Executive Officer MS A390
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January 2011 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.shtml.

The Litigation Rosters for the last four years may be found on the Internet site.

FRANCHISE AND INCOME TAX
Closed Cases – November 2010

Case Name	Court Number
Benjamin Du (Opinion filed 10/26/10 in FTB's Favor)	Ca Supreme & Appeals 2nd District (Los Angeles) B213971
General Mills (Court Ruled in FTB's Favor 11/01/10)	California Supreme Court S173180
Paul & Patricia Mickelsen (Remanded to Trial Court for Retrial)	Court of Appeal 2nd Appellate District Case No. B213971
River Garden Retirement Home (FTB Prevailed 11/17/10)	California Supreme Court & Appeals 1st District A123316
Edward & Anneliese Shimmon (Opinion filed 10/26/10 in FTB's Favor)	Court of Appeal 2nd Appellate District Case No. B213971

FRANCHISE AND INCOME TAX
New Cases –January 2011

Case Name	Court Number

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

January 2011

APPLE, INC. v. Franchise Tax Board
San Francisco Superior Court Case No. CGC08471129
Court of Appeal, 1st Appellate District Case No. A128091 — Filed – 01/16/08

Taxpayer's Counsel
Jeffrey M. Vesely
Pillsbury, Winthrop, Shaw, Pittman, LLP

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. 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. Respondent's Opening Brief was filed October 5, 2010. Appellant's Reply Brief is due December 6, 2010. Apple filed its Reply Brief. FTB has until February 4, 2011 to respond.**

BAKERSFIELD MALL, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. CGC07462728 — Filed – 04/25/07

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

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. On December 1, 2010, a Joint Case Conference Statement was filed by Plaintiff. On December 6, 2010, a Complex Litigation Case Management Conference was held and continued to January 25, 2011. The January 25, 2011, Case Management Conference has been continued to March 24, 2011.**

BANKS, KENNETH v. Franchise Tax Board
San Francisco Superior Court Case No.CGC09484981 — Filed - 02/13/09

Taxpayer's Counsel
Stephen Moskowitz, Esq.
Law Offices of Stephen Moskowitz, LLP

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 was set to commence on September 20, 2010, but was continued to December 6, 2010. Order Shortening Time regarding Motion to Continue Trial was filed on November 9, 2010. The Non-Opposition to Defendant's Motion to Continue the Trial was filed on November 18, 2010. On November 23, 2010 an Order Granting Motion to Continue Trial was granted. Trial is scheduled to commence on April 18, 2011. The Settlement Conference set for March 29, 2011, has been continued to April 1, 2011.**

BUNZL DISTRIBUTION v. Franchise Tax Board
San Francisco Superior Court Case No.CGC10506344 — Filed – 12/17/10

Taxpayer's Counsel
William F. Colgin
Kimberley M. Reeder
William Clayton
Morgan, Lewis, & Bockius, LLP

FTB's Counsel
Kris Whitten
Karen Yiu

Issue:
1. Whether FTB properly included the California factors attributable to certain single-member LLCs when calculating the taxpayer's apportionment percentages.
2. Whether FTB properly included the single-member LLC's in the taxpayer's combined report.
3. Whether the FTB Settlement Bureau conducts itself with reckless disregard for Board published procedures?
4. Whether the policies and/or procedures of the FTB Settlement Bureau constitute improper underground regulations.

Year: 2005 — Amount $1,368,734.00 Tax
$128,562.00 Interest

Status: **Summons and Complaint served on FTB December 21, 2010. FTB's Demurrer to the Complaint is scheduled to be heard on March 1, 2011. Case Management Conference set for May 20, 2011.**

CA-CENTERSIDE II, LLC v. Franchise Tax Board — Filed: 02/04/10
Fresno Superior Court Case No. 10CECG00434

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

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 was originally set for August 23, 2010. On August 18, 2010 a Minute Order was issued by Judge Franson, overruling the Demurrer with 45 days to answer, and scheduling Status Conference for October 13, 2010. On October 13, 2010, FTB and Ca-Centerside stipulated that FTB shall have fifteen court days to file and serve its answer to the First Amended Complaint from the Decision of the Court of Appeal on FTB's Petition for Writ of Mandate. Petition for Writ of Mandate was denied October 10, 2010. Request for Judicial Notice was denied October 20, 2010. FTB filed its Answer to the First Amended Complaint on November 8, 2010.**

