



Executive Officer MS A390  
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Sacramento, CA 95812-2229

### July 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 – July 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 – July 2010

Case Name

Court Number

GEORGE, MERVIN L. & LAURA LEE v. Franchise Tax Board  
Sacramento Superior Court Case No. 34-2010-00073479  
Taxpayer's Counsel  
Mervin L. George, Pro Per  
Laura L. George, Pro Per

Filed 03/18/10

FTB's Counsel  
Jill Bowers

- Issues:
1. Whether as a non-member of the governing tribe, Plaintiff-wife's income is exempt from California state income tax?
  2. Whether plaintiff-wife is a member of the governing tribe, and if so whether her income, which is not from a reservation source, is exempt from California state income tax?
  3. Whether as a member of the governing tribe, Plaintiff-husband's retirement income is exempt from California state income tax?

Years: 2002 through 2005

Amount

\$23,369.67

Status: Summons and Complaint served by mail on April 27, 2010. Defendant filed the Second Amended Answer on June 18, 2010.

JONES APPAREL GROUP, INC. & SUBSIDIARIES v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC10499083  
Taxpayer's Counsel  
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts  
Silverstein & Pomerantz, LLP

Filed 04/26/10

FTB's Counsel  
Jill Bowers

- Issues:
1. Whether California's Amendment of RTC 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 RTC 25128 is precluded by California's participation in the Multistate Tax Compact, violates the Constitutions of the United States of America and the State of California.

Years: 12/31/01 through 12/31/03

Amount

\$755,730.00

Status: Summons and Complaint served on April 27, 2010. On June 15, 2010, Complex Litigation hearing previously set for August 6, 2010, was continued to October 7, 2010.

OBIORA, NOEL L. V Franchise Tax Board  
San Francisco Superior Court Case No. CGC10498757  
Taxpayer's Counsel  
Pro Per

Filed - 05/15/10  
FTB's Counsel  
Karen Yiu

Issues: 1. Whether Plaintiff properly and timely filed his tax returns for tax years 2005 and 2006.  
2. Whether the Franchise tax Board properly withheld Plaintiff's claimed tax refund.

Year: 2005-2006

Amount: \$3,215.00

Status: April 16, 2010 Summons and Complaint filed. On June 21, 2010, the Order to Show Cause calendar hearing was continued to July 20, 2010. Case Management Conference Set for August 13, 2010.

QUELLOS GROUP, LLC v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC10501299  
Taxpayer's Counsel  
Amanda J. Pedvin  
Step toe & Johnson, LLP

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

Filed - 07/20/10  
FTB's Counsel  
Anne Michelle Burr  
Christopher Haskins

Issues: 1. Whether the promoter penalty provided for in RTC section 19177 violates the due process clauses 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 improper activity.  
5. Whether the proper measure of the promoter penalty may include income not received by person/entity against whom the penalty has been assessed.

Years: 2001

Refund sought: \$569,807.25

Status: Summons and Complaint filed July 6, 2010

Irene Tritz v. John Potter, et al (Selvi Stanislaus)  
United States Federal District Court Central District  
SACV10-182DOC (RNBx)  
Taxpayer's Counsel  
Irene Tritz  
Pro Se

Filed - 02/12/10

FTB's Counsel  
To be Assigned

Issues: 1. Whether Plaintiff's post-judgment settlement of damages award against her former employer (U.S. Postal Service), which she contends she was led to believe by the Postal Service and its counsel was non-taxable, may be set aside on any of the following bases:

- A. Fraud/Misrepresentation;
- B. Voidable Contract due to undue Influence
- C. Breach of Settlement Agreement
- D. Discrimination
- E. Retaliation
- F. Hostile Environment
- G. Interference by the Court
- H. Final Contract Violates Rights of Others
- I. Conspiracy

Years:

Amount: Not Specified

Status: First Amended Complaint filed June 4, 2010. First Amended Complaint has not yet been properly served upon FTB or Selvi Stanislaus.

FRANCHISE AND INCOME TAX  
MONTHLY PUBLIC LITIGATION ROSTER

July 2010

APPLE, INC. v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC08471129  
Court of Appeal, 1<sup>st</sup> 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: Complex Litigation (TELEPHONIC) Case Management Conference, Previously Set for July,20, 2010, is continued to August 16,2010.

