



Legal Division MS A390
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May 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 – May 2011

Case Name

Court Number

Stephen P. Cherner &
Vickory M. Cherner

Los Angeles Superior Court Case No.
BC442103

Charles D. Minor
(Closed)

Los Angeles Superior Court Case No.
BC 406992

Robert Rowen
(Court Ruled in Plaintiff's favor)

Sonoma County Superior Court Case No.
SVC248500

**FRANCHISE AND INCOME TAX
New Cases - May 2011**

Case Name

Court Number

Daniel V Inc.

Los Angeles Superior Court Case No.:
BC457301

Walter B & Laura K Elcock

Alameda County Superior Court Case No.
RG11570953

William E. Kruse
Tammy Ross

Sacramento County Superior Court Case No.
34-2011-00098

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

May 2011

APPLE, INC. v. Franchise Tax Board San Francisco Superior Court Case No. CGC08471129 Court of Appeal, 1 st Appellate District Case No. A128091 <u>Taxpayer's Counsel</u> Jeffrey M. Vesely Pillsbury, Winthrop, Shaw, Pittman, LLP	Filed - 01/16/08 <u>FTB's Counsel</u> Kristian Whitten
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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. Apple timely filed its Reply Brief. FTB filed its Reply Brief as Cross-Appellant on February 1, 2011. The Case is now fully briefed. The Request for Oral Argument was filed on March 21, 2011 by FTB. The Record to Court for Review was sent on April 13, 2011.

BAKERSFIELD MALL, LLC v. Franchise Tax Board San Francisco Superior Court Case No. CGC07462728 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin Silverstein & Pomerantz, LLP	Filed - 04/25/07 <u>FTB's Counsel</u> Marguerite Stricklin
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Issues: 1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.
2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26 of the California Constitution.
3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of state police power and is void.

Years: 2000 through 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 July 14, 2011.

BANKS, KENNETH v. Franchise Tax Board San Francisco Superior Court Case No.CGC09484981 <u>Taxpayer's Counsel</u> Stephen Moskowitz, Esq. Law Offices of Stephen Moskowitz, LLP	Filed - 02/13/09 <u>FTB's Counsel</u> Lucy Wang
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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. **Trial and related Mandatory Settlement Conference were thereafter continued to different dates. A Settlement Conference was concluded on May 16, 2011, with the case not settling. Trial commenced on May 23, 2011, On May 24, 2011, the Witness List was filed, the Exhibit List was filed, evidence was received and Trial was continued to July 7, 2011, for the presentation of closing briefs.**

BUNZL DISTRIBUTION v. Franchise Tax Board San Francisco Superior Court Case No.CGC10506344 <u>Taxpayer's Counsel</u> William F. Colgin Kimberley M. Reeder William Clayton Morgan, Lewis, & Bockius, LLP	Filed - 12/17/10 <u>FTB's Counsel</u> Kris Whitten Karen Yiu
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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 was heard on March 1, 2011. The Demurrer was sustained in part and overruled in part. Case Management Conference set for May 20, 2011. Case

Management Statement was filed on April 21, 2011. The Response to Plaintiff's Request for Production is due May 9, 2011. The Answer was filed May 11, 2011. On May 26, 2011, a Case Management Statement was filed by FTB. On May 27, 2011, a Case Management Statement was filed by Plaintiff.

CA-CENTERSIDE II, LLC v. Franchise Tax Board Fresno Superior Court Case No. 10CECG00434 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin Silverstein & Pomerantz, LLP	Filed: 02/04/10 <u>FTB's Counsel</u> Steven J. Green
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- Issues:
1. Whether the LLC fee imposed on an LLC doing business entirely within California by Rev. Tax. Code §17942 is unconstitutional under the due process, equal protection and commerce clauses of the U.S. Constitution.
 2. Whether Rev. Tax. Code §17942 violates Article XIII, section 26, of the California Constitution.
 3. Whether Rev. Tax. Code §17942 constitutes an invalid exercise of state police power and is void.

