State of California
Franchise Tax Board

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Legal Division MS A390
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Sacramento, CA 95812-2229

June 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.

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FRANCHISE AND INCOME TAX
Closed Cases – June 2009

Case Name	Court Number
None	

FRANCHISE AND INCOME TAX
New Cases – MAY 2009

Case Name	Court Number
None	

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

June 2009

ABBOTT LABORATORIES & Affiliates v. Franchise Tax Board
Los Angeles Superior Court Case No. BC369808 — Filed – 04/20/07
Court of Appeal, 2nd Appellate District Case No. B204210

Taxpayer's Counsel	*FTB's Counsel*
J. Pat Powers	Brian Wesley
Baker & McKenzie, LLP	
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Status: Unpublished Opinion vacated by Court of Appeal on April 20, 2009.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	*FTB's Counsel*
Jeffrey M. Vesely	Kristian Whitten
Pillsbury, Winthrop, Shaw, Pittman, LLP	

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	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	Marguerite Stricklin
Silverstein & Pomerantz, LLP	

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 regarding Plaintiff's Motion for Leave to Amend Complaint continued to July 30, 2009.**

BANISTER, JOSEPH R. v. Franchise Tax Board
Sacramento Superior Court Case No. 06CS00930 (Petition Writ of Mandate) — Filed – 07/10/06
Sacramento Superior Court Case No. 07AS04091 (Claim for Refund) — Transferred – 09/14/07

Taxpayer's Counsel	*FTB's Counsel*
Joseph R. Banister (Pro Per)	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 — Filed - 02/13/09

Taxpayer's Counsel	*FTB's Counsel*
Stephen Moskowitz, Esq. Law Offices of Stephen Moskowitz, LLP	Lucy Wang

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

Year: 1995 — Amount: $276,096.00 Tax

Status: **Case Management Statements filed by both parties on June 18, 2009.**

CALIFORNIA TAXPAYERS' ASSOCIATION v. Franchise Tax Board
Sacramento Superior Court Case No. 34-2009-80000138 — Filed – 02/17/09

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin P. Antolin Silverstein & Pomerantz, LLP	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 XIIIA, § 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: **Order and Judgment Denying Petition for Writ of Mandate and Verified Complaint for Injunctive Relief and Declaratory Judgment, filed on June 5, 2009.**

CITY NATIONAL CORPORATION v. Franchise Tax Board
Los Angeles Superior Court Case No. BC334772 — Filed – 06/10/05
Court of Appeal, 2nd Appellate District Case No. B189240
California Supreme Court Case No. S150563

Taxpayer's Counsel	*FTB's Counsel*
Kenneth R. Chiate, Mary S. Thomas	Brian Wesley
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP	
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: **Plaintiff's Notice of Motion for Protective Order filed on June 25, 2009. Hearing scheduled for July 29, 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	*FTB's Counsel*
Kenneth R. Chiate	Molly K. Mosley
Quinn, Emanuel, Urquhart Oliver & Hedges, LLP	
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 — Filed – 03/13/07
Court of Appeal, 2nd Appellate District Case No. B202997

Taxpayer's Counsel	*FTB's Counsel*
Thomas R. Freeman, Paul S. Chan,	Mark Richelson
Bird, Marella, Boxer, Wolpert,	
Nessim, Drooks & Lincenberg, P.C.	
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, 2nd 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/Appellants' Opening Brief to be filed by July 27, 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: **Trial held on July 1, 2009, matter taken under submission.**

GARCIA, W. ROCKE AND GLENDA L. v. Franchise Tax Board
San Francisco Superior Court Case No. CGC06456659 Filed – 10/02/06
Court of Appeal, 1st 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: **Oral Argument held on July 7, 2009.**

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board
San Francisco Superior Court Case No. CGC05439929 — Filed – 03/29/05
Court of Appeal, 1st Appellate District Case No. A120492
California Supreme Court Case No. S173180

Taxpayer's Counsel	*FTB's Counsel*
Thomas H. Steele	Joyce Hee
Andres Vallejo, Jeffrey S. Terraciano	
Morrison & Foerster LLP	
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 General Mills' Answer to Petition for Review filed on June 10, 2009.
Defendant/Appellant FTB's Reply to Answer to Petition for Review, filed on June 23, 2009.

