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### **March 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 – March 2010**

**Case Name**

**Court Number**

Golden West Health Plan, Inc. Los Angeles Superior Court Case No. BC353849  
(Taxpayer's Petition for Rehearing was denied on 08/17/09)

Jensen, Craig C. & Sally - Los Angeles Superior Court Case No. 08K09860  
(Taxpayers' Petition for Review was denied on 01/21/10)

Montgomery, Parker G. San Francisco Superior Court Case No. CGC09484121  
(Negotiated resolution)

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**FRANCHISE AND INCOME TAX**  
**New Cases – March 2010**

**Case Name**

**Court Number**

Freedom From Religion Foundation, Inc. et al. v. Timothy Geither, Douglas Shulman and Selvi Stanislaus  
U.S. District Court, Eastern District of California Sacramento Division Case No. CV02894WBS

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

**March 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: Plaintiff's Notice of Motion for Award of Reasonable Attorney's Fees, filed on March 29, 2010. Defendant's Opposition to Plaintiff's Motion for Attorneys' Fees, filed on April 12, 2010. Defendant's Request for Judicial Notice in Opposition to Plaintiff's Motion, filed on April 12, 2010. Court Notice to Court Reporter to prepare transcript for appeal issued on April 12, 2010. Hearing regarding Plaintiff's Motion for Attorneys' Fees held on April 26, 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 continued to April 23, 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: Hearing regarding Order to Show Cause scheduled for May 20, 2010, is off calendar. Defendant's Request for Trial De Novo following mediation/arbitration filed on April 8, 2010. Case Management Conference scheduled for July 2, 2010, is off calendar. Trial scheduled to commence on August 16, 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: **Plaintiff's First Amended Complaint and Proof of Service filed on March 3, 2010. Defendant's Demurrer, and Memorandum of Points and Authorities in Support of Demurrer filed on April 23, 2010.**

CALIFORNIA TAXPAYERS' ASSOCIATION v. Franchise Tax Board  
Sacramento Superior Court Case No. 34-2009-80000138  
Court of Appeal, 3<sup>rd</sup> Appellate District Case No. C062791  
Taxpayer's Counsel  
Amy L. Silverstein, Edwin P. Antolin  
Silverstein & Pomerantz, LLP

Filed - 02/17/09  
FTB's Counsel  
Jill T. Bowers

- Issues:
1. Whether RTC section 19138 creates a new penalty for the underpayment of taxes owed or creates a new tax.
  2. Whether RTC section 19138 required a two-thirds vote of both the Assembly and Senate to be properly enacted under Article XIII A, § 3 of the California Constitution.
  3. Whether RTC section 19138 was enacted in accordance with Article IV, § 8(b) of the California Constitution.
  4. Whether RTC section 19138 violates the Eight and Fourteenth Amendments to the Constitution of the United States of America.
  5. Whether RTC section 19138 violates the Commerce Clause of the Constitution of the United States of America by improperly discriminating against corporations engaged in a unitary business.
  6. Whether Plaintiff is entitled to the issuance of a writ of mandate commanding FTB to not enforce RTC section 19138.

Year: 2003 Amount \$0.00

Status: **Respondent's Opposition to Petitioner/Appellant's Request for Judicial Notice filed on April 12, 2010.**

CENTERCAL MANAGEMENT SERVICES, INC. v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC09493854  
Taxpayer's Counsel  
Edward O.C. Ord, Esq.  
Jenny Lin-Alva, Byron G. Sun  
Ord and Norman

Filed: 10/26/09  
FTB's Counsel  
Marguerite Stricklin

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

Year: 2002 Amount \$77,777.00

**Status:** Mandatory Settlement Conference rescheduled to October 8, 2010, Trial scheduled for October 25, 2010. Case Management Conference scheduled for March 26, 2010, is off calendar. Plaintiff's Objections to Case Management Order and Proposed Trial Date, filed on March 19, 2010.

