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### January 2009 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 - January 2009

Case Name

Court Number

FRANCHISE AND INCOME TAX  
New Cases - January 2009

Case Name

Court Number

NONE

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

January 2009

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

Los Angeles Superior Court Case No. BC369808  
Court of Appeal, 2<sup>nd</sup> Appellate District 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: Oral Argument is continued to February 11, 2009.

**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: Plaintiff's Opening Brief filed on January 26, 2009. Defendant's Trial Brief filed January 26, 2009. Trial scheduled for January 26, 2009, off calendar on January 27, 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: Case Management Conference rescheduled to March 13, 2009.

**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 held on January 5, 2009. Defendant's Motion in Limine to Establish Order of Proof filed on January 13, 2009. Defendant's Consolidated Reply Brief regarding Motions in Limine filed on January 23, 2009.

**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: Mediation Brief of Defendant filed January 20, 2009. Mediation held on January 26, 2009, Motion to be filed subsequently.

**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 Case No. S150563

Taxpayer's Counsel

Kenneth R. Chiate, Mary S. Thomas

Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP

Filed – 06/10/05

FTB's Counsel

Brian Wesley

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 held on January 15, 2009, and continued to March 5, 2009.

**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, 3<sup>rd</sup> 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: Oral Argument waived by Plaintiffs/Appellants and Defendant/Respondent on December 12, 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

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

Issues: 1. Whether Franchise Tax Board properly denied EZ Credits claimed by Plaintiff.  
2. Whether Franchise Tax Board has authority to look behind vouchers issued by Local Enterprise Zone coordinator.

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

Status: Oral Argument held on January 27, 2009.

**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

Mark Richelson

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

Year: 1999 Amount \$288,938.00 Interest

Status: **Judgment Sustaining Demurrer Without Leave to Amend and Dismissing Action filed on January 9, 2009. Notice of Entry of Judgment Sustaining Demurrer Without Leave to Amend and Dismissing Action filed on January 16, 2009.**

**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: Mandatory Settlement Conference scheduled for March 3, 2009. Trial scheduled for April 21, 2009.

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

San Francisco Superior Court Case No. CGC06456659

**Court of Appeal, 1<sup>st</sup> Appellate District. Case No. A122710**

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/Appellant's Opening Brief filed on January 12, 2009. Plaintiffs/Respondents' Brief to be filed on March 23, 2009.**

**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

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: Oral Argument scheduled for February 26, 2009.

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

Los Angeles Superior Court Case No. BC353849  
Court of Appeal, 2<sup>nd</sup> Appellate 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: Plaintiff/Respondent's Reply Brief to be filed on February 13, 2009.

**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: Case Management Conference scheduled for March 12, 2009.

**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: **Case Management Conference held on January 13, 2009.** Final Status Conference scheduled for August 5, 2009. Trial scheduled for August 11, 2009.

**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: Final Status Conference scheduled for January 30, 2009.

**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  
**Post-trial Motions heard on January 21, 2009.**

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

Los Angeles Superior Court Case No. 08K09860  
Court of Appeal, 2<sup>nd</sup> Appellate District Case No. B211815

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: **Plaintiffs/Appellants' Opening Brief to be filed on March 4, 2009.**

**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: **Discovery proceeding.** Final Status Conference rescheduled to March 17, 2009. Trial rescheduled to March 30, 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: **Final Status Conference continued to August 11, 2009.**

**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: Order of Dismissal, and Order Sustaining Motion for Judgment on the Pleadings Without Leave to Amend, filed by Defendant on January 9, 2009. Notice of Entry of Order Sustaining Motion for Judgment on the Pleadings Without Leave to Amend, filed on January 16, 2009.

**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

David Lew  
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 September 3, 2009. Order Granting Ex-Parte Application to Continued Trial Date to September 21, 2009, filed on January 16, 2009. Defendant's Substitution of Attorney filed on January 22, 2009. David Lew Substituted for Joyce Hee,

**MIKE, ANGELINA v. Franchise Tax Board**

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

Appellate Court, 4<sup>th</sup> Appellate District Court No. D054439

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: Plaintiff's Notice of Appeal filed on January 20, 2009.

**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: 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. CGC05437721 Filed - 01/15/05

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

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

Court of Appeal, 1<sup>st</sup> Appellate 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: Case Management Conference held on January 23, 2009. Trial scheduled for June 19, 2009.

**QUIGLEY, RODNEY J. & DEBRA J. v. Franchise Tax Board**

United States District Court, Northern District, No. C0804616

Filed - 10/06/08

Taxpayer's Counsel

Rodney J. Quigley, Pro Per

FTB's Counsel

Kristian Whitten

Issue: Whether interest received on a federal tax refund suit constitutes income.

Year: 2004 Amount \$879.35

Status: Defendant's Motion to Dismiss granted on December 8, 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. Carrier

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: Post Mediation Status Conference scheduled for May 8, 2009. Final Status Conference scheduled for June 8, 2009. Trial scheduled for June 17, 2009.

**RIVER GARDEN RETIREMENT HOME v. Franchise Tax Board**

San Francisco Superior Court Case No. CGC07467783  
Court of Appeal, 1<sup>st</sup> Appellate District. No. A123316

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: Plaintiff/Appellant's Opening Brief to be filed on February 13, 2009. Defendant/Respondent's Reply Brief to be filed on March 13, 2009.

**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> Appellate District 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

Filed - 10/10/07

Taxpayer's Counsel

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

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: Post-Mediation Status Conference continued by Stipulation to March 12, 2009. 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

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: Order of Dismissal. Order Sustaining Motion for Judgment on the Pleadings Without Leave to Amend, filed by Defendant on January 9, 2009. Notice of Entry of Order Sustaining Motion for Judgment on the Pleadings Without Leave to Amend, filed by Defendant on January 16, 2009.

**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: Status Conference held on December 29, 2008.

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

Sacramento Superior Court Case No. 01AS04316

Court of Appeal, 3<sup>rd</sup> Appellate District 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: Plaintiffs/Appellants' Mediation Brief filed on December 10, 2008.

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

San Francisco Superior Court Case No. 05440001

Court of Appeal, 1<sup>st</sup> Appellate District Case No. A116277 & Case No. A117751

California Supreme Court Case No. S166870

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: Plaintiff/Petitioner's Petition for Review denied on November 13, 2008.