State of California
Franchise Tax Board

Legal Division MS A390
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January 2012 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: https://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 – January 2012

Case Name	Court Number
Apple, Inc.	San Francisco County Superior Court Case No. Appellate District Case No. A128091
William E. Kruse & Tammy Ross	Sacramento County Superior Court Case No. 34-2011-00098570

FRANCHISE AND INCOME TAX
New Cases –January 2012

Case Name	Court Number
Mercedes-Benz USA , Inc.	Sacramento County Superior Court 34-2012-00116949

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

January 2012

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	*FTB's Counsel*
Jeffrey M. Vesely	Kristian Whitten
Pillsbury, Winthrop, Shaw, Pittman, LLP	

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. On August 23, 2011, the Case was argued and submitted. On September 12, 2011, the Court of Appeal issued a published Opinion affirming the Trial Court Judgment. On September 26, 2011, Apple filed a Petition for Rehearing. On October 5, 2011, an Order Denying Petition for Rehearing was filed. Apple filed a Petition for Review on October 21, 2011. FTB's Answer was filed on November 10, 2011. The Reply to our Answer to the Petition for Review was filed on November 21, 2011. Two Amicus letters supporting the grant for Petition for Review were filed on November 22, 2011. The California Supreme Court extended the time for granting/denying review to January 19, 2012. On January 23, 2012, the California Supreme Court denied Apple's Petition for Review. Two Remittiturs were filed, the first was for the main Appeal and the second was for each party to bear their own costs.

BAKERSFIELD MALL, LLC v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC07462728	Filed – 04/25/07
Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	Marguerite Stricklin
Silverstein & Pomerantz, LLP	

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 was continued to July 14, 2011. On June 16, 2011, a Notice of Continued Case Management Conference was filed by FTB. On July 14, 2011, the Case Management Conference was held and continued to October 3, 2011. On October 3, 2011, the Case Management Conference was held and the matter was continued to November 2, 2011. Case Management Conference held January 25, 2012, and was continued to March 20, 2012.**

BUNZL DISTRIBUTION v. Franchise Tax Board	
San Francisco Superior Court Case No.CGC10506344	Filed – 12/17/10
Taxpayer's Counsel	*FTB's Counsel*
William F. Colgin	Kris Whitten
Kimberley M. Reeder	Karen Yiu
William Clayton	
Morgan, Lewis, & Bockius, LLP	

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. 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. On June 10, 2011, an Order Continuing Case Management Conference was filed resetting the conference for August 12, 2011. On June 14, 2011, the Answer to Cross Complaint was filed by the Cross-Defendant, Bunzl. On July 8, 2011, a Joint Notice of Agreement to Accept Service Electronically was filed by Bunzl. FTB filed a Case Management Statement on July 18, 2011. Bunzl Distribution filed a Case Management Statement on July 18, 2011. On July 28, 2011, the August 12, 2011, Case Management Conference was cancelled. On July 18, 2011, the trial was set for June 18, 2012. The Mandatory Settlement Conference is set for June 1, 2012.

CA-CENTERSIDE II, LLC v. Franchise Tax Board	Filed: 02/04/10
Fresno Superior Court Case No. 10CECG00434	
Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	Amy Winn
Silverstein & Pomerantz, LLP	

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:	Amount
2000 through 2005	$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. On July 22, 2011, Plaintiff's First Set of Special Interrogatories to Defendant FTB were submitted. On July 22, 2011, Plaintiff's First Set of Form Interrogatories were served. On July 22, 2011, Plaintiff's First Set of Demands for Production, Inspection, and Copying of Documents was served. On July 22, 2011, Plaintiff's first Set of Requests for Admission to Defendant FTB were served. On July 22, 2011, Declaration of Johanna Roberts in Support of Additional Discovery was served. On October 3, 2011, the FTB responded to Responses to Plaintiff's First Set of Requests for Admission. On October 3, 2011, the FTB responded to Plaintiff's First Set of Form Interrogatories. On October 3, 2011, FTB responded to Plaintiff's First Set of Demands for Production, Inspection and Copying of Documents. On October 3, 2011, FTB responded to Plaintiff's First Set of Special Interrogatories.