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| CITY NATIONAL CORPORATION v. Franchise Tax Board                                       |   |                      |
| Los Angeles Superior Court Case No. BC334772   |   | Filed - 06/10/05     |
| Court of Appeal, 2 <sup>nd</sup> Appellate District Case No. B189240                   |   |                      |
| California Supreme Court Case No. S150563  |   |                      |
| <u>Taxpayer's Counsel</u>  | <u>Taxpayer's Counsel</u>   | <u>FTB's Counsel</u> |
| Kenneth R. Chiate, Mary S. Thomas<br>Quinn, Emanuel,<br>Urquhart, Oliver & Hedges, LLP | Sherrill Johnson,<br>Offices of the General Counsel<br>City National Bank | Brian Wesley         |

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

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

**Status:** Hearing regarding Order to Show Cause scheduled for May 6, 2010.

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|---|--|----------------------|
| CITY NATIONAL CORPORATION & Subs. v. Franchise Tax Board            |  |                      |
| Sacramento Superior Court Case No. 06AS02275                        |  | Filed - 06/06/06     |
| <u>Taxpayer's Counsel</u>   | <u>Taxpayer's Counsel</u>  | <u>FTB's Counsel</u> |
| Kenneth R. Chiate, Quinn, Emanuel,<br>Urquhart Oliver & Hedges, LLP | Sherrill Johnson<br>Offices of the General Counsel<br>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.

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| CUTLER, FRANK v. Franchise Tax Board         |                      |
| Los Angeles Superior Court Case No. BC421864 |                      |
| <u>Taxpayer's Counsel</u>                    | <u>FTB's Counsel</u> |
| Marty Dakessian<br>Reed Smith 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: **Plaintiff's Substitution of Attorney filed on March 29, 2010. Stipulation and Order to continued Trial Date to October 4, 2010, filed on April 19, 2010. Hearing on Motion for Summary Judgment rescheduled to September 8, 2010. Final Status Conference rescheduled to September 23, 2010.**

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| DICON FIBEROPTICS, INC. v. Franchise Tax Board   |  |                      |
| Los Angeles Superior Court Case No. BC367885   |  |                      |
| Court of Appeal, 2 <sup>nd</sup> Appellate District Case No. B202997                                   |  |                      |
| California Supreme Court Case No. S173860  |  |                      |
| <u>Taxpayer's Counsel</u>  | <u>Taxpayer's Counsel</u>                | <u>FTB's Counsel</u> |
| Thomas R. Freeman, Paul S. Chan,<br>Bird, Marella, Boxer, Wolpert,<br>Nessim, Dooks & Lincenberg, P.C. | Marty Dakessian<br><b>Reed Smith LLP</b> | 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 Reply Brief to be filed by May 7, 2010.**

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| DU, BENJAMIN R. AND CARMELA v. Franchise Tax Board   |  |                      |
| Los Angeles Superior Court Case No. BC391413   |  |                      |
| Court of Appeal, 2 <sup>nd</sup> Appellate District Case No. B213971 (consolidated with Mickelsen & Shimmon)             |  |                      |
| <u>Taxpayer's Counsel</u>  |  | <u>FTB's Counsel</u> |
| Charles P. Rettig, Steven Toscher<br>Sharyn M. Fisk & Michael R. Stein<br>Hochman, Salkin, Rettig, Toscher & Perez, P.C. |  | W. Dean Freeman      |

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

Year: 1999

Amount \$288,938.00 Interest

Status: **Plaintiffs/Appellants' Reply Brief to be filed by May 10, 2010.**

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| ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board                |  |                      |
| Sacramento Superior Court Case No. 07AS03070                         |  |                      |
| Court of Appeal, 3 <sup>rd</sup> Appellate District Case No. C063450 |  |                      |
| <u>Taxpayer's Counsel</u>  |  | <u>FTB's Counsel</u> |
| Robert R. Rubin<br>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: **Record on Appeal filed on March 30, 2010. Defendant/Appellant's Opening Brief to be filed by May 10, 2010.**

**FREEDOM FROM RELIGION FOUNDATION, INC., ET AL v. TIMOTHY GEITHNER, DOUGLAS SHULMAN AND SELVI STANISLAUS**

U.S. District Court, Eastern District of California Sacramento Division Case No. CV02894-WBS-DAD Filed: 10/14/09  
U.S. Court of Appeals 9<sup>th</sup> Circuit Court No. 09-17753

Taxpayer's Counsel  
Michael A. Newdow  
Newdow Law

FTB's Counsel  
Jill Bowers

- Issues:**
1. Whether Revenue and Taxation Code sections 17131.6 and 17280(d)(2) violate the Establishment Clause of the First Amendment to the United States Constitution.
  2. Whether Revenue and Taxation Code sections 17131.6 and 17280(d)(2) violate the Establishment Clause of Article 1, Section 4, of the California Constitution and the provisions of Article 16, Section 5 of the California Constitution.