Years: 2000 through 2005 Amount
\$65,201.00 Tax

Status: Defendant's Demurrer and Memorandum of Points and Authorities in Support of Demurrer was filed on April 23, 2010. The hearing on Demurrer was 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. 34-2009-80000168 Court of Appeal, 3 rd Appellate District Case No. C062791 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin P. Antolin Silverstein & Pomerantz, LLP	Filed - 02/17/09 <u>FTB's Counsel</u> Jill T. Bowers
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- Issues:
1. Whether RTC section 19138 creates a new penalty for the underpayment of taxes owed or creates a new tax.
 2. Whether RTC section 19138 required a two-thirds vote of both the Assembly and Senate to be properly enacted under Article XIII, § 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. Volume 1 of the record was transmitted to the Supreme Court on January 24, 2011. On February 14, 2011, CalTax filed a Request to Depublish the Opinion issued by the Third District Court of Appeal. On March 17, 2011, The California Supreme Court denied both requests. A Remittitur was issued and the case has been concluded. On April 4, 2011, the Court received Respondent's Memorandum of Costs on Appeal. Galley Proof Sent to Reporter of Decisions on April 4, 2011. On April 21, 2011, a Memorandum of Points and Authorities in Support of Motion for Order Striking or Taxing Costs on Appeal was filed by Plaintiff. On April 21, 2011, A Declaration of Edwin Antolin in Support of Plaintiff's Motion for Order Striking or Taxing Costs on Appeal. On April 27, 2011, a Remittitur was issued stating FTB would pay the Costs. On May 9, 2011, FTB's Opposition to Plaintiff's Motion for Order Striking or Taxing Costs on Appeal was filed. On May 13, 2011, Plaintiff's Reply Brief in Support of Motion for Order Striking or Taxing Costs on Appeal was filed. On May 17, 2011, a Motion for Order Striking or Taxing Costs was filed. On May 23, 2011, Tentative Ruling on Motion for Order Striking or Taxing Costs was issued by the Court ruling in FTB's favor.

CUTLER, FRANK v. Franchise Tax Board Los Angeles Superior Court Case No. BC421864 <u>Taxpayer's Counsel</u> Marty Dakessian Reed Smith LLP	Filed - 09/15/09 <u>FTB's Counsel</u> Christine Zarifarian
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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. On May 2, 2011, an Order was issued granting FTB's Motion for Summary Judgment or in the Alternative Summary Adjudication. On May 3, 2011, the Notice of Entry of Order Denying Plaintiff's Motion for Summary Judgment was filed. On May 3, 2011, the Notice of Entry of Order on FTB's Motion for Summary Judgment or in the Alternative Summary Adjudication was filed. On May 5, 2011, Plaintiff's Notice of Ex-Parte Application and Application Requesting Order Clarifying Orders on Cross Motions for Summary Judgment was filed. On May 18, 2011 a Judgment, Minute Order, and Request for Dismissal were filed. The Order denied the Plaintiff's Motion for Summary Adjudication, granted Defendant's Motion for Summary Judgment, and granted Plaintiff's Request for Dismissal of the Fourth Cause of Action.

DANIEL V INC. v. Franchise Tax Board		
Los Angeles Superior Court Case No. BC457301		
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	Filed - 03/14/11
Marty Dakessian	Anthony Sgherzi	<u>FTB's Counsel</u>
Bird, Marella, Boxer, Wolpert, Reed Smith LLP		Eric Brown

- Issues:
1. Whether Appellant has demonstrated the accuracy-related penalties assessed for the 1997 and 1998 tax years should be abated?
 2. Whether Appellant has demonstrated a late filing penalty assessed for the 1997 tax year should be abated.
 3. Whether Daniel V has demonstrated where it's commercial Domicile was located.

<u>Years:</u> 1997	<u>Amount:</u> Tax:	\$40,759.23
	Interest:	\$56,388.57
	Late Filing Penalty	\$10,189.80
	Amnesty Penalty	\$16,076.42
	Total:	\$123,414.02
1998	Tax:	\$840,010.32
	Interest:	\$1,073,439.12
	Late Filing Penalty	\$0.00
	Amnesty Penalty	\$237,050.56
	Total:	\$2,150,500.00

Status: Summons and Complaint served March 14, 2011. Answer to the Complaint filed April 12, 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, Marty Dakessian W. Dean Freeman
Bird, Marella, Boxer, Wolpert, Reed Smith LLP
Nessim, Dooks & Lincenberg, P.C.

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 W. Dean Freeman
Sharyn M. Fisk & Michael R. Stein
Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Issues: Whether Plaintiffs are entitled to interest suspension under Revenue & Taxation Code section 19116.