STEPHEN & VICKORY CHERNER v. Franchise Tax Board	Filed: 09/16/11
Los Angeles Superior Court Case No. BC469768	
Taxpayer's Counsel	*FTB's Counsel*
Laura G. Brys	Craig Scott
Burris, Schoenberg & Walden, LLP	

Issues:
1. Whether the Franchise Tax Board properly denied/withheld Plaintiff's Claim for Refund?
2. Whether the Franchise Tax Board properly handled and diligently processed taxpayers 2005 Amnesty Penalty Application?

Years: 1990, 2005 Amount $87,897.00

Status: **Summons & Complaint filed September 16, 2011. On December 1, 2011, a Notice of Hearing on Demurrer to Complaint for Declaratory Relief/Demurrer to Complaint for Declaratory Relief together with a Memorandum of Points & Authorities and a Request for Judicial Notice of the Pleadings & Exhibits filed in the Prior Cherner/FTB suit were filed by FTB. The Plaintiff's First Set of Specially Prepared Interrogatories Propounded to FTB was served on t December 30, 2011. On January 27, 2012, FTB responded to Plaintiff's First Set of Special Interrogatories.**

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. 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. On June 14, 2011, a Notice of Appeal combined with Election to Proceed was filed by the Plaintiff. On June 30, 2011, a Notice to Reporters to Prepare the Transcript on Appeal was filed. Plaintiff/Appellant filed his Opening Brief on November 21, 2011. On December 8, 2011, a Stipulation Extending Time for FTB to File its Brief until February 21, 2012, was filed.

DAI, WEILI v. Franchise Tax Board
San Francisco Superior Court Case No. CGC-11-515643 Filed – 11/03/11

Taxpayer's Counsel	*FTB's Counsel*
Glenn A Smith	Marguerite Stricklin
Law Offices of Glenn A. Smith	

Issues: 1. Whether Plaintiff is entitled to Declaratory Relief under section 11350 of the Government Code in the form of a determination that FTB has created and implemented invalid regulations with respect to the treatment of stock options.

Year: 2006 Amount: $ 1.00

Status: Summons & Complaint filed November 3, 2011. On December 15, 2011, a Summons and the First Amended Complaint were filed alleging that Plaintiff is entitled to a declaration under Section 11350 of the Government Code that FTB has created and implemented certain invalid regulations. The First Request for Production of Documents by Plaintiff was propounded to FTB on December 23, 2011. The First Set of Special Interrogatories by Plaintiff was propounded to FTB on December 23, 2011. The time for FTB to respond to the First Amended Complaint has been extended from January 20, 2012, to February 10, 2012.

DANIEL V INC. v. Franchise Tax Board
Los Angeles Superior Court Case No. BC457301 Filed – 03/14/11

Taxpayer's Counsel	*Taxpayer's Counsel*	*FTB's Counsel*
Marty Dakessian	Anthony Sgherzi	Eric Brown
Reed Smith LLP		

Issues: 1. Whether Appellant has demonstrated the amnesty-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.

Years: 1997

Amount:	
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. On May 3, 2011, FTB sent the First Set of Special Interrogatories to Daniel V. FTB also sent a Demand for Production of Documents . On June 21, 2011, Daniel V's Response to Defendant's First Set of Interrogatories was sent. On July 12, 2011, Plaintiff Responded to the Request for Production of Documents. On December 6, 2011, the Plaintiff's Request for Production of Documents Set One to the Franchise Tax Board was served. Trial is scheduled for July 16, 2012. The Final Status Conference is on July 6, 2012. The Parties are to participate in a non-binding Mediation during January 2012. A Post-Mediation Status Conference is scheduled for February 6, 2012.**

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, Drooks & 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 Argument on the matter.**

DENNIS A. DODENHOFF v. Franchise Tax Board
Yolo County Superior Court Case No. PT11-993 — Filed – 05/02/11

Taxpayer's Counsel	*FTB's Counsel*
Dennis A. Dodenhoff, In Pro Per	Robert Asperger

Issues:
1. Whether Plaintiff can recover what he describes as Pecuniary Property which he alleges was taken by FTB by means of force and under color of the law.
2. Whether Plaintiff can Petition for Exemplary Damages and an Injunction to prevent Agency action not authorized by law.

