



September 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 – September 2009**

Case Name

Court Number

Garcia, W. Rocke & Glenda L.

San Francisco Superior Court Case No. GCG06456659
(Judgment for the Plaintiffs, see page 5)

**FRANCHISE AND INCOME TAX
New Cases – September 2009**

Case Name

Court Number

Cutler, Frank

Los Angeles Superior Court Case No. BC421864

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

September 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

California Supreme Court Case No. S175798

Taxpayer's Counsel

J. Pat Powers

Baker & McKenzie, LLP

Taxpayer's Counsel

Scott L Brandman (NY)

Baker & McKenzie, LLP

FTB's Counsel

Brian Wesley

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: Defendant/Respondent's Answer to Petition for Review filed on September 15, 2009. Plaintiffs/Appellants' Reply in Support of Petition for Review filed on September 28, 2009. Notice from California Supreme Court extending time period for review of Petition to November 24, 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: Defendant's Objection to Proposed Statement of Decision filed on September 18, 2009. Appendix of Federal and Other Authorities regarding Defendant's Objection to Proposed Statement of Decision filed on September 18, 2009. Plaintiff's Objections to Proposed Statement of Decision filed on September 18, 2009. Defendant's Response to Plaintiff's Objections to Proposed Statement of Decision filed on October 2, 2009. Defendant's Appendix of Authorities regarding Response to Objections to Proposed Statement of Decision filed on October 2, 2009. Defendant's Response to Plaintiff's Objections to Proposed Statement of Decision filed on October 2, 2009. Reply of Defendant's Response to Defendant's Objections to proposed Statement of Decision filed October 9, 2009.

BAKERSFIELD MALL, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC07462728

Filed - 04/25/07

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz, LLP

FTB's Counsel

Marguerite Stricklin

Issues: 1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.

2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26 of the California Constitution.
3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of state police power and is void.

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

Status: **Order for Motion for Leave to File First Amended Complaint filed on September 8, 2009. Plaintiff's First Amended Complaint filed on September 8, 2009. Defendant's Answer to First Amended Complaint filed on October 8, 2009. Case Management Conference continued to November 19, 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: Pre-Arbitration Settlement Conference scheduled for November 3, 2009. **Notice of Random Selection from Panel of Arbitrators filed on September 14, 2009. Plaintiff's Rejected on September 22, 2009, Proposed Arbitrator Gregory Emerson Stubbs. Defendant's Rejected on September 24, 2009, Proposed Arbitrator Richard Michael Lieberman. Notice sent on September 25, 2009, of David Edward having been appointed Arbitrator. Hearing on Order to Show Cause scheduled for January 25, 2010.**

CALIFORNIA TAXPAYERS' ASSOCIATION v. Franchise Tax Board

Sacramento Superior Court Case No. 34-2009-80000138
Court of Appeal, 3rd Appellate District Case No. C062791
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 Civil Appeal Mediation Statement filed on September 24, 2009. Notice from Court of Appeal filed on September 28, 2009; case is not suitable for mediation. Appellant's Notice Designating Record on Appeal filed on October 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

Filed – 06/10/05

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: Cross-Discovery Motion, Motion for Summary Adjudication of Issues, and Motion for Judgment on the Pleadings continued to November 10, 2009. Trial rescheduled to March 16, 2010.

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.

CUTLER, FRANK v. Franchise Tax Board

Los Angeles Superior Court Case No. BC421864

Filed – 09/15/09

Taxpayer's Counsel

Marty Dakessian
Akerman Senterfitt, LLP

FTB's Counsel

Christine Zarifarian

- Issues:
1. Whether California's Qualified Small Business Stock Deferral of Tax Provisions violate the Commerce Clause and Due Process Requirements of the United States Constitution.
 2. Whether Plaintiff is entitled to a refund of taxes and interest paid to FTB.
 3. Whether the Amnesty Penalty violates the Due Process Clause of the United States and California Constitutions.
 4. Whether Plaintiff is entitled to attorneys' fees and costs under RTC 19717 and/or CCP 1021.5.

Year: 1998

Amount \$200,182.00 Tax
\$47,600.00 Penalty

Status: Summons and Complaint served on September 17, 2009. Case Management Conference scheduled for December 15, 2009.

DICON FIBEROPTICS, INC. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC367885
Court of Appeal, 2nd Appellate District Case No. B202997
California Supreme Court Case No. S173860

Filed - 03/13/07

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: Defendant/Respondent's Request for Extension of Time to File Opening Brief from October 16, 2009, to November 17, 2009, filed on October 7, 2009. Extension granted to November 17, 2009, on October 14, 2009.

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

Los Angeles Superior Court Case No. BC391413
Court of Appeal, 2nd Appellate District Case No. B213971 (consolidated with Mickelsen & Shimmon)

Filed - 05/23/08

Taxpayer's Counsel

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

FTB's Counsel

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 filed on October 22, 2009.

ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board

Sacramento Superior Court Case No. 07AS03070

Filed - 07/05/07

Taxpayer's Counsel

Robert R. Rubin
McDonough, Holland & Allen, PC

FTB's Counsel

Robert Asperger

Issue: Whether Plaintiff was entitled for California purposes, to elect out of treatment provided by section 338(h)(10) of the Internal Revenue Code.

