

chair **John Chiang**
member **Judy Chu, Ph.D.**
member **Michael C. Genest**



State of California
Franchise Tax Board

July 2008 Franchise Tax Board Public 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 – July 2008

Case Name

Court Number

Bratton, Kerry M.

San Francisco Superior Court Case No. CGC07461671

FRANCHISE AND INCOME TAX
New Cases – July 2008

Case Name

Court Number

NONE

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

July 2008

ABBOTT LABORATORIES & Affiliates v. Franchise Tax Board

Los Angeles Superior Court Case No. BC369808
Court of Appeal, 2nd Appellate Dist. Case No. B204210

Filed – 04/20/07

Taxpayer's Counsel

J. Pat Powers
Baker & McKenzie, LLP

FTB's Counsel

Brian Wesley

Scott L Brandman (NY)
Baker & McKenzie, LLP

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

Years: 1999 and 2000

Amount \$2,340,093.00

Status: **Extension granted to August 14, 2008, to file Appellant's Reply Brief.**

APPLE, INC. v. Franchise Tax Board

San Francisco Superior Court Case No. CGC08471129

Filed – 01/16/08

Taxpayer's Counsel

Jeffrey M. Vesely
Pillsbury, Winthrop, Shaw, Pittman, LLP

FTB's Counsel

Kristian Whitten

Issues: 1. Whether the Franchise Tax Board properly determined the order in which dividends are paid from earnings and profits.
2. Whether the Franchise Tax Board improperly allocated and disallowed interest.

Year: 09/30/89

Amount \$231,038.00

Status: Mandatory Settlement Conference rescheduled to January 9, 2009. Trial rescheduled to January 26, 2009.

BAKERSFIELD MALL, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC07462728
Court of Appeal, 1st Appellate District Case No. A119709

Filed – 04/25/07

Taxpayer's Counsel

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

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: **Trial continued to August 28, 2008.**

BANISTER, JOSEPH R. v. Franchise Tax Board

Sacramento Superior Court Case No. 06CS00930 (Petition Writ of Mandate)

Filed – 07/10/06

Sacramento Superior Court Case No. 07AS04091 (Claim for Refund)

Transferred – 09/14/07

Taxpayer's Counsel

FTB's Counsel

Joseph R. Banister (Pro Per)

Amy Winn

- Issues:
1. Whether plaintiff has a California filing obligation.
 2. Whether penalties were properly assessed against plaintiff.

Year: 2002

Amount \$895.00 Tax
\$537.50 Penalty

Status: Docket No. 07AS04091:

Trial Setting Conference held on June 16, 2008. Settlement Conference scheduled for August 14, 2008.
Trial scheduled for September 16, 2008.

BAYER CORPORATION v. Franchise Tax Board

Sacramento Superior Court Case No. 07AS03350

Filed – 07/23/07

Taxpayer's Counsel

FTB's Counsel

Eric J. Coffill, Carley A. Roberts

Steven J. Green

Morrison & Foerster, LLP

Issue: Whether the value of Plaintiff's inventory was properly calculated for each of the years for purposes of determining its cost of goods sold.

Years: 1993 and 1994

Amount \$2,481,551.00

Status: Discovery proceeding.

BRAR, KALDEEP S. & IMELDA A. & PROFESSIONAL RESOURCE ENTERPRISES, INC. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC365233

Filed – 01/24/07

Court of Appeal, 2nd Appellate District Case No. B207757

Taxpayer's Counsel

FTB's Counsel

Robert F Klueger, Esq.

Mark P. Richelson

Boldra, Klueger & Stein, LLP

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

Year: 1999

Amount \$335,885.53

Status: Plaintiffs' Notice of Appeal filed on May 13, 2008.

CITY NATIONAL CORPORATION v. Franchise Tax Board

Los Angeles Superior Court Case No. BC334772

Filed – 06/10/05

Court of Appeal, 2nd Appellate District Case 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

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: **Case Management Conference continued to October 20, 2008.**

CITY NATIONAL CORPORATION & Subs. v. Franchise Tax Board

Sacramento Superior Court Case No. 06AS02275

Filed – 06/06/06

Taxpayer's Counsel

Kenneth R. Chiate

Quinn, Emanuel, Urquhart Oliver & Hedges, LLP

FTB's Counsel

Molly K. Mosley

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: Defendant's Notice of Entry of Order to Stay Action Pending Certain Developments in Related Los Angeles Action filed on April 3, 2008.

