



STATE OF CALIFORNIA  
**FRANCHISE TAX BOARD**  
Legal Department  
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Member

### **May 2007 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 – May 2007**

**Case Name**

**Court Number**

NONE

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**FRANCHISE AND INCOME TAX**  
**New Cases – May 2007**

**Case Name**

**Court Number**

Shaw, Brian K.

Los Angeles Superior Court No. BC370250

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

**May 2007**

**ABBOTT LABORATORIES & Affiliates v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC369808

*Taxpayer's Counsel*

J. Pat Powers  
Baker & McKenzie, LLP

Filed – 04/20/07

*FTB's Counsel*

Brian Wesley

Issue: Whether Plaintiffs were entitled to a deduction under section 24402 after the statute was found to be unconstitutional.

Years: 1999-2000 Amount \$715,735.00

Status: **Defendant's Demurrer filed on May 23, 2007. Hearing on Demurrer scheduled for July 12, 2007.**

**BAKERSFIELD MALL, LLC v. Franchise Tax Board**

San Francisco Superior Court Docket No. No. CGC07462728

*Taxpayer's Counsel*

Amy L. Silverstein, Edwin Antolin  
Silverstein & Pomerantz, LLP

Filed – 04/25/07

*FTB's Counsel*

Marguerite Stricklin

Issues: 1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.  
2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26 of the California Constitution.  
3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of the states police power and is void.

Years: 2000 through 2004 Amount \$56,537.00

Status: **Plaintiff's Application for Approval of Complex Litigation Designation filed on May 4, 2007. Complex Designation granted on May 22, 2007.**

**BLACKIE, GERALD v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC362241

*Taxpayer's Counsel*

Paul William Raymond  
Attorney at Law

Filed – 11/21/06

*FTB's Counsel*

Anthony Sgherzi

Issues: 1. Whether Plaintiff was a resident of California for the year 1994.  
2. Whether Plaintiff would be subject to any penalties if the tax is sustained.

Year: 1994 Amount \$538,997.00

Status: Initial Status Conference held on March 9, 2007. Trial scheduled for December 3, 2007.

**BRAR, Kaldeep S. & Imelda A. & Professional Resource Enterprises, Inc. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC365233

Filed – 01/24/07

Taxpayer's Counsel

Robert F Klueger, Esq.

Boldra, Klueger & Stein, LLP

FTB's Counsel

Mark P. Richelson

Issue: 1. Whether FTB properly determined the Los Angeles Revitalization Zone credit carryovers to which Plaintiffs were entitled.

Year: 1999 Amount \$335,885.53

Status: **Hearing on Demurrer held on May 3, 2007, Demurrer overruled.**

**BRATTON, KERRY M. v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC07461671

Filed – 03/23/07

Taxpayer's Counsel

Mark T. Schieble

Foley & Lardner, LLP

Attorneys At Law

FTB's Counsel

**Amy J. Winn**

Issue: Whether the penalty for the promotion of an abusive tax shelter provided for in section 19177 was properly assessed to Plaintiff.

Year: 2003 Amount \$3,996,235.94 Penalty

Status: **Defendant's Answer to Complaint filed on May 23, 2007. Cross-Complaint filed by Cross-Complainant Franchise Tax Board on May 25, 2007.**

**CITY NATIONAL CORPORATION v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC334772

Filed – 06/10/05

Court of Appeal, 2<sup>nd</sup> Appellate District No. B189240

California Supreme Court No. S150563

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: Defendant/Respondent's Petition for Review denied on April 11, 2007.

**CITY NATIONAL CORPORATION & Subs. v. Franchise Tax Board**

Sacramento Superior Court Docket No. 06AS02275

Taxpayer's Counsel

Kenneth R. Chiate

Quinn, Emanuel, Urquhart Oliver & Hedges, LLP

Sherrill Johnson

Offices of the General Counsel

City National Bank

Filed – 06/06/06

FTB's Counsel

Michael J. Cornez

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

Year: 2004

Amount \$23,900,000.00

Status: Discovery proceeding.

**COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board**

Sacramento Superior Court Docket No. 03AS00707

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts

Morrison & Foerster, LLP

Filed - 02/07/03

FTB's Counsel

Steven J. Green

- Issues:
1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.
  2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years: 1974 through 1982, 1984 through 1987, 1989 through 1991

Amount \$2,912,696.00

Status: Order to Stay Proceeding signed by Judge Virga on November 29, 2004, until a decision is reached in the *General Motors v. FTB* case.

