29/00 Amount: \$1,116,225	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether purchases of software licenses qualify as tangible personal property. Whether some portion of the software license not stored, used or consumed in or during the manufacturing, processing, or fabrication of tangible personal property for ultimate sale is exempt from sales tax.

Status: Answer filed.

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**Watson Sysco Food Services, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002879  
AG Case #062397849

Sales Tax; Protest Filed: 08/10/06 Period: 04/01/01- 07/31/04 Amount: \$63,720.38	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Curtis Osterloh Eric Hagenswold Scott Douglass & McConnico, LLP Austin
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Issue: Whether electricity used to lower the temperature of food products is exempt as electricity used in processing.

Status: Discovery in progress.

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

Sales Tax; Protest  
Filed: 09/27/96  
Period: 06/01/88-  
06/30/92  
Amount: \$35,247

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Natalie Maloney  
  
Richard L. Rothfelder  
Milissa M. Magee  
Kirkendall, Isgur &  
Rothfelder  
Houston

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

Status: Inactive.

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

Sales Tax; Refund  
Filed: 12/18/03  
Period: 10/01/93-  
12/31/97  
Amount: \$415,185.61

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christopher Jackson  
  
Judy M. Cunningham  
Attorney at Law  
Austin

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

Status: Discovery in progress.

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***White Swan, Inc. v. Strayhorn, et al.*** Cause #D-1-GN-06-002987  
AG Case #062398086

Sales Tax; Refund &  
Declaratory Judgment  
Filed: 08/17/06  
Period: 01/01/98-  
12/31/00  
Amount: \$219,297.54

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christopher Jackson  
  
Judy M. Cunningham  
Attorney at Law  
Austin

Issue: Whether the purchase of electricity used to lower the temperature of food products is exempt under Tax Code Sections 151.317 and 151.318. Whether the process causes a physical change to the products. Whether the purchases of packing supplies and repairs to and replacement parts of processing are exempt from sales tax. Whether the decision of the Comptroller violated the rules of statutory construction and long-standing Comptroller policy. Plaintiff also seeks attorneys' fees.

Status: Discovery in progress.

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***Williams, Duane Everett v. Comptroller*** Cause #GN304667

AG Case #031899222

Sales Tax; Refund & Declaratory Judgment Filed: 12/10/03 Period: 2002 Amount: \$50,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Michael R. Cooper Salado
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Issue: Whether Plaintiff's civil rights were violated by the Comptroller's audit and whether the audit assessment should be set aside for lack of substantial evidence.

Status: Answer filed.

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***World Fitness Centers, Inc. v. Rylander, et al.*** Cause #GN201795

AG Case #021626239

Sales Tax; Refund Filed: 05/30/02 Period: 09/01/94- 05/31/98 Amount: \$273,005.56	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether Plaintiff owes sales tax on the discount and reserve amounts of its factored contracts when Plaintiff is a cash-basis taxpayer.

Status: Answer filed.

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

Sales Tax; Refund Filed: 06/24/02 Period: 08/01/92- 02/28/97 Amount: \$333,602.57	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff is liable for tax on items temporarily stored in Texas. Whether tax on services purchased by Plaintiff should be reduced to reflect the out-of-state benefit of those services. Whether Plaintiff should get a refund or credit for tax paid on inventory. Whether the Comptroller should be barred from off-setting debts in the period between the filing of Plaintiff's bankruptcy petition and the confirmation of its reorganization plan.

Status: Plaintiff to provide documents to resolve dispute.

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

Sales Tax; Refund & Declaratory Judgment Filed: 05/27/03 Period: 08/01/92- 02/28/97 Amount: \$1,170,404.64	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff is entitled to exemption on items of inventory temporarily stored in-state. Whether tax was improperly assessed on services performed outside the state. Whether installation services on counters and software were readily separable from taxable tangible property. Whether the Comptroller should be enjoined from taking offsets pursuant to Plaintiff's bankruptcy plea.

Status: Plaintiff to provide documents to resolve dispute.

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**Zimmerman Sign Co. v. Strayhorn, et al.** Cause #GN500612  
AG Case #052113065

Sales Tax; Refund

Filed: 02/28/05

Period: 01/01/95-  
04/30/98

Amount: \$105,046.66

Asst. AAG Assigned:

Plaintiff's Counsel:

Natalie Maloney

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

Issue: Whether certain equipment, machinery, parts, supplies and consumables purchased to manufacture exterior signs are exempt from sales tax under the manufacturing exemption. Whether or not Plaintiff is a "contractor" to qualify for the manufacturing exemption.

Status: Discovery in progress.

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## Insurance Tax

**AXA Equitable Life Insurance Co. v. Strayhorn, et al.** Cause #GN501095  
AG Case #052135712

Gross Premium &  
Maintenance Tax; Protest  
& Declaratory Judgment  
Filed: 04/07/05  
Period: 2004  
2005  
2004 (Maintenance Tax)  
Amount: \$57,166  
\$28,583  
\$849 (Maintenance Tax)

Asst. AAG Assigned:  
Plaintiff's Counsel:

Gene Storie  
Fred B. Werkenthin  
Edward C. Small  
Steven D. Moore  
Pat Fitzgerald  
Jackson Walker LLP  
Austin

Issue: Whether dividends retained and applied to reduce premiums be included in gross premiums subject to tax under Article 4.11 and Article 4.17. Plaintiff also seeks attorneys' fees.

Status: Stayed by agreement pending final decision in *Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.*, Cause No. 484,745.

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**Allstate County Mutual Insurance Co.; Allstate Insurance Co.; Allstate Indemnity Co.; Allstate Texas Lloyds; and Allstate Property and Casualty Insurance Co. v. Strayhorn, et al.** Cause #GN300968  
AG Case #031778947

Insurance Premium Tax;  
Protest & Declaratory  
Judgment  
Filed: 03/26/03  
Period: 1995-1998  
Amount: \$174,386.15  
\$10,529.48  
\$4,013.24  
\$11,858.40  
\$7,306.09  
(Total: \$208,093.27)

Asst. AAG Assigned:  
Plaintiff's Counsel:

Natalie Maloney  
Steven D. Moore  
Fred B. Werkenthin  
Jackson & Walker  
Austin

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

Status: Discovery in progress.

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

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

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

Status: Settlement negotiations in progress.

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

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

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

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

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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:	Gene Storie  Ricky Alexander Jennifer Ramsey 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: Case was to be dismissed by court unless retained. Plaintiff filed unopposed motion to retain; granted. Inactive until *Lexington Insurance* is decided. Trial set 08/13/07.

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**First American Title Insurance Co. v. Strayhorn, et al.** Cause #GN301692  
#03-04-00342-CV  
#05-0541  
AG Case #031806011

Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/23/03 Period: 1998 through 2002 Amount: \$1,432,580.76	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin  Matthew J. Zim Steptoe & Johnson, LLP Washington, D.C.
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA. Plaintiff also seeks attorneys’ fees.

Status: The State’s Motion for Summary Judgment granted 05/18/04 and Plaintiff’s denied. Notice of Appeal filed 06/17/04. Motion to consolidate cases granted 07/29/04 (*Old Republic National Title Insurance Co. v. Strayhorn, et al.*, Cause #GN401630). Appellants’ brief filed 08/30/04. Appellees’ brief filed 10/26/04. Reply brief filed by Appellant 11/15/04. Submitted on Oral Argument 01/19/05. Appellees’ supplemental brief filed 02/01/05. Appellants’ supplemental brief filed 02/15/05. Opinion issued 06/03/05 affirming the trial court’s judgment in favor of the Comptroller. Petition for Review filed in the Tx. Supreme Court 07/14/05. Respondent filed waiver to respond 07/28/05. Case forwarded to Court 08/02/05. Court requested response 08/29/05; response filed 09/28/05. Petitioner’s reply filed 10/13/05. Briefing on the merits requested 12/19/05. Petitioners’ brief filed 02/17/06. Respondents’ brief filed 03/09/06. Petitioners’ reply brief filed 03/24/06. Amicus Curiae brief received by Court 04/11/06. Petition for Review denied 09/01/06. Motion for Rehearing filed 10/16/06. Amicus Curiae brief received by Court 10/16/06. First response to motion for rehearing due 11/17/06.

