



### August 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 – August 2008**

**Case Name**

**Court Number**

Duffield, David A. & Cheryl D

San Francisco Superior Court Case No. CGC07459331

Friedberg, Edward & Traci Reynolds

Sacramento Superior Court No. 07AM01181

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**FRANCHISE AND INCOME TAX  
New Cases – August 2008**

**Case Name**

**Court Number**

NONE

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FRANCHISE AND INCOME TAX  
MONTHLY PUBLIC LITIGATION ROSTER

August 2008

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

Los Angeles Superior Court Case No. BC369808  
Court of Appeal, 2<sup>nd</sup> 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: Appellant's Reply Brief filed on August 8, 2008. Plaintiff's Supplemental Request for Judicial Notice of Appellant's Opening Brief in: *Ceridian Corp. v. Franchise Tax Board*, filed with permission of the Court on August 12, 2008.

**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, 1<sup>st</sup> 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 October 10, 2008.

**BANISTER, JOSEPH R. v. Franchise Tax Board**

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

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

Taxpayer's Counsel

Joseph R. Banister (Pro Per)

Filed - 07/10/06

Transferred - 09/14/07

FTB's Counsel

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. Trial scheduled for September 16, 2008.

**BAYER CORPORATION v. Franchise Tax Board**

Sacramento Superior Court Case No. 07AS03350

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts

Morrison & Foerster, LLP

Filed - 07/23/07

FTB's Counsel

Steven J. Green

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

Court of Appeal, 2<sup>nd</sup> Appellate District Case No. B207757

Taxpayer's Counsel

Robert F Klueger, Esq.

Klueger & Stein, LLP

Filed - 01/24/07

FTB's Counsel

Mark P. Richelson

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

Year: 1999

Amount \$335,885.53

Status: On August 11, 2008, Appeal Dismissed per Rule 8.140(b) for failure to file record on appeal. Motion to Withdraw as Appellant's Counsel filed by Robert Klueger on August 14, 2008.

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

Los Angeles Superior Court Case No. BC334772  
Court of Appeal, 2<sup>nd</sup> Appellate District Case No. B189240  
California Supreme Court No. S150563

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

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, 3<sup>rd</sup> 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 filed on August 13, 2008.

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

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

Filed – 03/13/07

Taxpayer's Counsel

Thomas R. Freeman, Paul S. Chan,  
Bird, Marella, Boxer, Wolpert,  
Nessim, Dooks & 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: Deluxe Corporation's Application to File Amicus Curiae Brief filed on August 4, 2008. Defendant's Reply to Deluxe Corporation's Amicus Curiae Brief filed on August 22, 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: Hearing on consolidated cases held on August 7, 2008. Mediation vacated, hearing on demurrer continued to October 29, 2008.

**ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board**

Sacramento Superior Court Case No. 07AS0307

Filed – 07/05/07

Taxpayer's Counsel

Robert R. Rubin  
McDonough, Holland & Allen, PC

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.

**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, 1<sup>st</sup> 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: Plaintiffs/Appellant's Reply Brief to be filed by September 17, 2008.

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

Los Angeles Superior Court Case No. BC269404

Court of Appeal, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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 Extension of Time to file Opening Brief to September 15, 2008, granted on August 13, 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: Order Sustaining Defendant's Demurrer to Answer to Cross-Complaint Without Leave to Amend filed on August 18, 2008.

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

Los Angeles Superior Court Case No. BC393360

Filed - 06/26/08

Taxpayer's Counsel

FTB's Counsel

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

Christine Zarifian

Voss, Cook & Thel, LLP

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.