Years: 1992, 1993, 1999, 2000-2008 — Amount: $99,273.45

Status: Summons and Complaint were personally served on FTB on May 9, 2011. The Plaintiff filed suit in Yolo County Superior Court. This suit follows Small Claims Case No. CV CL 10-526 filed in Yolo County on December 28, 2010, which was decided against Plaintiff. On March 16, 2011, FTB petitioned the Court for dismissal via written correspondence. A Notice of Judgment was entered on April 15, 2011, stating that Dennis Dodenhoff was not owed any monies from any named defendant. The Plaintiff also filed a claim with the California Victim Compensation and Government Claims Board (VCGCB). On April 1, 2011, The VCGCB sent a letter stating that they will act on Plaintiff's Claim. On June 8, 2011, FTB's Demurrer and Motion to Strike the Yolo County Superior Court action were filed, and set for Hearing on August 25, 2011. On August 5, 2011, Plaintiff filed Plaintiff's Rebuttal to Defendant's Demurrer. On August 17, 2011, Reply Memorandum of Points and Authorities in Support of Demurrer and Motion to Strike by Defendant FTB was filed. On August 25, 2011, a Tentative Ruling Sustaining Defendant's Demurrer was filed. Plaintiff filed an Amended Complaint on August 30, 2011. On September 23, 2011, a Notice of Hearing on Demurrer together with a Memorandum of Points and Authorities in Support thereof was filed by Defendant FTB to Plaintiff's First Amended Complaint. On November 1, 2011, the Court sustained FTB's Demurrer without Leave to Amend. Plaintiff has indicated that he will appeal that determination. The Notice of Entry of Judgment was filed on January 10, 2012.

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: On October 26, 2010, the Court of Appeal issued an Opinion Affirming Judgments against the Dus' and the Shimmons'. The Judgment against the Mickelsens' was reversed. The Respondent was awarded its costs incurred in the Du and Shimmon appeals. Plaintiff's filed a Petition for Rehearing 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	Filed – 04/14/11
Taxpayer's Counsel	*FTB's Counsel*
William E. Taggart	Karen Yiu
Taggart & Hawkins.	

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

Year:		Amount:
	2003	$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. On May 17, 2011, the Stipulation and Proposed Order to Transfer Case was filed. On June 24, 2011, FTB's Demurrer to Plaintiff's Complaint, Notice of Hearing thereon, and Pleading in Support thereof were filed. On September 8, 2011, Case Management Conference Statement was filed. On September 16, 2011, FTB's Index of Non-California Authorities in Support of Demurrer to Complaint was filed. On September 16, 2011, FTB's Reply in Support of Demurrer to Complaint was filed. Plaintiff's Opposition to Demurrer was filed on September 17, 2011. On September 23, 2011, the Court sustained the FTB's Demurrer to the First, Second and Third Causes of Action without Leave to Amend and dismissed those three causes of action. Case is proceeding on one remaining Cause of Action. FTB filed its Answer to the Complaint on October 21, 2011. Trial is scheduled for June 15, 2012.**

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. A131477		
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. 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 were 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. On July 21, 2011, Appellant filed its Opening Brief in the Court of Appeal, First Appellate District. FTB filed its Opening Brief on November 17, 2011.

THE GILLETTE COMPANY & SUBSIDIARIES v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC10495911	Filed 01/11/10
Court of Appeal First District Court Case No. A130803	
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: 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 Jones Apparel Group, Inc. and Subsidiaries, 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. On May 4, 2011, Appellant filed its Opening Brief. On August 9, 2011, Respondent's Brief was filed. On August 9, 2011, Respondent's Opposition to Appellants' Request for Judicial Notice was filed. On August 9, 2011, Respondent's Appendix in Support of Respondent's Brief was filed. On August 9, 2011, Respondent's Request for Judicial Notice, Motion, Memorandum and Supporting Papers Volume 1 of 2 was filed. On August 9, 2011, a Proposed Order Granting Respondent's Request for Judicial Notice was filed. Appellants filed a Reply Brief on October 28, 2011. On December 8, 2011, the parties filed a Joint Request for Extension of Time to File Oppositions and Replies to the Amicus Briefs submitted in this matter. Respondent FTB's Consolidated Reply Brief to Amicus Curiae Briefs filed in Support of Appellants was filed on January 23, 2012. Respondent's Supplemental Request for Judicial Notice, Motion, Memorandum and Supporting Papers was filed January 20, 2012. Declaration of Jeffrey Margolis in Support of Respondent's Supplemental Request for Judicial Notice was filed January 20, 2012. Appellants' Response to Amicus Brief of Multistate Tax Commission was filed January 20, 2012. Proposed Order Granting Appellants Request for Judicial Notice in Support of their

Responses to Amicus Brief of the Multistate Tax Commission was filed January 20, 2012. Appellants' Request for Judicial Notice in Support of their Response to Amicus Brief of the Multistate Tax Commission, Motion and Memorandum was filed January 20, 2012. The Declaration of Johanna Roberts in Support of Appellants' Request for Judicial Notice in Support of their Response to Amicus Brief of the Multistate Tax Commission was filed January 20, 2012.