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

Retaliatory Tax; Protest  
Filed: 05/21/04  
Period: 2003  
Amount: \$1,490,029.00

Asst. AAG Assigned:

Christine Monzingo

Plaintiff’s Counsel:

Ron K. Eudy  
Sneed, Vine & Perry  
Austin

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

Status: Answer filed.

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**First American Title Insurance Co. v. Strayhorn, et al.** Cause #GN501795  
AG Case #052153855

Retaliatory Tax; Protest Filed: 05/17/05 Period: 2004 Amount: \$2,140,952.88	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA.

Status: Answer filed.

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**First American Title Insurance Co. v. Strayhorn, et al.** Cause #D-1-GN-06-001853  
AG Case #062359823

Retaliatory Tax; Protest Filed: 05/24/06 Period: 2005 Amount: \$1,020,476.26	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA.

Status: Answer filed.

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

Insurance Premium Tax;  
Protest & Declaratory  
Judgment  
Filed: 02/22/01  
Period: 1992-1995  
Amount: \$1,596,196.63  
\$36,174.92

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Gene Storie  
  
Curtis L. Frisbie, Jr.  
Cynthia C. Hollingsworth  
Jeremy Martin  
Gardere Wynne Sewell  
LLP  
Dallas

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

Status: Summary Judgment hearing held 08/01/02; Summary Judgment granted for insurers. Notice of Appeal filed 03/21/03. Appellants' brief filed 08/15/03. Appellee's brief filed 11/10/03. Appellants' reply brief filed 12/05/03. Oral argument held 01/07/04. Third Court of Appeals reversed and remanded trial court's judgment 02/20/04. Appellees filed Motion for Consideration En Banc and Motion for Rehearing 03/08/04; overruled 03/25/04. Petition for Review filed 06/24/04. Waiver of Response filed 07/06/04. Case forwarded to Court 07/13/04. Response to Petition for Review filed by Respondent 08/26/04. Petitioner's Reply filed 09/17/04. Court requested briefs on the merits. Petitioners' brief filed 11/18/04. Respondents' brief filed 01/07/05. Amicus Curiae posted 01/18/05. Petitioner's reply brief on the merits filed 01/27/05. Court requested reply from Respondents; reply brief filed 03/17/05. Lexington filed a motion on 03/23/05 to strike and/or seal the Amicus Brief of Varco Int'l. Response filed 04/13/05 at the Court's request. Petition granted 05/27/05. Motion to Strike Amicus Brief denied and Motion to Seal granted 05/27/05. Submitted on Oral Argument 09/28/05. Amicus Curiae posted 10/18/05 and 10/21/05.

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**Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.** Cause #484,745  
#03-06-00446-CV  
AG Case #90304512

Gross Premium Tax;  
Protest  
Filed: 05/24/90  
Period: 1985-1986  
1989-1992  
Amount: \$1,848,606

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Gene Storie  
  
Fred B. Werkenthin  
Steve Moore  
Breck Harrison  
Jackson & Walker  
Austin

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

Status: Ninth Amended Petition filed. Settlement discussed, and partial settlement agreed to. Final Judgment entered on paid-up additions issue. Renewal premium issue severed and retained on docket. Plaintiffs made settlement offer on remainder of case. Motion for Summary Judgment hearing held 02/14/06. Judgment granted for Plaintiffs 06/29/06. State filed Notice of Appeal 07/26/06; docketing statement filed 08/01/06. Clerk's Record filed 08/24/06. Appellants' brief filed 09/25/06. Appellees' brief filed 10/25/06. Oral Argument requested. Reply brief due 11/14/06.

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

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

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

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**New York Life Insurance Co. v. Strayhorn, et al.** Cause #GN501094  
AG Case #052130697

Gross Premium Tax & Maintenance Tax; Protest & Declaratory Judgment Filed: 04/07/05 Period: 2004 2005 2004 (Maintenance Tax) Amount: \$105,822 \$52,911 \$1,572 (Maintenance Tax)	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Fred B. Werkenthin Edward C. Small Steven D. Moore Pat Fitzgerald Jackson Walker LLP
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Issue: Whether dividends retained and applied to reduce premiums be included in gross premiums subject to tax under Article 4.11 and Article 4.17. Plaintiff also seeks attorneys' fees.

Status: Stayed by agreement pending final decision in *Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.*, Cause No. 484,745.

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

Retaliatory Tax; Refund Filed: 05/21/04 Period: 2003 Amount: \$289,403.85	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used "split" premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller's interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller's policy change violated Due Process and the APA. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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**Old Republic National Title Insurance Co. v. Strayhorn, et al.** Cause #GN501794  
AG Case #052151883

Retaliatory Tax; Protest Filed: 05/17/05 Period: 2004 Amount: \$234,970.95	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used "split" premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller's interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller's policy change violated Due Process and the APA.

Status: Answer filed.

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**Old Republic National Title Insurance Co. v. Strayhorn, et al.** Cause #GN503918  
AG Case #052240827

Retaliatory Tax; Protest Filed: 10/28/05 Period: 01/01/01- 12/31/04 Amount: \$247,928.29	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA.

Status: Answer filed.

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**Old Republic National Title Insurance Co. v. Strayhorn, et al.** Cause #D-1-GN-06-001854  
AG Case #062359823

Retaliatory Tax; Protest Filed: 05/24/06 Period: 2005 Amount: \$255,144.50	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA.

Status: Answer filed.

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**Old Republic Title Insurance Co. v. Strayhorn, et al.** Cause #GN301693  
#03-04-00347-CV  
(Consolidated with *First American Title Insurance Co. v. Strayhorn, et al.*, Cause #GN301692, #03-04-00342-CV)  
AG Case #031806029

Retaliatory Tax; Protest & Declaratory Judgment Filed: 05/23/03 Period: 2002 Amount: \$219,626.40	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Ron K. Eudy Sneed, Vine & Perry Austin
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Issue: Whether the Comptroller properly used “split” premiums in calculating the retaliatory tax of a foreign title insurance company. Whether the Comptroller’s interpretation of the title insurance tax statutes violates the Equal Protection Clause. Whether the Comptroller’s policy change violated Due Process and the APA. Plaintiff also seeks attorneys’ fees.

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

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**Prudential Insurance Co., The v. Strayhorn, et al.** Cause #GN501093  
AG Case #052137189

Gross Premium &  
Maintenance Tax; Protest  
& Declaratory Judgment  
Filed: 04/07/05  
Period: 2004  
2005  
2004 (Maintenance Tax)  
Amount: \$230,578  
\$115,289  
\$3,426 (Maintenance  
Tax)

Asst. AAG Assigned:

Gene Storie

Plaintiff’s Counsel:

Fred B. Werkenthin  
Edward C. Small  
Steven D. Moore  
Pat Fitzgerald  
Jackson Walker LLP  
Austin

Issue: Whether dividends retained and applied to reduce premiums be included in gross premiums subject to tax under Article 4.11 and Article 4.17. Plaintiff also seeks attorneys’ fees.