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

Sacramento Superior Court Case No. 06AS02661
Court of Appeal, 3rd Appellate District Case No. C056503

Filed – 06/22/06

Taxpayer's Counsel
Harry Gordon Oliver II
Attorney at Law

FTB's Counsel
George Spanos

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: **Plaintiffs/Appellants' Reply Brief due on September 29, 2008.**

DICON FIBEROPTICS, INC. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC367885
Court of Appeal, 2nd Appellate District Case No. B202997

Filed – 03/13/07

Taxpayer's Counsel
Thomas R. Freeman, Paul S. Chan,
Bird, Marella, Boxer, Wolpert,
Nessim, Drooks & Lincenberg, P.C.

FTB's Counsel
Mark Richelson

Marty Dakessian
Mardiros, Hagop, Dakessian

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

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

Status: Plaintiff/Appellant's Reply Brief filed on June 4, 2008. Application of Deluxe Corporation for Leave to File Amicus Curiae Brief, and Request for Judicial Notice, filed on June 17, 2008.

DU, BENJAMIN R. AND CARMELA v. Franchise Tax Board

Los Angeles Superior Court Case No. BC391413

Filed – 05/23/08

Taxpayer's Counsel
Charles P. Rettig, Steven Toscher
Sharyn M. Fisk & Michael R. Stein
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

FTB's Counsel
Donald R. Currier

Issue: Whether plaintiffs are entitled to interest suspension under Revenue and Taxation Code section 19116.

Year: 1999 Amount \$288,938.00 Interest

Status: **Defendant's Demurrer filed on July 10, 2008. Hearing on Demurrer scheduled on September 11, 2008.**

DUFFIELD, DAVID A. & CHERYL D. v. Franchise Tax Board

San Francisco Superior Court Case 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 \$7,152,029.00 Tax
\$4,006,669.25 Penalty

Status: Hearing on Order to Show Cause scheduled for June 10, 2008, taken off calendar.

ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board

Sacramento Superior Court Case No. 07AS0307

Taxpayer's Counsel

Robert R. Rubin

McDonough, Holland & Allen, PC

Filed – 07/05/07

FTB's Counsel

Robert Asperger

Issue: Whether Plaintiff was entitled for California purposes, to elect out of treatment provided by section 338(h)(10) of the Internal Revenue Code.

Year: 08/28/97

Amount \$630,615.97

Status: Trial Setting Conference continued to September 15, 2008.

FREIDBERG, EDWARD AND TRACI REYNOLDS v. Franchise Tax Board

Sacramento Superior Court Case No. 07AS02358

Taxpayer's Counsel

Edward Freidberg, Suzanne M. Alves

Freidberg & Parker

Filed – 02/02/07

FTB's Counsel

Amy Winn

Larry Keethe

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: **Judgment in favor of Plaintiffs filed on July 30, 2008.**

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

San Francisco Superior Court Case No. CGC06456659

Taxpayer's Counsel

William J. McLean

A Professional Law Corporation

Filed – 10/02/06

FTB's Counsel

Kristian Whitten

- Issues: 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 \$357,009.00 Tax
\$259,056.00 Penalty

Status: **Judgment in favor of Plaintiffs filed on July 2, 2008.**

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

San Francisco Superior Court Case No. CGC05439929

Court of Appeal, 1st Appellate District Case No. A120492

Taxpayer's Counsel

Thomas H. Steele

Andres Vallejo, Jeffrey S. Terraciano

Morrison & Foerster LLP

Paul H. Frankel

Morrison & Foerster LLP

Filed – 03/29/05

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: **Defendant/Respondent's Brief filed on July 29, 2008.**

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

Los Angeles Superior Court Case No. BC269404

Court of Appeal, 2nd Appellate District Case No. B165665

California Supreme Court No. S127086

Taxpayer's Counsel

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayoob

Filed - 03/06/02

FTB's Counsel

Stephen Lew

Donald Currier

- 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: Final Status Conference scheduled for September 29, 2008. Trial scheduled for October 1, 2008.