**DELUCCHI, MARIO & KATHLEEN, et al. v. Franchise Tax Board**

Sacramento Superior Court Docket No. 06AS02661

Taxpayer's Counsel

Harry Gordon Oliver II

Attorney at Law

Filed – 06/22/06

FTB's Counsel

Michael J. Cornez

- Issues: 1. Whether Plaintiffs properly computed income on an installment sale.  
2. Whether Plaintiffs may be deemed to have elected out of the installment method.  
3. Whether Plaintiffs' gain on the sale of a stock qualified for exemption as Small Business Stock in 1995.

Year: 1995 Amount \$954,800.00

Status: Discovery proceeding.

**DICON FIBEROPTICS, INC. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC367885

Taxpayer's Counsel

Paul S. Chan and Angela E. Oh

Bird, Marella, Boxer, Wolpert,

Nessim, Dooks & Lincenberg, P.C.

Filed – 03/13/07

FTB's Counsel

Mark Richelson

Issue: Whether Franchise Tax Board properly denied EZ Credits claimed by Plaintiff.

Year: Ending 03/31/07 Amount \$1,104,992.00

Status: **Defendant's Demurrer and Points and Authorities filed on May 21, 2007.**

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

San Francisco Superior Court Docket No. CGC04436496

Taxpayer's Counsel

R. Todd Luoma

Law Office of Richard Todd Luoma

Filed - 11/19/04

FTB's Counsel

Anne Michelle Burr

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.

**DUFFIELD, David A. & Cheryl D. v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC07459331

Taxpayer's Counsel

Jeffrey M. Vesely

Kerne H. O. Matsubara, Annie H. Huang

Pillsbury, Winthrop, Shaw, Pittman, LLP

Filed – 01/05/07

FTB's Counsel

David Lew

- Issues: 1. Whether Plaintiffs exchange of PeopleSoft Stock for the stock of Nevada Pacific Development Corporation qualified as a tax-free exchange pursuant to Revenue and Taxation Code section 17321.  
2. Whether Plaintiffs were subject to the penalty imposed by section 19777.5.

3. Whether the penalty imposed by section 19777.5 meets Due Process requirements.
4. Whether Plaintiffs were entitled to an abatement of interest pursuant to Revenue and Taxation Code section 19104.

Year: 1994

Amount \$11,159,001.25

Status: Discovery proceeding.

**FREIDBERG, Edward and Traci Reynolds v. Franchise Tax Board**

Sacramento Superior Court Docket No. 07AM01181

Taxpayer's Counsel

Edward Freidberg, Suzanne M. Alves

Freidberg & Parker

Filed – 02/02/07

FTB's Counsel

Larry Keethe

Amy Winn

Issue: Whether Franchise Tax Board was required to credit the amount of a non-final judgment to satisfy Plaintiffs' self-assessed taxes for years subsequent to those involved in the judgment.

Years: 2003 and 2004

Amount \$9,326.32 Penalty

Status: **Plaintiffs' Stipulation to Transfer from Limited to Unlimited Jurisdiction Court and Order Thereon filed on May 17, 2007.**

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

San Francisco Superior Court Docket No. CGC06456659

Taxpayer's Counsel

William J. McLean

A Professional Law Corporation

Filed – 10/02/06

FTB's Counsel

Kristian Whitten

- 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: Discovery proceeding. Trial set for August 27, 2007. **Tentative Ruling; Defendant's Motion to File an Amended Answer is granted, Order signed in open court on May 25, 2007.**

**GENERAL ELECTRIC COMPANY AND SUBSIDIRIES v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC06-449157  
Court of Appeal, 1<sup>st</sup> Appellate Dist. Court No. A115530

Filed – 02/03/06

Taxpayer's Counsel

Amy L. Silvertein  
Silverstein & Pomerantz, LLP

FTB's Counsel

David Lew

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: Defendant/Respondent's Request for Oral Argument filed on March 7, 2007. Plaintiffs/Appellants' Request for Oral Argument filed on March 9, 2007.

