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### **May 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 – MAY 2009

Case Name

Court Number

Bayer Corporation

Sacramento Superior Court Case No. 07AS03350

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FRANCHISE AND INCOME TAX  
New Cases – MAY 2009

Case Name

Court Number

None

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

**May 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 Tax

Status: Unpublished Opinion vacated by Court of Appeal on April 20, 2009.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 Tax

Status: Tentative Decision filed on May 19, 2009, with direction that Plaintiff file a Proposed Statement of Decision.

**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 state police power and is void.

Years: 2000 through 2004 Amount \$56,537.00 Tax

Status: Case Management Conference held on May 22, 2009, regarding Plaintiff's Motion for Leave to Amend Complaint.

**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: Judgment in favor of Defendant filed on April 8, 2009.

**BANKS, KENNETH v. Franchise Tax Board**

San Francisco Superior Court Case No. CGC09484981

Taxpayer's Counsel

Stephen Moskowitz, Esq.

Law Offices of Stephen Moskowitz, LLP

Filed - 02/13/09

FTB's Counsel

Lucy Wang

Issue: Whether Plaintiff was a Resident of California during 1995.

Year: 1995

Amount \$276,096.00 Tax

Status: Answer to Complaint filed on April 24, 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: Respondent's Notice of Demurrer and Demurrer to Petition for Writ of Mandate and Verified Complaint for Injunctive Relief and Declaratory Judgment filed on April 2, 2009. Petitioner's Request for Judicial Notice in Support of Verified Petition for Writ of Mandate and Opposition to Demurrer by Respondent, filed on April 13, 2009. Hearing on the Merits of the Petition was held on May 8, 2009, and, by Order issued April 20, 2009, denied in its entirety.

**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 Tax

Status: Case Management Conference held on June 11, 2009. Final Status Conference scheduled for November 2, 2009. Trial scheduled for November 10, 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 Tax

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

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 Tax

Status: **Petition for Rehearing denied on June 2, 2009. Petition for Review filed with the California Supreme Court on June 16, 2009.**

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

Los Angeles Superior Court Case No. BC391413

Filed - 05/23/08

Court of Appeal, 2<sup>nd</sup> Appellate District Case No. B213971 (consolidated with Mickelsen & Shimmon)

Taxpayer's Counsel

FTB's Counsel

Charles P. Rettig, Steven Toscher

Mark Richelson

Sharyn M. Fisk & Michael R. Stein

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

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

FTB's Counsel

Robert R. Rubin

Robert Asperger

McDonough, Holland & Allen, PC

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 Tax

Status: **Plaintiff's Notice of Change of Address filed on May 14, 2009. Trial rescheduled to July 1, 2009.**

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

San Francisco Superior Court Case No. CGC06456659

Filed - 10/02/06

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

Taxpayer's Counsel

FTB's Counsel

William J. McLean

Kristian Whitten

A Professional Law Corporation

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:** Plaintiffs/Respondents' Request for Oral Argument filed by Plaintiffs on May 4, 2009.  
Defendant/Appellant's Letter Brief filed on issue of timelines of appeal filed on May 18, 2009.  
Plaintiffs/Respondents' Letter Brief filed on May 20, 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 Tax

**Status:** Plaintiffs/Respondents' Answer to Petition for Review filed on June 10, 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 Tax

**Status:** Awaiting Court of Appeal's decision.

**GOLDMAN, STEPHEN J. AND AZITA ETAATI v. Franchise Tax Board**

Alameda County Superior Court Case No. RG09441003

Filed – 03/12/09

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

FTB's Counsel

David Lew

**Issue:** The issue is whether a self-reporting taxpayer participating in the Voluntary Compliance Initiative (VCI) is entitled to interest suspension under Revenue and Taxation Code section 19116.

**Year:** 2000 **Amount** \$823,950.00 Interest

**Status:** Defendant's Answer to Complaint filed on April 27, 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 Tax

Status: Oral Argument regarding entitlement to Jury Trial scheduled for July 16, 2009. Case Management Conference scheduled for June 11, 2009, continued to September 10, 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: 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 Tax

Status: Final Status Conference scheduled for January 30, 2009, off calendar.

**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

Filed - 01/06/98

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison  
Hutchison & Steffen, H. Bartow Farr III

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: **Nevada Supreme Court**  
**Defendant's Opening Brief to be filed on July 20, 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

Filed - 04/18/08

Taxpayer's Counsel

Jonathan Bailey Lappen  
Lappen and Lappen

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 Tax

Status: Defendant/Respondent's Opening Brief filed on April 29, 2009.

**KIEWIT CORPORATION v. Franchise Tax Board**

San Diego Superior Court Case No.37-2009-00087282-CU-MC-CTL

Filed - 04/09/09

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

FTB's Counsel

Brian Wesley

- Issues:
1. Whether Plaintiff is entitled to a refund of taxes due to RTC section 24410 having been declared unconstitutional.
  2. Whether Plaintiff properly included gross receipts from securities as part of the sales factor in calculating its tax liability to California.
  3. Whether Plaintiff is entitled to a refund of taxes due to a claimed entitlement to Enterprise Zone hiring credits.
  4. Whether Plaintiff is entitled to a refund of taxes due to RTC section 24402 having been declared unconstitutional.

5. Whether Plaintiff's sale of an interest in a partnership may properly be considered non-business income.

Years: 1996 through 2001 Amount \$3,779,530.00 Tax

Status: Defendant's Answer to Complaint filed on May 10, 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 Tax

Status: Final Status Conference scheduled for January 30, 2009, continued to August 11, 2009.