**Year:** None Amount \$-0-

**Status:** Notice of Motion and Motion by Defendant Selvi Stanislaus to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State Claim upon which relief can be granted, filed on February 26, 2010. Notice of Hearing on Motion to Dismiss scheduled for March 29, 2010, rescheduled to May 10, 2010. Opening Brief of Appellant and Intervenor Michael Rodgers filed on March 26, 2010 (Case No. 09-17753). Opposition Brief to be filed by April 26, 2010.

**GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board**

San Francisco Superior Court Case No. CGC05439929

Filed - 03/29/05

Court of Appeal, 1<sup>st</sup> 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:** Trial commenced on April 9, 2010, and is continuing to May 4, 2010.

**THE GILLETTE COMPANY & SUBSIDIARIES v. Franchise Tax Board**

San Francisco Superior Court Case No. CGC10495911

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

Status: Application for Approval of Complex Litigation Designation, and [Proposed] Order Granting Designation of Complex Litigation filed with respect to the following cases:

- (1) The Gillette Company and Subsidiaries v. Franchise Tax Board;
- (2) Kimberly-Clark Worldwide, Inc., & Subsidiaries, et al. v. Franchise Tax Board;
- (3) The Procter & Gamble Manufacturing Company & Affiliates v. Franchise Tax Board;
- (4) RB Holdings (USA) Inc., v. Franchise Tax Board; and
- (5) Sigma Aldrich, Inc. & Affiliates v. Franchise Tax Board.

Defendant's Opposition to Application for Complex Designation filed on March 11, 2010. Plaintiff's Reply to Defendant's Opposition to the Application for Approval of Complex Litigation Designation; Proof of Service in Support, filed on March 16, 2010. Order granting Application for Complex Designation filed on April 1, 2010. Defendant's Demurrer, Notice of Demurrer, Memorandum of Points and Authorities in Support of Demurrer, Notice of Related Demurrers and Declaration of Service, filed on March 11, 2010. Hearing on Demurrer scheduled for May 3, 2010. Case Management Conference scheduled for June 11, 2010, is rescheduled to May 27, 2010.

GOLDMAN, STEPHEN J. AND AZITA ETAATI v. Franchise Tax Board  
Alameda County Superior Court Case No. RG09441003  
Taxpayer's Counsel  
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

Filed - 03/12/09  
FTB's Counsel  
David Lew

Issue: The issue is whether a self-reporting taxpayer participating in the Voluntary Compliance Initiative (VCI) is entitled to interest suspension under Revenue and Taxation Code section 19116.

Year: 2000 Amount \$823,950.00 Interest

Status: Case Management Conference held on April 7, 2010. Hearing on Motion for Summary Judgment held on April 7, 2010. Order granting Franchise Tax Board's Motion for Summary Judgment filed on April 21, 2010.

GONZALES, THOMAS J. II v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC06454297  
Court of Appeal, 1<sup>st</sup> 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

Filed - 07/18/06  
FTB's Counsel  
Jeffrey Rich

Issues:

1. Whether a \$142,000,000.00 capital loss from an abusive tax shelter is allowable.
2. Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.
3. Whether the taxpayer is entitled to deduct legal expenses paid in connection with an investment.

Years: 2000 and 2001 Amount \$12,374,510.00 Tax

Status: Respondent and Real Party in Interest's Answer Brief on the Merits filed April 5, 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: Plaintiffs' Memorandum of Costs filed on February 9, 2010. Defendant's Motion to Strike Plaintiffs' Memorandum of Costs and Memorandum of Points and Authorities in support thereof, filed on March 1, 2010. Court's Order continuing hearing regarding Motion for Attorneys' Fees to May 13, 2010, filed on April 8, 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

FTB's Request for Extension of Time to File its combined Reply Brief to May 31, 2010, granted on April 16, 2010, Memorial Day, holiday extends filing date to June 1, 2010.

