



May/June 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 - June 2010

Case Name

Court Number

Westlund, Charles G.
(Dismissal filed 03/25/10; no appeal filed.)

Los Angeles Superior Court Case No. BC406803

FRANCHISE AND INCOME TAX
New Cases - May/June 2010

Case Name

Court Number

(none)

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

May/June 2010

APPLE, INC. v. Franchise Tax Board
San Francisco Superior Court Case No. CGC08471129
Court of Appeal, 1st Appellate District Case No. A128091
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: Motion to Dismiss Plaintiff's Appeal filed by FTB on April 28, 2010. Proposed briefing schedule filed by joint proposal on May 6, 2010, and accepted by the Court on May 11, 2010. Apple, Inc.'s opposition to Motion to Dismiss Appeal filed May 13, 2010. Record on appeal and notice of record was filed on May 18, 2010. Court of Appeal denied FTB's motion to dismiss appeal on May 26, 2010, and will consider issue as part of the merits of the case. On June 6, 2010, the Court deferred ruling on Apple Inc.'s request for judicial notice filed on May 13, 2010; the Court will decide this matter when it rules on the merits of the case. Plaintiff/Appellant, Apple Inc., to file its opening brief on August 6, 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: On May 28, 2010, a Joint Case Management Conference Statement was filed. The Complex Litigation Case Management Conference was held telephonically between Court and counsel of record on June 2, 2010, and was continued to July 20, 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: Defendant's Request for Trial De Novo following mediation/arbitration was filed on April 8, 2010. On May 12, 2010, a Notice of Time and Place of Trial was issued by the Court scheduling trial for September 20, 2010.

CA-CENTERSIDE II, LLC v. Franchise Tax Board Fresno Superior Court Case No. 10CECG00434 <i>Taxpayer's Counsel</i> Amy L. Silverstein, Edwin Antolin Silverstein & Pomerantz, LLP	Filed: 02/04/10 <i>FTB's Counsel</i> 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: Defendant's Demurrer and Memorandum of Points and Authorities in Support of Demurrer was filed on April 23, 2010. The hearing on Demurrer was continued to August 12, 2010. The Case Management Conference is set for August 23, 2010.

CALIFORNIA TAXPAYERS' ASSOCIATION v. Franchise Tax Board Sacramento Superior Court Case No. 34-2009-80000138 Court of Appeal, 3 rd Appellate District Case No. C062791 <i>Taxpayer's Counsel</i> Amy L. Silverstein, Edwin P. Antolin Silverstein & Pomerantz, LLP	Filed - 02/17/09 <i>FTB's Counsel</i> 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 FTB's Opposition to Petitioner/Appellant's (CalTax) Request for Judicial Notice filed on April 12, 2010. Caltax's request for judicial notice was denied on April 23, 2010. There was a motion/application to augment the record filed by respondent on May 20, 2010. Court granted augmentation on June 15, 2010. Appellant's opening brief due June 17, 2010.

CENTERCAL MANAGEMENT SERVICES, INC. v. Franchise Tax Board
San Francisco Superior Court Case No. CGC09493854

Filed: 10/26/09

Taxpayer's Counsel
Edward O.C. Ord, Esq.
Jenny Lin-Alva, Byron G. Sun
Ord and Norman

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: **Plaintiff's Objections to Case Management Order and Proposed Trial Date filed on March 19, 2010. On June 11, 2010, plaintiff filed an ex parte application for order to continue trial date.**

CITY NATIONAL CORPORATION v. Franchise Tax Board
Los Angeles Superior Court Case No. BC334772
Court of Appeal, 2nd Appellate District Case No. B189240
California Supreme Court Case No. S150563

Filed - 06/10/05

Taxpayer's Counsel
Kenneth R. Chiate, Mary S. Thomas
Quinn, Emanuel,
Urquhart, Oliver & Hedges, LLP

Taxpayer's Counsel
Sherrill Johnson,
Offices of the General Counsel
City National Bank

FTB's Counsel
Brian Wesley

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

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

Status: **On June 2, 2010, petitioner filed a Request and Entry of Dismissal with prejudice of the entire action of all parties and all causes of action.**

CITY NATIONAL CORPORATION & Subs. v. Franchise Tax Board
Sacramento Superior Court Case No. 06AS02275

Filed - 06/06/06

Taxpayer's Counsel
Kenneth R. Chiate, Quinn, Emanuel,
Urquhart Oliver & Hedges, LLP