GOLDMAN, STEPHEN J. AND AZITA ETAATI v. Franchise Tax Board
Alameda County Superior Court Case No. RG09441003 Filed – 03/12/09
Court of Appeal First Appellate District Case No.: A128985

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

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. On June 6, 2011, Appellants filed their Reply Brief. This case is now fully briefed. On January 23, 2012, the Court of Appeal issued an opinion which is certified for publication that affirmed the trial court's Judgment in favor of FTB.

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
Court of Appeal, 1st Appellate District Case No. A134238

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: On June 6, 2011, the California Supreme Court issued a unanimous opinion holding that under the California Constitution there is no right to a jury trial in Tax Refund Lawsuits. On June 20, 2011, a Petition for Rehearing was filed by Gonzales. On June 22, 2011, the Court extended the time to consider the Petition until September 6, 2011. On July 13, 2011, the Petition for Rehearing was denied. On July 13, 2011, the Remittitur was issued. The Jury Trial decision is now final. On July 21, 2011, a Status Conference Hearing was set for July 29, 2011. On July 29, 2011, Trial was set for September 12, 2011. On August 17, 2011, Notice of Motion and Motion for Judgment on the Pleadings; Request for Judicial Notice; Points and Authorities; Declaration by Cross Complainant FTB was filed. On August 26, 2011, Six Motions in Limine and a Declaration in Support there were filed by of FTB. On September 2, 2011, the Opposition to Plaintiff's Motion in Limine was filed by FTB. On September 2, 2011, the Memorandum of Points and Authorities in Reply to Opposition to Motion for Judgment on the Pleadings was filed by FTB. On September 2, 2011, Plaintiff filed his oppositions to each of FTB's Motions In Limine together with a declarations in support thereof. On September 2, 2011, the Designation of Deposition Transcript Extractions was filed by Plaintiff. On September 6, 2011, the Status Conference was continued from September 9, 2011, to September 12, 2011. On September 6, 2011, a Motion for Judgment on the Pleadings and for Order Precluding Evidence regarding Tax Shelters was filed by FTB. Hearing on the Requests for Judicial Notice was continued from September 9, 2011, to September 12, 2011. On September 6, 2011, a Request for Judicial Notice at Trial, together with declarations in support thereof was filed by FTB. On September 6, 2011, Trial was continued from 9:00 a.m. to 1:30 p.m. On September 8, 2011, a Request for Leave to File a Supplemental Trial Brief was filed by Plaintiff. On September 8, 2011, the Objections to Plaintiff's Designation of Deposition Extractions was filed FTB. On September 8, 2011, Non-California Authorities Cited in Support of Trial Brief was filed by FTB. On September 13, 2011, Closing Arguments were held and the matter was submitted for Decision. The Court ruled in favor of FTB on the Substantive Tax Shelter issue, holding that a Federal Court Decision on the same issue was binding upon Plaintiff. The Court ruled in favor of the Plaintiff on the Penalty issue. On September 14, 2011, a Stipulation and Order to Return All Trial Exhibits & Depositions to Respective Counsel for Safe Keeping was filed. On September 22, 2011, an Order and a Fee Paid for Plaintiff's Counsel to Maintain and Preserve Documents Previously lodged with the Court was filed. On November 16, 2011, the Statement of Decision on the Cross-Complaint was filed by Gonzales. On November 18, 2011, the Court Ordered judgment be entered in favor of Gonzales on the Cross-Complaint in the amount of $86,589.25. On November 28, 2011, a Stipulation and Order regarding Correct Statement of Decision On Cross-Complaint was filed. On December 1, 2011, Memorandum of Costs and Disbursements was filed by Plaintiff. On December 21, 2011, a Response to Petition of Tom Gonzales for Restoration of Trustee Powers and For Release of Responsibility for Acts of Temporary Trustee was filed. Notice of Appeal/Request for Transcript was filed by Plaintiff on January 6, 2012. On January 18, 2012, the Clerk's Notice of filing Appeal was entered. On January 19, 2012, a Motion to Use Settled Statement filed by Plaintiff was filed.