Year: 1999 Amount: \$288,938.00 Interest

Status: The Court permitted letter briefs no longer than five pages to be filed. On October 26, 2010, the Judgments against the Dus' and the Shimmons' were affirmed. The Judgment against the Mickelsens' was reversed. The Respondent was awarded it's the costs incurred in the Du and Shimmon appeals. The Petition for Rehearing filed on November 10, 2010. The Petition for Rehearing was denied on November 18, 2010. Plaintiff/Appellant timely filed a Petition for Review with the California Supreme Court. The Petition for Review was denied on February 2, 2011. The Remittitur was issued February 9, 2011. FTB has prevailed in the Petitions filed by Du and Shimmon. The suit filed by Micklesen has been remanded to the Superior Court for further proceedings.

William B. & Laura K Elcock v. Franchise Tax Board
Alameda Superior Court Case No. RG 11570953
Taxpayer's Counsel
William E. Taggart
Taggart & Hawkins.

Filed - 04/14/11
FTB's Counsel
Karen Yiu

Issue: Whether Plaintiff was entitled to refunds for tax years 2003-2006 for Non-Qualified Stock Options (NQSO's).

<u>Year:</u> 2003	<u>Amount:</u> \$87,209.00Tax
	\$21,802.00 Penalty
2004	\$15,282.00Tax
	\$3,820.00 Penalty
2005	\$28,585.00 Tax
2006	\$89,822.00

Status: **Summons and Complaint filed April 14, 2011.**

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
Boutin & Jones Inc.

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. 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. The case became fully briefed on January 26, 2011.**

FREEDOM FROM RELIGION FOUNDATION, INC., ET AL v. TIMOTHY GEITHNER, DOUGLAS SHULMAN AND SELVI STANISLAUS
Filed 10/14/09
U.S. District Court, Eastern District of California Sacramento Division Case No. CV02894-WBS-DAD
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. A Joint Motion for Stay of Proceedings was filed on January 18, 2011. Hearing on the Motion for Stay of Proceedings was scheduled to be conducted on February 28, 2011. FTB served on Plaintiffs Requests for Production of Documents and Interrogatories on February 11, 2011. On February 14, 2011, the Court granted Parties Joint Motion to Stay Proceedings pending the Decision of the Supreme Court of the United States in *Arizona Christian School Tuition Organization v. Winn*. Thus Plaintiffs' Responses to the Discovery Demands will not be due until a specified time after the Stay is lifted. On April 8, 2011, a Joint Status Report was filed. On April 21, 2011, an Order signed by Judge Shubb ordered that Discovery Responses are due on April 22, 2011, that the Pre-Trial Motions need to be filed by June 3, 2011, and the Motions Challenging Plaintiff's Standing in light of *Winn* need to be filed by May 27, 2011, with the Oppositions filed by June 17, 2011, and Replies filed by July 1, 2011. The Court continues the stay of all other proceedings until forthcoming motions are resolved. On May 9, 2011, USCA Opinion, stating the judgment of the District Court is Affirmed in part and Remanded; each side shall bear its own costs. On May 26, 2011, Motion to Dismiss for Lack of Jurisdiction was filed. On May 27, 2011, a Notice of Motion and Motion by Defendant Selvi Stanislaus for Judgment on the Pleadings and Exhibit One to MSJ 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. Post-Trial briefing and exchanges regarding proposed statements of Decision occurred through September 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. Notice of Appeal was filed on March 17, 2011. On April 12, 2011, the Exhibits and Depositions from Trial on Remand returned to respective Counsel. On April 12, 2011, an Order granting Application, admitting as Counsel Pro Hac Vice for Appellant, was filed. On April 26, 2011, The Court of Appeal certified the record.

THE GILLETTE COMPANY & SUBSIDIARIES v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC10495911	Filed 01/11/10
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Lucy Wang
Silverstein & Pomerantz, LLP	

Issues:

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

Years: 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. 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. The Certification of the Appeal Record was mailed on January 24, 2011. In February a Joint Stipulation Extending Time for Filing Briefs was filed allowing both Appellants and Respondent sixty additional days within which to file their respective briefs.

GOLDMAN, STEPHEN J. AND AZITA ETAATI v. Franchise Tax Board	
Alameda County Superior Court Case No. RG09441003	Filed - 03/12/09
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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 Appellant's Opening Brief was filed December 17, 2010. FTB filed its Respondent's Brief on March 17, 2011. In March a Joint Stipulation was filed allowing Appellant's sixty days to file Appellant's Reply Brief.

