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November 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 – November 2009

Case Name

Court Number

None

FRANCHISE AND INCOME TAX
New Cases – November 2009

Case Name

Court Number

Centercal Management Services, Inc.

San Francisco Superior Court Case No. CGC-09493854

Taiheyo Cement U.S.A., Inc.

Los Angeles Superior Court Case No. BC422623

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

November 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: Remittitur issued on November 5, 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: Objections to the Court's Proposed Statement of Decision filed by both parties on October 15, 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: Joint Case Management Statement filed on November 16, 2009. Minutes filed on November 19, 2009, regarding Case Management Conference held and continued to February 5, 2010.

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: Notice sent by the Court on November 13, 2009 regarding Order to Show Cause to Lucy F. Wang and Stephen M. Moskowitz set for December 10, 2009 for Failure to Appeal at Pre-Arbitration Settlement Conference on November 3, 2009. Plaintiff's Response to Order to Show Cause filed on December 2, 2009. Order to Show Cause to Plaintiff's Counsel and Defendant's Counsel for Failure to Appear at Pre-Arbitration Settlement Conference on November 3, 2009, is ordered off calendar on December 10, 2009. Settlement Conference tentatively scheduled for March 24, 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: Reporter's Transcript filed on December 2, 2009.

CENTERCAL MANAGEMENT SERVICES, INC. v. Franchise Tax Board

San Francisco Superior Court Case No. CGC-09493854

Filed: 10/26/09

FTB's Counsel

Marguerite Stricklin

Taxpayer's Counsel

Edward O.C. Ord, Esq.

Jenny Lin-Alva, Byron G. Sun

Ord and Norman

Issue: Whether Plaintiff filed a Claim for Refund before the expiration of the Statute of Limitations.

Year: 2002

Amount \$77,777.00

Status: Civil Complaint for the Refund of Income Tax served on November 19, 2009.

CITY NATIONAL CORPORATION v. Franchise Tax Board		
Los Angeles Superior Court Case No. BC334772		Filed – 06/10/05
Court of Appeal, 2 nd Appellate District Case No. B189240		
California Supreme Court Case No. S150563		
<u><i>Taxpayer's Counsel</i></u>	<u><i>Taxpayer's Counsel</i></u>	<u><i>FTB's Counsel</i></u>
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: Hearing regarding Motion for Summary Adjudication, (2) Motion to Compel Further Responses, and (3) Motion for Summary Judgment scheduled for January 28, 2010. Final Status Conference 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
<u><i>Taxpayer's Counsel</i></u>	<u><i>Taxpayer's Counsel</i></u>	<u><i>FTB's Counsel</i></u>
Kenneth R. Chiate, Quinn, Emanuel,	Sherrill Johnson	Molly K. Mosley
Urquhart Oliver & Hedges, LLP	Offices of the General Counsel	
	City National Bank	

Issue: Whether Plaintiffs improperly engaged in tax shelter transaction involving Real Estate Investment Trusts (REITs).

Year: 2004 Amount \$23,900,000.00 Tax

Status: Defendant's Notice of Entry of Order to Stay Action Pending Certain Developments in Related Los Angeles action filed on April 3, 2008.

CUTLER, FRANK v. Franchise Tax Board		
Los Angeles Superior Court Case No. BC421864		Filed – 09/15/09
<u><i>Taxpayer's Counsel</i></u>		<u><i>FTB's Counsel</i></u>
Marty Dakessian		Christine Zarifarian
Akerman Senterfitt, LLP		

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: Answer to Complaint filed on November 15, 2009. Case Management Conference rescheduled on December 15, 2009, to January 27, 2010.

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: Plaintiff/Appellant's Request for an Extension of Time to Filed Reply Brief to January 15, 2010 filed. Extension granted on December 4, 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: Stipulation for Extension of Time to File and Serve Defendant/Respondent's Brief extended to January 22, 2010.