CALIFORNIA TAXPAYERS' ASSOCIATION v. Franchise Tax Board	
Sacramento Superior Court Case No. 34-2009-80000138	Filed – 02/17/09
Court of Appeal, 3rd Appellate District Case No. C062791	
Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin P. Antolin	Jill T. Bowers
Silverstein & Pomerantz, LLP	

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 XIIIA, § 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 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. Cal Tax'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. Oral Argument was conducted and the matter was submitted for Decision on November 15, 2010. On December 13, 2010, the Opinion was filed. The Judgment was affirmed and the FTB was awarded its costs on appeal. Plaintiff filed a Petition for Review with the California Supreme Court on January 21, 2011.**

CENTERCAL MANAGEMENT SERVICES, INC. v. Franchise Tax Board	Filed: 10/26/09
San Francisco Superior Court Case No. CGC09493854	
Taxpayer's Counsel	*FTB's Counsel*
Edward O.C. Ord, Esq.	Marguerite Stricklin
Jenny Lin-Alva, Byron G. Sun	
Ord and Norman	

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

Year: 2002 Amount $77,777.00

Status: **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, Trial 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. On October 19, 2010, the Court vacated its order scheduling trial April 25, 2011, and the Mandatory Settlement Conference to be held on March 30, 2011, was vacated. The Court ordered the case back to Case Management Conference on April 29, 2011, and continued the trial date to October 24, 2011.

STEPHEN P. CHERNER & VICKORY M. CHERNER v. Franchise Tax Board — Filed 07/22/10
Los Angeles Superior Court Case No. BC442103

Taxpayer's Counsel	*FTB's Counsel*
Donald S. Burris	Anthony F. Sgherzi
Richard E. Walden	
Laura G Brys	
Alfred D. Ellis	

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. Case Management Conference scheduled for November 29, 2010. On November 29, 2010, the Case Management Conference and the Order to Show Cause was continued to January 5, 2011. The Demurrer was scheduled to be heard January 5, 2011. On January 5, 2011, the Plaintiff's filed an Amended Complaint. The Court took the original Demurrer Hearing off calendar. FTB filed a Demurrer to First Amended Complaint and Points and Authorities in Support of FTB's Demurrer to Plaintiff's First Amended Complaint for Refund of Taxes on January 21, 2011. The Demurrer Hearing is scheduled for March 5, 2011.

CUTLER, FRANK v. Franchise Tax Board
Los Angeles Superior Court Case No. BC421864 — Filed – 09/15/09

Taxpayer's Counsel	*FTB's Counsel*
Marty Dakessian	Christine Zarifarian
Reed Smith LLP	

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/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 was 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 and 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. Trial has been continued to March of 2011.

DICON FIBEROPTICS, INC. v. Franchise Tax Board
Los Angeles Superior Court Case No. BC367885 — Filed – 03/13/07
Court of Appeal, 2nd Appellate District Case No. B202997
California Supreme Court Case No. S173860

Taxpayer's Counsel	*Taxpayer's Counsel*	*FTB's Counsel*
Thomas R. Freeman, Paul S. Chan, Bird, Marella, Boxer, Wolpert, Nessim, Drooks & Lincenberg, P.C.	Marty Dakessian Reed Smith LLP	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 was 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. On July 26, 2010, a Reply Brief on the Merits was filed. On July 26, 2010, an Answer to the Amicus Brief was filed. The parties are waiting for the Supreme Court to schedule Oral Arguments on the matter.

BENJAMIN R. AND CARMELA DU v. Franchise Tax Board
Los Angeles Superior Court Case No. BC391413 — Filed – 05/23/08
Court of Appeal, 2nd Appellate District Case No. B213971 (consolidated with Mickelsen & Shimmon
California Supreme Court Case No. S173860

Taxpayer's Counsel	*FTB's Counsel*
Charles P. Rettig, Steven Toscher Sharyn M. Fisk & Michael R. Stein Hochman, Salkin, Rettig, Toscher & Perez, P.C.	W. Dean Freeman

Issues: Whether Plaintiffs are entitled to interest suspension under Revenue & 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. On June 29, 2010, the case was ordered fully briefed. A calendar notice scheduling oral argument 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 to 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 information relevant to the propriety of its taking judicial notice of such matters. The Court permitted letter briefs no longer than five pages to be filed no later than August 20, 2010. Letter Briefs were filed by Plaintiff/Appellant and Defendant/Respondent on August 20, 2010. On October 26, 2010, the Opinion was filed. The Judgments against the Dus' and the Shimmons' are affirmed. The Judgment against the Mickelsens' was reversed. The Respondent was awarded it's the costs incurred in the Du and Shimmon appeals. The Court also granted the Amicus Curiae's Request for Judicial Notice. Petition for Rehearing filed on November 10, 2010. The Petition for Rehearing was denied on November

18, 2010. On December 7, 2010, the Record was transmitted to the Supreme Court. The Remittitur is due to be issued no later than February 7, 2011.