Status: Stayed by agreement pending final decision in *Metropolitan Life Insurance Co., et al. v. A.W. Pogue, et al.*, Cause No. 484,745.

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**STP Nuclear Operating Co. v. Strayhorn, et al.** Cause #GN302053  
#03-06-00428-CV  
AG Case #031808371

Insurance Premium Tax;  
Protest  
Filed: 06/11/03  
Period: 2002  
Amount: \$115,287.80

Asst. AAG Assigned:

Gene Storie

Plaintiff’s Counsel:

Howard P. Newton  
Rene D. Ruiz  
Cox Smith Matthews Inc.  
San Antonio

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

Status: Due to order consolidating cases entered 06/27/05, *STP Nuclear Operating Co. v. Strayhorn, et al.*, Cause No. GN501910, consolidated into this case. Hearing on cross-motions for summary judgment held 04/17/06. Judgment granted for Plaintiff on grounds of McCarran-Ferguson Act and for Defendants on issue of pre-emption. Judgment signed 06/20/06. State filed Notice of Appeal 07/18/06; docketing statement filed 07/21/06. Clerk's Record filed 08/30/06. Appellants' brief filed 10/20/06; Oral Argument requested. Appellee's brief due 11/20/06.

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***STP Nuclear Operating Co. v. Strayhorn, et al.*** Cause #GN501910  
AG Case #052155728

Insurance Premium Tax; Protest Filed: 05/27/05 Period: 2004 Amount: \$154,235.67	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Howard P. Newton Rene D. Ruiz Cox Smith Matthews Inc. San Antonio
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Issue: Whether the independently procured insurance tax may be collected from a Texas corporation despite the decisions in *Todd Shipyards* and *Dow Chemical*. Whether imposition of the tax violates equal and uniform protection or is pre-empted by federal law governing the operation of nuclear plants.

Status: Due to order consolidating cases entered 06/27/05, see *STP Nuclear Operating Co. v. Strayhorn, et al.*, Cause No. GN302053.

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***STP Nuclear Operating Co. v. Strayhorn, et al.*** Cause #GN503375  
AG Case #052214509

Insurance Premium Tax; Refund Filed: 09/19/05 Period: 1998-2001 Amount: \$529,071.60	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Howard P. Newton Rene D. Ruiz Cox Smith Matthews Inc. San Antonio
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Issue: Whether the independently procured insurance tax may be collected from a Texas corporation despite the decisions in *Todd Shipyards* and *Dow Chemical*. Whether imposition of the tax violates equal and uniform protection or is pre-empted by federal law governing the operation of nuclear plants.

Status: Inactive. Pending resolution of companion STP case.

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**STP Nuclear Operating Co. v. Strayhorn, et al.** Cause #D-1-GN-06-002569  
AG Case #062382932

Insurance Premium Tax; Protest Filed: 07/14/06 Period: 2005 Amount: \$166,950.77	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Howard P. Newton Rene D. Ruiz Rodrigo J. Figueroa Cox Smith Matthews Inc. San Antonio
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Issue: Whether the independently procured insurance tax may be collected from a Texas corporation despite the decisions in *Todd Shipyards* and *Dow Chemical*. Whether imposition of the tax violates equal and uniform protection or is pre-empted by federal law governing the operation of nuclear plants.

Status: Answer filed.

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

Insurance Premium Tax; Protest & Declaratory Judgment Filed: 08/24/01 Period: 01/01/95- 12/31/98 Amount: \$163,021.27	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Michael W. Jones Kevin F. Lee Thompson, Coe, Cousins & Irons Austin  Richard S. Geiger Thompson, Coe, Cousins & Irons Dallas
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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: To be determined by *Lexington Insurance Co., Landmark Insurance Co., et al. v. Strayhorn, et al.* Dismissal notice has been received from the court.

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

Insurance Tax; Protest &  
Declaratory Judgment  
Filed: 10/20/99  
Period: 1993-1997  
1993-1997  
Amount: \$416,462.73  
\$214,893.74

Asst. AAG Assigned:

Paul Masters

Plaintiff's Counsel:

Raymond E. White  
Daniel Micciche  
Akin, Gump, Strauss,  
Hauer & Feld  
Austin

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

Status: Discovery in progress. Trial set 04/23/07.

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## Other Taxes

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

AG Case #021670484

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

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

Status: Answer filed.

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***Beadles, Joe Haven v. Strayhorn*** Cause #D-1-GN-06-002682

AG Case #062385901

Diesel Fuel Tax; Refund & Declaratory Judgment Filed: 07/24/06	Asst. AAG Assigned:	Gene Storie
Period: Amount: \$697,793.00	Plaintiff's Counsel:	Joe Haven Beadles Pro Se Mt. Pleasant

Issue: Plaintiff claims that the State issued a diesel fuel bonded suppliers' permit to Plaintiff without Plaintiff's knowledge, allowing diesel fuel taxes to be assessed against Plaintiff. Plaintiff claims he never purchased or sold diesel fuel. Plaintiff claims the State previously collected the taxes in question from subsidiaries who sold diesel fuel through truck stops. Plaintiff claims these subsidiaries bought the diesel fuel from an oil company which the State, through an "agreement with the oil company," exempted from paying taxes. Plaintiff requests that all diesel fuel taxes assessed be dismissed.

Status: Answer filed.

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**Bryan ISD v. Strayhorn** Cause #D-1-GV-06-001442  
AG Case #062389937

Property Tax; Administrative Appeal Filed: 08/03/06 Period: 2005 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Ray Bonilla Ray, Wood & Bonilla, LLP Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties in Categories A and B property. Whether the Comptroller erred in its procedures and methods used to properly value Categories A, B and L1 property. Whether the Comptroller's order on the value study is arbitrary and unreasonable and supported by substantial evidence.

Status: Answer filed.

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

Motor Vehicle Sales Tax; Declaratory Judgment Filed: 02/12/04 Period: Amount: \$0.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Lara L. Reenan Henry Oddo Austin & Fletcher Dallas
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Issue: Whether Plaintiff's tax collection and financing activities are legal under the Tax Code, Finance Code and Constitution.

Status: Co-defendant's motion to dismiss granted 06/21/04.

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

Gas Production Tax; Refund Filed: 09/22/04 Period: 01/01/95- 11/30/97 Amount: \$539,224.78	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Jamie Nielson Austin
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Issue: Whether Plaintiff's refund claim fell within the statute of limitations deadline once the high-cost gas exemption or reduction was applied. Whether the high-cost gas refund claim involves the same type of tax as the marketing cost deduction claim which was the basis for the Section 111.207(d) tolling.

Status: Discovery in progress. Case to be settled.

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**Culberson County-Allamore ISD v. Strayhorn** Cause #D-1-GV-06-001443  
AG Case #062390018

Property Tax; Administrative Appeal Filed: 08/03/06 Period: 2005 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Bonilla Ray, Wood & Bonilla, LLP Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties in Categories A, C and D3 property. Whether the Comptroller erred in its procedures and methods used to properly value Categories A, C and D3 property. Whether the Comptroller's order on the value study is arbitrary and unreasonable and supported by substantial evidence.

Status: Discovery in progress.

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

Property Tax; Declaratory Judgment Filed: 09/30/04 Period: Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Walter E. Spears Stephen K. Hamilton Neil H. McLaurin, IV Bartley & Spears, P.C. Houston
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Issue: Whether Tax Code §32.05(c), which subordinates the liens of property owners' associations, is unconstitutional.

Status: Answer filed.

