State of California
Franchise Tax Board

Executive Officer MS A390
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Sacramento, CA 95812-2229

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October 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 – October 2009

Case Name	Court Number
None	

FRANCHISE AND INCOME TAX
New Cases – October 2009

Case Name	Court Number
None	

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

October 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	*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' Petition for Review denied on October 28, 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: **Plaintiff's Reply to Response of Defendant to Plaintiff's Objections to Proposed Statement of Decision filed on October 9, 2009. Plaintiff's Copies of Additional California Authority Cited in Plaintiff's Reply to Defendant's Response to Plaintiff's Objections to Proposed Statement of Decision filed on October 10, 2009. Defendant's Appendix of Authorities regarding Reply of Defendant to Objections to Proposed Statement of Decision filed on October 9, 2009. Reply of Defendant to Plaintiff's Response to Defendant's Objections to Proposed Statement of Decision filed by Defendant on October 9, 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 continued to November 19, 2009.

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

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

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

Year: 1995 — Amount $276,096.00 Tax

Status: **Pre-Arbitration Settlement Conference held on November 3, 2009.** Hearing on Order to Show Cause scheduled for January 25, 2010. **Settlement Conference tentatively scheduled for March 24, 2010.**

CALIFORNIA TAXPAYERS' ASSOCIATION v. Franchise Tax Board
Sacramento Superior Court Case No. 34-2009-80000138 — Filed – 02/17/09
Court of Appeal, 3rd Appellate District Case No. C062791

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin P. Antolin	Jill T. Bowers
Silverstein & Pomerantz, LLP	

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: **Appellant's Designation of Record on Appeal filed in the Superior Court on October 8, 2009. Designation is for a Reporter's Transcript and Appendix filed on October 13, 2009. Notice of Non-Availability of Register of Action from Fen-Ru Chen filed on October 30, 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	*Taxpayer's Counsel*	*FTB's Counsel*
Kenneth R. Chiate, Mary S. Thomas	Sherrill Johnson,	Brian Wesley
Quinn, Emanuel,	Offices of the General Counsel	
Urquhart, Oliver & Hedges, LLP	City National Bank	

Issues: 1. Whether Plaintiff improperly engaged in tax shelter transaction involving Regulated Investment Trusts (REITs) and Regulated Investment Companies (RICs) during the subject years.
2. Whether certain subsidiaries were exempt from California taxation as IRC 501(c)(15) entities.
3. Whether Plaintiff has satisfied the requirement of exhausting all administrative remedies in order to maintain a lawsuit.

Years: 1999 through 2003 Amount $84,676,129.00 Tax

Status: **Final Status Conference regarding Motion for Summary Adjudication, (2) Motion to Compel Further Responses and (3) Motion for Summary Judgment continued to February 25, 2010.** 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	*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.

CUTLER, FRANK v. Franchise Tax Board
Los Angeles Superior Court Case No. BC421864 Filed – 09/15/09

Taxpayer's Counsel	*FTB's Counsel*
Marty Dakessian Akerman Senterfitt, LLP	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: **Order to Show Cause Failure to File Proof of Service filed by Clerk on September 17, 2009. Proof of Service for Summons and Complaint filed on October 5, 2009.** Case Management Conference scheduled for December 15, 2009.

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: **Defendant/Respondent's Opening Brief filed on November 16, 2009.**

DU, BENJAMIN R. AND CARMELA v. Franchise Tax Board
Los Angeles Superior Court Case No. BC391413 — Filed – 05/23/08
Court of Appeal, 2nd Appellate District Case No.B213971 (consolidated with Mickelsen & Shimmon)

Taxpayer's Counsel	*FTB's Counsel*
Charles P. Rettig, Steven Toscher 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: **Defendant/Respondent's Opening Brief to be filed by November 23, 2009.**

ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board
Sacramento Superior Court Case No. **07AS03070** — Filed – 07/05/07

Taxpayer's Counsel	*FTB's Counsel*
Robert R. Rubin McDonough, Holland & Allen, PC	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: **Defendant's Notice of Appeal filed on November 10, 2009.**

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

Taxpayer's Counsel	*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: **Joint Status Conference Statement filed on October 23, 2009.**

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

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

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

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

Status: **Notice of Status Conference scheduled for November 6, 2009 filed by Clerk at the LA Superior Court on October 15, 2009. Plaintiff's Miscellaneous Documents filed at the LA Superior Court on October 27, 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: Case Management Conference continued to February 2, 2010.