KIEWIT CORPORATION v. Franchise Tax Board  
San Diego Superior Court Case No.37-2009-00087282-CU-MC-CTL  
Taxpayer's Counsel  
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

Filed - 04/09/09  
FTB's Counsel  
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: **Plaintiff's Opposition to Motion and Supporting Declarations regarding Demurrer filed on March 8, 2010. Defendant's Reply to Plaintiff's Opposition to Motion and Supporting Declarations, filed on March 12, 2010. Tentative Ruling for Demurrer/Motion to Strike, filed on March 18, 2010. Case Management Conference scheduled for May 14, 2010. Hearing on Demurrer scheduled for May 14, 2010.**

KIMBERLY-CLARK WORLD WIDE, INC. & SUBSIDIARIES v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC 10495916  
Taxpayer's Counsel  
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

Filed 01/11/10  
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: **Application for Approval of Complex Litigation Designation, and [Proposed] Order Granting Designation of Complex Litigation filed with respect to the following cases:**  
**(1) The Gillette Company and Subsidiaries v. Franchise Tax Board;**  
**(2) Kimberly-Clark Worldwide, Inc., & Subsidiaries, et al. v. Franchise Tax Board;**  
**(3) The Procter & Gamble Manufacturing Company & Affiliates v. Franchise Tax Board;**  
**(4) RB Holdings (USA) Inc., v. Franchise Tax Board; and**  
**(5) Sigma Aldrich, Inc. & Affiliates v. Franchise Tax Board.**  
**Defendant's Opposition to Application for Complex Designation filed on March 11, 2010. Plaintiff's Reply to Defendant's Opposition to the Application for Approval of Complex Litigation Designation; Proof of Service in Support, filed on March 16, 2010. Order granting Application for Complex Designation filed on**

**April 1, 2010. Defendant's Demurrer, Notice of Demurrer, Memorandum of Points and Authorities in Support of Demurrer, Notice of Related Demurrers and Declaration of Service, filed on March 11, 2010. Hearing on Demurrer scheduled for May 3, 2010. Case Management Conference scheduled for June 11, 2010, is rescheduled to May 27, 2010.**

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| MANNING, LAWRENCE T. & JOY v. Franchise Tax Board<br>Los Angeles Superior Court Case No. BC382987<br><i>Taxpayer's Counsel</i><br>Gordon B. Cutler, Esq. | Filed – 12/28/07<br><i>FTB's Counsel</i><br>Anthony Sgherzi |
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**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 continued to June 14, 2010.

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| MICKELSEN, PAUL L. & PATRICIA A. v. Franchise Tax Board<br>Los Angeles Superior Court Case No. BC385197<br>Court of Appeal, 2 <sup>nd</sup> Appellate District Case No.B213971 (consolidated with Du et al. & Shimmon)<br><i>Taxpayer's Counsel</i><br>Charles P. Rettig, Esq.<br>Steven Toscher, Sharyn M. Fisk<br>Hochman, Salkin, Retigg, Toscher & Perez, P.C. | Filed – 02/08/08<br><i>FTB's Counsel</i><br>W. Dean Freeman |
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**Issue:** Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.

**Year:** 1999 **Amount** \$537,178.00 Interest

**Status:** **Plaintiffs/Appellants' Stipulation for Extension of Time to File Reply Brief to May 10, 2010, filed on March 3, 2010. Extension granted to May 10, 2010.**

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| MICROSOFT CORPORATION v. Franchise Tax Board<br>San Francisco Superior Court Case No. CGC08471260<br><i>Taxpayer's Counsel</i><br>James P. Kleier, Brian W. Toman<br>Reed Smith, LLP | Filed – 01/22/08<br><i>FTB's Counsel</i><br>David Lew<br>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:** Case Management Conference scheduled for May 7, 2010. Objection to Plaintiff's Supplemental Authority and Request for Leave to File a Response to Same, filed by on behalf of The Honorable Curtis E.A. Karnow on March 1, 2010. Order disqualifying The Honorable Curtis E.A. Karnow, filed on March 15, 2010. Case Management Conference scheduled for May 7, 2010.

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| MIKE, ANGELINA v. Franchise Tax Board<br>San Diego Superior Court Case No. 37-2007-00067324-CU-MC-CTL<br>Appellate Court, 4 <sup>th</sup> Appellate District Court No. D054439<br><i>Taxpayer's Counsel</i><br>Richard M. Freeman, Carole M Ross<br>Sheppard, Mullin, Richter & Hampton, LLP | Filed - 05/25/07<br><i>FTB's Counsel</i><br>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:** Published Opinion in favor of Defendant Franchise Tax Board issued on March 5, 2010.

