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September 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 - September 2008

Case Name

Court Number

New Gaming Systems, Inc. & AKA Industries, Inc. Sacramento Superior Court Case No. 03AS05705

General Motors Corporation, et al. Los Angeles Superior Court Case No. BC269404

FRANCHISE AND INCOME TAX
New Cases - September 2008

Case Name

Court Number

NONE

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

September 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: Amicus Curiae Brief in Support of Application of California Taxpayers' Association and River Garden Retirement Home filed by Plaintiffs on September 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

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: Trial date to be rescheduled. Defendant's Notice of Motion to Quash Trial Subpoenas Duces Tecum filed on September 19, 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, 2nd Appellate District Case No. B207757

Taxpayer's Counsel

Kaldeep S. Brar, Pro Per

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: Order, Motion to Withdraw as Appellants' Counsel granted on September 12, 2008.

CITY NATIONAL CORPORATION v. Franchise Tax Board

Los Angeles Superior Court Case No. BC334772

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

Filed - 06/10/05

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

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

Molly K. Mosley

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

Taxpayer's Counsel

Harry Gordon Oliver II

Attorney at Law

Filed - 06/22/06

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, 2nd Appellate District Case No. B202997

Taxpayer's Counsel

Thomas R. Freeman, Paul S. Chan,

Bird, Marella, Boxer, Wolpert,

Nessim, Dooks & Lincenberg, P.C.

Marty Dakessian

Mardiros, Hagop, Dakessian

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 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

Taxpayer's Counsel

Charles P. Rettig, Steven Toscher

Sharyn M. Fisk & Michael R. Stein

Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Filed - 05/23/08

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: Case Management Conference off calendar on September 17, 2008.

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: Case Management Conference held on September 22, 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: Defendant's Notice of Appeal filed on September 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

Filed – 03/29/05

Taxpayer's Counsel

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

FTB's Counsel

Joyce Hee

Paul H. Frankel
Morrison & Foerster LLP

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 filed on September 16, 2008.

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

Los Angeles Superior Court Case No. BC353849
Court of Appeal, 2nd Appellate Court District Case No. B205246

Filed – 06/15/06

Taxpayer's Counsel

Alan R. Maler
Greenberg Traurig, LLP

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: Defendant/Appellant's Opening Brief filed on September 15, 2008.

GONZALES, THOMAS J. II v. Franchise Tax Board

San Francisco Superior Court Case No. CGC06454297

Filed – 07/18/06

Taxpayer's Counsel

Martin A. Schainbaum, Esq.
Martin A. Schainbaum, PLC

FTB's Counsel

Jeffrey Rich

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 Cross-Motions for Summary Judgment scheduled for November 13, 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

Year 1994 (SWG) Amount \$51,179.11 Tax

Status: Answer to Complaint filed on September 12, 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 Conference rescheduled to October 16, 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
The District Court has scheduled post-trial motions for November 19, 2008 hearing.

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: **Notice of Filing Notice of Appeal sent by Clerk on September 3, 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 rescheduled to October 16, 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: **Plaintiff's Motion for Reasonable Litigation Costs, including Attorneys' Fees denied on September 29, 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 scheduled for September 17, 2008, taken off calendar.**

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: **Mandatory Settlement Conference rescheduled to May 1, 2009. Trial rescheduled to May 18, 2009.**

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 rescheduled to October 6, 2008.

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: Final Status Conference scheduled for March 13, 2009. Trial scheduled for March 23, 2009.

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: Notice of Entry of Order Extending Time to File Motion for Attorneys Fees on Appeal filed on September 24, 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: Oral Argument in Appellate Division scheduled for October 17, 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: Order granting Motion for Summary Judgment of Defendant, and denying Motion of Plaintiff, filed on September 24, 2008.

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: 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 1994Amount

\$487,084.00 Tax

\$ 89,534.00 Penalty

Status: Post-Mediation Status Conference scheduled for November 6, 2008. Final Status Conference scheduled for July 10, 2009. 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: 1999Amount

\$515,422.00 Interest

Status: Post-Mediation Status Conference regarding Motion for Judgment on the Pleadings/Demurrer rescheduled 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: 2000Amount

\$137,694.00

Status: Status Conference scheduled for December 29, 2008.

TOYS "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

Taxpayer's Counsel

Eric J. Coffill

Carley A. Roberts

Morrison & Foerster, LLP

Filed - 07/17/01

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

Filed - 04/01/05

Court of Appeal, 1st Appellate Court Case No. A116277 & Case No. A117751

California Supreme Court Case No. S166870

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: Plaintiff/Petitioner's Petition for Review filed in the California Supreme Court on September 19, 2008.