ELS EDUCATIONAL SERVICES, INC. v. Franchise Tax Board	
Sacramento Superior Court Case No. 07AS03070	Filed – 07/05/07
Court of Appeal, 3rd Appellate District Case No. C063450	
Taxpayer's Counsel	*FTB's Counsel*
Robert R. Rubin	Robert Asperger
Boutin & Jones Inc.	

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. Appellant's 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. On September 29, 2010, a Request for Judicial Notice was filed by Respondent. Respondent's Brief was filed September 29, 2010. On October 1, 2010, the ruling on the Request for Judicial Notice was deferred. On October 8, 2010, a Stipulation for Extension of Time was filed by Appellant. On January 14, 2011, the Court Granted the Extension to January 26, 2011. On January 26, 2011, Respondent's Reply Brief was timely filed.**

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	*FTB's Counsel*
Michael A. Newdow	Jill Bowers
Newdow Law	

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. A Joint Motion for Stay of Proceeding was filed on January 18, 2011. Hearing on the Motion for Stay of Proceedings is scheduled to be conducted on February 28, 2011.

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	*Taxpayer's Counsel*	*FTB's Counsel*
Paul H. Frankel	Andres Vallejo,	Joyce Hee
Morrison & Foerster LLP	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 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 of 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. On October 6, 2010, the Court ordered the matter be deemed under submission. On November 1, 2010, a Tentative Statement of Decision was issued in favor of FTB. On December 17, 2010, an Order to Extend Time to Enter Judgment and Require Responses to Judgment was filed. On January 10, 2011, Judgment was entered in favor of FTB.**

THE GILLETTE COMPANY & SUBSIDIARIES v. Franchise Tax Board
San Francisco Superior Court Case No. CGC10495911 Filed 01/11/10

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	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, a Complex Litigation Case Management Conference was held; the Court ordered the matters consolidated, and the Complex Litigation Hearing, including the hearing on FTB's Demurrers was 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. Plaintiff filed Corrected Opposition to Demurrer on September 7, 2010. On October 5, 2010, Plaintiff filed an Objection to Defendant's Request for Judicial Notice. The Declaration of Charles Olson in Support of Plaintiff's Objection was filed on October 5, 2010. The Second Request for Judicial Notice in Support of Plaintiff's Objections was filed by Plaintiff on October 5, 2010. On October 7, 2010, the Complex Litigation Hearing on FTB's Demurrer to Complaint, was held. The Court sustained the Demurrers without leave to amend. On October 26, 2010, the Order on the Demurrer was filed. The Notice of Entry of Order was filed on November 2, 2010. On December 2, 2010, A Notice of Appeal/Request for Preparation of Transcript was filed on behalf of Gillette.**

GOLDMAN, STEPHEN J. AND AZITA ETAATI v. Franchise Tax Board
Alameda County Superior Court Case No. RG09441003 Filed – 03/12/09

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	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. The Court has granted an extension of time to the taxpayer to file its Opening Brief. The Appellant's Opening Brief was filed December 17, 2010. FTB's Respondent's Brief is due March 17, 2011.**

GONZALES, THOMAS J. II v. Franchise Tax Board
San Francisco Superior Court Case No. CGC06454297 Filed – 07/18/06
Court of Appeal, 1st Appellate District Case No. A122723 (Franchise Tax Board v. San Francisco Superior Court)
(Real Party in Interest Tom Gonzales)
California Supreme Court Case No. S176943

Taxpayer's Counsel	*FTB's Counsel*
Martin A. Schainbaum, Esq.	Jeffrey Rich
Martin A. Schainbaum, PLC	

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 Suit 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. The case is now fully briefed and the parties are waiting for the Supreme Court to schedule Oral Arguments on the matter.**