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: Defendant's Notice of Appeal filed on November 10, 2009. Plaintiff's Certificate of Interested Entities or Persons filed on December 2, 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: Minutes filed. Case Management Conference held on October 29, 2009, and continued to January 19, 2010.

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: Status Conference scheduled for November 6, 2009, is off calendar.

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

Alameda County Superior Court Case No. RG09441003

Filed – 03/12/09

Taxpayer's Counsel

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

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: Case Management Conference continued to February 2, 2010. **Hearing on Motion for Summary Judgment scheduled for April 7, 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

Martin A. Schainbaum, Esq.

Martin A. Schainbaum, PLC

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: California Supreme Court granted Petition for Review to Defendant on December 2, 2009. Case Management Conference rescheduled from December 15, 2009 to December 18, 2009. Trial rescheduled to January 11, 2010 continued until after the Supreme Court rules.

GRIBBLE, STANLEY W. & SWG MANAGEMENT COMPANY v. Franchise Tax Board

Los Angeles Superior Court Case No. BC393360

Filed – 06/26/08

Taxpayer's Counsel

James G. Damon, M. Edward Mishow, Esq.

Voss, Cook & Thel, LLP

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: 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

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 \$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

Thomas L. Steffen & Mark A. Hutchison

Hutchison & Steffen, H. Bartow Farr III

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 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

California Supreme Court Case No. S178199

Taxpayer's Counsel

Jonathan Bailey Lappen

Lappen and Lappen

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: **Plaintiffs/Appellants' Petition for Review filed on November 23, 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

Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts

Silverstein & Pomerantz, LLP

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: Hearing regarding Motion and Motion to Stay Proceedings Pending Appeal in *Abbott* and *Dicon* cases, scheduled for January 15, 2010.

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: **Stipulation for Extension of Time to File and Serve Defendant/Respondent's Brief extended to January 22, 2010.**

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: 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

Filed - 05/25/07

Taxpayer's Counsel

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

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: Calendar Notice sent by the Court scheduling Oral Argument for January 12, 2010.

MONTGOMERY, PARKER G. v. Franchise Tax Board

San Francisco Superior Court Case No. CGC09484121

Filed - 01/15/09

Taxpayer's Counsel

David E. Harris
 Miller, Starr, Regalia
 A Professional Law Corporation

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: Defendant's Ex-Parte Application for Order to Continue Trial Date, and Supporting Declaration filed on November 25, 2009. Order filed on November 25, 2009, Shortening Time regarding Motion to continue trial date. Defendant's Notice of Motion and Motion to Continue Trial date, Proof of Service, Memorandum of Points and Authorities, and Declaration filed on November 25, 2009. Defendant's Declaration of Service of Notice of Motion for Continuance of Trial Date; Memorandum of Points and Authorities, and Declaration of Karen W Yiu filed on November 30, 2009. Plaintiff's Memorandum of Points and Authorities in Opposition to Defendant's Motion to Continue Trial filed. Declaration of David E. Harris filed on December 3, 2009. Defendant's Reply in Support of Defendant's Motion for Continuance of Trial Date filed. Reply Declaration of Karen W. Yiu in Support of Defendant's Motion filed on December 7, 2009. Defendant's Notice of Motion and Motion to Continue Trial date denied. Trial date of April 5, 2010, and Mandatory Settlement Conference of March 22, 2010 maintained.

