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July 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 – July 2009

Case Name

Court Number

Banister, Joseph R.

Sacramento Superior Court Case No. 07AS04091

FRANCHISE AND INCOME TAX
New Cases – July 2009

Case Name

Court Number

Personal Selling Power, Inc.

Alameda Superior Court Case No. RG09462520

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

July 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

Taxpayer's Counsel

FTB's Counsel

J. Pat Powers

Scott L Brandman (NY)

Brian Wesley

Baker & McKenzie, LLP

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: Published Opinion affirming Judgment in favor of FTB, filed on July 21, 2009. Modified Opinion filed on August 6, 2009 (no change in Judgment).

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 September 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: 1995Amount \$276,096.00 TaxStatus: Order for Arbitration and Pre-Arbitration Settlement Conference scheduled for November 3, 2009. Case Management Conference off calendar.**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: 2003Amount \$0.00Status: Notice of Entry of Judgment filed on July 7, 2009.**CITY NATIONAL CORPORATION v. Franchise Tax Board**

Los Angeles Superior Court Case No. BC334772

Court of Appeal, 2nd Appellate District Case No. B189240

California Supreme Court Case No. S150563

Taxpayer's Counsel

Kenneth R. Chiate, Mary S. Thomas

Quinn, Emanuel,

Urquhart, Oliver & Hedges, LLP

Taxpayer's Counsel

Sherrill Johnson,

Offices of the General Counsel

City National Bank

Filed - 06/10/05

FTB's Counsel

Brian Wesley

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 2003Amount \$84,676,129.00 Tax

Status: **Plaintiff's Notice of Motion for Summary Judgment filed on July 23, 2009. Hearing on Motion for Summary Adjudication of Issues scheduled for October 6, 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

Taxpayer's Counsel

Sherrill Johnson
Offices of the General Counsel
City National Bank

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 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

Thomas R. Freeman, Paul S. Chan,
Bird, Marella, Boxer, Wolpert,
Nessim, Dooks & Lincenberg, P.C.

Taxpayer's Counsel

Marty Dakessian
Mardiros, Hagop, Dakessian

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 Tax

Status: 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

Charles P. Rettig, Steven Toscher
Sharyn M. Fisk & Michael R. Stein
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

FTB's Counsel

W. Dean Freeman

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 September 25, 2009. Defendant's Change of Counsel filed on August 4, 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 Tax

Status: Tentative Ruling in favor of Plaintiff filed on July 6, 2009. Defendant's Objections to Tentative Ruling After Trial filed on July 16, 2009. Plaintiff's Response to Defendant's Objections to Tentative Ruling After Trial filed on July 31, 2009.

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

San Francisco Superior Court Case No. CGC06456659

Court of Appeal, 1st Appellate District. Case No. A122710Taxpayer'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: Unpublished Opinion denying Attorney's Fees filed on July 16, 2009. Request for Publication of Opinion filed by non-party, Stephen H. Bennett, CPA, on July 23, 2009. Letter sent by Chief Justice, Ronald George, recommending against Publication of Opinion, filed on July 30, 2009. Modified Opinion filed on July 30, 2009.

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Case No. CGC05439929

Court of Appeal, 1st Appellate District Case No. A120492

California Supreme Court Case No. S173180

Taxpayer's Counsel

Paul H. Frankel

Morrison & Foerster LLP

Taxpayer's Counsel

Andres Vallejo,

Morrison & Foerster LLP

Filed - 03/29/05

FTB's Counsel

Joyce Hee

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: Petition for Review denied on July 29, 2009.

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

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

Taxpayer's Counsel

Alan R. Maler
Greenberg Traurig, LLP

Filed – 06/15/06

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: **Unpublished Opinion filed on July 20, 2009, in favor of Defendant/Appellant FTB, and reversing Judgment of the Trial Court in favor of Plaintiff/Respondent on July 19, 2007.**

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

Alameda County Superior Court Case No. RG09441003

Taxpayer's Counsel

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

Filed – 03/12/09

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: **Management Conference scheduled for July 27, 2009, continued to October 1, 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 Writ held on July 16, 2009.** Case Management Conference 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 rescheduled to August 26, 2009. Trial rescheduled to September 1, 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: **Case in suspense pending the outcome of similar issue pending with the IRS.**

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: Nevada Supreme Court
Defendant's Opening Brief filed on July 20, 2009.

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

Los Angeles Superior Court Case No. 08K09860

Court of Appeal, 2nd 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 Tax

Status: **Calendar Notice sent by the Court on July 15, 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
Silverstein & Pomerantz, LLP

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: **Joint Stipulation to Extend Page Limits for Demurrer Briefing filed on July 30, 2009. Defendant's Opposition to Notice of Motion and Supporting Declaration filed on August 3, 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: **Status Conference regarding Federal tax case continued to January 22, 2010.**

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.