GOLDEN WEST HEALTH PLAN, INC. v. Franchise Tax Board
Los Angeles Superior Court Case No. BC353849 — Filed – 06/15/06
Court of Appeal, 2nd Appellate District Case No. B205246

Taxpayer's Counsel	*FTB's Counsel*
Alan R. Maler	Marla Markman
Greenberg Traurig, LLP	

Issue: Whether Plaintiff made a valid S Corporation election for California purposes.

Years: 04/01/03 through 06/01/03 — Amount $669,045.00 Tax

Status: **Oral Argument held on July 10, 2009.**

GOLDMAN, STEPHEN J. AND AZITA ETAATI v. Franchise Tax Board
Alameda County Superior Court Case No. RG09441003 — Filed – 03/12/09

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	David Lew
Silverstein & Pomerantz, LLP	

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 — Filed – 07/18/06

Taxpayer's Counsel	*FTB's Counsel*
Martin A. Schainbaum, Esq.	Jeffrey Rich
Martin A. Schainbaum, PLC	

Issues:
1. Whether a $142,000,000.00 capital loss from an abusive tax shelter is allowable.
2. Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.
3. Whether the taxpayer is entitled to deduct legal expenses paid in connection with an investment.

Years: 2000 and 2001 — Amount $12,374,510.00 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 — Filed – 06/26/08

Taxpayer's Counsel	*FTB's Counsel*
James G. Damon, M. Edward Mishow, Esq.	Christine Zarifian
Voss, Cook & Thel, LLP	Stephen Lew

Issues:
1. Whether stock basis can be increased when cancellation of indebtness 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 assesed.

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 — Filed – 12/28/07

Taxpayer's Counsel	*FTB's Counsel*
Gordon B. Cutler, Esq.	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 — Filed - 01/06/98
Nevada Supreme Court Case No. 47141
Nevada Supreme Court Case No. 53264

Taxpayer's Counsel	*FTB's Counsel*
Thomas L. Steffen & Mark A. Hutchison	James W. Bradshaw
Hutchison & Steffen, H. Bartow Farr III	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 — Filed – 04/18/08
Court of Appeal, 2nd Appellate District Case No. B211815

Taxpayer's Counsel	*FTB's Counsel*
Jonathan Bailey Lappen	Anthony Sgherzi
Lappen and Lappen	

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	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Brian Wesley
Silverstein & Pomerantz, LLP	

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 Demurrer filed on May 26, 2009.**

MANNING, LAWRENCE T. & JOY v. Franchise Tax Board
Los Angeles Superior Court Case No. BC382987 Filed – 12/28/07

Taxpayer's Counsel	*FTB's Counsel*
Gordon B. Cutler, Esq.	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 Filed – 02/08/08
Court of Appeal, 2nd Appellate District Case No.B213971 (consolidated with Du et al. & Shimmon)

Taxpayer's Counsel	*FTB's Counsel*
Charles P. Rettig, Esq.	Mark P. Richelson
Steven Toscher, Sharyn M. Fisk	
Hochman, Salkin, Retigg, Toscher & Perez, P.C.	

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: **Plaintiff/Appellant's Opening Brief to be filed by July 27, 2009.**

MICROSOFT CORPORATION v. Franchise Tax Board
San Francisco Superior Court Case No. CGC08471260 Filed – 01/22/08

Taxpayer's Counsel	*FTB's Counsel*
James P. Kleier, Brian W. Toman	David Lew
Reed Smith, LLP	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: Hearing on Motion for Summary Adjudication 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 — Filed – 05/25/07
Appellate Court, 4th Appellate District Court No. D054439

Taxpayer's Counsel	*FTB's Counsel*
Richard M. Freeman, Carole M Ross	Leslie Branman Smith
Sheppard, Mullin, Richter & Hampton, LLP	

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 Opening Brief filed on July 8, 2009.**