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**Daingerfield-Lone Star ISD v. Strayhorn** Cause #D-1-GV-06-001444  
AG Case #062390034

Property Tax; Administrative Appeal Filed: 08/03/06 Period: 2005 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Ray Bonilla Ray, Wood & Bonilla, LLP Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties in Categories A and F1 property. Whether the Comptroller erred in its procedures and methods used to properly value Categories A and F1 property. Whether the Comptroller's order on the value study is arbitrary and unreasonable and supported by substantial evidence.

Status: Answer filed.

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

Gas Production Tax; Declaratory Judgment Filed: 05/06/91 Period: 01/01/87 - 12/31/87 Amount: \$3,054,480.60	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Scott, Douglass & McConnico Austin
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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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**El Paso Natural Gas Co. v. Strayhorn, et al.** Cause #GN501395  
AG Case #052141975

Gas Production Tax;  
Protest & Declaratory  
Judgment  
Filed: 04/25/05  
Period: 01/01/87-  
12/31/87  
01/01/88-12/31/88  
Amount: \$10,517.30

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

Issue: Whether Plaintiff owes gas production tax on Order 94 Payments. Whether Plaintiff is liable for tax on gas purchases as a producer or exempt as a purchaser. Whether Plaintiff is exempt from paying severance taxes as an interstate natural gas pipeline company. Plaintiff claims violation of the Due Process, Commerce, and Supremacy Clauses, and equal and uniform taxation. Plaintiff requests that the assessed penalty and interest be waived, and seeks attorneys' fees.

Status: Discovery in progress. Settlement negotiations in progress.

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***El Paso Natural Gas Co. v. Strayhorn, et al.*** Cause #GN502628  
(Consolidated with *El Paso Natural Gas Company v. Strayhorn, et al.*, Cause #GN501395.)  
AG Case #052186640

Gas Production Tax;  
Refund & Declaratory  
Judgment  
Filed: 07/28/05  
Period: 01/01/87-  
12/31/87  
01/01/88-12/31/88  
Amount:  
\$41,492.78+\$31,595.18  
(penalty)+87,955.50  
(interest)  
\$25,231.65+\$44,138.50  
(interest)  
(plus interest on both tax  
amounts)

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

Issue: Whether Order 94 payments are exempt from tax. Whether Plaintiff is liable for taxes as a gas producer or exempt as a purchaser. Whether imposition of the gas production tax on Plaintiff violates the Commerce Clause and Supremacy Clause. Whether gas contract settlement payments or transactions are taxable. Plaintiff claims violation of due process rights under the constitutions of both Texas and the United States. Plaintiff also claims violation of equal and uniform taxation. Plaintiff seeks attorneys' fees, and waiver of penalties and interest assessed.

Status: See *El Paso Natural Gas Company v. Strayhorn, et al.*, Cause #GN501395.

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***El Paso Natural Gas Co. v. Strayhorn, et al.*** Cause #GN502815  
(Consolidated with *El Paso Natural Gas Company v. Strayhorn, et al.*, Cause #GN501395.)  
AG Case #052195583

Gas Production Tax; Protest Filed: 08/10/05 Period: 12/01/82- 12/31/86 01/01/89-12/31/90 Amount: \$2,217,939.19	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Mark W. Eidman Ray Langenberg Doug Dashiell Doug Sigel Scott, Douglass & McConnico Austin
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Issue: Whether Plaintiff owes gas production tax on Order 94 Payments. Whether Plaintiff is liable for taxes as a gas producer or exempt as a purchaser. Whether gas contract settlement payments or transactions are taxable. Plaintiff claims that taxes assessed by the defendant is "double-dipping," and time limitations bar the assessments. Plaintiff claims violation of due process rights under the constitutions of both Texas and the United States, and violation of the Commerce Clause and Supremacy Clause. Plaintiff also claims violation of equal and uniform taxation. Plaintiff seeks attorneys' fees and waiver of interest assessed. Plaintiff also requests disclosure of certain information and material.

Status: See *El Paso Natural Gas Company v. Strayhorn, et al.*, Cause #GN501395.

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***El Paso Natural Gas Co. v. Strayhorn, et al.*** Cause #GN503965  
(Consolidated with *El Paso Natural Gas Company v. Strayhorn, et al.*, Cause #GN501395.)  
AG Case #052243847

Gas Production Tax; Refund	Asst. AAG Assigned:	Paul Masters
Filed: 11/02/05	Plaintiff's Counsel:	Mark W. Eidman
Period: 12/01/82- 12/31/86		Ray Langenberg
01/01/89-12/31/90		Doug Dashiell
Amount: \$1,814,098.80 + \$1,958,296.59 in interest		Doug Sigel
\$32,615 + \$37,401.27 in interest		Scott, Douglass & McConnico
		Austin

Issue: Whether Plaintiff owes gas production tax on Order 94 Payments. Whether Plaintiff is liable for taxes as a gas producer or exempt as a purchaser. Whether imposition of the gas production tax on Plaintiff violates the Commerce Clause and Supremacy Clause. Whether gas contract settlement payments or transactions are taxable. Plaintiff claims violation of equal and uniform taxation. Plaintiff claims that taxes assessed by the defendant is "double-dipping," and time limitations bar the assessments. Plaintiff claims violation of due process rights under the constitutions of both Texas and the United States. Plaintiff seeks attorneys' fees and waiver of interest assessed.

Status: See *El Paso Natural Gas Company v. Strayhorn, et al.*, Cause #GN501395.

***Evercom Systems, Inc. v. Strayhorn, et al.*** Cause #GN503910  
#03-06-00481-CV  
AG Case #052240835

PUC Gross Receipts Tax; Protest	Asst. AAG Assigned:	Jim Cloudt
Filed: 10/27/05	Plaintiff's Counsel:	Andrew M. Taylor
Period: 04/01/97- 12/31/98		Eric B. Storm
Amount: \$45,827.59		Bracewell & Patterson, LLP
		Austin

Issue: Plaintiff requests review of administrative hearing decision. Whether Plaintiff is a public utility or dominant carrier under PURA definitions. Whether the Gross Receipts Assessment can be applied against Plaintiff.

Status: Plaintiff's Motion for Summary Judgment filed 03/02/06; Summary Judgment hearing held 05/03/06. Plaintiff's motion granted in part; defendants' motion granted in part. State's Notice of Appeal filed 08/11/06. Cross-Appellant's Notice of Appeal filed 08/22/06. Clerk's Record filed 08/30/06. Cross-Appellants' brief due 10/31/06. Comptroller's brief filed 10/31/06.

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

Mixed Beverage Gross Receipts Tax; Protest & Declaratory Judgment Filed: 03/04/02 Period: 03/01/99-06/30/99 Amount: \$36,177.36	Asst. AAG Assigned:  Plaintiff's Counsel:	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: Plea to the Jurisdiction and Motion for Summary Judgment withdrawn. Settlement negotiations being discussed.

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

Hotel Occupancy Tax; Protest, Injunction & Declaratory Judgment Filed: 10/28/02 Period: 03/01/97-11/30/00 12/01/00-03/31/02 Amount: \$193,629.45 \$59,232.72	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  Kirk R. Manning Stephen L. Phillips Julie K. Lane Cantey & Hanger Austin
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Issue: Whether Plaintiff's service charges are subject to the hotel tax. Whether the charges are gratuities under the Comptroller's rule. Plaintiff also seeks injunctive relief and attorneys' fees.

Status: Discovery in progress. Settlement negotiations in progress.