GONZALES, THOMAS J. II v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC06454297	Filed - 07/18/06
Court of Appeal, 1 st 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	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Martin A. Schainbaum, Esq. Martin A. Schainbaum, PLC	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 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. On April 5, 2011, the Case was argued and submitted for Decision.

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. 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 a two-volume Appendix of Exhibits. On October 12, 2010, FTB filed a Supplemental Reply Brief regarding Costs. 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. On February 4, 2011, Hyatt filed a Notice of Submission of Hyatt's Embedded (i) Answering Brief and Opening Cross Appeal Brief; (ii) Reply Brief on Cross Appeal; and (iii) Answering Brief on Cost Appeal which was filed with the Nevada Supreme Court. The matter is now fully briefed and the Parties await the 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

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. 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 <u>Taxpayer's Counsel</u> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed - 04/09/09 <u>FTB's Counsel</u> Tim Nader
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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 to commenced April 8, 2011. On March 24, 2011, the Trial Readiness Conference was rescheduled to October 14, 2011, and the Trial was rescheduled to November 4, 2011.**

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
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Issues:

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

Years: 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.

William E. Kruse & Tammy Ross v. Franchise Tax Board Sacramento Superior Court Case No.34-2011-00098570 <i>Taxpayer's Counsel</i> William E. Kruse Kruse Law Corporation	Filed 03/03/11 <i>FTB's Counsel</i> Robert Asperger
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Issues: 1. Whether Plaintiff's are entitled to their 2008 state income tax refund.

Years: 2008 **Amount:** \$2,231.00

Status: On March 3, 2011, the Summons and Complaint were filed. On May 26, 2011, Demurrer and Motion to Strike All or Portions of the Complaint and Supporting Memorandum of Points and Authorities was filed in support thereof by FTB.

Nemat & Maryam Maleksalehi v. Franchise Tax Board Sacramento County Superior Court Case No. 34-2009-80000365 <i>Taxpayer's Counsel</i> Barzin Barry Sabahat, Esq. Anchor Law Firm	Filed 05/26/10 <i>FTB's Counsel</i> Jill Bowers
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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. On March 25, 2011 a Minute Order was filed. On April 13, 2011, Respondent State Board of Equalization's Rule 3.1312(b) Statement was filed. On April 14, 2011, a Memorandum of Points and Authorities in Support of Demurrer by Respondent FTB to First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and for recovery of overpaid taxes was filed. On April 14, 2011, a Notice of Hearing on Demurrer and Demurrer by Respondent FTB to First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief and for Recovery of Overpaid Taxes was filed. On April 14, 2011, FTB's Request for Judicial Notice in Support of Demurrer to Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief was filed. On April 27, 2011, Respondent State Board of Equalization's Second Rule 3.1312 (b) Statement was filed. On April 29, 2011, the Order Sustaining Demurrer by Respondent State Board of Equalization was filed. On April 29, 2011, a Judgment of Dismissal as to the State Board of Equalization was filed.

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

Year: 1999 Amount: \$537,178.00 Interest

Status: Please see summary for Du v Franchise Tax Board. A Preemptory Challenge was filed on March 23, 2011, pursuant to which Plaintiff disqualified Judge Mackey from presiding over this case. The Case Management Conference is scheduled for May 20, 2011. On May 20, 2011, a Minute Order was issued. The Minute Order stated that the Final Status Conference is set for January 20, 2012, and the Court Trial is set for January 30, 2012.

MICROSOFT CORPORATION v. Franchise Tax Board San Francisco Superior Court Case No. CGC08471260 <u>Taxpayer's Counsel</u> James P. Kleier, Brian W. Toman Reed Smith, LLP	Filed – 01/22/08 <u>FTB's Counsel</u> David Lew Lucy Wang
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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. 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. On January 28, 2011, Microsoft filed its Objections to the Court's Proposed Statement of Decision. On February 17, 2011, the Court issued its Statement of Decision in favor of FTB. On March

15, 2011, the Court ordered that Microsoft take nothing from FTB. The Notice of Entry of Judgment was filed on March 21, 2011. On May 12, 2011, a Notice of Appeal/Request for a Transcript was filed by Plaintiff. On May 23, 2011, the Declaration was filed by Microsoft. On May 26, 2011, the Directory Notice to Prepare Transcript was filed.

