



Executive Officer MS A390
PO Box 2229
Sacramento, CA 95812-2229

September 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 - August 2010

Case Name

Court Number

Ronald E. Reed
(Dismissed by Court on 08/26/2010)

United States District Court, Central District Case No. CV
10-2415-GW (Manx)

FRANCHISE AND INCOME TAX
New Cases –September 2010

Case Name

Court Number

Eugene & Penelope Midlock v. Franchise Tax Board
Alameda County Superior Court Case No. RG10536311
Taxpayer's Counsel
Amy L. Silverstein
Edwin Antolin
Johanna W. Roberts

Filed 09/14/10

FTB's Counsel

Issues: 1. Whether the Franchise Tax Board properly assessed an Accuracy Related Penalty against Plaintiff in this VCI Option 2 case?

Years: 2001

Amount

\$47,637.57

Status: Summons and Complaint served personally on September 14, 2010.

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

September 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., Filed its opening brief on August 6, 2010. On August 6, 2010, Appellant filed an Opening Brief. A Motion to Consolidate Appeals A128091 and A129090 for purposes of Oral Argument was filed on August 18, 2010, and granted on August 24, 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, was continued to August 16,2010. On August 16, 2010, the Complex Litigation Matter was removed from the calendar and continued to December 6, 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. Ex Parte Application for Order to Continue Trial and Points and Authorities in support thereof was filed August 5, 2010. The trial set to commence on September 20, 2010, was continued to December 6, 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 \$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 held and the matter taken under submission on August 12, 2010. The Case Management Conference is set for August 23, 2010. On August 18, 2010 a Minute Order was issued by Judge Franson, overruling the Demurrer with forty-five days to answer. Status Conference set for October 13, 2010.

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

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

- Issues:
1. Whether RTC section 19138 creates a new penalty for the underpayment of taxes owed or creates a new tax.
 2. Whether RTC section 19138 required a two-thirds vote of both the Assembly and Senate to be properly enacted under Article XIII, § 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. Appellant's Opening Brief was filed on February 3, 2010, and FTB's Opening Brief was Filed on April 28, 2010. Respondent FTB's Opposition to Petitioner/Appellant's (CalTax) Request for Judicial Notice was 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 closing brief was filed June 18, 2010.

CENTERCAL MANAGEMENT SERVICES, INC. v. Franchise Tax Board San Francisco Superior Court Case No. CGC09493854 <u>Taxpayer's Counsel</u> Edward O.C. Ord, Esq. Jenny Lin-Alva, Byron G. Sun Ord and Norman	Filed: 10/26/09 <u>FTB's Counsel</u> 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. On July 29, 2010, the Notice of Early Settlement Conference was filed. Centercal filed a Motion to Continue Jury Trial/Settlement Conference and Points and Authorities in support thereof on September 17, 2010.

Stephen P. Cherner & Vickory M Cherner v. Franchise Tax Board Los Angeles Superior Court Case No. BC442103 <u>Taxpayer's Counsel</u> Donald S. Burris Richard E. Walden Laura G Brys Alfred D. Ellis	Filed 07/22/10 <u>FTB's Counsel</u>
--	--

Issues: 1. Whether the Franchise Tax Board properly denied/withheld Plaintiff's Claim for Refund?
 2. Whether the Franchise Tax Board was correct in not allowing the phase-in provisions for the passive activity loss for tax years 1987, 1988 and 1989.

Years: 1990 Amount \$87,897.00

Status: Summons and Complaint served by mail on July 28, 2010. Order to Show Cause and Notice of Case Management Conference filed on August 2, 1010.