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: Defendant's Opposition to Motion to Compel Further Responses to Discovery and for Sanctions filed on November 12, 2009. Defendant's Case Citations regarding its Opposition to Motion to Compel Further Responses filed on November 12, 2009. Defendant's Proof of Service of Opposition to Motion to Compel Further Responses to Discovery and for Sanctions; Case Citations regarding Opposition filed on November 12, 2009. Plaintiff's Association of Attorneys: Pearl, Richard Morse filed on November 20, 2009. Plaintiff's Reply Brief in Support of Plaintiff's Motion to Compel Further Responses to Discovery; Proof of Service filed on November 20, 2009. Plaintiff's Case Citations in Support of its Motion to Compel and its Reply Brief in Support of Plaintiff's Motion to Compel Further Responses to Discovery (Exhibits 1-14) filed on November 24, 2009. Plaintiff's Case Citations in Support of its Motion to Compel and its Reply Brief in Support of Plaintiff's Motion to Compel Further Responses to Discovery (Exhibits 15-25) filed on November 24, 2009. Minutes filed on December 2, 2009. Plaintiff's Motion to Compel Further Responses to Discovery is granted on December 2, 2009. Plaintiff's Motion for Sanctions is denied on December 2, 2009. Counsel for Plaintiff to prepare or submit Proposed Order. Matter is continued to January 7, 2010, for a Case Management Conference. Plaintiff's Proof of Service of Order on Plaintiff's Motion to Compel Further Responses to Discovery filed on December 4, 2009. Order on Plaintiff's Motion to Compel Further Responses to Discovery filed on December 8, 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

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 Order. Case Management Conference rescheduled to April 1, 2010.

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

Step toe & Johnson, LLP

Step toe & 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

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: Defendant/Respondent's Letter dated November 17, 2009, regarding conflicts of dates to schedule Oral Argument; 12/22/09, 01/15/10 and 03/22/10 through 03/26/10.

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

Filed - 09/07/07

Taxpayer's Counsel

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

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/Respondent FTB's Notice of Appeal/Cross-Appeal and Appellant's Notice Designating Record on Appeal, filed on December 21, 2009.** FTB's Brief to be filed by January 11, 2010. Appellant Rohr, Inc.'s Brief to be filed by April 1, 2010.

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 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

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: **Stipulation for Extension of Time to File and Serve Defendant/Respondent's Brief extended to January 22, 2010.**

TAIHEYO CEMENT U.S.A., INC. v. Franchise Tax Board
Los Angeles Superior Court Case No. BC422623
Taxpayer's Counsel
Marty Dakessian
Akerman Senterfitt, LLP

Filed - 11/12/09

FTB's Counsel
Marta Smith

- Issues:**
1. Whether plaintiff is entitled to enterprise zone sales and use tax credits for certain items it claims it "placed in service" during the tax years in question. In particular, the issue is whether the phrase "placed in service" refers to depreciable capital assets or "expensed items" usually consumed within a year of their initial use.
 2. Whether the assessment of an Amnesty penalty in this case is factually warranted.
 3. Whether the assessment of an Amnesty penalty in this case violates due process protections afforded the taxpayer under the constitutions of the United States of America and/or the state of California.
 4. Whether FTB's interpretation/enforcement of provisions contained within the enterprise zone credit statute constitute underground regulations.
 5. Whether plaintiff is entitled to attorneys fees under the provisions of the Revenue and Taxation Code and/or the private attorney general doctrine.

Years: 1998 and 1999 **Amount** \$4,980,165.00

Status: Plaintiff's Complaint for Refund of Taxes, Interest, and Penalties Paid and for Declaratory Relief served on November 12, 2009. Case Management Conference scheduled for February 18, 2010.

THODE, JEROME P. & KATHLEEN A. THODE-FERRIS v. Franchise Tax Board

Los Angeles Superior Court Case No. BC383969
Taxpayer's Counsel
Gordon B. Cutler, Esq.

Filed - 01/17/08
FTB's Counsel
Anthony Sgherzi

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

Year: 2000 **Amount** \$137,694.00 Tax

Status: Status Conference continued from December 14, 2009, to March 18, 2010.

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: Stipulation for Extension of Time to File Response to Amended Complaint filed by Defendants The State of California, Selvi Stanislaus and Arnold Schwarzenegger on October 29, 2009. Revised Notice 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, 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>Taxpayer's Counsel</u>	<u>FTB's Counsel</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>Taxpayer's Counsel</u>	<u>FTB's Counsel</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: **FTB's Further Responses to Plaintiff's Interrogatories, Set No. One, served on December 7, 2009.** Final Status Conference rescheduled to May 10, 2010, and Trial rescheduled to May 24, 2009.