



February 2010 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 – February 2010

Case Name

Court Number

None

FRANCHISE AND INCOME TAX
New Cases – February 2010

Case Name

Court Number

CA-CENTERSIDE II, LLC

Fresno Superior Court Case No. 10CECG00434

RB Holdings (USA) Inc. & Subsidiaries

San Francisco Superior Court Case No. CGC10496438

Sigma-Aldrich Corp. & Subsidiaries

San Francisco Superior Court Case No. CGC10496437

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

February 2010

APPLE, INC. v. Franchise Tax Board

San Francisco Superior Court Case No. CGC08471129

Taxpayer's Counsel

Jeffrey M. Vesely

Pillsbury, Winthrop, Shaw, Pittman, LLP

Filed - 01/16/08

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: **Order Granting Motion to Modify the Judgment, filed on February 22, 2010. Amended Judgment after Nonjury Trial filed on February 22, 2010. Notice of Entry of Amended Judgment filed on February 22, 2010. Trial Motion scheduled for February 25, 2010, is off calendar on February 22, 2010.**

BAKERSFIELD MALL, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC07462728

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz, LLP

Filed - 04/25/07

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: **Case Management Conference held on February 5, 2010, and continued to March 10, 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: Court's Notice; Arbitration Order to Show Cause of January 25, 2010, continued to May 20, 2010; Jurisdiction of the Arbitrator is extended through April 20, 2010.

CA-CENTERSIDE II, LLC v. Franchise Tax Board
Fresno Superior Court Case No. 10CECG00434
Taxpayer's Counsel
Amy L. Silverstein, Edwin Antolin
Silverstein & Pomerantz, LLP

Filed: 02/04/10

FTB's Counsel
Steven J. Green

- 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 2005 **Amount** \$787,200.00 Tax

Status: Summons and Complaint for Tax Refund and Declaratory Relief served on February 8, 2010. Case Management Conference scheduled for June 7, 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: Petitioner/Appellant's Opening Brief and Appendix, 6 Volumes (1,396 pp.), filed on February 4, 2010. Respondent's Request for Extension of Time to file Reply Brief to April 12, 2010, filed on February 16, 2010. Extension to File Reply Brief granted to April 12, 2010, on February 22, 2010.

CENTERCAL MANAGEMENT SERVICES, INC. v. Franchise Tax Board

Filed: 10/26/09

San Francisco Superior Court Case No. CGC09493854

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: Answer to Complaint for Refund of Taxes filed on January 4, 2010. Case Management Conference scheduled for March 26, 2010.

CITY NATIONAL CORPORATION v. Franchise Tax Board

Filed - 06/10/05

Los Angeles Superior Court Case No. BC334772

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

California Supreme Court Case No. S150563

Taxpayer's Counsel

Kenneth R. Chiate, Mary S. Thomas
Quinn, Emanuel,
Urquhart, Oliver & Hedges, LLP

Taxpayer's Counsel

Sherrill Johnson,
Offices of the General Counsel
City National Bank

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: Final Status Conference scheduled for February 25, 2010, continued to May 5, 2010. **Court Order filed on February 2, 2010; Trial scheduled for March 16, 2010, continued to May 12, 2010.**

CITY NATIONAL CORPORATION & Subs. v. Franchise Tax Board

Filed - 06/06/06

Sacramento Superior Court Case No. 06AS02275

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

Taxpayer's Counsel

Marty Dakessian

Akerman Senterfitt, LLP

Filed - 09/15/09

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: 1998Amount

\$200,182.00 Tax

\$ 47,600.00 Penalty

Status: Hearing on Motion for Summary Judgment scheduled for July 12, 2010. Final Status Conference scheduled for August 5, 2010. Trial date scheduled for August 16, 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

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

Filed - 03/13/07

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 03/31/07Amount

\$1,104,992.00 Tax

Status: Plaintiff/Appellant's Reply Brief filed on February 16, 2010. Defendant/Respondent's Application for Extension of Time to File Reply Brief to April 7, 2010, and Declaration of W. Dean Freeman, filed on February 18, 2010. Extension to file Reply Brief granted to April 7, 2010, on February 22, 2010.

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)Taxpayer's Counsel

Charles P. Rettig, Steven Toscher

Sharyn M. Fisk & Michael R. Stein

Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Filed - 05/23/08

FTB's Counsel

W. Dean Freeman

Issue: Whether plaintiffs are entitled to interest suspension under Revenue and Taxation Code section 19116.

Year: 1999Amount

\$288,938.00 Interest

Status: Defendant/Respondent's Opening Brief filed February 22, 2010. Plaintiffs/Appellants' Reply Brief to be filed on March 15, 2010.

ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board

Sacramento Superior Court Case No. 07AS03070

Filed - 07/05/07

Court of Appeal, 3rd Appellate District Case No. C063450

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/Appellant's Petition for Rehearing filed. Motion for Relief from Default; Memorandum of Points and Authorities; Declaration of Robert E. Asperger filed on February 2, 2010. Order granting Defendant/Appellant's Petition for Rehearing, filed on February 4, 2010. Order filed on February 11, 2010 dismissing the appeal is vacated, and the appeal is reinstated.

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

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: Case Management/Status Conference held on February 25, 2010. The Court defers ruling on issue of alternative formulations until further hearing on April 1, 2010. Informal conference call between the Court and Counsel will be scheduled for March 1, 2010.

THE GILLETTE COMPANY & SUBSIDIARIES v. Franchise Tax Board

Filed 01/11/10

San Francisco Superior Court Case No. CGC10495911

Taxpayer's Counsel

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

Silverstein & Pomerantz, LLP

FTB's Counsel

Lucy Wang

Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1997 through 2004 Amount \$4,137,591.00

Status: Defendant's Ex-Parte Application for Order Stipulated for Extension of Time to Respond to Complaint, Memorandum of Points and Authorities, Declaration filed on February 10, 2010. Order Granting Defendant's Ex-Parte Application for an Extension of Time to Respond to March 12, 2010, filed on February 18, 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: Hearing on Motion for Summary Judgment scheduled for April 7, 2010. Case Management Conference scheduled for April 7, 2010. Discovery Proceeding.

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: Order filed on January 12, 2010, granting Plaintiff's Motion to Reopen Discovery. **Petitioner FTB's Opening Brief on the Merits filed on February 2, 2010 (Case No. S176943).**

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: Judgment in favor of FTB regarding tax, filed on January 27, 2010. Judgment in favor of Plaintiffs regarding penalties, filed on January 27, 2010.

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
Order Granting Motion for Extension of Time to File its Combined Reply Brief on Appeal and Answering Brief on Cross-Appeal, filed on February 19, 2010. Brief should be filed on or before April 30, 2010.

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

Los Angeles Superior Court Case No. 08K09860
Court of Appeal, 2nd Appellate District Case No. B211815
California Supreme Court Case No. S178199

Filed - 04/18/08

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: Petition for Review denied on January 21, 2010. Remittitur issued on January 26, 2010.

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

Tim Nader

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: Demurrer/Motion to Strike, scheduled for March 19, 2010, and was filed on January 26, 2010. Defendant's Stipulation regarding Extension of Time to File Responsive Pleading, filed on January 26, 2010. Case Management Conference rescheduled to March 19, 2010. Defendant's Demurrer to Amend Complaint, and Supporting Documents filed on January 27, 2010.

KIMBERLY-CLARK WORLD WIDE, INC. & SUBSIDIARIES v. Franchise Tax Board

San Francisco Superior Court Case No. CGC 10495916

Filed 01/11/10

Taxpayer's Counsel

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

FTB's Counsel

Lucy Wang

Issues:

1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1993 through 2004

Amount \$14,344,394.00

Status: Case Management Conference scheduled for June 11, 2010. **Defendant's Ex-Parte Application for Order Stipulated for Extension of Time to Respond to Complaint, Memorandum of Points and Authorities, and Declaration, filed on February 10, 2010. Order Granting Defendant's Ex-Parte Application for an Extension of Time to Respond to March 12, 2010, filed on February 18, 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 regarding Federal Tax held on January 21, 2010, and continued to June 14, 2010. Plaintiff's Status Conference Report filed on January 21, 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: **Defendant/Respondent's Opening Brief filed on February 22, 2010. Plaintiffs/Appellants' Reply Brief to be filed on March 15, 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: Court Trial scheduled for January 25, 2010, removed from calendar; scheduled in error. Notice of Assignment of Judge William H. Follett filed on February 23, 2010. Plaintiff's Supplemental Authority regarding Statement of Disqualification filed on February 23, 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: Defendant/Respondent's Opposition to Plaintiff/Appellant's Request for Judicial Notice filed on January 5, 2010. Oral Argument held on 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: Trial scheduled for April 5, 2010. Settlement Conference set for March 22, 2010, continued to March 24, 2010, per Stipulation of Counsel and filed on February 5, 2010. Discovery proceeding.

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 January 7, 2010. Hearing regarding Motion for Attorney's Fees scheduled for May 7, 2010.

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 rescheduled to April 1, 2010.

THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board

Filed 01/11/10

San Francisco Superior Court Case No. CGC10495912

Taxpayer's Counsel

FTB's Counsel

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

Lucy Wang

Silverstein & Pomerantz, LLP

- Issues:
1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
 2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 06/30/99 through 06/30/05

Amount \$11,837,747.00

Status: Defendant's Ex-Parte Application for Order Stipulated for Extension of Time to Respond to Complaint, Memorandum of Points and Authorities, Declaration filed on February 10, 2010. Order Granting Defendant's Ex-Parte Application for an Extension of Time to Respond to March 12, 2010, filed on February 18, 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

Septoe & 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

Years: N/A

Refund sought \$3,473,437.50 Penalty

Status: Mandatory Settlement Conference rescheduled to October 25, 2010. Trial rescheduled to November 8, 2010.

RB HOLDINGS (USA) INC. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496438 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed 01/29/10 <u>FTB's Counsel</u> Lucy Wang
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- Issues:
1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
 2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 2002 through 2004

Amount \$145,240.00

Status: Summons and Complaint served on February 1, 2010. Proof of Service filed on February 1, 2010. Defendant's Ex-Parte Application for Order Stipulated for Extension of Time to Respond to Complaint, Memorandum of Points and Authorities, Declaration filed on February 10, 2010. Order Granting Defendant's Ex-Parte Application for an Extension of Time to Respond to March 12, 2010 filed on February 18, 2010.

REILING, BERNARD & JUDITH ET AL, v. Franchise Tax Board Los Angeles Superior Court Case No. BC378978 <u>Taxpayer's Counsel</u> James D. Gustafson, Stephen R. Goostrey Gustafson & Goostrey, LLP	Filed - 10/12/07 <u>FTB's Counsel</u> Anthony Sgherzi
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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 held on February 23, 2010. Discovery proceeding. Trial rescheduled to March 3, 2010.

RIVER GARDEN RETIREMENT HOME v. Franchise Tax Board San Francisco Superior Court Case No. CGC07467783 Court of Appeal, 1 st Appellate District. No. A123316 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin Silverstein & Pomerantz, LLP	Filed - 10/02/07 <u>FTB's Counsel</u> David Lew
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- 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	Filed - 09/07/07
Court of Appeal, 4 th Appellate District Division 1 Case No. D052309	
California Supreme Court Case No. S161612	
Court of Appeal, 4 th District, Division One, Case No. D055755 (Attorney's Fees)	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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: Motion for Order to File Appellant's Opening Brief with Corrections [Cal. Rule of Court 8.204(e)(2)(B)] filed on January 21, 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
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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 held on February 11, 2010.

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board

Los Angeles Superior Court Case No. BC363822	Filed - 12/22/06
Court of Appeal, 2 nd Appellate District Case No. B213971 (consolidated with Du et al. & Mickelsen)	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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 filed February 22, 2010. Plaintiffs/Appellants' Reply Brief to be filed on March 15, 2010.

SIGMA-ALDRICH, Corp. & Subsidiaries v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496437 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed 01/29/10 <u>FTB's Counsel</u> Lucy Wang
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Issues: 1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 1998 through 2004 Amount \$501,662.00

Status: Summons and Complaint served on February 1, 2010. Proof of Service filed on February 1, 2010. Defendant's Ex-Parte Application for Order Stipulated for Extension of Time to Respond to Complaint, Memorandum of Points and Authorities, Declaration filed on February 10, 2010. Order Granting Defendant's Ex-Parte Application for an Extension of Time to Respond to March 12, 2010 filed on February 18, 2010.

TAIHEYO CEMENT U.S.A., INC. v. Franchise Tax Board Los Angeles Superior Court Case No. BC422623 <u>Taxpayer's Counsel</u> Marty Dakessian Akerman Senterfitt, LLP	Filed - 11/12/09 <u>FTB's Counsel</u> Marta Smith
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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: Trial Setting Conference scheduled for April 12, 2010. Case Management Conference held on 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 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: **Petitioner's Summons and [Proposed] Third Amended Complaint filed by fax on February 26, 2010.**

VENTAS FINANCE I, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. 05440001

Court of Appeal, 1st Appellate District Case No. A116277 & Case No. A117751

California Supreme Court Case No. S166870

U.S. Supreme Court Case No. 08-1022

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin

Silverstein & Pomerantz, LLP

Filed - 04/01/05

FTB's Counsel

Marguerite Stricklin

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

Years: 2001 through 2003

Amount \$29,580.00 Tax

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

WESTLUND, CHARLES G. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC406803

Taxpayer's Counsel

Robert F. Klueger, Esq.

Klueger & Stein, LLP

Filed - 01/30/09

FTB's Counsel

Mark P. Richelson

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

Years: 1994 through 1996

Amount \$ 96,632.00 Tax
 \$116,622.67 Penalty

Status: **Plaintiff's Representative's Motion to be Relieved as Counsel filed on February 1, 2010. Plaintiff in Pro Per's Opposition to Motion to be Relieved as Counsel filed on February 18, 2010.** Final Status Conference rescheduled to May 10, 2010, and Trial rescheduled to May 24, 2009.