

# **Bond Case Briefs**

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## **TAX - CALIFORNIA**

### **Myers v. State Board of Equalization**

**Court of Appeal, Second District, Division 3, California - September 25, 2015 - Cal.Rptr.3d - 2015 WL 5656124**

A taxpayer brought a mandamus and declaratory judgment action to compel state officials to collect a gross premium tax from two health care service plans on the basis that they were “insurers.” The Superior Court sustained state officials’ and health care service plans’ demurrers without leave to amend. Taxpayer appealed.

The Court of Appeal held that:

- On issue of first impression, health care service plans were “insurers” subject to gross premium tax if indemnifying against future contingent claims represented a significant financial proportion of their businesses;
- Prior final judgment denying declaratory and injunctive relief on same issue was within public interest exception to res judicata rule; and
- Taxpayer’s action did not improperly seek to prevent or enjoin the collection of any tax.

Two taxpayers were “insurers” subject to the state constitution’s gross premium tax if indemnifying against future contingent claims represented a significant financial proportion of taxpayers’ businesses, even if the taxpayers were designated as “health care service plans” for regulatory purposes under the Knox-Keene Health Care Service Plan Act.

Trial court’s prior final judgment denying declaratory and injunctive relief to compel a health care service plan to pay the state constitutional gross premium tax as “insurers” was within the public interest exception to the res judicata rule, in a new mandamus and declaratory judgment action against the same health care service plan and another plan, since the applicability of the gross premium tax presented a pure question of law, the matter affected public finances, and the prior judgment did not result in an appellate opinion.

The constitutional provision stating that no legal or equitable process shall issue to prevent or enjoin the collection of any tax did not bar taxpayers’ mandamus and declaratory judgment action to compel state officials to collect a gross premium tax from two health care service plans on the basis that they were “insurers,” since the action did not seek to enjoin the state from collecting any other taxes or fees. Whatever effect the “in lieu of” clause of the gross premium tax provision would have on the corporate franchise taxes the state had previously collected from the health care service plans was a matter for the plans to raise in a subsequent tax refund action.