HARLEY DAVIDSON INC. & SUBSIDIARIES v. Franchise Tax Board
San Diego Superior Court Case No. 37-2011-00100846 Filed – 11/09/11

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein	Leslie Branman Smith
Edwin Antolin	
Silverstein & Pomerantz	

Issues: 1.Whether Plaintiffs should be allowed a claim for refund for 2000-2002 based on

assertions that Plaintiffs have been discriminated against by FTB as they were not allowed as a multistate corporation to file separate returns.

2. Whether Plaintiffs are entitled to use the equal-weighted three factor formula to apportion their income.
3. Whether California lacks nexus sufficient to justify taxation of certain Harley Davidson subsidiaries and, if there is nexus, whether the income of these subsidiaries can be attributable to California.

Years: 2000-2002 Amount: $1,851,942.00

Status: **Summons and Complaint filed November 9, 2011. On December 20, 2011, Harley Davidson filed a First Amended Complaint. The Notice of Hearing on Demurrer and Demurrer by FTB to First Amended Verified Complaint for Refund of Taxes was filed January 20, 2012. The Memorandum of Points and Authorities in Support of FTB's Demurrer to First Amended Verified Complaint for Refund of Taxes was filed January 20, 2012.**

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

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'sCounsel*
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: 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.

MARTIN A. LOGIES v. Franchise Tax Board Filed 07/01/11
Santa Clara County Superior Court Case No.111CV203752

Taxpayer's Counsel	*FTB's Counsel*
Bradley A. Bening	Marguerite Stricklin
Willoughby, Stuart & Bening	

Issues: 1. Whether Plaintiff is entitled to cancellation of the Preparer penalties.
2. Whether Plaintiff is entitled to a refund of the $21,112.50 that he has paid to date.

Years: 1997-2001 Amount: $21,112.50

Status: On June 23, 2011, the Summons and Complaint were filed. On August 4, 2011, the Santa Clara County Superior Court approved a Stipulation and Order transferring the case to Alameda County. On October 13, 2011, an Order was issued transferring the case to Oakland, Alameda County. On November 7, 2011, the case was transferred to Oakland.

MERCEDES-BENZ USA INC. v. Franchise Tax Board Filed 01/11/12
Sacramento County Superior Court Case No.111CV203752

Taxpayer's Counsel	*FTB's Counsel*
Eric Coffill	Jill Bowers
Carley A. Roberts	
Morrisson & Foerster	

Issues: 1. Whether the loss sustained by Plaintiff upon liquidation of that certain entity known as AEG should properly be considered an ordinary loss or a capital loss.
2. Whether certain bad debts should be classified as ordinary losses or capital loss carryover.
3. Whether income generated by pension assets should be classified as non-business income.

Years: 1996-1997 Amount: $10,300,564.00

Status: Summons and Complaint served on January 12, 2012.