MONTGOMERY, Parker G. v. Franchise Tax Board
San Francisco Superior Court Case No. CGC09484121 — Filed – 01/15/09

Taxpayer's Counsel	*FTB's Counsel*
David E. Harris	Karen Yiu
Miller, Starr, Regalia	
A Professional Law Corporation	

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 1st Appellate District Case No. A114805
Court of Appeal, 1st Appellate District Case No. A115841 (Attorneys' Fees)
Court of Appeal, 1st Appellate District Case No. A115950 (Attorneys' Fees)
California Supreme Court Case No. S162627

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	Marguerite C. Stricklin
Silverstein & Pomerantz	

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 scheduled for July 7, 2009, rescheduled to August 14, 2009.**

QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. CGC09487540 — Filed – 04/20/09

Taxpayer's Counsel	*FTB's Counsel*
Amanda J. Pedvin	Anne Michelle Burr
Steptoe & Johnson, LLP	

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: **Motion to Admit Counsel Pro Hac Vice, and Declaration in support thereof filed by Plaintiff on July 2, 2009. Hearing scheduled for August 4, 2009. Answer to Cross Complaint filed by Cross Defendant Quellos Financial Advisors LLC on July 6, 2009.**

REILING, BERNARD & JUDITH ET AL, v. Franchise Tax Board
Los Angeles Superior Court Case No. BC378978 — Filed – 10/12/07

Taxpayer's Counsel	*FTB's Counsel*
James D. Gustafson, Stephen R. Goostrey	Donald R. Currier
Gustafson & Goostrey, LLP	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: **Post Mediation Status Conference scheduled for August 26, 2009. Final Status Conference scheduled for September 28, 2009. Trial scheduled for October 7 2009.**

RIVER GARDEN RETIREMENT HOME v. Franchise Tax Board
San Francisco Superior Court Case No. CGC07467783 — Filed – 10/02/07
Court of Appeal, 1st Appellate District. No. A123316

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	David Lew
Silverstein & Pomerantz, LLP	

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 — Filed – 09/07/07
Court of Appeal, 4th Appellate District Division 1 Case No. D052309
California Supreme Court Case No. S161612

Taxpayer's Counsel	*FTB's Counsel*
Mark L. Mann	Brian D. Wesley
Luce, Forward, Hamilton & Scripps LLP	

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: Awaiting Court's Judgment to be filed.

SHAW, BRIAN K. v. Franchise Tax Board
Los Angeles Superior Court Case No. BC378829 — Filed – 10/10/07

Taxpayer's Counsel	*FTB's Counsel*
David Roth, Esq.	Diane Spencer-Shaw
Hochman, Salkin, Rettig, Toscher & Perez	

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, 2nd Appellate District Case No.B213971 (consolidated with Du et al. & Mickelsen)

Taxpayer's Counsel	*FTB's Counsel*
Charles P. Rettig, Sharyn M. Fisk	Lisa W. Chao
Hochman, Salkin, Rettig, Toscher & Perez, P.C.	

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: **Plaintiffs/Appellant's Opening Brief to be filed by July 27, 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	*FTB's Counsel*
Gordon B. Cutler, Esq.	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 scheduled for July 1, 2009, rescheduled to December 14, 2009.**

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	*FTB's Counsel*
Richard M. Freeman, Matthew S. McConnell, Carole M. Ross	Timothy Nader
Sheppard, Mullin, Richter & Hampton, LLP	

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: **Order filed on June 30, 2009, continuing Hearing on Motion to Dismiss to August 3, 2009.**

VENTAS FINANCE I, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. 05440001 Filed – 04/01/05
Court of Appeal, 1st 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	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	Marguerite Stricklin
Silverstein & Pomerantz, LLP	

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 — Filed - 01/30/09

Taxpayer's Counsel	*FTB's Counsel*
Robert F. Klueger, Esq.	Mark P. Richelson
Klueger & Stein, LLP	

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 held on June 16, 2009. Post Mediation Conference scheduled for August 17, 2009. Final Status Conference scheduled for November 23, 2009. Trial Date Set for December 7, 2009.**