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 cross motions for summary judgment occurred on September 8, 2010, at which time both motions were denied. The Final Status Conference was set for September 23, 2010. The short cause court trial is set for October 4, 2010. On August 9, 2010, the Stipulation and Order to Continue Trial was filed. **Plaintiff filed Points and Authorities with Separate Statement, and Declaration of Frank Cutler on August 25, 2010. Defendant filed a Response with Objections and the Declaration of Ann Hodges with Points and Authorities on August 25, 2010. An Order Permitting Donald M Griswold to Appear as Counsel Pro Hac Vice was filed by Plaintiff on September 8, 2010. An Order granting permission to allow Donald M. Griswold to Appear Pro Hac Vice was granted on September 8, 2010. FTB filed an Objection to Proposed Order on Motion for Summary Judgment on September 15, 2010. On September 22, 2010, a Stipulation and Order to continue trial was filed by the Plaintiff/Petitioner.**

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
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, 2nd Appellate District Case No. B213971 (consolidated with Mickelsen & Shimmon)

Taxpayer's Counsel

Charles P. Rettig, Steven Toscher

Sharyn M. Fisk & Michael R. Stein

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

Filed - 05/23/08

FTB's Counsel

W. Dean Freeman

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

Year: 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. Defendant/Respondent filed a Response to the Amicus Curiae Brief on July 26, 2010. The cause was argued and submitted on July 28, 2010. On August 6, 2010, a letter was sent by Plaintiff informing the court concerning a change or Correction in the Mickelsons' 1999 federal tax return, which increased their California tax liability. The court decided to afford the parties an opportunity to present information, including copies and all relevant state and local tax returns or other relevant information to the propriety of taking judicial notice. The Court is allowing letter briefs no longer than five pages to be filed no later than August 20, 2010. **Letter Briefs were filed by both Plaintiff/Appellant and Defendant/Respondent on August 20, 2010. The Opinion is scheduled to be filed on November 18, 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. Appellants Opening Brief was timely filed July 22, 2010. Respondent ELS filed an Application and Order on August 25, 2010, Respondent filed a Substitution of Attorneys on September 16, 2010, substituting firms from McDonough Holland & Allen to Boutin Jones Inc.

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: 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.

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

San Francisco Superior Court Case No. CGC05439929

Filed - 03/29/05

Court of Appeal, 1st Appellate District Case No. A120492

California Supreme Court Case No. S173180

Taxpayer's Counsel

Paul H. Frankel

Morrison & Foerster LLP

Taxpayer's Counsel

Andres Vallejo,

Morrison & Foerster LLP

FTB's Counsel

Joyce Hee

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

Years: 1992 through 1997

Amount \$3,950,026.00 Tax

Status: 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 Status Conference regarding the Proposed Statement of Decision was continued to September 15, 2010. **Defendant filed Response to Revised Order Requiring Further Briefing and Information on August 27, 2010. On August 27, 2010, Plaintiff filed Response to the Court's Questions revised on August 10, 2010. The Meet and Confer regarding post trial issues was held on September 14, 2010, and was taken under submission until October 6, 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. On August 19, 2010, an Ex Parte Application for an Order for Permission to File Briefs Exceeding Page Limits and Joint Stipulation was filed by Plaintiff. The Order on Briefs Exceeding Page Limits was filed August 19, 2010. **On August 23, 2010, an Ex Parte hearing was held to Extend Page Limit on Briefs, Order signed. On September 2, 2010, Plaintiff filed the Index of Non-California Authorities in Support of Opposition to Defendants Demurrer. Plaintiff filed Corrected Opposition to Demurrer on September 7, 2010. The Hearing on the pending Demurrers will likely be addressed on 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. The Notice of Appeal and designation of the record was filed July 2, 2010. A 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. Receipt of the Record was filed July 23, 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

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. The Notice of Ruling was 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

Filed - 01/06/98

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen, H. Bartow Farr III

FTB's Counsel

James W. Bradshaw
McDonald, Carano,
Wilson LLP
Las Vegas, Nevada

Issues: 1. Whether 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. On September 13, 2010, Hyatt filed and served a Supplemental Answering Brief (regarding the award of his costs). FTB will file and serve a Supplemental Reply Brief (regarding Hyatt's costs), on October 13, 2010. The Nevada Supreme Court remains pending concerning Hyatt's Motion for Leave to File Sur-Reply of thirty pages in partial Response to the FTB's one-hundred and forty-five page Reply Brief on the main appeal.