GONZALES, THOMAS J. II v. Franchise Tax Board
San Francisco Superior Court Case No. CGC06454297 Filed – 07/18/06
Court of Appeal, 1st Appellate District Case No. A122723 (Franchise Tax Board v. San Francisco Superior Court) (Real Party in Interest Tom Gonzales)
California Supreme Court Case No. S176943

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: **Petitioner Franchise Tax Board's Petition for Review filed on October 6, 2009. Respondent Thomas J. Gonzalez's Answer to Petition for Review filed on October 23, 2009. Petitioner Franchise Tax Board's Reply to Answer to Petition for Writ of Mandate filed on November 2, 2009.** Trial rescheduled to January 11, 2010.

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 assessed.

Year: 1994 (Gribble) Amount $671,102.00 Tax
$178,015.05 Penalty

Year 1994 (SWG) Amount $ 51,179.11 Tax

Status: **Defendant's Opening Brief filed on October 23, 2009. Plaintiffs' Closing Brief filed on October 23, 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 Opening Brief and Response to FTB's Opening Brief extended to December 21, 2009.

JENSEN, CRAIG C. & SALLY v. Franchise Tax Board
Los Angeles Superior Court Case No. 08K09860 Filed – 04/18/08
Court of Appeal, 2nd Appellate District Case No. B211815

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

Issue: Whether Revenue and Taxation Code section 17043, which imposes an additional tax of one percent on taxable income in excess of $1 million in taxable years beginning on or after January 1, 2005, violates the equal protection clause of the U.S. Constitution.

Year: 2006 Amount $19,283.00 Tax

Status: **Published Opinion filed on October 14, 2009 affirming Judgment in favor of Defendant/Respondent.**

KIEWIT CORPORATION v. Franchise Tax Board
San Diego Superior Court Case No.37-2009-00087282-CU-MC-CTL Filed – 04/09/09

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

Issues:
1 Whether Plaintiff is entitled to a refund of taxes due to RTC section 24410 having been declared unconstitutional.
2. Whether Plaintiff properly included gross receipts from securities as part of the sales factor in calculating its tax liability to California.

3. Whether Plaintiff is entitled to a refund of taxes due to a claimed entitlement to Enterprise Zone hiring credits.
4. Whether Plaintiff is entitled to a refund of taxes due to RTC section 24402 having been declared unconstitutional.
5. Whether Plaintiff's sale of an interest in a partnership may properly be considered non-business income.

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

Status: **Defendant's Request for Judicial Notice filed on October 29, 2009. Defendant's Notice of Motion and Motion to Stay Pending Appeal in *Abbott* and *Dicon* cases; Memorandum of Points and Authorities; Order Staying Trial filed on October 29, 2009. Hearing scheduled for January 15, 2010. Defendant's Separate Appendix of Federal Legal Authorities filed on October 29, 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 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: **Defendant/Respondent's Opening Brief to be filed by November 23, 2009.**

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

Taxpayer's Counsel	*FTB's Counsel*
James P. Kleier, Brian W. Toman	David Lew
Reed Smith, LLP	Lucy Wang

Issues:
1. Whether royalty income received from licensing agreements with Original Equipment Manufacturers should be sourced outside of California based upon costs of performance.
2. Whether receipts from trading marketable securities should be included in the sales factor.
3. Whether the value of trademarks, copyrights, patents and other intangible assets should be included in the property factor.

4. Whether the taxpayer should be allowed a deduction under Revenue and Taxation Code section 24402 for dividends received for the years at issue.
5. Whether the amnesty penalty under Rev. & Tax. Code § 19777.5 violates the due process clause of the U.S. Constitution, applies only retroactively, or attaches only after a liability becomes due and payable.

Years: 1995 and 1996 Amount $25,283,868.00 Tax

Status: 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 Filed – 05/25/07
Appellate Court, 4th Appellate District Court No. D054439

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

Issue: Whether plaintiff's distribution of gaming income derived from revenue generated on a Native American reservation is exempted from California tax because plaintiff resided on the reservation of another tribe.

Year: 2000 Amount $31,856.00 Tax

Status: **Plaintiff's Reply Brief filed on October 30, 2009. Oral Argument Waiver Notice sent by the Court due November 12, 2009. Request for Oral Argument sent via fax filed by Plaintiff/Appellant on November 12, 2009.**

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

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

Issue: Whether Franchise Tax Board properly denied Plaintiff's claimed worthless stock deduction.

Year: 1999 Amount $332,692.00 Tax
$126,530.46 Penalty

Status: 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 Filed – 01/15/05
Court of Appeal 1st Appellate District Case No. A114805
Court of Appeal, 1st Appellate District Case No. A115841 (Attorneys' Fees)
Court of Appeal, 1st Appellate District Case No. A115950 (Attorneys' Fees)
California Supreme Court Case No. S162627

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

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clauses.

