



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
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Member

October 2006, Franchise Tax Board Litigation Roster

All currently active cases and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list of new cases that have been added to the roster for the month is also provided, as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: <http://www.ftb.ca.gov/law/litrstr/index.html>.

The Litigation Rosters for the last four years may be found on the Internet site.

FRANCHISE AND INCOME TAX
Closed Cases – October 2006

Case Name

Court Number

None

FRANCHISE AND INCOME TAX
New Cases – October 2006

Case Name

Court Number

Garcia, W. Roche And Glenda L. San Francisco Superior Court Docket No. CGC06456659

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

October 2006

CITY NATIONAL CORPORATION v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC334772
Court of Appeal, 2nd Appellate District No. B189240

Filed – 06/10/05

Taxpayer's Counsel

Kenneth R. Chiate, Mary S. Thomas
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP

FTB's Counsel

Donald R. Currier
Joseph M. O'Heron

Sherrill Johnson
Offices of the General Counsel
City National Bank

- Issues:
1. Whether Plaintiff improperly engaged in tax shelter transaction involving Regulated Investment Trusts (REITs) and Regulated Investment Companies (RICs) during the subject years.
 2. Whether certain subsidiaries were exempt from California taxation as IRC 501(c)(15) entities.
 3. Whether Plaintiff has satisfied the requirement of exhausting all administrative remedies in order to maintain a lawsuit.

Years: 1999 through 2003

Amount \$84,676,129.00

Status: **Court of Appeal scheduled Oral Argument to January 11, 2007. Appellant's Reply Brief filed on October 25, 2006.**

CITY NATIONAL CORPORATION & Subs. v. Franchise Tax Board

Sacramento Superior Court Docket No. 06AS02275

Filed – 06/06/06

Taxpayer's Counsel

Kenneth R. Chiate
Quinn, Emanuel, Urquhart Oliver & Hedges, LLP

FTB's Counsel

Michael J. Cornez

Sherrill Johnson
Offices of the General Counsel
City National Bank

Issue: Whether Plaintiffs improperly engaged in tax shelter transaction involving Real Estate Investment Trusts (REITs).

Year: 2004

Amount \$23,900,000.00

Status: **Plaintiff's Cross-Motion to Bifurcate or Sever denied on October 4, 2006. Defendant's Motion to Stay the case denied on October 4, 2006.**

Status: Defendant's Answer to Plaintiffs' Complaint filed on July 24, 2006.

DILTS, WALTER B. JR. AND PHYLLIS A. KAPPELER v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC04436496

Filed - 11/19/04

Taxpayer's Counsel

FTB's Counsel

R. Todd Luoma

Anne Michelle Burr

Law Office of Richard Todd Luoma

Issue: Whether Plaintiffs ceased to be California residents as of December 16, 1994.

Years: 1994 and 1995

Amount \$973,101.00

Status: Notice sent by the Court, Order to Show Cause continued to January 8, 2008.

GARCIA, W. ROCKE AND GLENDA L. v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC06456659

Filed - 10/02/06

Taxpayer's Counsel

FTB's Counsel

William J. McLean

Kristian Whitten

A Professional Law Corporation

- Issue:
1. Whether Plaintiffs timely acquired replacement real property in compliance with the Internal Revenue Code section 1033.
 2. Whether a decision by the State Board of Equalization precludes the assessment of penalties pursuant to section 19777.5.
 3. Whether the penalty assessed by Section 19777.5 satisfies due process requirements.

Year: 1992

Amount \$616,065.66

Status: Plaintiffs' Summons and Complaint served by mail on October 11, 2006.

GENERAL ELECTRIC COMPANY AND SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC06-449157

Filed - 02/03/06

Taxpayer's Counsel

FTB's Counsel

Amy L. Silvertstein

David Lew

Silverstein & Pomerantz, LLP

Jeffrey M. Vesely

Pillsbury, Winthrop, Shaw, Pittman, LLP

- Issues:
1. Whether the penalty imposed by section 19777.5(a) on amounts due and payable on March 31, 2005, for years beginning before January 31, 2003, violates the due process clause of the United States Constitution.
 2. What is the meaning of "due and payable" for purposes of section 19777.5(a) of the Revenue and Taxation Code?

Years: (None)

Amount \$0.00

Status: **Record on Appeal filed by the Clerk on October 26, 2006.**

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC05-439929

Taxpayer's Counsel

Thomas H. Steele

Andres Vallejo, Jeffrey S. Terraciano

Morrison & Foerster LLP

Filed – 03/29/05

FTB's Counsel

Marguerite Stricklin

- Issues:
1. Whether the Plaintiffs' payroll factor was properly computed by excluding foreign employee stock options.
 2. Whether the Plaintiffs' sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
 3. Whether federal RAR adjustments were properly taken into account.