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, was 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. **The civil trial and the Trial Readiness Conference was reassigned to Judge Lisa Foster on August 27, 2010.**

KIMBERLY-CLARK WORLD WIDE, INC. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC 10495916 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed 01/11/10 <u>FTB's Counsel</u> 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.**

Nemat & Maryam Maleksalehi v. Franchise Tax Board Sacramento County Superior Court Case No. 34-2009-80000365 <u>Taxpayer's Counsel</u> Barzin Barry Sabahat, Esq. Anchor Law Firm	Filed 05/26/10 <u>FTB's Counsel</u> Jill Bowers
---	---

- Issues:
1. Whether the restitution of illegally obtained funds is deductible in the year restitution is made.
 2. Whether the taxpayers are able to take deductions from gross income derived from illegal activities under California law.

Years: 12/31/01 Amount \$115,870.00

Status: **Summons and Complaint served on June 1, 2010. FTB's Demurrer is set for October 22, 2010.**

MICKELSEN, PAUL L. & PATRICIA A. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC385197

Court of Appeal, 2nd Appellate District Case No.B213971 (consolidated with Du et al. & Shimmon)

Taxpayer's Counsel

Charles P. Rettig, Esq.

Steven Toscher, Sharyn M. Fisk

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

Filed - 02/08/08

FTB's Counsel

W. Dean Freeman

Issue: Whether a taxpayer self-reporting under VCI is eligible for interest suspension pursuant to section 19116.

Year: 1999

Amount \$537,178.00 Interest

Status: 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. Case Management Conference was continued to August 18, 2010. Trial set for August 23, 2010. On August 13, 2010, Microsoft filed an Opposition to Defendant's Motion in Limine - Numbers 1 and 2. On August 16, 2010, the Reply Brief in Support of Motions in Limine was filed by Defendant/FTB. **Trial commenced on September 1, 2010, and further proceedings are scheduled to resume on October 14, 2010. On September 24, 2010, The Motion to Admit Counsel Pro Hac Vice was granted.**

Eugene & Penelope Midlock v. Franchise Tax Board

Alameda County Superior Court Case No. RG10536311

Taxpayer's Counsel

Amy L. Silverstein

Edwin Antolin

Johanna W. Roberts

Filed 09/14/10

FTB's Counsel

Issues: 1. Whether the Franchise Tax Board assessed an Accuracy Related Penalty in the VCI Option 2 case?

Years: 2001

Amount \$47,637.57

Status: Summons and Complaint served personally on September 14, 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. FTB filed Demurrer on September 3, 2010. On September 15, 2010, The Order to Show Cause was continued to November 17, 2010.

PERSONAL SELLING POWER, INC. v. Franchise Tax Board
Alameda Superior Court Case No. RG09462520
Taxpayer's Counsel
Michael L. Corman
Law offices of Michael L. Corman

Taxpayer's Counsel
Amy L. Silverstein, Edwin Antolin
Silverstein & Pomerantz, LLP

Filed - 07/13/09
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, 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 held and an Order issued on September 2, 2010. Case Management Conference continued to November 11, 2010.

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

Taxpayer's Counsel

Matthew D. Lerner, Esq.

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 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 its Joint Case Management Conference Statement. On October 25, 2010, a Mandatory Settlement Conference is set. The Opening Trial Briefs are due October 27, 2010. The Reply Briefs are due November 29, 2010. The Bifurcated Trial date is set for December 7, 2010.

QUELLOS GROUP, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. CGC10501299

Taxpayer's Counsel

Amanda J. Pedvin

Septoe & 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 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. On July 30, 2010, an Application for Approval of Complex Litigation Designation was filed. Case Management Conference is set for September 1, 2010. On August 3, 2010, Defendant filed both an Answer to the Complaint and its Cross Complaint. On August 27, 2010, Defendant filed a Joint Case Management Conference Statement. On August 30, 2010, Quellos Group LLC filed an Answer to Cross Complaint.