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

Los Angeles Superior Court Case No. BC353849

Filed – 06/15/06

Court of Appeal, 2nd Appellate Court District Case No. B205246

Taxpayer's Counsel

FTB's Counsel

Alan R. Maler

Marla Markman

Greenberg Traurig, LLP

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: Plaintiff/Appellant's Stipulation of Extension of Time to file Opening Brief to August 14, 2008, filed on June 17, 2008.

GONZALES, THOMAS J. II v. Franchise Tax Board

San Francisco Superior Court Case No. CGC06454297

Filed – 07/18/06

Taxpayer's Counsel

FTB's Counsel

Martin A. Schainbaum, Esq.

Jeffrey Rich

Martin A. Schainbaum, PLC

- Issues:
1. Whether a \$142,000,000.00 capital loss from an abusive tax shelter is 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: **Hearing on Demurrer held on July 10, 2008, and continued to August 5, 2008.**

GRIBBLE, STANLEY W. & SWG MANAGEMENT COMPANY v. Franchise Tax Board

Los Angeles Superior Court Case No. BC393360

Taxpayer's Counsel

James G. Damon, M. Edward Mishow, Esq.

Voss, Cook & Thel, LLP

Filed – 06/26/08

FTB's Counsel

Christine Zarifian

Stephen Lew

- Issues:
1. Whether stock basis can be increased when cancellation of indebtedness income is not recognized because of the insolvency exception of IRC §108(a)(1)(B).
 2. Whether various transactions between the Plaintiffs and third parties lacked economic substance.
 3. Whether the penalty under Revenue and Taxation Code section 19777.5 was properly assessed.

Year: 1994 (Gribble)

Amount \$671,102.00 Tax
\$178,015.05 Penalty

1994 (SWG)

Amount \$51,179.11 Tax

Status: **Answer to Complaint to be filed on September 13, 2008.**

HANGER, DWIGHT T. & VICKI J. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC382988

Taxpayer's Counsel

Gordon B. Cutler, Esq.

Filed – 12/28/07

FTB's Counsel

Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000

Amount \$324,908.00

Status: Mandatory Settlement scheduled for October 2, 2008. Final Status Conference scheduled for November 21, 2008. Trial scheduled for December 1, 2008.

HYATT, GILBERT P. v. Franchise Tax Board

Clark County Nevada District Court Case No. A382999

Nevada Supreme Court Case 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: Clark County Nevada District Court
Case submitted to the Jury on July 30, 2008.

JENSEN, CRAIG C. & SALLY v. Franchise Tax Board

Los Angeles Superior Court Case No. 08K09860

Taxpayer's Counsel

Jonathan Bailey Lappen
Lappen and Lappen

Filed – 04/18/08

FTB's Counsel

Anthony Sgherzi

Issue: Whether Revenue and Taxation Code section 17043, which imposes an additional tax of one percent on taxable income in excess of \$1 million in taxable years beginning on or after January 1, 2005, violates the equal protection clause of the U.S. Constitution.

Year: 2006

Amount \$19,283.00

Status: Court's Order Sustaining Demurrer Without Leave to Amend filed on July 29, 2008. Motion and Order of Dismissal by the Court filed on July 29, 2008.

KANCHANAPOOM, VISUT & MEECHI v. Franchise Tax Board

Los Angeles Superior Court Case No. NC050569

Taxpayer's Counsel

Kenneth J. Catanzarite
Richard Vergel de Dios
Catanzarite Law Corporation

Filed – 12/04/07

FTB's Counsel

Ron Ito

Issue: Whether passive activity and capital losses from the disposition of partnership interests are deductible in the taxable years in issue.

Years: 1991 through 1995

Amount \$230,632.00

Status: Defendant's Demurrer filed on May 8, 2008. Plaintiffs' Opposition to Demurrer filed on May 28, 2008. Response to Opposition to Demurrer of Defendant to Second Amended Complaint filed on June 3, 2008. Defendant's Answer to Second Amended Complaint filed on June 19, 2008. Final Status Conference scheduled for January 9, 2009. Trial scheduled for January 20, 2009.

MANNING, LAWRENCE T. & JOY v. Franchise Tax Board

Los Angeles Superior Court Case No. BC382987

Taxpayer's Counsel

Gordon B. Cutler, Esq.