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. 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 was scheduled for May 20, 2011. On May 20, 2011, a Minute Order was issued. The Minute Order states that the Final Status Conference is set for January 20, 2012, and the Court Trial is set for January 30, 2012. On October 11, 2011, FTB filed a Notice of Motion and Motion for Summary Judgment. On October 11, 2011, FTB filed a Memorandum of Points and Authorities in Support of Motion for Summary Judgment. On October 11, 2011, FTB filed a Separate Statement of Undisputed Material Facts in Support for Motion for Summary Judgment. The Motion for Summary Judgment is scheduled to be heard on January 27, 2012. The Trial is scheduled for January 30, 2012. On November 15, 2011, Plaintiff's filed Notice of Motion and Motion for Summary Judgment. On November 15, 2011, Plaintiff's filed an Order Removing Unredacted Pleading from the Court's Imaging System and Granting Leave to File Redacted Pleading in Place of the Unredacted one. On November 15, 2011, Plaintiffs' filed Evidence in Support of Motion for Summary Judgment. On November 15, 2011 Plaintiffs filed Memorandum of Points and Authorities in Support for Motion for Summary Judgment. On November 15, 2011 Plaintiffs' filed Separate Statement of Undisputed Material Facts in Support of Motion for Summary Judgment. On November 16, 2011, a Notice of Results of Hearing on Stipulation re: Continuance of Case Management Conference and Trial Calendaring of Plaintiffs' Proposed Motion for Summary Judgment was filed, which set the Hearing Date for Defendant's Motion for Summary Judgment for January 27, 2012, for Plaintiffs' Motion for Summary Judgment for February 1, 2012, and the Pre-trial Conference for February 28, 2012. The Case Status Conference that was set for December 12, 2011 is off calendar. The January 30, 2012, trial date has been vacated. On January 12, 2012, the Plaintiffs' Separate Statement of Undisputed Material Facts in Support in Opposition to Defendant's Motion for Summary Judgment was filed. On January 12, 2012, Evidence in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment was filed. On January 12, 2012, Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment was filed. Plaintiffs' Objections to Evidence Submitted by Defendant in Support of Defendant's Motion for Summary Judgment was filed on January 12, 2012. On January 18, 2012, FTB's Response to Plaintiffs' Separate Statement of Undisputed Material Facts was filed in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment. On January 18, 2012, FTB's Opposition to Plaintiffs' Motion for Summary Judgment was filed. On January 19, 2012, FTB's Response to Plaintiff's Separate Statement of Undisputed Material Facts filed in Support of Plaintiffs' Motion for Summary Judgment was filed. On January 23, 2012, FTB filed its Reply to Plaintiffs' Opposition to Defendant's Motion for Summary Judgment. On January 26, 2012, Plaintiffs' Reply to Defendant FTB's Opposition to Plaintiffs Motion for Summary Judgment was filed.

MICROSOFT CORPORATION v. Franchise Tax Board	
San Francisco Superior Court Case No. CGC08471260	Filed – 01/22/08
Court of Appeal Court Case No. A131964	
Taxpayer's Counsel	*FTB's Counsel*
A. Pilar Mata, Esq,	David Lew
Sutherland, Asbill, & Brennan 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. 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 26, 2011, the Directory Notice to Prepare Transcript was filed. On June 8, 2011, the Appeal Record was Certified and mailed to the Court of Appeal. Appellant's Opening Brief was filed on September 19, 2011. On October 13, 2011, Microsoft filed a Joint Appendix. On December 19, 2011, Respondent's Brief was filed.**

OBIORA, NOEL L. V Franchise Tax Board
San Francisco Superior Court Case No. CGC10498757 Filed – 05/15/10
Court of Appeal Court Case No. A133069

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. FTB filed Demurrer on September 3, 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 Jurisdiction to Unlimited Jurisdiction was also filed. The Answer to the First Amended Complaint was filed by FTB on October 29, 2010. Trial was set for August 29, 2011. On May 6, 2011, a Motion for Summary Judgment was filed by FTB. On May 12, 2011, a Notice of Motion and Motion for Summary Judgment was filed. On May 12, 2011, a Preemptory Challenge of Honorable Peter J. Busch was filed by Plaintiff. FTB's Motion for Summary Judgment was to be heard on July 25, 2011. Hearing on Plaintiff's Motion for Summary Judgment was to be on heard on July 26, 2011. On July 11, 2011, an Opposition to FTB's Motion for Summary Judgment was filed by the Plaintiff. On July 12, 2011, FTB filed its Opposition to Plaintiff's Motion for Summary Judgment. Thereafter, the**

Court transferred the parties' Motions for Summary Judgments to another Law and Motion department due to the Preemptory Challenge. The Court denied the Motion for Sanctions. On July 26, 2011, the Court adopted its Tentative Ruling and Granted FTB's Motion for Summary Judgment. The Notice of Entry of Order granting FTB's Motion for Summary Judgment and the Notice of Entry of Order denying Plaintiff's Motion for Summary Judgment were filed on July 26, 2011. On August 25, 2011, a Notice of Appeal and Request for Transcript was filed by Plaintiff. On September 7, 2011, a Notice of Default on Appeal was sent to Appellant. On September 8, 2011, a Request for the Transcript was filed. On December 6, 2011, a Motion for Relief from Dismissal and to Reinstate Appeal was filed. On December 9, 2011, A Motion for Relief from Dismissal and to Reinstate the Appeal was filed, which motion was denied. On December 13, 2011, the Remittitur was filed. A Notice of Default on Appeal was sent to Appellant on January 3, 2012. On January 10, 2012, the Order Dismissing the Appeal was filed.