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

San Francisco Superior Court Docket No. CGC05-439929

Filed – 03/29/05

Taxpayer's Counsel

Thomas H. Steele  
Andres Vallejo, Jeffrey S. Terraciano  
Morrison & Foerster LLP

FTB's Counsel

Joyce Hee

- 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 \$3,950,026.00

Status: **Status Conference held on May 10, 2007; Court Trial continued to July 25, 2007. Plaintiffs' Post-Trial Opening Brief filed on May 25, 2007.**

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

Los Angeles Superior Court Docket No. BC269404  
Court of Appeal, 2<sup>nd</sup> Appellate District No. B165665  
California Supreme Court No. S127086

Filed - 03/06/02

Taxpayer's Counsel

Charles R. Ajalat  
Law Office of Ajalat, Polley & Ayob

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: Remittitur issued on April 9, 2007. **Trial Setting Conference rescheduled to June 29, 2007.**

**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: Trial scheduled for July 11, 2007. Mandatory Settlement Conference scheduled for June 25, 2007.

**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

**Michael Cornez**

**Amy Winn**

- 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: Mandatory Settlement Conference scheduled for February 5, 2008. Trial scheduled for February 19, 2008.

**HAMPTON, RICKEY, Estate of Irene Dorothy Hampton (deceased) v. Franchise Tax Board**

Alameda Superior Court Docket No. WG07310386

Filed – 02/09/07

Taxpayer's Counsel

FTB's Counsel

Bernard F. Cummins

Randall P. Borcharding

Attorney At Law

Issue: Whether Plaintiffs are entitled to a refund of tax based on federal adjustments.

Year: 2003

Amount \$14,074.00

Status: **State Controller's Answer to Complaint for Refund of Overpayment Estate Tax filed on April 25, 2007. Defendant's Franchise Tax Board's Answer to Complaint filed on May 10, 2007.**

**HARGIS, BOB & RUTH v. Franchise Tax Board**

San Diego Superior Court Docket No. GIC 876431

Filed – 12/05/06

Taxpayer's Counsel

FTB's Counsel

Kevin M. Bagley, Robert M. Shaughnessy

Domini Pham

Duckor, Stradling, Metzger & Wynne

A Law Corporation

Issues: 1. Whether Plaintiffs were residents of California during the years at issue.  
2. Whether a penalty for a dishonored check was properly assessed.  
3. Whether the penalty provided for in section 19777.5 was properly assessed.

Years: 1999 and 2000

Amount \$915,873.40

Status: Discovery proceeding. **Case Management Conference scheduled for June 15, 2007.**

**HILTON, ERIC & BITTEN v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC354308

Filed – 06/21/06

Taxpayer's Counsel

FTB's Counsel

Richard K. Semeta

Anthony Sgherzi

A Professional Law Corporation

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: **Defendant's Trial Brief filed on May 10, 2007.**

**HYATT, GILBERT P. v. Franchise Tax Board**

Clark County Nevada District Court No. A382999  
Nevada Supreme Court No. 47141

Filed - 01/06/98

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison  
Hutchison & Steffen, H. Bartow Farr III

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

**Plaintiff's Petition for Writ of Mandamus to Nevada Supreme Court denied on May 10, 2007.**

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

Alameda Superior Court Docket No. 837723-0  
Court of Appeal, 1<sup>st</sup> Appellate District Court No. A102915  
California Supreme Court No. S136922

Filed - 04/09/01

Taxpayer's Counsel

Carley Roberts  
Morrison & Foerster, LLP

FTB's Counsel

Joyce Hee

Hollis L. Hyans  
Morrison & Foerster, LLP  
New York, NY

- 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: Defendant/Respondent's Reply to Plaintiffs/Appellants' Supplemental Brief filed on March 14, 2007.  
Plaintiff/Appellant's Supplemental Reply Brief filed on March 15, 2007.

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

San Francisco Superior Court Docket No. 302520

Filed - 04/05/99

Court of Appeal, 1<sup>st</sup> Appellate Dist. No. A091644

California Supreme Court No. S 104529

Court of Appeal, 1<sup>st</sup> Appellate Dis. No. A109715

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

*Taxpayer's Counsel*

William E. Taggart, Jr.

Taggart & Hawkins

*FTB's Counsel*

Marguerite Stricklin

Issue: Whether Plaintiffs were residents of California in 1993.

Year: 1993

Amount \$244,012.00

Status: **Appellants' Petition for Rehearing denied on May 10, 2007. Modified Opinion filed.**

**MERCURY GENERAL CORPORATION v. Franchise Tax Board**

San Francisco Superior Court Docket No. No. GCG07462688

Filed – 04/25/07

*Taxpayer's Counsel*

Roy E. Crawford, Robert J. Waldow

Heller, Ehrman, LLP

*FTB's Counsel*

Julian Standen

Issues:

1. Whether a portion of Plaintiff's insurance subsidiary management expenses was properly disallowed under Rev. & Tax. Code § 24425.
2. Whether the amnesty penalty under Rev. & Tax. Code § 19101 violates the due process clause of the U.S. Constitution, applies only retroactively, or attaches only after a liability becomes due and payable.