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:** On May 12, 2010, a Notice of Time and Place of Trial was issued by the Court scheduling trial for September 20, 2010, at 9:30 am in Department 206.

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
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- 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 \$65,201.00 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 <sup>rd</sup> 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
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- 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:** Plaintiff has appealed the Sacramento County Superior Court's denial of its Petition for Writ of Mandate. 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: On June 23, 2010, plaintiff filed a motion to continue trial and/or settlement conference. The hearing was set for July 14, 2010, The court ordered the matter off calendar on July 14, 2010, saying it was untimely pursuant to CCP 1005 B. The application was resubmitted on July 22, 2010, Master Calendar was set for April 25, 2011, and the Settlement Conference was set for October 8, 2010.

CITY NATIONAL CORPORATION v. Franchise Tax Board  
Los Angeles Superior Court Case No. BC334772  
Court of Appeal, 2<sup>nd</sup> 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: The Notice of Settlement of the Entire Case was filed May 7, 2010. Request for Dismissal filed June 25, 2010.

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, 2<sup>nd</sup> 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, Drooks & Lincenberg, P.C.

Taxpayer's Counsel  
Marty Dakessian  
Reed Smith LLP

FTB's Counsel  
W. Dean Freeman

- 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. The Response to the Amicus Curiae Brief was filed June 29, 2010. The Supreme Court has not yet scheduled oral arguments on the matter.

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)

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. Appellant's Reply Brief was received June 28, 2010, and needed permission to file three days late. On June 29, 2010, the case was ordered fully briefed. A calendar notice scheduling oral argument set for July 28, 2010, was issued on July 1, 2010. Plaintiff thereafter filed an application for leave to file an Amicus Brief which was attached to the application. The Amicus Curiae brief was accepted for filing on July 16, 2010. The Court of Appeal also issued a letter advising it was considering taking Judicial Notice of certain items and requested input from the parties to be made no later than July 21, 2010. Defendant FTB filed a letter brief on July 21, 2010.

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> Robert R. Rubin McDonough, Holland & Allen, PC	Filed - 07/05/07  <u>FTB's Counsel</u> Robert Asperger
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**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. Appellants Opening Brief was timely filed July 22, 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 <u>Taxpayer's Counsel</u> Michael A. Newdow Newdow Law	<u>FTB's Counsel</u> Jill Bowers
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**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:** On May 21, 2010 a Memorandum and Order regarding Motions to Dismiss was filed. On June 18, 2010, the Amended Complaint for Declaratory and Injunctive Relief was filed. On June 21, 2010, a Corrected Amended Complaint for Declaratory and Injunctive Relief was filed. On June 30, 2010, the Answer to Corrected Amended Complaint for Declaratory and Injunctive Relief was filed.

GEORGE, MERVIN L. & LAURA LEE v. Franchise Tax Board  
Sacramento Superior Court Case No. 34-2010-00073479  
*Taxpayer's Counsel*  
Mervin L. George, Pro Per  
Laura L. George, Pro Per

Filed 03/18/10  
*FTB's Counsel*  
Jill Bowers

- Issues:**
1. Whether as a non-member of the governing tribe, plaintiff-wife's income is exempt from California state income tax?
  2. Whether plaintiff-wife is a member of the governing tribe, and also whether her income, which is not from a reservation source, is exempt from California state income tax?
  3. Whether as a member of the governing tribe, Plaintiff-husband's retirement income is exempt from California state income tax?

**Years:** 2002 through 2005 **Amount** \$23,369.67

**Status:** Summons and Complaint served by mail on April 27, 2010. Defendant filed the Second Amended Answer on June 18, 2010.

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC05439929  
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

Filed - 03/29/05  
*FTB's Counsel*  
Joyce Hee

*Taxpayer's Counsel*  
Andres Vallejo,  
Morrison & Foerster LLP

- Issues:**
1. Whether the Plaintiffs' payroll factor was properly computed by excluding foreign employee stock options.
  2. Whether the Plaintiffs' sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
  3. Whether federal RAR adjustments were properly taken into account.

**Years:** 1992 through 1997 **Amount** \$3,950,026.00 Tax

**Status:** 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. Response to Plaintiffs' Proposed Statement of Decision was filed by FTB on June 29, 2010. The Status Conference regarding Proposed Statement of Decision was continued to August 11, 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. This case is now consolidated with the actions filed on behalf of Kimberly-Clark World Wide, Inc. & Subsidiaries, Procter & Gamble Manufacturing Co. & Affiliates; RB Holdings (USA) Inc. & Subsidiaries; and Sigma-Aldrich, Corp. & Subsidiaries, all of which involve the same legal issues.