RB HOLDINGS (USA) INC. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496438 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed 01/29/10 <u>FTB's Counsel</u> Lucy Wang
---	---

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 <u>Taxpayer's Counsel</u> James D. Gustafson, Stephen R. Goostrey Gustafson & Goostrey, LLP	Filed - 10/12/07 <u>FTB's Counsel</u> Anthony Sgherzi
--	---

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; this 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 st Appellate District. No. A123316 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin Silverstein & Pomerantz, LLP	Filed - 10/02/07 <u>FTB's Counsel</u> David Lew
--	---

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. On August 11, 2010, there was an Order Denying the Petition for Writ of Mandate and Request for Stay. Plaintiff filed a Petition for Review with the California Supreme Court on August 26,

2010. The record was transmitted to the Supreme Court on August 27, 2010. Respondent Franchise Tax Board filed an Answer to Petition for Review on September 15, 2010.

ROHR, INC. v. Franchise Tax Board

San Diego Superior Court Case No. 37-2007-00070925-CU-CO-CTL

Filed - 09/07/07

Court of Appeal, 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

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. Appellant faxed a letter on July 29, 2010, informing the court that both parties believe that an agreement can be reached before August 10, 2010. On August 2, 2010, a joint application was filed to take argument off calendar pending dismissal. An order was filed on August 3, 2010, taking the matter off calendar. **On August 30, 2010, the court received a letter from opposing counsel stating documentation is not entirely complete and it is not certain that it will be ready to dismiss on September 2, 2010.**

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board

Los Angeles Superior Court Case No. BC363822

Filed - 12/22/06

Court of Appeal, 2nd Appellate District Case No. B213971 (consolidated with Du et al. & Mickelsen)

Taxpayer's Counsel

Charles P. Rettig, Sharyn M. Fisk

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

FTB's Counsel

W. Dean Freeman

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

Year: 1999 Amount \$515,422.00 Interest

Status: **Please see Summary for Du v Franchise Tax Board.**

SIGMA-ALDRICH, CORP. & SUBSIDIARIES v. Franchise Tax Board

Filed 01/29/10

San Francisco Superior Court Case No. CGC10496437

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: 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. The Notice of Entry of Order was filed on July 26, 2010, and a second Notice of Appeal was filed on July 26, 2010. The Court sent a Notice to Reporter to prepare the Transcript for appeal purposes on August 18, 2010.**

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:**
- Whether California's taxation of per-capita gambling distributions made by tribes to tribal members not living on the tribe's reservation violates:
 - The Indian Commerce Clause contained within the United States Constitution;
 - The Supremacy Clause of the United States Constitution;
 - The Indian Gaming Regulatory Act; or
 - The Tribal-State Gaming Compact between the tribe and the State of California.
 - Whether California taxation of wages earned by tribal members working at tribal casinos but not living on the tribe's reservation violates:
 - The Indian Commerce Clause contained within the United States Constitution;
 - The Supremacy Clause of the United States Constitution;
 - The Indian Gaming Regulatory Act; or
 - The Tribal-State Gaming Compact between the tribe and the State of California.
 - 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. 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. On August 10, 2010, the Transcript for proceeding held on May 10, 2010, became available. **On August 30, 2010, Twenty Nine Palms filed a Notice of Appeal to the 9th Circuit Court of Appeal.**

VENTAS FINANCE I, LLC v. Franchise Tax Board

San Francisco Superior Court Case No. 05440001

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

California Supreme Court Case No. S166870

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

Taxpayer's Counsel

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

Filed - 04/01/05

FTB's Counsel

Marguerite Stricklin

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

Years: 2001 through 2003 Amount \$29,580.00 Tax

Status: On August 23, 2010, the case was assigned to Judge Paul H. Alvarado. With a Case Management Conference Hearing set for September 17, 2010. On September 3, 2010, both parties filed a Case Management Statement requesting one day for trial.