Filed – 12/28/07

FTB's Counsel

Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000

Amount \$167,710.00

Status: Mandatory Settlement Conference scheduled for October 2, 2008. Final Status Conference scheduled for November 21, 2008. Trial scheduled for December 1, 2008.

MERCURY GENERAL CORPORATION v. Franchise Tax Board

San Francisco Superior Court Case No. CGC07462688

Taxpayer's Counsel

Roy E. Crawford, Robert J. Waldow
McDermott, Will & Emery

Filed – 04/25/07

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 § 19777.5 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 \$7,238,225.53 Tax
\$4,453,793.66 Penalty

Status: **Statement of Decision in favor of Plaintiff filed on July 24, 2008.**

MICKELSEN, PAUL L. & PATRICIA A. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC385197

Taxpayer's Counsel

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

Filed – 02/08/08

FTB's Counsel

Mark P. Richelson

Issue: Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.

Year: 1999

Amount \$537,178.00 Interest

Status: Hearing on Motion and Motion for Judgment on the Pleadings scheduled for August 21, 2008.

MICROSOFT CORPORATION v. Franchise Tax Board

San Francisco Superior Court Case No. CGC08471260

Taxpayer's Counsel

James P. Kleier, Brian W. Toman
Reed Smith, LLP

Filed – 01/22/08

FTB's Counsel

Joyce Hee
Lucy Wang

- Issues:
1. Whether royalty income received from licensing agreements with Original Equipment Manufacturers should be sourced outside of California based upon costs of performance.
 2. Whether receipts from trading marketable securities should be included in the sales factor.

3. Whether the value of trademarks, copyrights, patents and other intangible assets should be included in the property factor.
4. Whether the taxpayer should be allowed a deduction under Revenue and Taxation Code section 24402 for dividends received for the years at issue.
5. Whether the amnesty penalty under Rev. & Tax. Code § 19777.5 violates the due process clause of the U.S. Constitution, applies only retroactively, or attaches only after a liability becomes due and payable.

Years: 1995 and 1996

Amount \$25,283,868.00

Status: Case Management Conference continued to September 26, 2008. **Plaintiff's First Amended Complaint filed on July 7, 2008.**

MIKE, ANGELINA v. Franchise Tax Board

San Diego Superior Court Case No. 37-2007-00067324-CU-MC-CTL

Taxpayer's Counsel

Richard M. Freeman, Carole M Ross

Sheppard, Mullin, Richter & Hampton, LLP

Filed – 05/25/07

FTB's Counsel

Leslie Branman Smith

Issue: Whether plaintiff's distribution of gaming income derived from revenue generated on a Native American reservation is exempted from California tax because plaintiff resided on the reservation of another tribe.

Year: 2000

Amount \$31,856.00

Status: Trial scheduled for September 19, 2008. Discovery proceeding.

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

Sacramento Superior Court Case No. 03AS05705

Taxpayer's Counsel

Robert R. Rubin

McDonough, Holland & Allen, PC

Filed - 10/10/03

FTB's Counsel

Amy Winn

- 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 set for July 23, 2007 postponed, date unknown.

NISSAN NORTH AMERICA, INC. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC373781

Taxpayer's Counsel

Richard J. Ayoob

Ajalat, Polley, Ayoob & Matarese

Filed – 07/06/07

FTB's Counsel

Mark P. Richelson

Ronald N. Ito

Donald R. Currier

- Issues: 1. Whether claimed EZ credits were erroneously disallowed.
2. Whether Value Added Taxes should be included in the denominator of the sales factor.
3. Whether other errors were made in computing the taxpayer's tax.

Years: 04/01/01 through 03/31/02

Amount \$725,632.00

Status: Case Management Conference held on May 7, 2008.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC05-437721

Court of Appeal 1st Appellate Court District Case No. A114805

Court of Appeal, 1st Appellate Court District Case No. A115841 (Attorneys' Fees)

Court of Appeal, 1st Appellate Court District Case No. A115950 (Attorneys' Fees)

California Supreme Court Case No. S162627

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz

Filed – 01/15/05

FTB's Counsel

Marguerite C. Stricklin

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: **Remittitur issued on July 8, 2008.**

PARÉ, David F. v. Franchise Tax Board

San Diego Superior Court Case No. IC872806

Superior Court Appellate Division Case No. 37-2008-002000002-CL-MC-CTL

Taxpayer's Counsel

David F. Paré, Pro Per

Filed – 09/21/06

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 \$5,735.90

Status: Appellant's Reply Brief filed on June 5, 2008.