EUGENE & PENELOPE MIDLOCK v. Franchise Tax Board Alameda County Superior Court Case No. RG10536311 <u>Taxpayer's Counsel</u> Amy L. Silverstein Edwin Antolin Johanna W. Roberts	Filed 09/14/10 <u>FTB's Counsel</u> Karen Yiu
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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 was set for January 27, 2011. The Answer to the Complaint was filed October 29, 2010. On January 11, 2011, a Joint Case Management Statement was filed. A Tentative Case Management Order was filed on January 24, 2011. On March 25, 2011, the date of July 12, 2011, was reserved for a hearing on a Motion for Summary Judgment. On April 22, 2011, the date of August 18, 2011, was reserved for a hearing on a Motion for Summary Judgment. On April 19, 2011, An Application for a Continuance of Trial was filed by Plaintiff's. On April 22, 2011, a Hearing was held to reset the Trial to September 23, 2011.

JASBIR & TAJENDER NAGRA v. Franchise Tax Board San Francisco Superior Court Case No. CGC-10-506223 <u>Taxpayer's Counsel</u> John Youngquist Law Offices of John Youngquist	Filed 12/14/10 <u>FTB'S Counsel</u> Marguerite Stricklin
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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. The original attorney John Gigounas had to withdraw suddenly because of a serious illness. The new attorney John Youngquist, has recently sent in a POA. A Trial date has been set for August.

OBIORA, NOEL L. V Franchise Tax Board San Francisco Superior Court Case No. CGC10498757 <u>Taxpayer's Counsel</u> Pro Per	Filed - 05/15/10 <u>FTB's Counsel</u> Karen Yiu
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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. The motion was continued to January 28, 2011. On February 14, 2011, a Notice of Entry of Order/Notice of Ruling was filed granting Defendant's Motion to Compel Further Responses and a Verification of Plaintiff's Responses to Discovery and Monetary Sanctions. On February 17, 2011, Plaintiff sent to FTB specially prepared Interrogatories set one. On May 6, 2011, a Motion for Summary Judgment was filed by FTB. FTB also filed a Memorandum of Points and Authorities in Support of Motion for Summary Judgment. Also filed on May 6, 2011, was Evidence in Support of Motion for Summary Judgment filed by FTB. FTB also filed on May 6, 2011, a Request for Judicial Notice on the Motion for Summary Judgment. On May 6, 2011, FTB filed an Index of Non-California Authorities in Support of Motion for Summary Judgment and a Proof of Service by U.S. Mail. On May 12, 2011, Notice of Motion and Motion for Summary Judgment, Memorandum of Points and Authorities in Support of Plaintiff's MSJ, Plaintiff's Statement of Undisputed Facts, Index of Non California Authorities in Support of MSJ, and Plaintiff's Evidence in Support of the Motion for Summary Judgment was filed. On May 12, 2011, a Preemptory Challenge of Honorable Peter J. Busch was filed by Plaintiff.

PERSONAL SELLING POWER, INC. v. Franchise Tax Board		
Alameda Superior Court Case No. RGO9462520		
<u>Taxpayer's Counsel</u>	<u>Taxpayer's Counsel</u>	Filed - 07/13/09
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 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 and later continued to April 13, 2011. On January 20, 2011, an Amended Notice of Motion was filed. On February 9, 2011, the Case Management Conference was continued to April 28, 2011. On April 4, 2011, the Hearing to Reset Motion for Judgment on the Pleadings and to Reset the Case Management Conference was continued to June 10, 2011. Hearing on Motion for Judgment on the Pleadings was reset to August 10, 2011.

THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC10495912	Filed: 1/11/10
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts	Lucy Wang
Silverstein & Pomerantz, LLP	

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

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

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

QUELLOS FINANCIAL ADVISORS, LLC v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC09487540	Filed - 04/20/09
<u>Taxpayer's Counsel</u> <u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Amanda J. Pedvin, Matthew D. Lerner, Esq.	Anne Michelle Burr