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| <u>Year:</u> 1994 (Gribble) | <u>Amount</u> \$671,102.00 Tax<br>\$178,015.05 Penalty |
| <u>Year</u> 1994 (SWG)      | <u>Amount</u> \$51,179.11 Tax                          |

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

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| <b>HANGER, DWIGHT T. &amp; VICKI J. v. Franchise Tax Board</b><br>Los Angeles Superior Court Case No. BC382988<br><u>Taxpayer's Counsel</u><br>Gordon B. Cutler, Esq. | Filed - 12/28/07<br><u>FTB's Counsel</u><br>Anthony Sgherzi |
|---|---|

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

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|-------------------|----------------------------|
| <u>Year:</u> 2000 | <u>Amount</u> \$324,908.00 |
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Status: Mandatory Settlement scheduled for October 2, 2008. Final Status Conference scheduled for November 21, 2008. Trial scheduled for December 1, 2008.

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| <b>HYATT, GILBERT P. v. Franchise Tax Board</b><br>Clark County Nevada District Court Case No. A382999<br>Nevada Supreme Court Case No. 47141<br><u>Taxpayer's Counsel</u><br>Thomas L. Steffen & Mark A. Hutchison<br>Hutchison & Steffen, H. Bartow Farr III | Filed - 01/06/98<br><u>FTB's Counsel</u><br>James W. Bradshaw<br>McDonald, Carano,<br>Wilson LLP<br>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.

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| <u>Years:</u> 1991 and 1992 | <u>Amount</u> \$7,545,492.00 Tax<br>\$5,659,119.00 Penalty |
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Status: Clark County Nevada District Court  
 On August 6, 2008, the Jury rendered a verdict in favor of plaintiff. Damages were awarded in the amount of \$85 million for intentional infliction of emotional distress, \$52 million for invasion of privacy and \$1.1 million for attorneys' fees expended in the administrative process ongoing in California. On August 14, 2008, the Jury awarded plaintiff punitive damages of \$250 million. The District Court has scheduled post-trial motions and a November 19, 2008 hearing.

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| <b>JENSEN, CRAIG C. &amp; SALLY v. Franchise Tax Board</b><br>Los Angeles Superior Court Case No. 08K09860<br><u>Taxpayer's Counsel</u><br>Jonathan Bailey Lappen<br>Lappen and Lappen | Filed - 04/18/08<br><u>FTB's Counsel</u><br>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: Plaintiffs' Notice of Appeal and Notice of Designation of Record on Appeal filed on August 26, 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: 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: Judgment in favor of Plaintiff filed on August 4, 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 consolidated cases held on August 7, 2008. Mediation vacated, hearing on demurrer continued to October 29, 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. **Defendant's Answer to Amended Complaint for Refund of Corporate Franchise Tax filed on August 6, 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. Ayooob

Ajalat, Polley, Ayooob & 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

Filed - 01/15/05

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

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

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

California Supreme Court Case No. S162627

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz

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

Filed – 09/21/06

Taxpayer's Counsel  
David F. Paré, 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 \$5,735.90

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

Filed – 10/12/07

Taxpayer's Counsel  
James D. Gustafson, Stephen R. Goostrey  
Gustafson & Goostrey, LLP

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

Filed – 10/02/07

Taxpayer's Counsel  
Amy L. Silverstein, Edwin Antolin  
Silverstein & Pomerantz, LLP

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, 4<sup>th</sup> Dist., Division 1 Case No. D052309  
California Supreme Court Case No. S161612

Filed – 09/07/07

Taxpayer's Counsel  
Mark L. Mann  
Luce, Forward, Hamilton & Scripps LLP

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: 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 consolidated cases held on August 7, 2008. Mediation vacated, hearing on demurrer continued to October 29, 2008.

**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 October 29, 2008.

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

Sacramento Superior Court Case No. 01AS04316  
Court of Appeal, 4<sup>th</sup> 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: **Stipulated Motion to Place Case in Mediation Program filed on August 1, 2008. Stipulated Motion granted on August 15, 2008.**

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

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

Filed - 04/01/05

Taxpayer's Counsel

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

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: **Opinion filed on August 11, 2008. Judgment is affirmed in part and reversed in part.**