GRIBBLE, STANLEY W. & SWG MANAGEMENT COMPANY v. Franchise Tax Board
Los Angeles Superior Court Case No. BC393360 Filed – 06/26/08

Taxpayer's Counsel	*FTB's Counsel*
James G. Damon, M. Edward Mishow, Esq.	Christine Zarifian
Voss, Cook & Thel, LLP	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	Filed – 12/28/07
Taxpayer's Counsel	*FTB's Counsel*
Gordon B. Cutler, Esq.	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	Filed - 01/06/98
Nevada Supreme Court Case No. 47141	
Nevada Supreme Court Case No. 53264	
Taxpayer's Counsel	*FTB's Counsel*
Thomas L. Steffen & Mark A. Hutchison	James W. Bradshaw
Hutchison & Steffen, H. Bartow Farr III	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. 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 filed a Supplemental Reply Brief (regarding Hyatt's costs), on October 13, 2010. Mr. Hyatt previously filed a motion requesting to file a Sur-Reply to FTB's Reply Brief. On August 24, 2010, FTB filed an Opposition to Hyatt's motion. On October 4, 2010, after reviewing the Motion and Opposition, Justice Hardesty denied Hyatt's motion and directed the clerk of the court to return, unfiled, the proposed Sur-Reply submitted by Mr. Hyatt on August 13, 2010, and to strike the appendix to the Sur-Reply filed on August 16, 2010. On September 13, 2010, Hyatt filed a Supplemental Answering Brief Regarding Costs, including two volumes of an Appendix of Exhibits. On October 12, 2010, FTB filed a Supplemental Reply Brief regarding Costs. The matter now is fully briefed. On January 20, 2011, FTB noticed and filed Respondent's embedded Answering and Opening Cross-Appeal Brief, Reply Cross-Appeal Brief, and Supplemental Answering Brief Regarding Costs in electronic form. Parties await Nevada Supreme Court's notice of date and time of oral argument.**

JONES APPAREL GROUP, INC. & SUBSIDIARIES v. Franchise Tax Board	Filed 04/26/10
San Francisco Superior Court Case No. CGC10499083	
Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Jill Bowers
Silverstein & Pomerantz, LLP	

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. The Complex Litigation hearing was held October 7, 2010, and the Court sustained the Demurrers to the Complaint without Leave to Amend. Please see summary for the Gillette Company & Subsidiaries v. Franchise Tax Board.**

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	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Tim Nader
Silverstein & Pomerantz, LLP	

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. Trial scheduled for April 8, 2011.**

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

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

Years: 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	Filed 05/26/10
Sacramento County Superior Court Case No. 34-2009-80000365	
Taxpayer's Counsel	*FTB's Counsel*
Barzin Barry Sabahat, Esq.	Jill Bowers
Anchor Law Firm	

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 was scheduled to be held on October 22, 2010. On October 15, 2010, a Request for Judicial Notice, and the FTB's Reply Memorandum of Points and Authorities were filed. The Demurrer is now scheduled to be heard on March 25, 2011.**

MICKELSEN, PAUL L. & PATRICIA A. v. Franchise Tax Board	
Los Angeles Superior Court Case No. BC385197	Filed – 02/08/08
Court of Appeal, 2nd Appellate District Case No.B213971 (consolidated with Du et al. & Shimmon)	
Taxpayer's Counsel	*FTB's Counsel*
Charles P. Rettig, Esq.	W. Dean Freeman
Steven Toscher, Sharyn M. Fisk	
Hochman, Salkin, Retigg, Toscher & Perez, P.C.	

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	Filed – 01/22/08
Taxpayer's Counsel	*FTB's Counsel*
James P. Kleier, Brian W. Toman	David Lew
Reed Smith, LLP	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: **Trial commenced on September 1, 2010, and further proceedings were scheduled to resume on October 14, 2010. On September 24, 2010, the Motion to Admit Counsel Pro Hac Vice was granted. On October 1, 2010, the Trial (closing arguments) was continued to November 4, 2010. On October 5, 2010, Per Diem Fees were deposited by Microsoft. On November 4, 2010, the Court heard Closing Arguments. The Proposed Statement of Decision is to be filed December 3, 2010, and the case was removed from the Trial Calendar. On January 18, 2011, the trial court issued a Proposed Statement of Decision that ruled in**

favor of the FTB on each of the four causes of action set forth in Microsoft's complaint for tax refund. Microsoft has 10 days from January 18, 2011, in which to file any objections on the ground that the Statement of Decision omits findings on critical issues or that its findings as to such issues are ambiguous. If any such objections are received, the Court may order a hearing on the objections or may rule on such matters without a hearing.