REILING, BERNARD & JUDITH ET AL, v. Franchise Tax Board

Los Angeles Superior Court Case No. BC378978

Taxpayer's Counsel

James D. Gustafson, Stephen R. Goostrey

Gustafson & Goostrey, LLP

Filed – 10/12/07

FTB's Counsel

Donald R. Currier

Elisa Wolfe-Donato

Issue: Whether Plaintiffs are entitled to deductions, depreciation, and deferral of gains by virtue of acquiring participation units in a trust that does not hold title to the underlying property.

Years: 1998 through 2002

Amount \$709,482.00

Status: Final Status Conference scheduled for January 12, 2009. Trial scheduled for January 21, 2009.

Discovery proceeding.

RIVER GARDEN RETIREMENT HOME v. Franchise Tax Board

San Francisco Superior Court Case No. CGC07467783

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz, LLP

Filed – 10/02/07

FTB's Counsel

David Lew

- Issues:
1. Whether Plaintiff is entitled to a dividend received deduction under Revenue and Taxation Code section 24402 for the years in issue.
 2. Whether the penalty imposed by Revenue and Taxation Code section 19777.5 was properly assessed.

Years: 1999 and 2000

Amount \$5,375.26 Tax
\$ 895.93 Penalty

Status: Mandatory Settlement Conference set for September 5, 2008. Trial set for September 22, 2008.

Discovery proceeding.

ROHR, INC. v. Franchise Tax Board

San Diego Superior Court Case No. 37-2007-00070925-CU-CO-CTL

Court of Appeal, 4th Dist., Division 1 Case No. D052309

California Supreme Court Case No. S161612

Taxpayer's Counsel

Mark L. Mann

Luce, Forward, Hamilton & Scripps LLP

Filed – 09/07/07

FTB's Counsel

Brian D. Wesley

- Issues:
1. Whether Rohr, Inc. was engaged in a unitary business with Rohr Credit Corporation, its subsidiary.
 2. Whether losses incurred by Rohr Credit Corporation constituted nonbusiness income.
 3. Whether plaintiff is entitled to attorneys' fees.
 4. Whether a suit for refund can be maintained where not all the interest due has been paid.

Years: 07/31/85 through 07/31/87

Amount \$5,155,415.00

Status: Petition for Review was denied on April 16, 2008. Discovery proceeding.

SHAW, BRIAN K. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC378829

Taxpayer's Counsel

David Roth, Esq.

Hochman, Salkin, Rettig, Toscher & Perez

Filed – 10/10/07

FTB's Counsel

Diane Spencer-Shaw

Issues: 1. Whether Plaintiff was a resident of California for tax purposes.
2. Whether assessing a penalty under Revenue and Taxation Code section 19777.5 violates Due Process.

Years: 1990 through 1994

Amount \$487,084.00 Tax
\$ 89,534.00 Penalty

Status: **Trial Setting Conference held on July 31, 2008. Trial scheduled for July 20, 2009.**

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board

Los Angeles Superior Court Case 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

Lisa W. Chao

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: Hearing on Order to Show Cause held on June 20, 2008. Post Mediation Status Conference scheduled for October 29, 2008. **Discovery proceeding.**

THODE, JEROME P. & KATHLEEN A. THODE-FERRIS v. Franchise Tax Board

Los Angeles Superior Court Case No. BC383969

Taxpayer's Counsel

Gordon B. Cutler, Esq.

Filed – 01/17/08

FTB's Counsel

Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000

Amount \$137,694.00

Status: Case Management Conference rescheduled to August 11, 2008.

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

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

Filed - 07/17/01

Taxpayer's Counsel

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

FTB's Counsel

Steven J. Green

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.4th 750 and General Motors v. Franchise Tax Board (2006) 39 Cal.4th 773. (Cal. Rules of Court, rule 29.3(d).)

VENTAS FINANCE I, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. 05-440001
Court of Appeal, 1st Appellate Court Case No. A116277 & Case No. A117751

Filed – 04/01/05

Taxpayer's Counsel

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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: **Case argued and submitted on July 10, 2008.**