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| NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board<br>San Francisco Superior Court Case No. CGC05437721<br>Court of Appeal 1 <sup>st</sup> Appellate District Case No. A114805<br>Court of Appeal, 1 <sup>st</sup> Appellate District Case No. A115841 (Attorneys' Fees)<br>Court of Appeal, 1 <sup>st</sup> Appellate District Case No. A115950 (Attorneys' Fees)<br>California Supreme Court Case No. S162627<br><i>Taxpayer's Counsel</i><br>Amy L. Silverstein, Edwin Antolin<br>Silverstein & Pomerantz | Filed - 01/15/05<br><i>FTB's Counsel</i><br>Marguerite C. Stricklin |
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**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 [Proposed] Order regarding Joint Stipulation in Support of Application for Permission to File Longer Memorandum and Proof of Service, filed on March 3, 2010. Order and Joint Stipulation in Support of Application for Permission to File Longer Memorandum, filed on March 4, 2010. Plaintiff's Motion for Attorney's Fees and Expense, Proof of Service, Memorandum of Points and Authorities; Declaration and Request for Judicial Notice filed on March 12, 2010. Hearing scheduled for May 7, 2010.

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| PERSONAL SELLING POWER, INC. v. Franchise Tax Board<br>Alameda Superior Court Case No. RG09462520<br><i>Taxpayer's Counsel</i><br>Michael L. Corman<br>Law offices of Michael L. Corman | <i>Taxpayer's Counsel</i><br>Amy L. Silverstein, Edwin Antolin<br>Silverstein & Pomerantz, LLP | Filed - 07/13/09<br><i>FTB's Counsel</i><br>Marguerite C. Stricklin |
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**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 held on April 1, 2010.

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| THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board<br>San Francisco Superior Court Case No. CGC10495912<br><u>Taxpayer's Counsel</u><br>Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts<br>Silverstein & Pomerantz, LLP | Filed 01/11/10<br><u>FTB's Counsel</u><br>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: 06/30/99 through 06/30/05 Amount \$11,837,747.00

Status: Application for Approval of Complex Litigation Designation, and [Proposed] Order Granting Designation of Complex Litigation filed with respect to the following cases:

- (1) The Gillette Company and Subsidiaries v. Franchise Tax Board;
- (2) Kimberly-Clark Worldwide, Inc., & Subsidiaries, et al. v. Franchise Tax Board;
- (3) The Procter & Gamble Manufacturing Company & Affiliates v. Franchise Tax Board;
- (4) RB Holdings (USA) Inc., v. Franchise Tax Board; and
- (5) Sigma Aldrich, Inc. & Affiliates v. Franchise Tax Board.

Defendant's Opposition to Application for Complex Designation filed on March 11, 2010. Plaintiff's Reply to Defendant's Opposition to the Application for Approval of Complex Litigation Designation; Proof of Service in Support, filed on March 16, 2010. Order granting Application for Complex Designation filed on April 1, 2010. Defendant's Demurrer, Notice of Demurrer, Memorandum of Points and Authorities in Support of Demurrer, Notice of Related Demurrers and Declaration of Service, filed on March 11, 2010. Hearing on Demurrer scheduled for May 3, 2010. Case Management Conference scheduled for June 11, 2010, is rescheduled to May 27, 2010.

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| QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board<br>San Francisco Superior Court Case No. CGC09487540<br><u>Taxpayer's Counsel</u><br>Amanda J. Pedvin<br>Septoe & Johnson, LLP | <u>Taxpayer's Counsel</u><br>Matthew D. Lerner, Esq.<br>Septoe & Johnson, LLP | Filed - 04/20/09<br><u>FTB's Counsel</u><br>Anne Michelle Burr |
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- 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: Early Settlement Conference continued to August 27, 2010. Trial rescheduled to November 8, 2010.

