State of California
Franchise Tax Board

Executive Officer MS A390
PO Box 2229
Sacramento, CA 95812-2229

chair John Chiang | member Betty T. Yee | member Michael C. Genest

August 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 – August 2009

Case Name	Court Number
	None

FRANCHISE AND INCOME TAX
New Cases – August 2009

Case Name	Court Number
	None

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

August 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: **Plaintiffs/Appellants' Petition for Review filed on August 26, 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: **Proposed Statement of Decision in favor of Plaintiff filed by the Court on August 20, 2009.**

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 held on September 8, 2009.**

BANKS, KENNETH v. Franchise Tax Board
San Francisco Superior Court Case No.CGC09484981 — Filed - 02/13/09

Taxpayer's Counsel
Stephen Moskowitz, Esq.
Law Offices of Stephen Moskowitz, LLP

FTB's Counsel
Lucy Wang

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

Year: 1995 — Amount $276,096.00 Tax

Status: Order for Arbitration and Pre-Arbitration Settlement Conference scheduled for November 3, 2009.

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

Taxpayer's Counsel
Amy L. Silverstein, Edwin P. Antolin
Silverstein & Pomerantz, LLP

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 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: **Petitioner's Notice of Appeal filed on August 12, 2009. Notice of Filing of Appeal sent by the Court on August 27, 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
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

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 2003 Amount $84,676,129.00 Tax

Status: 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	*Taxpayer's Counsel*	*FTB's Counsel*
Kenneth R. Chiate, Quinn, Emanuel, Urquhart Oliver & Hedges, LLP	Sherrill Johnson Offices of the General Counsel City National Bank	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
California Supreme Court Case No. S173860

Taxpayer's Counsel	*Taxpayer's Counsel*	*FTB's Counsel*
Thomas R. Freeman, Paul S. Chan, Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg, P.C.	Marty Dakessian Mardiros, Hagop, Dakessian	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 granted on August 19, 2009. Defendant/Respondent's Request for an Extension of Time to File Opening Brief to October 16, 2009, filed on August 25, 2009. Extension to File Opening Brief granted on August 27, 2009. Defendant/Respondent's Certification of Interested Entities or Persons filed on September 4, 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 Sharyn M. Fisk & Michael R. Stein Hochman, Salkin, Rettig, Toscher & Perez, P.C.	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.

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: **Defendant's Objections to Plaintiff's Proposed Judgment filed on August 6, 2009. Plaintiff's Response to Defendant's Objections to Plaintiff's Proposed Judgment filed on August 12, 2009. Statement of Decision in favor of Plaintiff, filed on September 9, 2009. Judgment in favor of Plaintiff filed on September 9, 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, 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: **Request for Publication of Opinion filed by non-party, Stephen H. Bennett, CPA, on August 10, 2009. Letter sent on August 14, 2009, to Chief Justice Ronald George recommending Denial of Request for Publication.**

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	*Taxpayer's Counsel*	*FTB's Counsel*
Paul H. Frankel	Andres Vallejo,	Joyce Hee
Morrison & Foerster LLP	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: **Petition for Review denied on July 29, 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: **Plaintiff/Appellant's Petition for Rehearing filed on July 31, 2009. Certificate of Compliance with word count for Plaintiff/Respondent's Petition for Rehearing, filed on August 3, 2009. Notice sent to all parties on August 5, 2009, requesting Defendant/Appellant FTB to file an Answer to Plaintiff/Respondent's Petition for Rehearing. Defendant/Appellant FTB's Answer to Petition for Rehearing filed on August 13, 2009. Modified Opinion filed (no change in Judgment); Petition for Rehearing denied on August 17, 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: Management Conference continued to October 1, 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: **Case Management Conference held on September 10, 2009. Published Opinion issued by the Court of Appeal on August 27, 2009, denying Defendant's Petition for Writ of Mandate and confirming Plaintiff's entitlement to a jury trial. Defendant's Petition for Review with the California Supreme Court is due to be filed by October 6, 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 held August 26, 2009. Trial started on September 1, 2009, and was completed on September 3, 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: 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 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
Plaintiff's Request for an Extension of Time to file Reply Brief filed on August 5, 2009. Three Amicus Curie Briefs were accepted by the Nevada Supreme Court on August 7, 2009, one brief in support of FTB was filed by Utah and joined by 17 states, a second brief was filed by the Multistate Tax Commission and the third brief was filed by the Nevada Attorney General. Defendant's Motion of no opposition to Hyatt's Extension Request was filed on August 18, 2009. Extension of Time to file Reply Brief granted on August 21, 2009, to November 5, 2009, and limited to 138 pages.