EUGENE & PENELOPE MIDLOCK v. Franchise Tax Board	Filed 09/14/10
Alameda County Superior Court Case No. RG10536311	
Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein	Karen Yiu
Edwin Antolin	
Johanna W. Roberts	

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

Years: 2001 Amount $47,637.57

Status: Summons and Complaint served personally on September 14, 2010. The Initial Case Management Conference is set for January 27, 2011. The file was transferred to Hayward Hall of Justice on September 16, 2010. An Ex Parte Stipulation and Order was filed on October 8, 2010. On October 15, 2010, the Ex Parte Stipulation and Order was granted and a Notice of Judicial Reassignment for All Purposes was issued. The case was transferred to Rene C. Davidson, Alameda County Courthouse, on October 18, 2010. The Answer to the Complaint was filed October 29, 2010. The Hearing on the Initial Case Management Conference is set for January 26, 2011. On November 9, 2010, a Notice of Unavailability of Counsel was filed indicating FTB Counsel was not available on the assigned date. On January 11, 2011, a Joint Case Management Statement was filed. The Court set Trial for July 2011. A Tentative Case Management Order was filed on January 24, 2011.

JASBIR & TAJENDER NAGRA v. Franchise Tax Board	Filed 12/14/10
San Francisco Superior Court Case No. CGC-10-506223	
Taxpayer's Counsel	*FTB'S Counsel*
John Gigounas	Marguerite Stricklin
Law Offices of John Gigounas	

Issues: 1. Whether FTB properly disallowed claimed gambling losses.

Years: 2006, 2007, 2008 Amount $40,670.00

Status: Summons and Complaint served personally on December 14, 2010. The Case Management Conference is set for May 20, 2011.

OBIORA, NOEL L. V Franchise Tax Board	
San Francisco Superior Court Case No. CGC10498757	Filed – 05/15/10
Taxpayer's Counsel	*FTB's Counsel*
Pro Per	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. On September 28, 2010, the Opposition to Demurrer to the Complaint was filed by Plaintiff. FTB filed Reply Brief in Support of Demurrer on October 1, 2010. On October 8, 2010, a Notice of Entry of Order/Notice of Ruling Sustaining Defendant's Demurrer was filed and a Notice of Entry of Order/Notice of Ruling Granting Motion to Reclassify Limited to Unlimited was also filed. On October 15, 2010, this case was Reclassified from Limited to Unlimited jurisdiction. The Answer to the First Amended Complaint was filed by FTB on October 29, 2010. On November 4, 2010, a Case Management Conference was set for December 17, 2010. On December 2, 2010, a Case Management Statement was filed by FTB. On December 13, 2010, FTB filed a Notice of Objection to the Trial date. Trial is set for August 29, 2011. On January 21, 2011, FTB filed its Reply Brief in Support of Motion to Compel Further Responses and Verification of Plaintiff's Responses to Discovery and for Monetary Sanctions.

Pare David F. v. Franchise Tax Board	
San Diego Superior Court Case No. 37-2010-00070987	Filed – 10/19/10
Taxpayer's Counsel	*FTB's Counsel*
In Pro Per	Leslie Branman Smith

Issues: 1. Whether Plaintiff has shown that he is entitled to claim head of household filing status for tax years 2000 and 2001.

Year: 2000-2001 Amount: $1,000.00

Status: Summons and Complaint filed October 9, 2010. Plaintiff filed the Request for Dismissal on January 3, 2011.

PERSONAL SELLING POWER, INC. v. Franchise Tax Board		
Alameda Superior Court Case No. RG09462520		Filed – 07/13/09
Taxpayer's Counsel	*Taxpayer's Counsel*	*FTB's Counsel*
Michael L. Corman	Amy L. Silverstein, Edwin Antolin	Marguerite C. Stricklin
Law offices of Michael L. Corman	Silverstein & Pomerantz, LLP	

Issues:
1. Does the sale of advertising to be printed qualify as a sale of tangible property for purposes of Public Law 86-272?
2. Whether Public Law 86-272 applies only to a net income tax, 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. On October 26, 2010, a Case Management Statement was filed by FTB. A Rejection Letter was issued on the Motion for Judgment on the Pleadings on November 2, 2010. On November 8, 2010, the Case Management Conference was continued to February 16, 2011. On January 11, 2011, a Motion for Judgment on the Pleadings was filed. The Motion for Judgment on the Pleadings Hearing was confirmed for February 16, 2011. On January 20, 2011, an Amended Notice of Motion was filed.

THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board	Filed 01/11/10
San Francisco Superior Court Case No. CGC10495912	
Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Lucy Wang
Silverstein & Pomerantz, LLP	

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

Years: 06/30/99 through 06/30/05 Amount $11,837,747.00

Status: **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		Filed – 04/20/09
Taxpayer's Counsel	*Taxpayer's Counsel*	*FTB's Counsel*
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 its Joint Case Management Conference Statement. Mandatory Settlement Conference was scheduled for October 25, 2010. The Opening Trial Briefs originally scheduled to be filed on October 27, 2010, are now due December 7, 2010. The Reply Briefs originally scheduled to be filed on November 29, 2010, are now due on January 11, 2011. The bifurcated Trial scheduled to commence on December 7, 2010, has been continued to February 1, 2011. On December 2, 1010, a Joint Stipulation of Facts was filed by FTB. A Notice of Revised Trial Briefing Schedule was filed by Quellos on December 2, 2010. Trial was continued from December 7, 2010, to February 1, 2011 to March 1, 2011. On January 18, 2011, Plaintiff's filed a Reply Brief, Request for Judicial Notice, Appendix of Non-California Authorities. Also on January 18, 2011, FTB filed its Reply to Plaintiff's Opening Trial Brief, and Objection to Plaintiff's Request for Judicial Notice.**

QUELLOS GROUP, LLC v. Franchise Tax Board		
San Francisco Superior Court Case No. CGC10501299		Filed – 07/20/10
Taxpayer's Counsel	*Taxpayer's Counsel*	*FTB's Counsel*
Amanda J. Pedvin	Matthew D. Lerner, Esq.	Anne Michelle Burr
Steptoe & Johnson, LLP	Septoe & Johnson, LLP	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. 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. On October 6, 2010, a Notice of New Trial Date and New Trial Briefing Schedule was filed by FTB. (See above). The Complex Litigation Case Management Conference has been continued to February 1, 2011. Although not formally consolidated, this case is proceeding in tandem with Quellos Financial Advisors, LLC v. Franchise Tax Board. On January 18, 2011, Plaintiff filed a Reply Brief and an Appendix of Non-California Authorities and a Request for Judicial Notice. FTB filed an Objection to Plaintiff's Request for Judicial Notice, and a Reply to Plaintiff's Opening Brief.**

RB HOLDINGS (USA) INC. & SUBSIDIRIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496438	Filed 01/29/10
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: 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	Filed – 10/12/07
Taxpayer's Counsel James D. Gustafson, Stephen R. Goostrey Gustafson & Goostrey, LLP	*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; 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. Tentative Decision issued by the court on October 18, 2010, in FTB's favor. Objection to Tentative Statement of Decision was filed on October 28, 2010. Reply to Objection to Tentative Statement of Decision was filed on November 8, 2010. On November 30, 2010, a Non-Appearance Case Review was held. The Court made an Order on submitted matter on December 6, 2010, issuing a Proposed Statement of Decision in favor of FTB. Plaintiff's have filed an Objection to the Proposed Statement of Decision and FTB has responded to that Objection.**

RIVER GARDEN RETIREMENT HOME v. Franchise Tax Board
San Francisco Superior Court Case No. CGC07467783 — Filed – 10/02/07
Court of Appeal, 1st Appellate District. No. A123316

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	David Lew
Silverstein & Pomerantz, LLP	

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, the Court of Appeal issued 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. On October 15, 2010, the time to granting or denying review was extended through and including November 23, 2010. The Taxpayer's Petition for Review was denied by the California Supreme Court on November 12, 2010. The Court of Appeal's Opinion is now final. The Remittitur was issued on November 17, 2010. The case was complete on November 17, 2010. On November 18, 2010, the Remittitur was affirmed and the case was completed. On January 13, 2011, the case file was shipped to the state retention center.**

ROWEN, ROBERT v. Franchise Tax Board
Sonoma County Superior Court Case No. SVC 248500 — Filed – 10/28/10

Taxpayer's Counsel	*FTB's Counsel*
Walt Moreno	Lucy Wang

Issue:
1. Whether Appellant demonstrated any error in the proposed assessment issued and affirmed by Respondent for Appellant's 2006 tax year.
2. Whether Appellant established reasonable cause to support abatement of the notice and demand penalty.
3. Whether Appellant has shown the filing enforcement recovery fee should be abated.