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

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

Status: 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, were continued to December 7, 2010. The Reply Briefs originally scheduled to be filed on November 29, 2010, were continued to January 11, 2011. On December 2, 2010, 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. The Trial that was scheduled for March 1, 2011, commenced on March 28, 2011 and was continued to April 25, 2011. On April 8, 2011, the FTB filed a Second Supplemental Request for Judicial Notice. On April, 21, 2011, an Objection to Defendant's Second Supplemental Request for Judicial Notice was filed by Plaintiff. A Declaration by Amanda Pedvin Varma in Support of the Objection to Defendant's Second Supplemental Request for Judicial Notice was filed on April 21, 2011. On April 25, 2011, the Response to Objection to Defendant's Second Supplemental Request for Judicial Notice was filed. On May 12, 2011, Post-Trial Brief on Plaintiff's Facial Due Process Challenge was filed by FTB. On May 13, 2011, Response to Supplemental Request for Judicial Notice was filed by Quellos.

QUELLOS GROUP, LLC v. Franchise Tax Board
San Francisco Superior Court Case No. CGC10501299
Taxpayer's Counsel *Taxpayer's Counsel*
Amanda J. Pedvin Matthew D. Lerner, Esq.
Steptoe & Johnson, LLP Steptoe & Johnson, LLP

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

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

Years: 2001

Refund sought: \$569,807.25

Status: Summons and Complaint filed July 23, 2010. 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 was 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. Trial was set for March 1, 2011, and commenced on March 28, 2011, and was continued to April 25, 2011. On April 8, 2011, the FTB filed a Second Supplemental Request for Judicial Notice.

On April, 21, 2011, an Objection to Defendant's Second Supplemental Request for Judicial Notice was filed by Plaintiff. A Declaration by Amanda Pedvin Varma in Support of the Objection to Defendant's Second Supplemental Request for Judicial Notice was filed on April 21, 2011. On April 25, 2011, the Response to Objection to Defendant's Second Supplemental Request for Judicial Notice was filed. On May 12, 2011, Post-Trial Brief on Plaintiff's Facial Due Process Challenge was filed by FTB. On May 13, 2011, Response to Supplemental Request for Judicial Notice was filed by Quellos. On May 26, 2011, Response to Defendant's Post-Trial Brief on Facial Due Process Challenge was filed by Plaintiff.

RB HOLDINGS (USA) INC. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496438 <i>Taxpayer's Counsel</i> Amy L. Silverstein, Edwin Antolin, Johanna W. Roberts Silverstein & Pomerantz, LLP	Filed 01/29/10 <i>FTB's Counsel</i> Lucy Wang
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- Issues:
1. Whether California's Amendment of Rev. & Tax. Code § 25128 in 1993 is precluded by California's participation in the Multistate Tax Compact.
 2. Whether California's denial of Plaintiff's claim for refund, premised upon the claim that the 1993 amendment to Rev. & Tax. Code § 25128 is precluded by California's participation in the Multistate Tax Compact, violates the U.S. Constitution and the California Constitution.

Years: 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 <i>Taxpayer's Counsel</i> James D. Gustafson, Stephen R. Goostrey Gustafson & Goostrey, LLP	Filed - 10/12/07 <i>FTB's Counsel</i> Anthony Sgherzi
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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. Plaintiffs filed an Objection to the Proposed Statement of Decision and FTB responded to that Objection. On January 27, 2011, the Court issued a Judgment and Notice of Entry of

Judgment in favor of FTB. On March 2, 2011, Plaintiff's filed a Motion to Tax Costs claimed by Defendant FTB. Plaintiffs filed a Notice of Appeal on March 28, 2011. On April 4, 2011, Appellants filed a Notice Designating the Record on Appeal. On April 7, 2011, the Response to FTB's Reply to Motion to Tax Costs Claimed and a Supplemental Declaration of Robert S. Horwitz was filed. On April 15, 2011, Appellant abandoned the Appeal.

SHIMMON, EDWARD & ANNELIESE v. Franchise Tax Board Los Angeles Superior Court Case No. BC363822 Court of Appeal, 2 nd Appellate District Case No. B213971 (consolidated with Du et al. & Mickelsen) <u>Taxpayer's Counsel</u> Charles P. Rettig, Sharyn M. Fisk Hochman, Salkin, Rettig, Toscher & Perez, P.C.	Filed – 12/22/06 <u>FTB's Counsel</u> W. Dean Freeman
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Issue: Whether a taxpayer filing under the first option of VCI was eligible for the interest suspension provided by section 19116.