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: **Case argued and submitted; Opinion to be filed by November 2, 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: **Plaintiff's Stipulation regarding Sanction for Failure to File Certificate of Service filed on August 3, 2009. Defendant's Reply to Opposition of Noticed Motion and Supporting Declarations filed on August 7, 2009. Demurrer/Hearing on Motion to Strike scheduled for August 14, 2009, vacated and rescheduled to August 18, 2009. Joint Stipulation to Change Date on Hearing on Demurrer, filed by both parties. On August 20, 2009. Civil Case Management Conference scheduled for October 30, 2009.**

MANNING, LAWRENCE T. & JOY v. Franchise Tax Board
Los Angeles Superior Court Case No. BC382987 — Filed – 12/28/07
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 $167,710.00 Tax

Status: **Notice of Continuance of Status Conference to January 22, 2010, filed on August 18, 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
Charles P. Rettig, Esq.
Steven Toscher, Sharyn M. Fisk
Hochman, Salkin, Retigg, Toscher & Perez, P.C.
FTB's Counsel
W. Dean Freeman

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 — Filed – 01/22/08
Taxpayer's Counsel
James P. Kleier, Brian W. Toman
Reed Smith, LLP
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, is off calendar. Mandatory Settlement Conference held on 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's Request for Extension of Time to File Brief to October 3, 2009 filed. Extension granted. Plaintiff/Appellant's Reply Brief due by November 30, 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: **Notice filed on August 5, 2009 of Early Settlement Conference rescheduled to January 29, 2010.** Trial scheduled for April 5, 2010.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board
San Francisco Superior Court Case No.CGC05437721
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

Filed – 01/15/05
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 Case Management Statement filed on August 5, 2009. Defendant's Case Management Statement filed on August 5, 2009. Plaintiff's Notice of Motion and Motion to Compel Further Responses to Discovery and for Sanctions, Proof of Service, Points and Authorities, Declaration, and Separate Statement filed on August 10, 2009; Hearing scheduled for September 9, 2009. Plaintiff's Amended Notice of Motion and Motion to Compel Further Responses to Discovery and for Sanctions, Proof of Service filed on August 14, 2009. Proof of Service on Amended Notice filed on August 20, 2009. Case Management Conference held and continued to September 8, 2009. Trial Motion calendar on September 9, 2009 regarding Plaintiff's Motion to Compel further Responses to Discovery and for Sanctions is off calendar, matter continued to September 22, 2009.**

PERSONAL SELLING POWER, INC. v. Franchise Tax Board
Alameda Superior Court Case No. RG09462520

Taxpayer's Counsel	*Taxpayer's Counsel*	Filed – 07/13/09
Michael L. Corman	Amy L. Silverstein, Edwin Antolin	*FTB's Counsel*
Law offices of Michael L. Corman	Silverstein & Pomerantz, LLP	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: **Answer to Complaint filed on September 3, 2009.**

QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. CGC09487540

Taxpayer's Counsel	*Taxpayer's Counsel*	Filed – 04/20/09
Amanda J. Pedvin	Matthew D. Lerner, Esq.	*FTB's Counsel*
Steptoe & Johnson, LLP	Septoe & Johnson, LLP	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: **Plaintiff's Case Management Statement filed on August 14, 2009. Defendant's Case Management Statement filed on August 14, 2009. Hearing on Motion for Complex Case Designation scheduled for August 27, 2009 is off calendar per request of moving party. Plaintiff's Application for Approval of Complex Litigation Designation filed on August 20, 2009. Order Granting Application of Matthew D. Lerner to Appear as Counsel Pro Hac Vice for Plaintiff, filed on September 3, 2009. Case Management Conference scheduled for September 18, 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: **Plaintiffs' Demand for Exchange of Expert Trial Witness Information filed on July 27, 2009. Plaintiffs' Case Management Statement filed on August 20, 2009. Declaration of Elisa Wolfe-Donato filed on August 25, 2009. Post Mediation Status Conference held on August 26, 2009. Final Status Conference rescheduled to February 23, 2010. Trial rescheduled to March 3, 2010.**

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. **Appellant's Reply Brief to be filed by October 19, 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 — 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: **Trial continued to October 13, 2009. Plaintiff's Trial Brief, List of Witnesses and List of Exhibits filed August 13, 2009. Defendant's List of Witness and List of Exhibits filed on August 13, 2009. Defendant's Trial Brief filed on August 17, 2009. Final Status Conference held on August 18, 2009. Ex-parte Proceeding granted on August 25, 2009. Trial continued to October 13, 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
Charles P. Rettig, Sharyn M. Fisk
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

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: 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 — 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 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	Filed – 03/30/09
Richard M. Freeman, Matthew S. McConnell, Carole M. Ross	*FTB's Counsel*
Sheppard, Mullin, Richter & Hampton, LLP	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: **Hearing on Motion to Dismiss held on August 3, 2009. Order Granting Defendant's Motion to Dismiss Amended Complaint on September 4, 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: 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	*FTB's Counsel*
Robert F. Klueger, Esq.	Mark P. Richelson
Klueger & Stein, LLP	

Filed - 01/30/09

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: **Statement-Non-Agreement filed by Mediator on July 31, 2009; mediation ended in no agreement. Post-Mediation Conference held August 17, 2009. Plaintiff's Declaration of Robert F. Klueger, Esq. in Support of Motion to Compel and Statement of Interrogatories and Responses in Dispute, filed on August 21, 2009. Plaintiff's Motion to Compel Further Answer filed on August 21, 2009. Hearing on Motion to Compel scheduled for September 30, 2009.** Final Status Conference scheduled for November 23, 2009 and Trial scheduled for December 7, 2009.