Taxpayer's Counsel
Sherrill Johnson
Offices of the General Counsel
City National Bank

FTB's Counsel
Molly K. Mosley

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

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

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

CUTLER, FRANK v. Franchise Tax Board
Los Angeles Superior Court Case No. BC421864
Taxpayer's Counsel
Marty Dakessian
Reed Smith 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: 1998 Amount \$200,182.00 Tax
\$ 47,600.00 Penalty

Status: On June 8, 2010, defendant/respondent FTB filed a Notice of Entry of Order Approving Stipulation extending the time for parties to file and serve cross-motions for summary judgment. Hearing on the motions for summary judgment is set for September 8, 2010. The Final Status Conference is set for September 23, 2010. The short cause court trial is set for October 4, 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
Reed Smith LLP

FTB's Counsel
Mark Richelson

- Issues:
1. Whether Franchise Tax Board properly denied EZ Credits claimed by Plaintiff.
 2. Whether Franchise Tax Board has authority to look behind vouchers issued by Local Enterprise Zone coordinator.

Year: Ending 03/31/07 Amount \$1,104,992.00 Tax

Status: Defendant/Respondent's Reply Brief filed on May 7, 2010. Amicus curiae brief filed on June 10, 2010, by California Taxpayers' Association in support of appellant. FTB's opposition is due on June 30, 2010. The Supreme Court will then set a hearing date.

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: Last day for filing of plaintiffs/appellants' Reply brief continued to June 25, 2010.

ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board
Sacramento Superior Court Case No. 07AS03070
Court of Appeal, 3rd Appellate District Case No. C063450
Taxpayer's Counsel
Robert R. Rubin
McDonough, Holland & Allen, PC

Filed - 07/05/07
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: Record on Appeal filed on March 30, 2010. Last day for filing of defendant/appellant's Opening Brief continued to July 9, 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 9th 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: Answering brief submitted by Timothy Geithner, Douglas Shulman and USA filed on May 12, 2010. Reply brief filed by Appellant Michael Rogers on May 26, 2010.

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
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. Closing arguments were concluded on June 2, 2010. Matter continued for status conference re: proposed statement of decision on July 21, 2010.

THE GILLETTE COMPANY & SUBSIDIARIES v. Franchise Tax Board
San Francisco Superior Court Case No. CGC10495911
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: 1997 through 2004 Amount \$4,137,591.00

Status: On May 27, 2010, the Complex Litigation Case Management Conference was held; the Court ordered the matters consolidated. Hearing on demurrers continued to August 6, 2010. The Complex Litigation hearing has been continued to October 7, 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 Motions for Summary Judgment held on April 7, 2010. Order granting Franchise Tax Board's Motion for Summary Judgment filed April 22, 2010. Judgment was filed and entered on May 14, 2010.

GONZALES, THOMAS J. II v. Franchise Tax Board
San Francisco Superior Court Case No. CGC06454297
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

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 was filed April 5, 2010 (Case No. S176943). Reply brief filed by petitioner FTB on May 13, 2010 (case now fully briefed).

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: **Hearing regarding defendant FTB's Motion to Strike and to Determine Prevailing Party held on May 18, 2010. Motion granted. Notice of Ruling filed by defendant FTB on May 18, 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: On June 1, 2010, FTB submitted appellant's reply brief and cross-respondent's answering brief in the Nevada Supreme Court. On June 8, 2010, FTB submitted appellant's Supplemental Opening Brief Regarding Costs, also in the Nevada Supreme Court. Both briefs were accepted and filed. Plaintiff requested an extension until September 13, 2010, to file a responsive brief. An oral argument and decision in the matter is not expected before 2011, at the earliest.**

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: **Tentative Ruling for Demurrer/Motion to Strike issued in favor of FTB on May 13, 2010. On May 14, 2010, the Case Management Conference was continued to July 16, 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: **On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.**

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 re: Federal Tax was held on June 14, 2010. The Order to Show Cause re: Settlement is to be held on June 29, 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: Last day for filing of plaintiffs/appellants' reply brief has been continued to June 25, 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: Case Management Conference has been continued to August 4, 2010.