Year: 1999 Amount: \$515,422.00 Interest

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

SIGMA-ALDRICH, CORP. & SUBSIDIARIES v. Franchise Tax Board San Francisco Superior Court Case No. CGC10496437 <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
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Issues:

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

Years: 1998 through 2004 Amount: \$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 <u>Taxpayer's Counsel</u> Marty Dakessian Reed Smith LLP	Filed – 11/12/09 <u>FTB's Counsel</u> Marta Smith
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Issues:

1. Whether plaintiff is entitled to enterprise zone sales and use tax credits for certain items it claims it "placed in service" during the tax years in question. In particular, the issue is whether the phrase "placed in service" refers to depreciable capital assets or "expensed items" usually consumed within a year of their initial use.
2. Whether the assessment of an Amnesty penalty in this case is factually warranted.

3. Whether the assessment of an Amnesty penalty in this case violates due process protections afforded the taxpayer under the constitutions of the United States of America and/or the state of California.
4. Whether FTB's interpretation/enforcement of provisions contained within the enterprise zone credit statute constitute underground regulations.
5. Whether plaintiff is entitled to attorneys fees under the provisions of the Revenue and Taxation Code and/or the private attorney general doctrine.

Years: 1998 and 1999

Amount: \$4,980,165.00

Status: 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. Appellant's Opening Brief was filed early January 2011. Respondent's Brief filed April 6, 2011.

Irene Tritz v. John Potter United States Federal District Court Central District SACV10-182DOC (RNBx) Ninth Circuit Court of Appeal 10-56967 <u>Taxpayer's Counsel</u> Irene Tritz Pro Se	Filed - 02/12/10 <u>FTB's Counsel</u> Marla Markman
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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. Appellant filed an Informal Brief with the Ninth Circuit Court of Appeal on May 20, 2011.

VENTAS FINANCE I, LLC v. Franchise Tax Board	Filed - 04/01/05
San Francisco Superior Court Case No. 05440001	
Court of Appeal, 1 st Appellate District Case No. A116277 & Case No. A117751	
California Supreme Court Case No. S166870	
U.S. Supreme Court Case No. 08-1022	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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. On February 28, 2011, the Court ordered a Hearing on the Remaining Attorney's Fees issue be scheduled for May 18, 2011. Plaintiff's Opening Brief is to be filed on April 7, 2011. FTB's Opposition is due April 23, 2011 and Plaintiff's Reply Brief is due on May 12, 2011. On May 7, 2011, a Notice and Motion for Attorney's Fees and Costs and Points and Authorities was filed along with a Request for Judicial Notice by Ventas. Trial now set for May 18, 2011. On April 29, 2011, the FTB filed an Opposition to Motion for Attorney's Fees and Costs. FTB also filed on April 29, 2011, the Declarations of William C. Hilson and Diedre O'Connor. On May 4, 2011, Opposition to Plaintiff's Motion for Attorney's Fees and Costs on Remand was filed by FTB. On May 4, 2011, a Request for Judicial Notice in Support of Opposition for Attorney's fees and Costs was filed by FTB. On May 4, 2011, the Declaration of Service of Opposition and Request for Judicial Notice was filed by FTB. On May 12, 2011, a Reply Brief in Support of Plaintiff's Motion for Attorneys' Fees and Costs on Remand was filed by Ventas. On May 12, 2011, a Reply Declaration of Edwin P. Antolin in Support of Plaintiff's Motion for Attorneys' Fees and costs on Remand was filed by Plaintiff. On May 12, 2011, a Reply Declaration of Richard M. Pearl in Support of Plaintiff's Motion for Award of Reasonable Attorneys' Fees and Costs was filed. The Case Management Conference of May 18, 2011, is Off Calendar. On May 18, 2011, the Trial on the Motion for Attorneys' Fees and Costs was held and continued to June 20, 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)	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Thomas Steele	Jeff Rich
Andres Vallejo	
Scott M. Reiber	
Morrison & 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. Answer was filed on January 28, 2011. On February 2, 2011, a Notice of Entry of Dismissal was filed regarding the Writ of Mandate. On January 24, 2011, a Stipulation to Appropriate Procedure to Challenge Amnesty penalty was filed. On January 28, 2011, the Answer to Verified Complaint for Refund for Amnesty Penalty was filed. On April 15, 2011, a Notice of Case Management Conference and Order to Appear was filed. Case Management Conference was set for June 23, 2011. Case Management Statement due 15 days before June 23, 2011.