Year: 2006 — Amount: $13,950.00

Status: **The Summons and Complaint were filed October 28, 2010. FTB filed an Answer on December 10, 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	*FTB's Counsel*
Charles P. Rettig, Sharyn M. Fisk	W. Dean Freeman
Hochman, Salkin, Rettig, Toscher & Perez, P.C.	

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

Year: 1999 — Amount: $515,422.00 Interest

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

SIGMA-ALDRICH, CORP. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496437	Filed 01/29/10
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: 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	Filed – 11/12/09
Taxpayer's Counsel Marty Dakessian Reed Smith LLP	*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. On November 16, 2010, a Request for Copies was filed by FTB.**

Irene Tritz v. John Potter
United States Federal District Court Central District — Filed – 02/12/10
SACV10-182DOC (RNBx)

Taxpayer's Counsel	*FTB's Counsel*
Irene Tritz	Marla Markman
Pro Se	

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. Notice of Appeal filed December 10, 2010. On December 15, 2010, a Time Schedule Order was filed in the United States Court of Appeals for the Ninth Circuit. On January 25, 2011, the Court sent a letter to Plaintiff/Appellant requesting money to cover the docket fees.

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	Filed – 03/30/09
Richard M. Freeman, Matthew S. McConnell, Carole M. Ross	*FTB's Counsel*
Sheppard, Mullin, Richter & Hampton, LLP	Timothy Nader

Issues:
1. Whether California's taxation of per-capita gambling distributions made by tribes to tribal members not living on the tribe's reservation violates:
   A. The Indian Commerce Clause contained within the United States Constitution;
   B. The Supremacy Clause of the United States Constitution;
   C. The Indian Gaming Regulatory Act; or
   D. The Tribal-State Gaming Compact between the tribe and the State of California.
2. Whether California taxation of wages earned by tribal members working at tribal casinos but not living on the tribe's reservation violates:
   A. The Indian Commerce Clause contained within the United States Constitution;
   B. The Supremacy Clause of the United States Constitution;
   C. The Indian Gaming Regulatory Act; or
   D. The Tribal-State Gaming Compact between the tribe and the State of California.
3. Whether the tribe constitutes a partnership-type organization such that monetary distributions to its members are exempt from taxation by the State of California.

Year: None — Amount None

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

of Appeals. On July 8, 2010, the transcript for proceeding held on August 3, 2009, 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 second Notice of Appeal to the 9th Circuit Court of Appeal. On January 14, 2011, the 9th Circuit issued a Notice of Voluntary Dismissal and the Order was entered on January 18, 2011.

VENTAS FINANCE I, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. 05440001 — Filed – 04/01/05
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	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	Marguerite Stricklin
Silverstein & Pomerantz, LLP	

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. On September 19, 2010, a Case Management Conference was held and continued until December 6, 2010. On October 4, 2010, this case was added to the Calendar for Settlement Conference Hearing, which is set for December 1, 2010. On November 19, 2010, both the Plaintiff and Defendant filed a Case Management Statement. On November 22, 2010, An Order granting Plaintiff's Request to be Excused from Appearance at Settlement Conference was granted. On December 1, 2010 a Settlement Conference was held but the case was not resolved. The Minutes for that Proceeding became available on December 1, 2010. On December 6, 2010, the Case Management Conference was continued to February 28, 2011.

Wendy's/Arby's Group Inc. v. Franchise Tax Board — Filed – 12/14/10
Sacramento Superior Court Case No. 34-2010-00092926
Sacramento Superior Court Case No. 34-2010-80000730 (Writ of Mandate)

Taxpayer's Counsel	*FTB's Counsel*
Thomas Steele	Jeff Rich
Andres Vallejo	
Scott M. Reiber	
Morrision & Foerster	

Issue: Whether FTB should abate the Amnesty Penalty for tax year 2000.

Years: 2000 — Amount $269,040.00 penalty

Status: Summons and Complaint and Petition for Writ of Mandate filed and served on December 6, 2010. On December 9, 2010, a Notice of Related case was filed.