RB HOLDINGS (USA) INC. & SUBSIDIARIES v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC10496438  
Taxpayer's Counsel  
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

Filed 01/29/10  
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: 2002 through 2004 Amount \$145,240.00

Status: Application for Approval of Complex Litigation Designation, and [Proposed] Order Granting Designation of Complex Litigation filed with respect to the following cases:  
(1) The Gillette Company and Subsidiaries v. Franchise Tax Board;  
(2) Kimberly-Clark Worldwide, Inc., & Subsidiaries, et al. v. Franchise Tax Board;  
(3) The Procter & Gamble Manufacturing Company & Affiliates v. Franchise Tax Board;  
(4) RB Holdings (USA) Inc., v. Franchise Tax Board; and  
(5) Sigma Aldrich, Inc. & Affiliates v. Franchise Tax Board.  
Defendant's Opposition to Application for Complex Designation filed on March 11, 2010. Plaintiff's Reply to Defendant's Opposition to the Application for Approval of Complex Litigation Designation; Proof of Service in Support, filed on March 16, 2010. Order granting Application for Complex Designation filed on April 1, 2010. Defendant's Demurrer, Notice of Demurrer, Memorandum of Points and Authorities in Support of Demurrer, Notice of Related Demurrers and Declaration of Service, filed on March 11, 2010. Hearing on Demurrer scheduled for May 3, 2010. Case Management Conference scheduled for June 11, 2010, is rescheduled to May 27, 2010.

REILING, BERNARD & JUDITH ET AL, v. Franchise Tax Board  
Los Angeles Superior Court Case No. BC378978  
Taxpayer's Counsel  
James D. Gustafson, Stephen R. Goostrey  
Gustafson & Goostrey, LLP

Filed - 10/12/07  
FTB's Counsel  
Anthony Sgherzi

Issue: Whether Plaintiffs are entitled to deductions, depreciation, and deferral of gains by virtue of acquiring participation units in a trust that does not hold title to the underlying property.

Years: 1998 through 2002 Amount \$709,482.00 Tax

Status: Trial continued to May 12, 2010.

RIVER GARDEN RETIREMENT HOME v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC07467783  
Court of Appeal, 1<sup>st</sup> Appellate District. No. A123316  
Taxpayer's Counsel  
Amy L. Silverstein, Edwin Antolin  
Silverstein & Pomerantz, LLP

Filed - 10/02/07  
FTB's Counsel  
David Lew

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

Years: 1999 and 2000

Amount \$5,375.26 Tax  
\$ 895.93 Penalty

Status: Oral Argument scheduled for May 11, 2010.

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| ROHR, INC. v. Franchise Tax Board<br>San Diego Superior Court Case No. 37-2007-00070925-CU-CO-CTL<br>Court of Appeal, 4 <sup>th</sup> District, Division One, Case No. D052309 (Review an Interim Order)<br>California Supreme Court Case No. S161612 (Writ Petition)<br>Court of Appeal, 4 <sup>th</sup> District, Division One, Case No. D055755 (Superior Court Judgment)<br>Court of Appeal, 4 <sup>th</sup> District, Division One, Case No. D055756 (Attorney's Fees)<br><u>Taxpayer's Counsel</u><br>Mark L. Mann<br>Luce, Forward, Hamilton & Scripps LLP | Filed - 09/07/07<br><br><br><br><br><br><u>FTB's Counsel</u><br>Brian D. Wesley |
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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: Ruling on Request for Judicial Notice deferred on April 7, 2010. Plaintiff/Respondent's Unopposed Request for Judicial Notice filed on March 19, 2010, will be considered with the appeal. Appellant Rohr, Inc.'s Brief filed on April 15, 2010. Oral Argument Waiver Notice sent by the Court on April 15, 2010.

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| SHAW, BRIAN K. v. Franchise Tax Board<br>Los Angeles Superior Court Case No. BC378829<br><u>Taxpayer's Counsel</u><br>David Roth, Esq.<br>Hochman, Salkin, Rettig, Toscher & Perez | Filed - 10/10/07<br><br><br><br><br><u>FTB's Counsel</u><br>Diane Spencer-Shaw |
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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.

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| SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board<br>Los Angeles Superior Court Case No. BC363822<br>Court of Appeal, 2 <sup>nd</sup> Appellate District Case No. B213971 (consolidated with Du et al. & Mickelsen)<br><u>Taxpayer's Counsel</u><br>Charles P. Rettig, Sharyn M. Fisk<br>Hochman, Salkin, Rettig, Toscher & Perez, P.C. | Filed - 12/22/06<br><br><br><br><br><br><u>FTB's Counsel</u><br>W. Dean Freeman |
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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: Plaintiffs/Appellants' Stipulation for Extension of Time to File Reply Brief to May 10, 2010, filed on March 3, 2010; Reply Brief to be filed on May 10, 2010.

