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### **February 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 – February 2009

Case Name

Court Number

FRANCHISE AND INCOME TAX  
New Cases – February 2009

Case Name

Court Number

California Taxpayers' Association

Sacramento Superior Court Case No. 34-2009-80000168

Montgomery, Parker G.

San Francisco Superior Court Case No. CGC09484121

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

February 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 held on 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: Trial held on February 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: 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: Order Directing Plaintiff to Submit Affidavit Regarding Income, filed on February 9, 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: Order Directing Payment and Requiring Filing of Dismissal, filed on February 9, 2009.

**CALIFORNIA TAXPAYERS' ASSOCIATION v. Franchise Tax Board**

Sacramento Superior Court Case No. 34-2009-80000138

Taxpayer's Counsel

Amy L. Silverstein, Edwin P. Antolin

Silverstein & Pomerantz, LLP

Filed - 02/17/09

FTB's Counsel

Jill T. Bowers

- Issues: 1. Whether RTC section 19138 creates a new penalty for the underpayment of taxes owed or creates a new tax.  
2. Whether RTC section 19138 required a two-thirds vote of both the Assembly and Senate to be properly enacted under Article XIII A, § 3 of the California Constitution.  
3. Whether RTC section 19138 was enacted in accordance with Article IV, § 8(b) of the California Constitution.  
4. Whether RTC section 19138 violates the Eight and Fourteenth Amendments to the Constitution of the United States of America.  
5. Whether RTC section 19138 violates the Commerce Clause of the Constitution of the United States of America by improperly discriminating against corporations engaged in a unitary business.  
6. Whether Plaintiff is entitled to the issuance of a writ of mandate commanding FTB to not enforce RTC section 19138.

Year: 2003

Amount \$0.00

Status: Plaintiff's Petition for Writ of Mandate and Verified Complaint for Injunctive Relief and Declaratory Judgment, served on February 18, 2009.

**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

Filed – 06/10/05

Taxpayer's Counsel

Kenneth R. Chiate, Mary S. Thomas  
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP

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

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: **Published Opinion; Judgment affirmed in favor of Defendant/Respondent. on February 4, 2009,**

**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

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: Plaintiff/Appellant's Letter Brief filed on February 13, 2009. Defendant/Respondent's Letter Brief filed on February 13, 2009. Defendant/Respondent's Reply to Plaintiff/Appellant's Letter Brief filed on February 20, 2009. Plaintiff/Appellant's Reply to Defendant/Respondent's Letter Brief filed on February 20, 2009.

**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

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: Plaintiffs' Notice of Appeal filed on February 5, 2009.

**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: 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

Filed - 10/02/06

Taxpayer's Counsel

William J. McLean  
A Professional Law Corporation

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 held on 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 Extension to file Reply Brief granted to March 17, 2009.

**GONZALES, THOMAS J. II v. Franchise Tax Board**  
San Francisco Superior Court Case No. CGC06454297  
*Taxpayer's Counsel*  
Martin A. Schainbaum, Esq.  
Martin A. Schainbaum, PLC

Filed - 07/18/06  
*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

**Nevada Supreme Court Case No. 53264**

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

**Franchise Tax Board Notice of Appeal filed at the Nevada Supreme Court on February 18, 2009. Hearing regarding Rule 60 Motion scheduled for April 2, 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: **Defendant Demurrer filed on February 13, 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 &amp; 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: Plaintiffs' Notice of Appeal filed on February 5, 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.

**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.

**MONTGOMERY, Parker G. v. Franchise Tax Board**

San Francisco Superior Court Case No. CGC09484121

Taxpayer's Counsel

David E. Harris  
Miller, Starr, Regalia  
A Professional Law Corporation

Filed - 01/15/09

FTB's Counsel

Karen Yiu

Issue: Whether Franchise Tax Board properly denied Plaintiff's claimed worthless stock deduction.

Year: 1999 Amount \$332,692.00 Tax  
\$126,530.46 Penalty

Status: Plaintiff's Summons and Complaint served on February 24, 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. A114805Court 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 &amp; 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: 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 &amp; 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: 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

Filed - 10/02/07

Court of Appeal, 1<sup>st</sup> Appellate District. No. A123316Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein &amp; 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 April 14, 2009. Defendant/Respondent's Brief to be filed on July 14, 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

Filed - 12/22/06

Taxpayer's Counsel

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

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 Int.

Status: Plaintiff's Notice of Appeal filed on February 5, 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

**U.S. Supreme Court Case No. 08-1022**

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: Petitioner Ventas Finance I, LLC's Petition for Writ of Certiorari filed in the U.S. Supreme Court on February 10, 2009. Respondent FTB's Waiver of Right to Respond, filed on February 24, 2009.