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

Los Angeles Superior Court Case No. BC385197

Court of Appeal, 2<sup>nd</sup> Appellate District Case No. B213971 (consolidated with Du et al. & Shimmon)

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: 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 Tax

**Status:** Defendant's Motion for Summary Adjudication filed on June 4, 2009. Hearing on Motion scheduled for August 20, 2009. Mandatory Settlement Conference scheduled for September 3, 2009. Trial scheduled for September 21, 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

Filed - 05/25/07

Taxpayer's Counsel

Richard M. Freeman, Carole M Ross  
Sheppard, Mullin, Richter & Hampton, LLP

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 Tax

**Status:** Plaintiff/Appellant's Stipulation of Extension of Time to File Opening Brief to July 8, 2009, filed.

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

San Francisco Superior Court Case No. CGC09484121

Filed - 01/15/09

Taxpayer's Counsel

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

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:** Case Management Conference continued to July 24, 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 continued to July 7, 2009.

**QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board**

San Francisco Superior Court Case No. CGC09487540

Taxpayer's Counsel

Amanda J. Pedvin  
Steptoe & Johnson, LLP

Filed - 04/20/09

FTB's Counsel

Anne Michelle Burr

- Issues:
1. Whether the promoter penalty provided for in RTC section 19177 violates the due process clause of the United States and California Constitutions.
  2. Whether the promoter penalty provided for in RTC section 19177 violates the commerce clause contained within the United States Constitution
  3. Whether the penalty provisions provided for in RTC section 19177 apply to activities prior to calendar year 2005.
  4. Whether the proper measure of the promoter penalty is \$1,000 per transaction or 50% of the gross income derived from the improper activity.
  5. Whether the proper measure of the promoter penalty may include income not received by the person/entity against whom the penalty has been assessed.

Years: N/A

Refund sought \$3,473,437.50 Penalty

Status: Defendant's Answer to Complaint filed on June 11, 2009. Defendant's Cross-Complaint filed on June 11, 2009.

**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. 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 Tax

Status: Order regarding Continuance of Trial Date and Associated Dates filed on April 24, 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

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: Plaintiff/Appellant's Opening Brief filed on April 30, 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 Tax

Status: Plaintiff's Motion for Summary Judgment granted on April 1, 2009.

**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 held on March 12, 2009.

**SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board**

Los Angeles Superior Court Case No. BC363822

Filed – 12/22/06

Court of Appeal, 2<sup>nd</sup> Appellate District Case No. B213971 (consolidated with Du et al. & Mickelsen)

*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 Interest

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

Filed – 01/17/08

*Taxpayer's Counsel*

Gordon B. Cutler, Esq.

*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 Tax

Status: Status Conference held on December 29, 2008.

**TWENTY-NINE PALMS BAND OF MISSION INDIANS v. Arnold Schwarzenegger & Selvi Stanislaus**

U.S. District Court, Eastern Division-Riverside Court House, Case No. EDCV08-1753-VAP (OPx)

Filed - 03/30/09

*Taxpayer's Counsel*

Richard M. Freeman, Matthew S. McConnell, Carole M. Ross  
Sheppard, Mullin, Richter & Hampton, LLP

*FTB's Counsel*

Timothy Nader

- Issues:
1. Whether California's taxation of per-capita gambling distributions made by tribes to tribal members not living on the tribe's reservation violates:
    - A. The Indian Commerce Clause contained within the United States Constitution;
    - B. The Supremacy Clause of the United States Constitution;
    - C. The Indian Gaming Regulatory Act; or
    - D. The Tribal-State Gaming Compact between the tribe and the State of California.
  2. Whether California taxation of wages earned by tribal members working at tribal casinos but not living on the tribe's reservation violates:
    - A. The Indian Commerce Clause contained within the United States Constitution;
    - B. The Supremacy Clause of the United States Constitution;
    - C. The Indian Gaming Regulatory Act; or
    - D. The Tribal-State Gaming Compact between the tribe and the State of California.
  3. Whether the tribe constitutes a partnership-type organization such that monetary distributions to its members are exempt from taxation by the State of California.

Year: None Amount None

Status: Defendant's Notice of Motion and Motion to Dismiss Amended Complaint filed on June 5, 2009.  
Defendant's Request for Judicial Notice in Support of Motion to Dismiss Amended Complaint filed on June 5, 2009. Hearing on Motion to Dismiss scheduled for July 20, 2009.

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

San Francisco Superior Court Case No. 05440001

Filed - 04/01/05

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

*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 Tax

Status: Petition for Writ of Certiorari denied on April 6, 2009, by U.S. Supreme Court. Case is remanded to San Francisco County Superior Court.

**WESTLUND, Charles G. v. Franchise Tax Board**  
Los Angeles Superior Court Case No. BC406803  
Taxpayer's Counsel  
Robert F. Klueger, Esq.  
Klueger & Stein, LLP

Filed - 01/30/09  
FTB's Counsel  
Mark P. Richelson

**Issue:** Whether FTB properly imposed additional tax and related assessments against Plaintiff for failing to report income received during tax years 1994, 1995 and 1996.

**Years:** 1994 through 1996

**Amount** \$96,632.00 Tax  
\$116,622.67 Penalty

**Status:** Case Management Conference scheduled for June 16, 2009.