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**MFC Finance Co. of Texas v. Rylander, et al.** Cause #GN002653  
#03-06-00328-CV  
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: Trial setting passed. Plaintiff filed Motion for Partial Summary Judgment 03/03/05. Summary Judgment hearing held 04/12/06. Comptroller's Motion for Summary Judgment granted in full; MFC's motion denied 04/28/06. Notice of Appeal filed in the 3COA 06/12/06. Clerk's Record filed 07/10/06. Appellant's brief filed 08/11/06. Appellees' brief filed 10/09/06. Oral Argument requested. Appellant's motion for leave to file amended brief granted 10/12/06.

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**Mabank ISD v. Comptroller** Cause #GV503360  
AG Case #052185741

Property Tax; Administrative Appeal	Asst. AAG Assigned:	Jana Kinkade
Filed: 07/19/05	Plaintiff's Counsel:	Kirk Swinney
Period: 2004		Roy L. Armstrong
Amount: \$N/A		McCreary, Veselka, Bragg & Allen, PC Austin

Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties and whether the Comptroller failed to properly account for the inflationary trend.

Status: Passed trial date and suspended discovery by agreement.

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**Malakoff ISD v. Comptroller** Cause #GV503359  
AG Case #052185758

Property Tax; Administrative Appeal Filed: 07/19/05 Period: 2004 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Kirk Swinney Roy L. Armstrong McCreary, Veselka, Bragg & Allen, PC Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties and whether the Comptroller failed to properly account for the inflationary trend.

Status: Passed trial date and suspended discovery by agreement.

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**Mineral Wells ISD v. Strayhorn** Cause #D-1-GV-06-001445  
AG Case #062389838

Property Tax; Administrative Appeal Filed: 08/03/06 Period: 2005 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Bonilla Ray, Wood & Bonilla, LLP Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties in Categories A and D3 property. Whether the Comptroller erred in its procedures and methods used to properly value Categories A and D3 property. Whether the Comptroller's order on the value study is arbitrary and unreasonable and supported by substantial evidence.

Status: Discovery in progress.

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

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

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: Inactive.

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**Nextel of Texas, Inc. v. Strayhorn, et al.** Cause #GN501852  
AG Case #052154796

Telecommunications Infrastructure Fund (TIF)	Asst. AAG Assigned:	Natalie Maloney
Tax; Protest & Declaratory Judgment	Plaintiff's Counsel:	Mark W. Eidman
Filed: 05/23/05		Ray Langenberg
Period: 01/01/99-12/31/03		Doug Sigel
Amount: \$2,113,301.35		Scott, Douglass & McConnico
		Austin

Issue: Whether receipts for equipment sold to customers and listed separately on invoices are subject to an additional TIF assessment as taxable telecommunications receipts. Whether TIF charges which Plaintiff passed on and collected from its customers are allowable reimbursements as TIF assessment. Plaintiff also seeks attorneys' fees.

Status: Answer filed.

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**Phenomenom v. Strayhorn, et al.** Cause #D-1-GN-06-000658  
AG Case #062295472

Mixed Beverage Gross Receipts Tax; Declaratory Judgment	Asst. AAG Assigned:	Paul Masters
Filed: 02/23/06	Plaintiff's Counsel:	Mark D. Hopkins
Period: 10/01/99 - 04/30/01		Savricks, Schumann, Johnson, McGarr, Kaminski & Shirley
Amount: \$85,000.00		Austin

Issue: Whether the sampling procedure used by the Comptroller was flawed, causing an incorrect tax assessment. Plaintiff claims Tax Code §112.108 is unconstitutional. Plaintiff seeks waiver of all penalty and interest, and seeks declaratory relief and attorneys' fees.

Status: Settlement offer made by Comptroller enforcement. Plaintiff's counsel informed of intent to withdraw.

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**Point Isabel ISD v. Texas Comptroller of Public Accounts** Cause #D-1-GN-06-002641  
AG Case #062384979

Property Tax; Administrative Appeal Filed: 07/21/06 Period: 2005 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Judith A. Hargrove James R. Evans, Jr. Hargrove & Evans Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties in Category A. Whether the Comptroller's order on the value study is arbitrary and unreasonable and supported by substantial evidence.

Status: Answer filed.

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

Motor Vehicle Tax; Protest Filed: 08/26/91 Period: 12/01/86 - 09/30/89 Amount: \$21,796	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  George L. Preston Paris
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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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**Ranger Fuels & Maintenance, L.L.C. v. Rylander, et al.** Cause #GN204124  
AG Case #021705900

Fuels Tax; Declaratory Judgment & Injunction Filed: 11/14/02 Period: Amount: \$115,000.00	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Donald H. Grissom Grissom & Thompson Austin
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Issue: Whether fuels tax is actually owed by an unrelated company. Whether the Comptroller abused its discretion and violated Plaintiff's constitutional rights. Plaintiff seeks injunctive and declaratory relief.

Status: Inactive.

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**Ranger Fuels & Maintenance, LLC v. Strayhorn, et al.** Cause #GN504104  
AG Case #052245941

Fuels Tax; Refund Filed: 11/15/05 Period: 05/01/02- 05/31/02 (Diesel) 01/01/02-04/30/02 (Gasoline) 03/01/02-04/30/02 (Diesel) 05/01/02-05/31/02 (Gasoline) Amount: \$208,428.70	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Donald H. Grissom William W. Thompson, III Grissom & Thompson Austin
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Issue: Whether Plaintiff acquired a business and its assets by filing a sales tax application with the Comptroller. Whether such acquisition was a fraudulent transfer. Whether Plaintiff owes fuel taxes under successor liability.

Status: Discovery in progress.

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**San Felipe-Del Rio CISD v. Strayhorn** Cause #D-1-GV-06-001446  
AG Case #062390042

Property Tax; Administrative Appeal Filed: 08/03/06 Period: 2005 Amount: \$	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties in Category A property. Whether the Comptroller erred in its procedures and methods used to properly value Category A property. Whether the Comptroller's order on the value study is arbitrary and unreasonable and supported by substantial evidence.

Status: Answer filed.

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**Stuart, Robert T. Jr., Estate of v. Strayhorn, et al.** Cause #GN503318  
AG Case #052216702

Inheritance Tax; Protest Filed: 09/14/05 Period: Amount: \$1,293,469.96	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David Wheat Thompson & Knight LLP Dallas  Frank Hill Thompson & Knight LLP Austin
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Issue: Whether Plaintiff's partnership interest located out of state is intangible personal property taxable in Texas. Plaintiff claims double taxation.

Status: Discovery in progress.

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**TPI Petroleum, Inc. v. Strayhorn, et al.** Cause #GN502629  
AG Case #052186657

Fuels Tax; Refund  
Filed: 07/28/05  
Period: 12/01/97-  
06/30/01  
Amount: \$528,639.00

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

Issue: Whether Plaintiff is entitled to a refund of diesel fuel tax paid on diesel fuel lost by drive-offs, a refund of gasoline tax and diesel fuel tax based on bad debt deductions, and a credit for motor fuel tax paid on sales of reefer fuel.

Status: Discovery in progress.

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

Gas Production Tax;  
Refund  
Filed: 02/13/04  
Period: 01/01/97-  
05/31/02  
Amount: \$456,608.80

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Natalie Maloney  
  
Mark W. Eidman  
Ray Langenberg  
Matthew J. Meese  
Scott, Douglass &  
McConnico  
Austin

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

Status: Plaintiff filed a Motion for Summary Judgment 02/02/05.

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

Telecommunications  
Infrastructure Fund (TIF)  
Tax; Protest  
Filed: 12/03/04  
Period: 02/01/99-  
10/31/02  
Amount: \$293,223.67

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

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

Status: Discovery in progress. Settlement negotiations in progress.