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. The Notice of Appeal and designation of the record was filed July 2, 2010. The Notice to the Attorney regarding the Notice of Appeal was filed on July 7, 2010, as was the Notice to the Court Reporter to prepare the Transcripts. The Notice of Certification of the Record was filed on July 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

Filed - 07/18/06

*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:** This case is now pending before the California Supreme Court on the question of whether Plaintiff may have his Request for Tax Refund decided by a jury. 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 the judgment issued by the (Nevada) Clark County District Court in favor of Gilbert Hyatt against FTB, including the award of \$250,000,000 in punitive damages was proper.

Years: N/A Amount: Approx. \$500,000,000

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. The Order Granting In Part Motions for Extensions of time was filed July 19, 2010.**

JONES APPAREL GROUP, INC. & SUBSIDIARIES v. Franchise Tax Board  
San Francisco Superior Court Case No. CGC10499083

Filed 04/26/10

Taxpayer's Counsel

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

FTB's Counsel

Jill Bowers

- Issues:**
1. Whether California's Amendment of RTC 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 RTC 25128 is precluded by California's participation in the Multistate Tax Compact, violates the Constitution of the United States of America and the State of California.

**Years:** 12/31/01 through 12/31/03

**Amount** \$755,730.00

**Status:** Summons and Complaint served on April 27, 2010. On June 15, 2010, Complex Litigation hearing previously set for August 6, 2010, is continued until October 7, 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:** 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. The civil court trial was scheduled for April 8, 2011. The Trial Readiness Conference was scheduled for March 25, 2011, and the case file location changed to the Hall of Justice on July 16, 2010. The Minutes were finalized for Civil Case Management conference on July 16, 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**

\$14,317,394.00

**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. The Oder to Show Cause for Dismissal after settlement was heard and the case was dismissed on June 29, 2010

MICKELSEN, PAUL L. & PATRICIA A. v. Franchise Tax Board  
Los Angeles Superior Court Case No. BC385197  
Court of Appeal, 2<sup>nd</sup> 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:** Please see summary for Du v Franchise Tax Board.

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. On July 23, 2010, FTB filed its Opening Trial Brief.

MIKE, ANGELINA v. Franchise Tax Board San Diego Superior Court Case No. 37-2007-00067324-CU-MC-CTL Appellate Court, 4 <sup>th</sup> Appellate District Court No. D054439 <i>Taxpayer's Counsel</i> Richard M. Freeman, Carole M Ross Sheppard, Mullin, Richter & Hampton, LLP	Filed - 05/25/07 <i>FTB's Counsel</i> Leslie Branman Smith
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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: The California Court of Appeal, Fourth Appellate District, issued a published opinion upholding the Franchise Tax Board's determination that Appellant's income was subject to California State income tax. A 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. On July 14, 2010, the California Supreme Court denied Appellant's Request to Depublish the opinion.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board San Francisco Superior Court Case No. CGC05437721 Court of Appeal 1 <sup>st</sup> Appellate District Case No. A114805 Court of Appeal, 1 <sup>st</sup> Appellate District Case No. A115841 (Attorneys' Fees) Court of Appeal, 1 <sup>st</sup> Appellate District Case No. A115950 (Attorneys' Fees) California Supreme Court Case No. S162627 <i>Taxpayer's Counsel</i> Amy L. Silverstein, Edwin Antolin Silverstein & Pomerantz	Filed - 01/15/05 <i>FTB's Counsel</i> 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: On May 7, 2010, Plaintiff's Motion for Attorney Fees and Costs on Remand was granted. The attorney's fee issue has since been resolved and the case dismissed.

OBIORA, NOEL L. V Franchise Tax Board San Francisco Superior Court Case No. CGC10498757 <i>Taxpayer's Counsel</i> Pro Per	Filed - 05/15/10 <i>FTB's Counsel</i> Karen Yiu
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Issues: 1. Whether Plaintiff properly and timely filed his tax returns for tax years 2005 and 2006 tax returns.  
2. Whether the Franchise tax Board properly withheld Plaintiff's claimed tax refund.