Years: 12/31/97 through 12/31/01 Amount $25,067.00 Fees
$ 3,764.29 Penalty

Status: Case Management Conference 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	*Taxpayer's Counsel*	*FTB's Counsel*
Michael L. Corman	Amy L. Silverstein, Edwin Antolin	Marguerite C. Stricklin
Law offices of Michael L. Corman	Silverstein & Pomerantz, LLP	

Issues:
1. Does the sale of advertising to be printed qualify as a sale of tangible property for purposes of Public Law 86-272?
2. **Whether Public Law 86-272 applies only to a net income tax, and the minimum tax under Revenue and Taxation Code section 23153.**

Year: 2002 Amount $908.05 Tax

Status: **Case Management Conference scheduled for December 1, 2009.**

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

Taxpayer's Counsel	*Taxpayer's Counsel*	*FTB's Counsel*
Amanda J. Pedvin	Matthew D. Lerner, Esq.	Anne Michelle Burr
Steptoe & Johnson, LLP	Septoe & Johnson, LLP	

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

Years: N/A Refund sought $3,473,437.50 Penalty

Status: **Case Management Conference continued to January 8, 2010.**

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

Taxpayer's Counsel	*FTB's Counsel*
James D. Gustafson, Stephen R. Goostrey	Anthony Sgherzi
Gustafson & Goostrey, LLP	

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 — Filed – 10/02/07
Court of Appeal, 1st Appellate District. No. A123316

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

Issues:
1. Whether Plaintiff is entitled to a dividend received deduction under Revenue and Taxation Code section 24402 for the years in issue.
2. Whether the penalty imposed by Revenue and Taxation Code section 19777.5 was properly assessed.

Years: 1999 and 2000 — Amount: $5,375.26 Tax; $ 895.93 Penalty

Status: **Plaintiff/Appellant's Request for Oral Argument filed on November 4, 2009. Defendant/Respondent's Request for Oral Argument filed on November 6, 2009.**

ROHR, INC. v. Franchise Tax Board
San Diego Superior Court Case No. 37-2007-00070925-CU-CO-CTL — Filed – 09/07/07
Court of Appeal, 4th Appellate District Division 1 Case No. D052309
California Supreme Court Case No. S161612

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

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

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

Status: **FTB's Brief to be filed by January 11, 2010. Hearing on Motion for Attorney's Fees held on October 30, 2009; ruling in favor of Plaintiff filed. Defendant FTB's Stipulation for Extending Time for Filing Briefs filed on November 5, 2009. Extension granted to January 11, 2010. Appellant Rohr, Inc.'s Brief to be filed on April 1, 2010.**

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

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

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

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

Status: Trial continued to February 11, 2010.

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board
Los Angeles Superior Court Case No. BC363822 — Filed – 12/22/06
Court of Appeal, 2nd Appellate District Case No.B213971 (consolidated with Du et al. & Mickelsen)

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

Issue: Whether a taxpayer filing under the first option of VCI was eligible for the interest suspension provided by section 19116.

Year: 1999 — Amount $515,422.00 Interest

Status: **Defendant/Respondent's Opening Brief to be filed by November 23, 2009.**

THODE, JEROME P. & KATHLEEN A. THODE-FERRIS v. Franchise Tax Board
Los Angeles Superior Court Case No. BC383969 — Filed – 01/17/08

Taxpayer's Counsel	*FTB's Counsel*
Gordon B. Cutler, Esq.	Anthony Sgherzi

Issue: Whether taxpayers constructively received the proceeds from the exchange of LLC memberships for stock in the taxable year.

Year: 2000 — Amount $137,694.00 Tax

Status: Status Conference rescheduled to December 14, 2009.

TWENTY-NINE PALMS BAND OF MISSION INDIANS v. Arnold Schwarzenegger & Selvi Stanislaus
U.S. District Court, Eastern Division-Riverside Court House, Case No. EDCV08-1753-VAP (OPx)
Filed – 03/30/09

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

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

Year: None — Amount None

Status: **Stipulation for Extension of Time to File Response as to Amended Complaint filed by Defendants The State of California, Selvi Stanislaus and Arnold Schwarzenegger on October 29, 2009. Notice revised of Motion to Dismiss Second Amended Complaint filed by Defendants Selvi Stanislaus and Arnold Schwarzenegger and Certificate of Service on November 12, 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 — Filed - 01/30/09

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

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

Years: 1994 through 1996 — Amount $ 96,632.00 Tax
$116,622.67 Penalty

Status: **Hearing regarding Motion to Compel and Motion for Judgment on the Pleadings held on October 30, 2009; Motion denied.** Final Status Conference rescheduled to May 10, 2010, and Trial rescheduled to May 24, 2009.