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

Cause #GN400781

AG Case #041937228

Mixed Beverage Gross Receipts Tax; Protest Filed: 03/09/04 Period: 05/01/96-09/30/98 Amount: \$211,145.65	Asst. AAG Assigned:  Plaintiff’s Counsel:	Paul Masters  Curtis J. Osterloh Matthew J. Meese Scott, Douglass & McConnico Austin
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Issue: Whether door charges should be taxed by both the mixed beverage gross receipts tax and sales tax. Plaintiff claims that the application of both taxes is in violation of equal and uniform taxation, and equal protection under the law. Plaintiff also claims violation of due process and the commerce clause.

Status: Waiting for position letter from Comptroller and anticipated settlement.

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***Vinson Oil Distribution v. Strayhorn, et al.*** Cause #D-1-GN-06-003262

AG Case #062405956

Fuels Tax Tax; Protest Filed: 08/31/06 Period: 12/01/01-12/31/01 12/01/02-12/31/02 12/01/03-12/31/03 Amount: \$40,711.92 (Diesel) \$1,861.38 (Gasoline)	Asst. AAG Assigned:  Plaintiff’s Counsel:	Jana Kinkade  Tom Tourtellotte Hance Scarborough Wright Woodward & Weisbart, LLP Austin
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Issue: Whether Plaintiff is entitled to a refund of gasoline tax and diesel fuel tax based on bad debt deductions resulting from proprietary card usage. Plaintiff claims violation of due process, equal protection and equal and uniform taxation.

Status: Answer filed.

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## Closed Cases

***Alleghany Pharmacal Corp. v. JP Morgan Chase Bank, N.A., dba Bank One/Chase Manhattan and the Comptroller of Public Accounts, State of Texas***

Cause #CV-06-2123

US District Court, Eastern District of New York

AG Case #062338017

Franchise Tax;

Declaratory Judgment

Filed: 05/08/06

Period: 1998-2004

Amount: \$126, 256.87

Asst. AAG Assigned:

Plaintiff's Counsel:

Gene Storie

Dewey Golkin, Esq.  
New York, New York

Issue: Whether Plaintiff is entitled to the release of its bank account funds frozen by the defendants. Whether Plaintiff owes franchise tax in Texas without sufficient nexus with the State. Plaintiff claims violation of constitutional rights and due process.

Status: Case settled.

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***Alpine ISD v. Strayhorn*** Cause #GV402237

AG Case #041999202

Property Tax;

Administrative Appeal

Filed: 07/27/04

Period: 2003

Amount: \$N/A

Asst. AAG Assigned:

Plaintiff's Counsel:

Christopher Jackson

Ray Bonilla  
Ray, Wood & Bonilla  
Austin

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

Status: Agreed Judgment entered 01/11/06.

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**Alpine ISD v. Strayhorn** Cause #GV503554  
AG Case #052186590

Property Tax; Administrative Appeal Filed: 07/28/05 Period: 2004 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties in Category A. Whether the Comptroller erred in its procedures and methods used to properly value Category D1 property. Whether the Comptroller's order on the value study is arbitrary and unreasonable and supported by substantial evidence.

Status: Agreed Judgment entered 02/21/06.

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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

#03-03-00458-CV

#05-0063

AG Case #991227646

Franchise Tax; Refund Filed: 10/18/99 Period: 1993-1996 Amount: \$407,212.91 \$107,861.97	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Jan Soifer Delgado, Acosta, Braden, Jones & Hayes, PC Austin  Susan A. Kidwell Locke, Liddell & Sapp Austin
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Issue: Whether income earned on Plaintiff's trust accounts for prepaid funeral services gives rise to Texas gross receipts.

Status: Motion for Summary Judgment held 04/10/03; granted in favor of the State 06/24/03. Plaintiff's Notice of Appeal filed 07/31/03. Appellants' brief filed 09/18/03. Appellees' brief filed 10/24/03. Appellants' reply brief filed 11/12/03. Oral Argument completed 01/07/04. Appellees' post-submission brief filed 01/22/04. Appellants' reply brief filed 02/06/04. Opinion issued 08/12/04 in favor of State affirming the district trial court's judgment. Motion for Rehearing filed 10/01/04; overruled 12/09/04. Petition for Review filed in Texas Supreme Court 01/24/05. Respondents filed waiver to respond 02/02/05. Case forwarded to Court 02/08/05. Court requested response to the Petition for Review. Respondent filed a response to the Petition for Review 03/31/05. Petitioners' Reply Brief filed 04/19/05. Briefing on the Merits requested 06/06/05. Petitioner's Brief on the Merits filed 08/12/05. Respondents' brief filed 10/03/05. Petitioner's reply brief filed 10/18/05. Petition for Review denied 01/27/06. Final Order of Supreme Court sent to Appeals Court 03/23/06; disposition final. Case stored 03/27/06. Mandate issued 03/30/06 by Appeals Court affirming trial court's judgment.

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

Sales Tax; Protest Filed: 04/17/03 Period: 01/01/99- 07/31/02 Amount: \$28,407.44	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Kal Malik Robert N. LeMay Kane, Russell, Coleman & Logan Dallas
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Issue: Whether Plaintiff is a lump-sum repairer of motor vehicles who should have paid tax on its purchases of oil and filters. Whether charging tax to the Plaintiff results in unconstitutional double taxation.

Status: Agreed Judgment entered 03/13/06.

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**Beadles, Joe Haven v. Comptroller** Cause #GN500155  
#03-05-00506-CV  
AG Case #052100160

Diesel Fuel Tax; Declaratory Judgment Filed: 01/14/05 Period: Amount: \$1,709,078.44	Asst. AAG Assigned:  Plaintiff's Counsel:	Gene Storie  Joe Haven Beadles Pro Se Mt. Pleasant
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Issue: Plaintiff claims that the State issued a diesel fuel bonded suppliers' permit to Plaintiff without Plaintiff's knowledge, allowing diesel fuel taxes to be assessed against Plaintiff. Plaintiff claims he never purchased or sold diesel fuel. Plaintiff claims the State previously collected the taxes in question from subsidiaries who sold diesel fuel through truck stops. Plaintiff claims these subsidiaries bought the diesel fuel from an oil company which the State, through an "agreement with the oil company," exempted from paying taxes.

Status: Motion for Summary Judgment granted 05/26/05. Case reopened 08/19/05 due to Notice of Appeal filed 08/11/05. Court of Appeals sent notice of intent to dismiss unless appellant files motion reasonably explaining delay in filing brief. Appellant's brief filed 12/12/05. Appellees' brief filed 01/17/06. Set on briefs 01/20/06. Appellant's reply brief filed 01/31/06. Submitted on briefs 03/06/06. Opinion issued 06/16/06 affirming district court's judgment in favor of State. Petition for Review due 07/31/06. Mandate issued 09/12/06.

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

Sales Tax; Protest & Declaratory Judgment Filed: 10/26/01 Period: 01/01/91- 12/31/97 Amount: \$200,000	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Alfred Ruebel Dallas
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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: Case dismissed 11/28/05.

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**Centex Materials, L.P., As Successor in Interest to Centex Materials, Inc. v. Strayhorn, et al.** Cause #GN301277  
AG Case #031787146

Franchise Tax; Protest & Declaratory Judgment Filed: 04/22/03 Period: 1997-2000 Amount: \$96,248.92	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  David Cowling Robert Lochridge Jones Day Dallas
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Issue: Whether the Comptroller's add-back of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Whether the Comptroller improperly applied changes in Rule 3.558 to earlier periods. Whether the officer add-back is arbitrary and discriminatory. Plaintiff also seeks declaratory relief and attorneys' fees.