Year: 2005-2006 Amount: \$3,215.00

**Status:** April 16, 2010 Summons and Complaint filed. On June 21, 2010, the Order to Show Cause calendar hearing was continued to July 20, 2010. Case Management Conference Set for August 13, 2010.

PERSONAL SELLING POWER, INC. v. Franchise Tax Board		Filed - 07/13/09
Alameda Superior Court Case No. RG09462520		
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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, or both 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 September 2, 2010.

THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board		Filed 01/11/10
San Francisco Superior Court Case No. CGC10495912		
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>
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:** 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		Filed - 04/20/09
San Francisco Superior Court Case No. CGC09487540		
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amanda J. Pedvin	Matthew D. Lerner, Esq.	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 Person/entity against whom the penalty has been assessed.

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

Status: Early Settlement Conference continued to August 27, 2010. On July 22, 2010, FTB filed it's Joint Case Management Conference Statement. On October 25, 2010, a Mandatory Settlement Conference is set. Trial rescheduled to November 8, 2010.

QUELLOS GROUP, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC10501299

Taxpayer's Counsel

Amanda J. Pedvin  
Steptoe & Johnson, LLP

Taxpayer's Counsel

Matthew D. Lerner, Esq.  
Steptoe & Johnson, LLP

Filed - 07/20/10

FTB's Counsel

Anne Michelle Burr  
Christopher Haskins

Issues: 1. Whether the promoter penalty provided for in RTC section 19177 violates the due process clause of the United and California Constitution  
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 the 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 improper activity.  
5. Whether the proper measure of the promoter penalty may include income not received by person/entity against whom the penalty has been assessed.

Years: 2001

Refund sought: \$569,807.25

Status: Summons and Complaint filed July 23, 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: 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 were presented on July 16, 2010. On July 20, 2010, an Order was issued noting case was under submission.

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: On May 11, 2010, the case was argued and submitted. On July 15, 2010, a published opinion was issued in favor of FTB.

ROHR, INC. v. Franchise Tax Board  
San Diego Superior Court Case No. 37-2007-00070925-CU-CO-CTL  
Court of Appeal, 4<sup>th</sup> District, Division One, Case No. D052309 (Review an Interim Order)  
California Supreme Court Case No. S161612 (Writ Petition)  
Court of Appeal, 4<sup>th</sup> District, Division One, Case No. D055755 (Superior Court Judgment)  
Court of Appeal, 4<sup>th</sup> 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. On July 6, 2010 the case was considered fully briefed.

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 the Due Process clauses of the Constitutions of the United States of America and the State of California.

Years: 1990 through 1994

Amount \$487,084.00 Tax  
\$ 89,534.00 Penalty

Status: On July 14, 2010, Motion in Limine filed to Exclude Evidence Supporting Proposed Injunction of the Tax Penalty. 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, 2<sup>nd</sup> 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: Please see Summary for Du v Franchise Tax Board.

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 \$1,607,168

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 was granted on July 1, 2010. On July 23, 2010 the Notice of Appeal was filed.

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.

Irene Tritz v. John Potter  
United States Federal District Court Central District  
SACV10-182DOC (RNBx)  
Taxpayer's Counsel  
Irene Tritz  
Pro Se

Filed - 02/12/10  
FTB's Counsel

Issues: 1. Whether Plaintiff's post-judgment settlement of damages award against her former employer (U.S. Postal Service), which she contends she was led to believe by the Postal Service and its counsel was non-Taxable, may be set aside on any of the following bases:  
A. Fraud/Misrepresentation;  
B. Voidable Contract due to undue Influence  
C. Breach of Settlement Agreement  
D. Discrimination  
E. Retaliation  
F. Hostile Environment  
G. Interference by the Court  
H. Final Contract Violates Rights of Others

## I. Conspiracy

Years:

Amount: Not Specified

Status: First Amended Complaint filed June 4, 2010. First Amended Complaint has not yet been properly served upon FTB or Selvi Stanislaus.

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 9<sup>th</sup> Circuit Court of Appeals. On July 8, 2010, The transcript for proceeding, held on 8/3/09 became available, after that date it would be available by PACER. The Notice of Filing the transcript was filed on July 8, 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. **July 21, 2010, Fee paid on Ex Parte Application for Reassignment of Case on Remand; Joint Stipulation in Support and Propose Order Filed by Plaintiff.**