Years: 12/31/93 through 12/31/96

Amount \$7,585,601.28

Status: **Plaintiff's Proof of Service regarding Summons, Verified Complaint for Refund; Notice of Case Management Conference scheduled for September 21, 2007, filed on May 3, 2007.**

**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: Trial scheduled for October 5, 2007.

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

Sacramento Superior Court Docket No. 03AS05705

Filed - 10/10/03

Taxpayer's Counsel

FTB's Counsel

Robert R. Rubin

Michael Cornez

McDonough, Holland & Allen, PC

- 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 held on March 19, 2007, Trial set for July 23, 2007.

**NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC05-437721

Filed – 01/15/05

Court of Appeal 1<sup>st</sup> Appellate Court Dist. No. A114805

Court of Appeal, 1<sup>st</sup> Appellate Court Dist. No. A115841 (Attorneys' Fees)

Court of Appeal, 1<sup>st</sup> Appellate Court Dist. No. A115950 (Attorneys' Fees)

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 Fees  
\$ 3,764.29 Penalty

Status: Defendant/Appellant's Opening Brief filed on April 20, 2007.

**PARÉ, DAVID F. v. Franchise Tax Board**

San Diego Superior Court Docket No. IC872806

Filed – 09/21/06

Court of Appeal, 3<sup>rd</sup> Appellate Court No. A60614

Taxpayer's Counsel

FTB's Counsel

David F. Paré, In Pro Per

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 Notice Designating Record on Appeal filed on March 15, 2007. Plaintiff's Notice of Appeal/Cross-Appeal filed on March 15, 2007.

**PLAYMATES TOYS, INC. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC344785

Taxpayer's Counsel

Edward Gartenberg, Ellis G. Wasson and Kristin L. Sciarra  
Gartenberg, Gelfand, Wasson & Selden, LLP

Filed – 12/19/05

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: Discovery proceeding. Notice of Status Conference rescheduled to July 12, 2007. **Trial rescheduled to July 26, 2007.**

**SHAW, Brian K. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC370250

Taxpayer's Counsel

David Roth, Esq.  
Hochman, Salkin, Rettig, Toscher and Perez

Filed – 04/27/07

FTB's Counsel

Diane Spencer Shaw

- Issues: 1. Whether Plaintiff was a resident of California.  
2. Whether section 19777.5 violates Due Process.

Years: 1990 through 1994 Amount \$576,518.00

Status: Plaintiff's Summons and Complaint served personally on the Franchise Tax Board on May 18, 2007.

**SHIMMON, Edward & Anneliese v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC363822

Taxpayer's Counsel

Charles P. Rettig, Sharyn M. Fisk  
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Filed – 12/22/06

FTB's Counsel

Donald Currier

Issue: Whether a taxpayer filing under the first option of VCI was eligible for the interest suspension provided by section 19116.

Year: 1999 Amount \$515,422.00 Interest

Status: Case Management Conference held on April 17, 2007.

**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: **Defendant's Notice of Entry of Judgment filed on May 7, 2007.**

**TOYS "R" US, INC. & AFFILIATES v. Franchise Tax Board**

Sacramento Superior Court Docket No. 01AS04316

Court of Appeal, 4<sup>th</sup> Appellate Court No. C045386

California Supreme Court No. S143422

Taxpayer's Counsel

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

Filed - 07/17/01

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 \$5,342,117.00

Status: Case is transferred to the Court of Appeal on November 15, 2006, with directions to vacate its decision and to reconsider the cause of action in light of Microsoft v. Franchise Tax Board (2006) 39 Cal.4<sup>th</sup> 750 and General Motors v. Franchise Tax Board (2006) 39 Cal.4<sup>th</sup> 773. (Cal. Rules of Court, rule 29.3(d).)

**VENTAS FINANCE I, LLC v. Franchise Tax Board**

San Francisco Superior Court Docket No. 05-440001

Court of Appeal, 1<sup>st</sup> Appellate Court No. A116277

*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: **Defendant/Appellant's Motion to Consolidate Appeals A116277 and A117751 granted on May 25, 2007, for purposes of Briefing, Oral Argument and decision.**