THE PROCTER & GAMBLE MANUFACTURING CO. & AFFILIATES v. Franchise Tax Board
San Francisco Superior Court Case No. CGC10495912 Filed: 1/11/10
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: 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, 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. The Trial that was scheduled for March 1, 2011, commenced on March 28, 2011 and was continued to April 25, 2011. On May 12, 2011, a Post-Trial Brief on Plaintiff's Facial Due Process Challenge to the statute was filed by FTB. Defendant FTB's Proposed Statement of Decision and Declaration of Service were filed June 17, 2011. The Parties have submitted proposed Statements of Decision and the Judge will review the case and issue a final Statement of Decision. The Case Management Conference which was set for October 24, 2011, was continued to November 16, 2011, and thereafter to December 19, 2011. On December 8, 2011, Objections and Proposed Revisions to Tentative Statement of Decision were filed by Cross-Complainant FTB. On December 12, 2011, Plaintiff's Revisions to Tentative Statement of Decision was filed. On December 12, 2011, the Joint Case Management Conference Statement was filed by FTB. Statement of Decision was filed on January 3, 2012 in favor of the Plaintiff. This case is being appealed.

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 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. Please see summary to Quellos Financial Advisors, LLC v. Franchise Tax Board. This case is being appealed.

RB HOLDINGS (USA) INC. & SUBSIDIRIES v. Franchise Tax Board	Filed 01/29/10
San Francisco Superior Court Case No. CGC10496438	
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: 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.

SEHAT SUTARDJA v. Franchise Tax Board	Filed 11/03/11
San Francisco Superior Court Case No. CGC-11-515645	
Taxpayer's Counsel	*FTB's Counsel*
Glenn A. Smith Law Offices of Glenn A. Smith	

Issues:
1. Whether Plaintiff is entitled to declaratory relief Under Section 11350 of the Government Code in the form of a determination that FTB has created and implemented invalid regulations with respect to the treatment of Stock Options.

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Years: 2006 Amount: $1.00

Status: Summons & Complaint filed November 3, 2011. On December 15, 2011, a Summons and the First Amended Complaint were filed alleging that Plaintiff is entitled to a declaration under Section 11350 of the Government Code that FTB has created and implemented certain invalid regulations. The First Request for Production of Documents by Plaintiff was propounded to FTB on December 23, 2011. The First Set of Special Interrogatories by Plaintiff was propounded to FTB on December 23, 2011.The time for FTB to respond to the First Amended Complaint is extended from January 20, 2012, to February 10, 2012. The time for FTB to respond to the Plaintiff's pending written Discovery is extended from January 27, 2012, to February 8, 2012.

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 Filed 01/29/10
San Francisco Superior Court Case No. CGC10496437

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: 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
Court of Appeal, 2nd Appellate District Court Case No. B226067

Taxpayer's Counsel	*FTB's Counsel*
Marty Dakessian	Marta Smith
Reed Smith LLP	

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. Appellant's Reply Brief was filed June 24, 2011. This case is now fully briefed. Oral Arguments are scheduled to be heard on February 14, 2012.**

Irene Tritz v. John Potter
United States Federal District Court Central District Filed – 02/12/10
SACV10-182DOC (RNBx)
Ninth Circuit Court of Appeal
10-56967

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

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. On June 22, 2011, the Notice of Appearance of Counsel or Re-Assignment of Counsel Within the Same Office was filed.**

On June 22, 2011, the Brief of Appellee Selvi Stanislaus, Executive Officer of the FTB, was filed. On June 29, 2011, Appellant's Informal Reply to Appellee Brief was filed. On July 14, 2011, seven copies of the Answering Brief were filed.

TRIVEDI, MRUDULA & RAMNIK. v. Franchise Tax Board		
Ventura County Superior Court Case No. 56-2011-00406565		Filed – 11/12/09
Taxpayer's Counsel	*FTB's Counsel*	
Mrudula & Ramnik Trivedi	Christine Zarifian	

Issues: 1. Whether plaintiff is entitled to Innocent Spouse relief from a deficiency collection for the 1992 tax year.

Years: 1992 Amount: $23,677.67

Status: Summons & Complaint filed November 7, 2011. On December 21, 2011, a Notice of Motion and Motion to Transfer; Memorandum of Points and Authorities; and Declaration in Support thereof was filed. The Reply of Defendant FTB in Support of Motion to Transfer was filed on January 24, 2012.