Years: 1992 through 1997

Amount \$3,550,367.00

Status: Trial scheduled for February 20, 2007. **Case Management Conference held on October 25, 2006.**

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404

Court of Appeal, 2nd Appellate District No. B165665

California Supreme Court No. S127086

Taxpayer's Counsel

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayob

Filed - 03/06/02

FTB's Counsel

Stephen Lew

Donald Currier

Joseph O'Heron

- Issues:
1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
 2. Whether interest income was properly characterized as business income.
 3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
 4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
 5. Whether various receipts from intangible assets were properly excluded from the sales factor.
 6. Whether research tax credits were properly limited to the entity incurring the expense.
 7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
 8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
 9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years: 1986 through 1988

Amount \$10,692,755.00

Status: **Defendant/Appellant's Petition for Rehearing denied on October 25, 2006. Remittitur issued on October 25, 2006.**

GOLDEN WEST HEALTH PLAN, INC. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC353849

Taxpayer's Counsel

Alan R. Maler

Greenberg Traurig, LLP

Filed – 06/15/06

FTB's Counsel

Marla Markman

Issue: Whether Plaintiff made a valid S Corporation election for California purposes.

Years: 04/01/03 through 06/01/03

Amount \$669,045.00

Status: Case Management Conference held on September 21, 2006.

GONZALES, THOMAS J. II v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC06454297

Taxpayer's Counsel

Martin A. Schainbaum, Esq.

Martin A. Schainbaum, PLC

Filed – 07/18/06

FTB's Counsel

Paul D. Gifford

Joyce E. Hee

Issues: 1. Whether the loss claimed with respect to a Son of Boss transaction was allowable.
2. Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.
3. Whether the taxpayer is entitled to deduct legal expenses paid in connection with an investment.

Years: 2000 and 2001

Amount \$12,374,510.00

Status: Case Management Conference scheduled for December 15, 2006. **Discovery proceeding.**

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 305968

Court of Appeal, 2nd Appellate District No. B187278

Taxpayer's Counsel

Eric L. Troff, Esq.

Gibbs, Giden, Locher & Turner, LLP

Filed - 11/12/03

FTB's Counsel

Donald Currier

Issue: Whether Plaintiffs were entitled to a business bad debt reduction.

Years: 1990 and 1993

Amount \$65,738.00

Status: **Defendant's Request to reschedule Oral Argument from October 30, 2006 to November 15, 2006, filed on October 2, 2006.**

HILTON, ERIC & BITTEN v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC354308

Taxpayer's Counsel

Richard K. Semeta

A Professional Law Corporation

Filed – 06/21/06

FTB's Counsel

Anthony Sgherzi

Issue: Whether a portion of the gain realized on the exercise of stock options by a non-resident was California source income.

Year 1997

Amount

\$27,346.98

Status: **Case Management Conference held on October 30, 2006.**

HYATT, GILBERT P. v. Franchise Tax Board

Clark County Nevada District Court No. A382999

Nevada Supreme Court No. 47141

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison

Hutchison & Steffen, H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel

James W. Bradshaw

McDonald, Carano,

Wilson LLP

Las Vegas, Nevada

Issues: 1. Whether Plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years: 1991 and 1992

Amount

\$7,545,492.00 Tax

\$5,659,119.00 Penalty

Status: Nevada Supreme Court

The case is pending before the Nevada Supreme Court on a writ action by Gilbert P. Hyatt.

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0

Court of Appeal, 1st Appellate District Court No. A102915

California Supreme Court No. S136922

Taxpayer's Counsel

Carley Roberts

Morrison & Foerster, LLP

Hollis L. Hyans

Morrison & Foerster, LLP

New York, NY

Filed - 04/09/01

FTB's Counsel

Joyce Hee

- Issues: 1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years: 1993 and 1994 Amount \$2,185,718.00

Status: Petition for Review granted on October 26, 2005. Further action in this matter is deferred pending consideration and disposition of a related issued in General Motors and Microsoft or pending further order of the court.

LUCAS, LADONNA v. Franchise Tax Board

Los Angeles Superior Court Docket No. BS102039

Taxpayer's Counsel

LaDonna Lucas, In Pro Per

Filed – 03/08/06

FTB's Counsel

Felix Leatherwood

- Issues: 1. Whether the Superior Court has jurisdiction to consider the action filed by the Plaintiff.
2. Whether Appellant qualifies as a head of household for the year 2002 and 2003.