Status: Non-suited 01/12/06.

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

#03-05-00245-CV

AG Case #0011395316

Sales Tax; Protest

Filed: 12/15/00

Period: 01/01/93-  
12/31/96

Amount: \$83,138.14

Asst. AAG Assigned:

Plaintiff's Counsel:

Scott Simmons

Rudy de la Garza  
Brownsville

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

Status: Dismissed for Want of Prosecution 06/25/04. Plaintiff filed Motion to Retain 07/08/04. Motion to Reinstate filed 08/29/04; granted 10/04/04. Plaintiff's Partial Motion for Summary Judgment hearing held 11/23/04; denied. Defendants' Motion for Summary Judgment granted in full 01/21/05. Notice of Appeal filed 04/22/05. Appellant's brief filed 06/15/05. Appellees' brief filed 07/21/05. Submitted on briefs 09/12/05. Opinion issued 11/10/05 affirming district court's judgment with modification of judgment by Court. Mandate issued 01/26/06.

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***Gallegos, Gerardo v. Strayhorn, et al.*** Cause #D-1-GN-05-004330

AG Case #062276092

Controlled Substance

Tax; Declaratory

Judgment

Filed: 12/07/05

Period: 01/24/90

Amount: \$62,136.47

Asst. AAG Assigned:

Plaintiff's Counsel:

Jana Kinkade

James Stafford  
Houston

Issue: Whether the Controlled Substances Tax is unconstitutional because it subjects Plaintiff to double jeopardy. Whether the state should be required to release all liens and tax assessments filed against Plaintiff. Plaintiff asks for attorneys' fees.

Status: Non-suited 03/14/06.

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

Property Tax; Administrative Appeal Filed: 07/29/04 Period: 2003 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Robert Mott Perdue, Brandon, Fielder, Collins & Mott Houston
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Issue: Whether the Comptroller erred by misapplying burden of proof and not properly selecting and valuing sample properties. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Agreed Judgment entered 01/04/06.

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

Sales Tax; Protest Filed: 10/13/98 Period: 07/01/90- 12/31/93 Amount: \$1,076,019	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  David E. Cowling Jones Day Dallas
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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: Plaintiff filed bankruptcy in Tennessee 03/25/99. Motion to Dismiss by court granted 05/07/01. Plaintiff filed Motion to Retain 04/25/01; granted order to retain 08/14/01 on DWOP, again on 07/25/02, and again 01/16/03. Order of Dismissal for Want of Prosecution entered 06/15/05.

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

Franchise Tax; Refund &  
Declaratory Judgment  
Filed: 07/24/03  
Period: 1999  
Amount: \$47,775.25

Asst. AAG Assigned:  
Plaintiff's Counsel:

Christine Monzingo  
Cynthia M. Ohlenforst  
G. James Landon  
J. Blake Rice  
Hughes & Luce  
Dallas

Issue: Whether an S corporation owned by an ESOP owes franchise tax when the shareholder has no income reportable to the IRS as taxable.

Status: Non-suited 01/26/06.

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***INOVA Diagnostics, Inc. v. Strayhorn, et al.*** Cause #GN302862  
#03-04-00503-CV  
#05-0517  
#05-1130  
AG Case #031836471

Franchise Tax; Protest &  
Declaratory Judgment  
Filed: 08/11/03  
Period: 1999 through  
2003  
Amount: \$4,658

Asst. AAG Assigned:  
Plaintiff's Counsel:

Christine Monzingo  
Gilbert J. Bernal, Jr.  
Stahl, Bernal & Davies  
Austin

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

Status: Non-jury trial held 07/13/04; Judgment granted for State. Findings of Fact and Conclusions of Law filed 07/21/04. Notice of Appeal filed 08/16/04. Appellant's brief filed 12/29/04. Appellees' brief filed 02/16/05. Appellant's reply brief filed 03/31/05. Oral Argument held 04/13/05. Opinion affirming Judgment for the Comptroller issued 05/26/05. Petition for Review filed in Tx. Supreme Court 07/11/05. Response to Petition for Review waived by respondent 07/28/05. Case forwarded to Court 08/02/05. Court requested response; filed 09/30/05. Petitioner's reply filed 10/14/05. Petition for Review denied 12/02/05. Case stored 01/30/06; Supreme Court disposition final. INOVA's Petition for Writ of Certiorari filed 03/02/06 in U.S. Supreme Court. Respondents' waiver filed 03/23/06. U.S. Supreme Court denied Writ of Certiorari 04/17/06.

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

Sales Tax; Refund Filed: 08/05/04 Period: 12/01/96- 12/31/99 Amount: \$1,820.48	Asst. AAG Assigned:  Plaintiff's Counsel:	Jim Cloudt  Mike Cichowski Port Arthur
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Issue: Whether parts and services for an ice machine, a hydro-blasting machine, and for a steam cleaning machine are exempt from sales tax under the manufacturing exemption.

Status: Agreed Judgment entered 11/18/05.

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

Sales Tax; Refund & Declaratory Judgment Filed: 09/13/02 Period: 06/01/86- 08/31/92 Amount: \$8,576,046	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: Plaintiff claims a sale for resale exemption on items resold to the federal government. Plaintiff also claims a denial of equal protection and that the incidence of the tax falls on the federal government. Plaintiff claims that the Comptroller violated the commerce clause by failing to follow title-passing regulations and also seeks a declaratory judgment and attorneys' fees.

Status: Agreed Judgment entered 12/22/05.

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

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

Asst. AAG Assigned:  
Plaintiff's Counsel:

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

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

Status: Agreed Judgment entered 08/11/05.

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

Sales Tax; Protest  
Filed: 05/23/03  
Period: 01/01/96-  
04/30/99  
Amount: \$2,015,426.24

Asst. AAG Assigned:  
Plaintiff's Counsel:

Paul Masters  
Douglas W. Sanders  
Elizabeth A. Copeland  
Jeffrey T. Cullinane  
Oppenheimer, Blend,  
Harrison & Tate  
San Antonio

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

Status: Court denied both cross-motions for Partial Summary Judgment 08/26/04. Plaintiff's Motion to Compel denied 11/18/04. Trial setting of 03/07/05 postponed. Case settled. Agreed Judgment entered 05/09/06.

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

Property Tax;  
Administrative Appeal  
Filed: 07/27/04  
Period: 2003  
Amount: \$N/A

Asst. AAG Assigned:  
Plaintiff's Counsel:

Natalie Maloney  
Ray Bonilla  
Ray, Wood & Bonilla  
Austin

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

Status: Non-suited 02/21/06.

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**Marathon ISD v. Strayhorn** Cause #GV503555

AG Case #052186608

Property Tax; Administrative Appeal Filed: 07/28/05 Period: 2004 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Jana Kinkade  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether the Comptroller erred in its procedures and methods used to properly value Category D1 property. Whether the Comptroller's order on the value study is arbitrary and unreasonable and supported by substantial evidence.

Status: Agreed Judgment entered 02/21/06.

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

AG Case #94149390

Sales Tax; Protest and Declaratory Judgment Filed: 09/16/94 Period: 05/01/94- 06/30/94 Amount: \$17,063.27	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Garry M. Miles Vinson & Elkins Austin
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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: Order of Dismissal with Prejudice entered 05/15/06.