W. Dean Freeman

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: Plaintiffs/Appellants' Opening Brief to be filed by September 25, 2009. Defendant's Change of Counsel filed on August 4, 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: 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

Appellate Court, 4th 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 Tax

Status: Defendant/Respondent Request for Extension of Time to File Brief filed on August 3, 2009. Extension granted on August 7, 2009, to September 8, 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: Case Management Conference scheduled for July 24, 2009, vacated. Mandatory Settlement Conference scheduled for March 22, 2010. Trial scheduled for April 5, 2010.

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

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: Plaintiff's Notice of Motion and Motion to Disqualify Judge Pursuant to CCP Sec 170.6 filed on July 10, 2009. Hearing scheduled for August 5, 2009. Case Management Conference scheduled for August 14, 2009, is off calendar and rescheduled to August 20, 2009. Hearing regarding Plaintiff's Motion to Disqualify Judge is off calendar as moot on July 23, 2009.

PERSONAL SELLING POWER, INC. v. Franchise Tax Board

Alameda Superior Court Case No. RG09462520 Filed - 07/13/09

Taxpayer's Counsel

Michael L. Corman

Law offices of Michael L. Corman

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz, LLP

FTB's Counsel

Marguerite C. Stricklin

Issue: Does the sale of advertising to be printed qualify as a sale of tangible property for purposes of Public Law 86-272?

Year: 2002 Amount \$908.05 Tax

Status: Plaintiff's Summons and Complaint served on July 14, 2009.

QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC09487540 Filed - 04/20/09

Taxpayer's Counsel

Amanda J. Pedvin

Septoe & Johnson, LLP

Taxpayer's Counsel

Matthew D. Lerner, Esq.

Septoe & Johnson, LLP

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: **Hearing regarding Motion to Admit Matthew D. Lerner as Counsel Pro Hac Vice held on August 4, 2009. Motion granted on August 4, 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. 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 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

Court of Appeal, 1st 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: **Defendant/Respondent's Brief filed on July 29, 2009.**

ROHR, INC. v. Franchise Tax Board

San Diego Superior Court Case No. 37-2007-00070925-CU-CO-CTL

Court of Appeal, 4th Appellate District Division 1 Case No. D052309

California Supreme Court Case No. S161612

Taxpayer's Counsel

Mark L. Mann
Luce, Forward, Hamilton & Scripps LLP

Filed - 09/07/07

FTB's Counsel

Brian D. Wesley

- Issues: 1. Whether Rohr, Inc. was engaged in a unitary business with Rohr Credit Corporation, its subsidiary.
2. Whether losses incurred by Rohr Credit Corporation constituted nonbusiness income.
3. Whether plaintiff is entitled to attorneys' fees.
4. Whether a suit for refund can be maintained where not all the interest due has been paid.

Years: 07/31/85 through 07/31/87 Amount \$5,155,415.00 Tax

Status: Defendant FTB's Notice of Appeal filed on August 7, 2009.

SHAW, BRIAN K. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC378829

Taxpayer's Counsel

David Roth, Esq.

Hochman, Salkin, Rettig, Toscher & Perez

Filed - 10/10/07

FTB's Counsel

Diane Spencer-Shaw

- Issues: 1. Whether Plaintiff was a resident of California for tax purposes.
2. Whether assessing a penalty under Revenue and Taxation Code section 19777.5 violates Due Process.

Years: 1990 through 1994 Amount \$487,084.00 Tax
\$ 89,534.00 Penalty

Status: Trial continued to August 28, 2009.

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board

Los Angeles Superior Court Case No. BC363822

Court of Appeal, 2nd 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.

Filed - 12/22/06

FTB's Counsel

W. Dean Freeman

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: Defendant's Change of Counsel filed on August 4, 2009. Appellants' Stipulation of Extension of Time to file Opening Brief to September 25, 2009, filed on July 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 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)

Taxpayer's Counsel

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

Filed - 03/30/09

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: **Opposition regarding Motion to Dismiss Amended Complaint filed by Plaintiff on July 20, 2009. Notice of Errata regarding Opposition filed by Plaintiff on July 21, 2009. Defendant's Reply to Plaintiff's Opposition to Motion to Dismiss Amended Complaint and Defendant's Reply to Plaintiff's Objection to Defendants' Request for Judicial Notice in Support of Motion to Dismiss Amended Complaint and Further Request for Judicial Notice filed on July 27, 2009.**

VENTAS FINANCE I, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. 05440001

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

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 Tax

Status: **Waiting to be assigned to a judge for the remand part of the trial.**

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: Post Mediation Conference scheduled for August 17, 2009. Final Status Conference scheduled for November 23, 2009. Trial date set for December 7, 2009.