Years: 2002 and 2003 Amount Unknown

Status: **Hearing on Defendant's Demurrer held on October 19, 2006. Defendant's Notice of Ruling of the Court Sustaining Demurrer Without Leave to Amend, but Without Prejudice to Petitioner to file a subsequent action after exhausting administrative remedies, filed on October 31, 2006.**

MARKEN, DONALD W. & CLAUDINE H. v. Franchise Tax Board

San Francisco Superior Court Docket No. 302520

Court of Appeal, 1st Appellate Dist. No. A091644

California Supreme Court No. S 104529

Court of Appeal, 1st Appellate Dis. No. A109715

Court of Appeal, 1st Appellate District No. A110668 (Attorneys' Fees)

Taxpayer's Counsel

William E. Taggart, Jr.

Taggart & Hawkins

Filed - 04/05/99

FTB's Counsel

Marguerite Stricklin

Issue: Whether Plaintiffs were residents of California in 1993.

Year: 1993 Amount \$244,012.00

Status: Plaintiffs/Appellants' Request for Oral Argument filed under A109715 on July 13, 2006.

MICROSOFT CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444
Court of Appeal, 1st Appellate Dist. Div. 3 No. A105312
California Supreme Court No. S133343

Filed - 10/19/01

Taxpayer's Counsel

James P. Kleier, Esq.

Reed Smith LLP

FTB's Counsel

Julian O. Standen

Joseph Patton Powers

Baker & McKenzie

- Issues:
1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
 2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
 3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year: 1991 Amount \$1,879,809.00

Status: **Defendant/Appellant's Petition for Rehearing denied on October 25, 2006.**

MONTGOMERY WARD LLC v. Franchise Tax Board v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Filed - 12/30/02

Taxpayer's Counsel

Antolin, Pilar M. Sansone, Amy Silverstein

Silverstein & Pomerantz, LLP

FTB's Counsel

Domini Pham

- Issues:
1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
 2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years: 1989 through 1994 Amount \$2,694,192.00

Status: **Status Conference continued to December 15, 2006.**

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS05705

Filed - 10/10/03

Taxpayer's Counsel

Spencer T. Malysiak

Spencer T. Malysiak Law Corp.

FTB's Counsel

Michael Cornez

- Issues:
1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.
 2. Whether a declaratory relief action can be brought to prevent the collection of tax.
 3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.

4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years: 1996 and 1997

Amount \$111,587.87

Status: Trial Setting Conference has been continued to March 19, 2007.

NEWS AMERICA INCORPORATED (FOX, INC.) v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC350576

Filed – 04/12/06

Taxpayer's Counsel

FTB's Counsel

Neil R. O'Hanlon

Felix E. Leatherwood

Hogan & Hartson, LLP

- Issues:
1. Whether the Franchise Tax Board properly classified gain realized on the sale of an interest in a partnership as nonbusiness income.
 2. If the gain on the sale of the interest in a partnership was nonbusiness income, whether it should be allocated to New York.
 3. Whether the assignment to California of the gain realized on the sale of the partnership fairly reflects the activities of the taxpayer in this state.

Year: 1989

Amount \$1,726,405.00

Status: Case Management Conference held on September 11, 2006. Defendant's Declaration for Additional Discovery filed on September 12, 2006.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC05-437721

Filed – 01/15/05

Court of Appeal 1st Appellate Court Dist. No. A114805

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein, Edwin Antolin

Marguerite Stricklin

Silverstein & Pomerantz

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clauses.

Years: 12/31/97 through 12/31/01

Amount \$25,067.00 Tax
\$ 3,764.29 Penalty

Status: **Defendant's Stipulation of Extension of Time to File Opening Brief filed on October 13, 2006.**
Plaintiff's Stipulation of Extension of Time to File Opening Brief filed on October 13, 2006.
Defendant's Notice of Appeal Re: Order Awarding Fees and Costs filed on October 17, 2006.
Amended Clerk's Notice of Filing of Notice of Appeal filed on October 27, 2006.

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386 Filed - 07/25/02

Court of Appeal, 2nd Appellate Dist. No. B169465

California Supreme Court No. S127649

Taxpayer's Counsel

Clayton Vreeland

Bingham McCutchen LLP

FTB's Counsel

Amy J. Winn

Issue: Whether the tax involved was timely assessed.

Year: 1983

Amount \$12,350.00

Status: Plaintiffs/Appellants' Petition for Rehearing denied and Remittitur issued on August 16, 2006.

PARÉ, David F. v. Franchise Tax Board

San Diego Superior Court Docket No. IC872806

Filed – 09/21/06

Taxpayer's Counsel

David F. Paré, In Pro Per

FTB's Counsel

Leslie Branman Smith

Issues: 1. Whether the child of an individual who lives with the plaintiff qualifies the individual for head-of-household filing status.
2. Whether the plaintiff has satisfied the requirements for bringing a suit for refund.