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| SIGMA-ALDRICH, CORP. & SUBSIDIARIES v. Franchise Tax Board<br>San Francisco Superior Court Case No. CGC10496437<br><u>Taxpayer's Counsel</u><br>Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts<br>Silverstein & Pomerantz, LLP | Filed 01/29/10<br><u>FTB's Counsel</u><br>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: Application for Approval of Complex Litigation Designation, and [Proposed] Order Granting Designation of Complex Litigation filed with respect to the following cases:  
(1) The Gillette Company and Subsidiaries v. Franchise Tax Board;  
(2) Kimberly-Clark Worldwide, Inc., & Subsidiaries, et al. v. Franchise Tax Board;  
(3) The Procter & Gamble Manufacturing Company & Affiliates v. Franchise Tax Board;  
(4) RB Holdings (USA) Inc., v. Franchise Tax Board; and  
(5) Sigma Aldrich, Inc. & Affiliates v. Franchise Tax Board.  
Defendant's Opposition to Application for Complex Designation filed on March 11, 2010. Plaintiff's Reply to Defendant's Opposition to the Application for Approval of Complex Litigation Designation; Proof of Service in Support, filed on March 16, 2010. Order granting Application for Complex Designation filed on April 1, 2010. Defendant's Demurrer, Notice of Demurrer, Memorandum of Points and Authorities in Support of Demurrer, Notice of Related Demurrers and Declaration of Service, filed on March 11, 2010. Hearing on Demurrer scheduled for May 3, 2010. Case Management Conference scheduled for June 11, 2010, is rescheduled to May 27, 2010.

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| TAIHEYO CEMENT U.S.A., INC. v. Franchise Tax Board<br>Los Angeles Superior Court Case No. BC422623<br><u>Taxpayer's Counsel</u><br>Marty Dakessian<br>Reed Smith LLP | Filed - 11/12/09<br><u>FTB's Counsel</u><br>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:** Hearing regarding Trial Setting Conference held on April 12, 2010. Final Status Conference scheduled for November 10, 2010, and Trial scheduled for November 16, 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 March 18, 2009 to May 18, 2010.

TWENTY-NINE PALMS BAND OF MISSION INDIANS v. Selvi Stanislaus, et al.

U.S. Dist. Ct. Central Dist. of Calif. Eastern Div.- 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:** Third Amended Complaint served on Defendants Selvi Stanislaus, John Chiang, Betty T. Yee, and Ana J. Matosantos filed on March 1, 2010. Defendant's Stipulation for Extension of Time to File Response as to Amended Complaint filed by Selvi Stanislaus on March 18, 2010. Order Granting Stipulation for Extension of Time to File Response to Amended Complaint to April 5, 2010, filed on March 21, 2010. Defendants' Request for Judicial Notice in Support Of Motion to Dismiss Plaintiff's Third Amended Complaint, Defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss, Defendants' Notice of Motion and Motion to Dismiss Plaintiff's Third Amended Complaint filed on April 5, 2010. Plaintiff's Opposition to Motion to Dismiss Third Amended Complaint, Plaintiff's Request for Judicial Notice in Opposition to Motion to Dismiss Third Amended Complaint, Plaintiff's Objection to Request for Judicial Notice and Evidence Cited Therein, filed on April 19, 2010.

VENTAS FINANCE I, LLC v. Franchise Tax Board  
San Francisco Superior Court Case No. 05440001  
Court of Appeal, 1<sup>st</sup> Appellate District Case No. A116277 & Case No. A117751  
California Supreme Court Case No. S166870  
U.S. Supreme Court Case No. 08-1022

Filed - 04/01/05

Taxpayer's Counsel

Amy L. Silverstein, Edwin Antolin  
Silverstein & Pomerantz, LLP

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

Filed - 01/30/09

Taxpayer's Counsel

Robert F. Klueger, Esq.  
Klueger & Stein, LLP

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: Hearing held regarding Motion to be Relieved as Counsel, Motion granted on March 5, 2010. Plaintiff's Request for Certified Copy of Opposition to Motion to be Relieved as Counsel, filed on March 9, 2010. Court Ordered Pursuant to Order to Show Cause regarding Dismissal, filed on March 9, 2010. Defendant's Notice of Ruling filed on March 23, 2010. Defendant's Notice of Entry of Dismissal filed on March 25, 2010.