MIKE, ANGELINA v. Franchise Tax Board
San Diego Superior Court Case No. 37-2007-00067324-CU-MC-CTL
Appellate Court, 4th Appellate District Court No. D054439
Taxpayer's Counsel
Richard M. Freeman, Carole M Ross
Sheppard, Mullin, Richter & Hampton, LLP

Filed - 05/25/07
FTB's Counsel
Leslie Branman Smith

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

Year: 2000 Amount \$31,856.00 Tax

Status: Request for depublication was filed by Twenty-Nine Palms Band of Mission Indians on May 4, 2010. FTB's Opposition to the Request for Depublication was filed on May 12, 2010.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. CGC05437721
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

Filed - 01/15/05

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: On May 7, 2010, Plaintiff's Motion for Attorney Fees and Costs on Remand was granted.

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 Conference has been continued to July 1, 2010.

THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board
San Francisco Superior Court Case No. CGC10495912

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

Amount \$11,837,747.00

Status: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. CGC09487540

Taxpayer's Counsel
Amanda J. Pedvin
Step toe & Johnson, LLP

Taxpayer's Counsel
Matthew D. Lerner, Esq.
Septo e & Johnson, LLP

Filed – 04/20/09
FTB's Counsel
Anne Michelle Burr

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

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. & SUBSIDIRIES 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: On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.

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 held from May 12, 2010, through May 21, 2010. Further briefing requested by the court, which briefing has been completed. Closing arguments to be presented on July 9, 2010.

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

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

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

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

Status: On May 11, 2010, the case was argued and submitted.

ROHR, INC. v. Franchise Tax Board
San Diego Superior Court Case No. 37-2007-00070925-CU-CO-CTL
Court of Appeal, 4th District, Division One, Case No. D052309 (Review an Interim Order)
California Supreme Court Case No. S161612 (Writ Petition)
Court of Appeal, 4th District, Division One, Case No. D055755 (Superior Court Judgment)
Court of Appeal, 4th District, Division One, Case No. D055756 (Attorney's Fees)
Taxpayer's Counsel
Mark L. Mann
Luce, Forward, Hamilton & Scripps LLP

Filed - 09/07/07
FTB's Counsel
Brian D. Wesley

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

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

Status: Respondent's brief filed on April 15, 2010; Appellant's Reply Brief is due on July 6, 2010.

SHAW, BRIAN K. v. Franchise Tax Board
Los Angeles Superior Court Case No. BC378829
Taxpayer's Counsel
David Roth, Esq.
Hochman, Salkin, Rettig, Toscher & Perez

Filed - 10/10/07
FTB's Counsel
Diane Spencer-Shaw

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

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

Status: August 6, 2010, is the new date for final status conference; trial is set for August 16, 2010.

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board
Los Angeles Superior Court Case No. BC363822
Court of Appeal, 2nd Appellate District Case No. B213971 (consolidated with Du et al. & Mickelsen)
Taxpayer's Counsel
Charles P. Rettig, Sharyn M. Fisk
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Filed - 12/22/06
FTB's Counsel
W. Dean Freeman

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

Year: 1999 Amount \$515,422.00 Interest

Status: **The last day for filing of plaintiffs/appellants' reply brief has been continued to June 25, 2010.**

SIGMA-ALDRICH, CORP. & SUBSIDIARIES v. Franchise Tax Board
San Francisco Superior Court Case No. CGC10496437
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: 1998 through 2004 Amount \$501,662.00

Status: **On June 10, 2010, the Court ordered this case consolidated with The Gillette Company & Subsidiaries v. Franchise Tax Board, San Francisco County Superior Court Case No. CGC-10-495911. Please refer to status summary for The Gillette Company & Subsidiaries v. Franchise Tax Board.**

TAIHEYO CEMENT U.S.A., INC. v. Franchise Tax Board
Los Angeles Superior Court Case No. BC422623
Taxpayer's Counsel
Marty Dakessian
Reed Smith 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: **FTB's Motion for Judgment on the Pleadings to be held on July 1, 2010. The Final Status Conference is scheduled for November 10, 2010; Trial is 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: **The Status Conference was held on May 18, 2010; case was dismissed.**

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: **Defendant's Motion to Dismiss Third Amended Complaint with Prejudice heard and granted on May 18, 2010. Judgment entered on May 20, 2010, along with the Order granting defendant's Motion to Dismiss Without Leave to Amend. On June 16, 2010, a Notice of Appeal was filed by plaintiff in the 9th Circuit Court of Appeals.**

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

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.