Years: 2000 through 2003

Amount \$5,185.00

Status: **Plaintiff's Second Summons and Complaint served by mail on the Franchise Tax Board on October 18, 2006.**

PLAYMATES TOYS, INC. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC344785

Filed – 12/19/05

Taxpayer's Counsel

Craig J. Stein

Gelfand, Stein & Wasson, LLP

FTB's Counsel

Joseph M. O'Heron

Issue: Whether Defendant Franchise Tax Board properly computed the numerator of the taxpayer's California sales factor by assigning sales made from Hong Kong to California.

Years: 1988 through 1990

Amount \$1,582,288.00

Status: **Defendant's Answer to First Amended Complaint filed on October 2, 2006. Hearing held on October 23, 2006, on Motion to Continue Trial to January 8, 2007. Plaintiff's Notice of Ruling on Joint Motion to Continue Trial Date to January 8, 2007, filed on October 23, 2006.**

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC 316070
Court of Appeal, 2nd Appellate Dist. No.B186947

Taxpayer's Counsel

W. Patrick O'Keefe, Jr.

W. Patrick O'Keefe, Jr. Incorporated

Filed – 05/25/04

FTB's Counsel

Anthony F. Sgherzi

Issue: Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.

Year: 1992

Amount \$45,415.00 Tax

Status: **Remittitur issued on October 5, 2006.**

SQUARE D COMPANY v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC05442465

Taxpayer's Counsel

Allan L. Schare, Kimberly M. Reeder

McDermott Will & Emery LLP

Palo Alto, Ca.

Richard A. Hanson

McDermott Will & Emery LLP

Chicago, IL

Filed – 06/21/05

FTB's Counsel

Paul Gifford

Issues: 1. Whether Palatine Hills Leasing, which invested in leverage lease transactions, was part of the unitary business conducted by Square D Company.
2. Whether the income of Palatine Hills Leasing constituted business income of the unitary business conducted by Square D Company.
3. How the proceeds from the short-term investment of funds should be reflected in the sales factor of the apportionment formula.

Years: 1985 through 1990

Amount \$5,635,087.40

Status: Order Granting Joint Motion for Continuance of Trial Date to December 4, 2006, filed on September 7, 2006.

SUNOCO, INC. v. Franchise Tax Board

Sacramento Superior Court Docket No. 06AS03797

Taxpayer's Counsel

Eric J. Coffill

Morrison & Foerster, LLP

Filed – 09/07/06

FTB's Counsel

Jeffrey A. Rich

Issues: 1. Whether gain realized on sale of stock was properly characterized as business income.
2. Whether sales were properly assigned to the California numerator of the sales factor.

Years: 1986 through 1990

Amount \$1,451,460.00

Status: **Defendant's Answer to Plaintiff's Complaint filed on October 6, 2006.**

TOY'S "R" US, INC. & AFFILIATES v. Franchise Tax Board

Sacramento Superior Court Docket No. 01AS04316
Court of Appeal, 4th Appellate Court No. C045386
California Supreme Court No. S143422

Filed - 07/17/01

Taxpayer's Counsel

Eric J. Coffill
Carley A. Roberts
Morrison & Foerster, LLP

FTB's Counsel

Michael J. Cornez

Issue: Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years: 1991 through 1994

Amount \$5,342,122.00

Status: Defendant/Respondent FTB's Certification of Interested Entities or Persons filed on August 4, 2006.
Plaintiff/Appellant Toys "R" Us Certification of Interested Entities or Persons filed on August 10, 2006.

UNION BANK OF CALIFORNIA v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 05441957

Filed – 06/06/05

Taxpayer's Counsel

James P. Kleier, Brian Toman, John R. Messenger
Reed Smith, LLP

FTB's Counsel

Anne Michelle Burr

Issues:

1. Whether additions to the bad debt reserves of the taxpayer's unitary business were properly calculated.
2. Whether there were losses arising from the exchange of loans for bonds that are deductible as ordinary losses.
3. Whether the water's-edge election fee assessed violated the Commerce Clause of the United State Constitution.

Year: 1991

Amount \$15,953,167.00

Status: Discovery proceeding. **Settlement Conference rescheduled to November 28, 2006. Order filed on October 4, 2006, continuing trial date to December 11, 2006.**

VENTAS FINANCE I, LLC v. Franchise Tax Board

San Francisco Superior Court Docket No. 05-440001

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz, LLP

Filed – 04/01/05

FTB's Counsel

Marguerite Stricklin

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax based upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clause.

Years: 2001 through 2003

Amount \$29,580.00

Status: Trial held August 14, 2006, case taken under submission by the Court.