Year: 08/28/97 **Amount** \$630,615.97 Tax

Status: Judgment in favor of Plaintiff filed on September 9, 2009. Memorandum of Costs Summary filed on October 2, 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. A122710

Filed - 10/02/06

Taxpayer's Counsel

William J. McLean
A Professional Law Corporation

FTB's Counsel

Kristian Whitten

- Issues:
1. Whether Plaintiffs timely acquired replacement real property in compliance with the Internal Revenue Code section 1033.
 2. Whether a decision by the State Board of Equalization precludes the assessment of penalties pursuant to section 19777.5.
 3. Whether the penalty assessed by Section 19777.5 satisfies due process requirements.

Year: 1992

Amount \$357,009.00 Tax
\$259,056.00 Penalty

Status: **Plaintiffs' Satisfaction of Judgment, Fully Satisfied file on October 15, 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

Filed - 03/29/05

Taxpayer's Counsel

Paul H. Frankel
Morrison & Foerster LLP

Taxpayer's Counsel

Andres Vallejo,
Morrison & Foerster LLP

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: **Remittitur issued on July 30, 2009. Plaintiffs' Memorandum of Costs filed on September 2, 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

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: **Remittitur filed on September 25, 2009.**

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: **Plaintiff's Case Management Statement and Proof of Service filed on September 15, 2009. Case Management Conference held on October 1, 2009, and continued to February 2, 2010.**

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: **Plaintiff's Case Management Statement filed on September 2, 2009. Defendant's Case Management Statement filed on September 8, 2009. Case Management Conference scheduled for September 10, 2009, off calendar. Trial rescheduled to January 11, 2010. Joint Stipulation and Court Order filed on September 25, 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: Trial held on September 3, 2009. **Defendant's List of Exhibits filed on September 4, 2009. Defendant's Civil Deposition filed on September 9, 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
Plaintiff's Opening Brief and Response to FTB's Opening Brief to be filed by November 5, 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: 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

Taxpayer's Counsel

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

Filed – 04/09/09

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: Case Management Conference scheduled for October 30, 2009. **Plaintiff's First Amended Complaint filed on September 30, 2009. Oral Argument held on September 21, 2009. Defendant's Demurrer is sustained. Court has taken under consideration the question of whether case should be stayed pending the decision of the Supreme Court regarding whether to grant review in Abbott.**

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: Status Conference continued to January 22, 2010.

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

Los Angeles Superior Court Case No. BC385197

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.

Filed – 02/08/08

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 filed on October 22, 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: **Plaintiff's Separate Pre-Trial Statement regarding Trial Time Limits, filed on September 15, 2009. Defendant's Ex-Parte Application for Order Shortening Time to Hear Motion to Continue Trial and Declaration filed on September 17, 2009. Trial date scheduled for September 29, 2009 continued to January 19, 2010.**

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 Brief filed on September 29, 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: Early Settlement Conference rescheduled to January 29, 2010. Trial scheduled for April 5, 2010. **Defendant's Notice of Unavailability of Karen W. Yiu, on September 18, 2009 through September 25, 2009 and October 12, 2009, filed on September 9, 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

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 held on October 14, 2009 and continued to December 2, 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: Answer to Complaint filed on September 3, 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
Steptoe & 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: Case Management Conference continued to November 6, 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

Anthony Sgherzi

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: 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: Plaintiff/Appellant's Reply Brief filed on October 19, 2009. Plaintiff/Appellant's Request for Judicial Notice filed on October 19, 2009. Plaintiff/Appellant's Request for Judicial Notice granted on October 22, 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's Response to Motion for Attorney's Fees filed on October 9, 2009. Hearing regarding Motion for Attorney's Fees scheduled for October 30, 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 February 11, 2010.**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: 1999Amount \$515,422.00 InterestStatus: Plaintiffs/Appellants' Opening Brief filed on October 22, 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: 2000Amount \$137,694.00 TaxStatus: Status Conference 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: **Second Amended Complaint filed on October 1, 2009. Amended Notice of Related Case(s) filed by Plaintiff on October 1, 2009. Notice of Document Discrepancies and Order by Judge Virginia A. Phillips Ordering Second Amended Complaint; Amended Certification and Amended Notice of Related Cases filed on October 1, 2009. Hearing held regarding Discharging Order to Show Cause, Minutes filed on October 6, 2009.**

VENTAS FINANCE I, LLC v. Franchise Tax Board	
San Francisco Superior Court Case No. 05440001	Filed - 04/01/05
Court of Appeal, 1 st Appellate District Case No. A116277 & Case No. A117751	
California Supreme Court Case No. S166870	
U.S. Supreme Court Case No. 08-1022	
<u><i>Taxpayer's Counsel</i></u>	<u><i>FTB's Counsel</i></u>
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	Filed - 01/30/09
<u><i>Taxpayer's Counsel</i></u>	<u><i>FTB's Counsel</i></u>
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: **Plaintiff's Opposition to Motion for Judgment on the Pleadings filed on September 18, 2009. Defendant's Response to Plaintiff's Opposition to Motion for Judgment on the Pleadings filed on September 23, 2009. Status Conference held and continued to October 30, 2009. Defendant's Supplemental Points and Authorities in Support of Motion for Judgment on the Pleadings filed on October 13, 2009. Final Status Conference rescheduled to May 10, 2010, and Trial rescheduled to May 24, 2009.**