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**MedSynergies, Inc. v. Strayhorn, et al.** Cause #D-1-GN-06-002431  
AG Case #062382940

Franchise Tax; Protest and Declaratory Judgment Filed: 07/03/06 Period: 01/01/99- 12/31/03 Amount: \$48,777.48	Asst. AAG Assigned:  Plaintiff's Counsel:	Christine Monzingo  Kal Malik Jason Bath Kane Russell Coleman & Logan PC Houston
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Issue: Whether the Comptroller's add-back to earned surplus of compensation to certain officers and directors included persons who lacked significant policy-making authority and was unconstitutional. Plaintiff also claims violation of equal and uniform taxation.

Status: Non-suited 08/11/06.

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

Sales Tax; Refund & Declaratory Judgment Filed: 09/18/02 Period: 04/01/97- 07/31/99 Amount: \$15,841	Asst. AAG Assigned:  Plaintiff's Counsel:	Natalie Maloney  James F. Martens James F. Martens & Associates Austin
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Issue: Plaintiff claims that the Comptroller wrongfully assessed additional sales tax by misstating Plaintiff's gross taxable receipts and wrongfully failed to entertain Plaintiff's refund claim. Plaintiff also seeks a declaratory judgment and attorneys' fees.

Status: Agreed Judgment signed 06/05/06.

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

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

Status: Agreed Judgment entered 03/11/96 on the gift send issue. An Agreed Order for Severance was entered 03/11/96 on the remodeling issues and the attorneys' fees. Cause renumbered 93-10279-A. State filed a Plea to the Jurisdiction on attorneys' fees on 10/06/93. Order of Dismissal for Want of Prosecution entered 06/15/05.

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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: Non-suited 08/11/06.

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**North Texas Asset Management, Inc. v. Sharp, et al.** Cause #94-08603  
AG Case #94113766

Sales Tax; Declaratory Judgment Filed: 07/14/94 Period: 05/02/91- 12/31/91 Amount: \$24,307	Asst. AAG Assigned:  Plaintiff's Counsel:	Paul Masters  Judy M. Cunningham Attorney at Law Austin
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Issue: Whether a sale of a business approved by the SBA (which held a lien and received the proceeds) is tantamount to a foreclosure sale so that no successor liability should attach.

Status: Case dismissed 09/05/06.

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

Property Tax; Administrative Appeal Filed: 07/27/04 Period: 2003 Amount: \$N/A	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Bonilla Ray, Wood & Bonilla Austin
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Issue: Whether the Comptroller erred by not properly selecting and valuing sample properties and whether the Comptroller failed to consider local modifiers, sales and market information. Whether the Comptroller's order on the value study is arbitrary and unreasonable.

Status: Agreed Judgment entered 01/11/06.

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**Raytheon E-Systems, Inc. v. Rylander, et al.** Cause #GN101511  
#03-02-00346-CV  
#03-0416  
AG Case #011451606

Sales Tax; Refund & Declaratory Judgment Filed: 05/17/01 Period: 06/01/89 - 12/31/96 Amount: \$5,381,609.00	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: Summary Judgment hearing held 03/05/02. Partial summary judgment for Plaintiff entered 03/29/02. Judgment for Raytheon granted 05/15/02. State's Notice of Appeal filed 06/04/02. Appellants' brief filed 09/20/02. Appellee's brief filed 10/18/02. Appellants' reply brief filed 11/07/02. Oral argument completed 12/04/02. Comptroller's post-submission brief filed 12/15/02. Trial court affirmed, in part, remanded, in part, 01/30/03. Motion for Rehearing and Motion for En Banc Reconsideration filed by State 03/17/03; denied 03/27/03. Petition for Review filed by State 05/12/03. Response filed 05/20/03 by Raytheon. Reply filed by State 05/30/03. Petition for Review denied 08/28/03. Motion for Rehearing filed by State 09/12/03; denied 10/24/03. Final Order of the Supreme Court sent to Court of Appeals 12/09/03. State's Motion for Summary Judgment granted 06/03/04. Raytheon's Motion for Summary Judgment denied 06/08/04. Order ruling that case is not final setting deadline for status report entered 06/28/04. State's Report filed 07/16/04. Judgment hearing on 10/04/04 passed to consider settlement. Agreed Judgment entered 11/28/05.

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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  
Filed: 03/28/02  
Period: 08/01/88 -  
05/31/97  
Amount: \$2,500,000.00

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

Mark W. Eidman  
Scott, Douglass &  
McConnico  
Austin

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

Status: Agreed Judgment entered 11/28/05.

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

Sales Tax; Refund  
Filed: 06/13/03  
Period: 04/01/89-  
12/31/96  
Amount: \$228,368

Asst. AAG Assigned:  
Plaintiff's Counsel:

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

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

Status: Agreed Judgment entered 11/28/05.

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

Cause #GN303643  
AG Case #031853625

Sales Tax; Refund  
Filed: 09/09/03  
Period: 07/01/97-  
12/31/98  
Amount: \$3,500,000

Asst. AAG Assigned:  
Plaintiff's Counsel:

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

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

Status: Agreed Judgment entered 11/28/05.

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

AG Case #031853633

Sales Tax; Refund  
Filed: 09/09/03  
Period: 01/01/99-  
12/31/02  
Amount: \$7,400,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

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

Status: Agreed Judgment entered 11/28/05.

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

Cause #GN303645

AG Case #031853641

Sales Tax; Refund  
Filed: 09/09/03  
Period: 01/01/97-  
12/31/98  
Amount: \$4,000,000

Asst. AAG Assigned:

Jim Cloudt

Plaintiff's Counsel:

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

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

Status: Agreed Judgment entered 11/28/05.

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

Cause #GN304089

AG Case #031873441

Sales Tax; Protest &  
Declaratory Judgment  
Filed: 10/16/03  
Period: 10/01/91-  
12/31/96  
Amount: \$389,408.28

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

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

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

Status: Agreed Judgment entered 11/28/05.

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***San Vicente ISD v. Strayhorn*** Cause #GV402240  
AG Case #041999194

Property Tax;  
Administrative Appeal  
Filed: 07/27/04  
Period: 2003  
Amount: \$N/A

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christopher Jackson  
  
Ray Bonilla  
Ray, Wood & Bonilla  
Austin

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

Status: Agreed Judgment entered 01/11/06.

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

Sales Tax; Protest  
Filed: 10/13/98  
Period: 01/01/92-  
12/31/93  
Amount: \$413,569

Asst. AAG Assigned:  
  
Plaintiff's Counsel:

Christopher Jackson  
  
David E. Cowling  
Jones Day  
Dallas

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

Status: On hold. Plaintiff filed bankruptcy in Tennessee on 03/25/99. Motion to Dismiss set 05/07/01. Plaintiff filed Motion to Retain 04/25/01; granted 08/14/01. Motion to Dismiss set 07/25/02. Motion granted 01/16/03 to retain. Order of Dismissal for Want of Prosecution entered 06/15/05.

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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:	Christopher Jackson  Gilbert J. Bernal, Jr. Stahl, Bernal & Davies Austin
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Issue: Whether items used in vessel repair, such as paint-gun parts, are exempt materials. Whether denial of the exemption violates equal protection. Plaintiff also seeks attorneys' fees.

Status: Agreed Judgment entered 04/03/06.

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

Franchise Tax; Refund Filed: 12/15/99 Period: 1994 Amount: \$1,028,616.15	Asst. AAG Assigned:  Plaintiff's Counsel:	Christopher Jackson  Ray Langenberg Scott, Douglass & McConnico Austin
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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: Order of Dismissal for Want of Prosecution entered 06/15/05.

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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:

Plaintiff's Counsel:

Gene Storie

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

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

Status: Dismissed for want of prosecution 06/15/05. Plaintiff has filed unopposed motion to reinstate. Case settled. Agreed Judgment of Dismissal entered 05/05/06.

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