State of California
Franchise Tax Board

Legal Division MS A390
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## August 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: 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 –August 2012

| Case Name | Court Number |
| --- | --- |

FRANCHISE AND INCOME TAX
New Cases –August 2012

| Case Name | Court Number |
| --- | --- |
| ComCon Production Services I, Inc. | Los Angeles Superior Court Case No. BC489779 |

FRANCHISE AND INCOME TAX
MONTHLY PUBLIC LITIGATION ROSTER

August 2012

| 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 was held January 25, 2012, and was continued to March 20, 2012. On March 20, 2012, the Case Management Conference was held and continued to April 4, 2012. On April 4, 2012, the Case Management Conference was held and continued to August 30, 2012. On June 26, 2012, a Notice of Related Case was filed by FTB. On June 27, 2012, Plaintiff filed a Stipulation, Extending the expiration date of the five year period within which trial must be commenced. Case Management Conference off calendar on August 30, 2012 and continued to October 5, 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 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. On July 18, 2011, trial was set for June 18, 2012. The Mandatory Settlement Conference is set for June 1, 2012. On February 28, 2012, FTB's Response to Plaintiff's Special Interrogatories, Set One, and FTB's Response to Plaintiff's Requests for Production of Documents, Set Two were served. On February 29, 2012, FTB's Notice of Motion and Motion for Summary Adjudication of the First and Second Causes of Action together with pleadings in support thereof, was filed. The Motion for Summary Adjudication is scheduled to be heard on May 21, 2012. On March 29, 2012, FTB filed a Motion for Protective Order, together with pleadings in support thereof, with respect to pending discovery. On March 29, 2012, Plaintiff filed a Motion, together with supporting pleadings, to compel FTB to provide further responses to discovery requests propounded by Plaintiff. Declaration of Kimberley M. Reeder in Support of Plaintiff Bunzl Distribution USA Inc.'s Motion to Compel Further Responses To Interrogatories, Requests for Admissions, and Requests for Production of Documents was filed. On March 29, 2012, Plaintiff's Notice of Motion and Motion to Compel Further Responses to Interrogatories, Requests for Admission, and Requests for Production of Documents was filed. On March 29, 2012, Plaintiff Bunzl Distribution USA Inc.'s Memorandum of Points and Authorities in Support of Motion to Compel Further Responses to Interrogatories was filed, Requests for Admission, and Requests for Production of Documents was filed. On March 29, 2012, Plaintiff's Separate Statement in Support of its Motion to Compel Further Responses to Interrogatories, Requests for Admission was filed. On April 4, 2012, Plaintiff's Demand for Exchange of Expert Witness Information was filed. On April 25, 2012, Defendant Franchise Tax Board's Disclosure of Expert Witnesses was filed. On April 27, 2012, Plaintiff Bunzl

Distribution USA. Inc.'s Expert Witness Disclosure was filed. On May 2, 2012, the Order Granting in Part and Denying in Part Plaintiff's Motion to Compel Further Discovery Responses and Denying in Part and Granting in Part Defendant's Motion for a Protective Order was filed. On May 3, 2012, the Franchise Tax Board's Notice of Taking Deposition of Bunzl Distribution USA Inc. and Request for Production of Documents was served. On May 10, 2012, Franchise Tax Board's Notice for Taking Deposition of Mukesh Bajaj Ph.D. and Request for Production of Documents was served. On May 10, 2012, Franchise Tax Board's Notice for Taking Deposition of Matthew G. Mercurio and Request for Production of Documents was served. On May 10, 2012, Franchise Tax Board's Notice for Taking Deposition of Jeffrey M. Healy and Request for Production of Documents was served. On May 11, 2012, Franchise Tax Board 's Objections to Plaintiff's Evidence filed in opposition to Motion for Summary Adjudication of the First and Second Causes of Action was filed. On May 11, 2012, Franchise Tax Board's Reply Brief in Support of Motion for Summary Adjudication of the First and Second Causes of Action was filed. On May 15, 2012, Bunzl Distribution USA Inc.'s Response to Franchise Tax Board's Supplemental Specially Prepared Interrogatories, Set One was filed. On May 15, 2012, Bunzl Distribution USA Inc.'s Response to Franchise Tax Board's Supplemental Form Interrogatories, Set One was filed. On May 15, 2012, Bunzl Distribution USA Inc.'s Response to Franchise Tax Board's Supplemental Request for Production of Documents, Set One was filed. On May 21, 2012, Franchise Tax Board's Response to Bunzl Distribution USA Inc.'s Requests for Production of Documents, Set Four was filed. On May 22, 2012, Bunzl Distribution USA Inc.'s Objections to Franchise Tax Board's Deposition Subpoena of Kimberley M. Reeder and Request for Documents was filed. On May 23, 2012, Franchise Tax Board's Motion for Leave to Amend Answer to Complaint, and supporting pleadings was filed. Bunzl's Ex Parte Application to Compel Discovery Responses and Deposition Testimony pursuant to the May 2, 2012, Order was heard on June 13, 2012 and was denied. On June 6, 2012, a Notice of Entry of Order Granting FTB's Motion of Summary Adjudication of the First and Second Causes of Action was filed. On June 13, 2012, FTB's Motion in Limine to Bifurcate Trial was filed. On June 13, 2012, FTB's Motion in Limine to Exclude Testimony Protected by the Attorney Work Product Doctrine and the Attorney Client Privilege Doctrine from Trial was filed. On June 13, 2012, FTB's Request for Judicial Notice in Support of Motions in Limine was filed. On June 13, 2012, FTB's Motion in Limine to Exclude All Evidence Regarding the Fifth Cause of Action was filed. On June 13, 2012, FTB's Motion in Limine to Exclude Expert Evidence from Matthew G. Mercurio was filed. FTB's Motion for Leave to Amend Answer to Complaint was filed and set for hearing on June 15, 2012. An Order to Show Cause is scheduled for October 16, 2012.

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| 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 | Steven Green |
| 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 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. 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. On May 12, 2012, Plaintiff filed a Motion to Compel further responses to discovery and for sanctions, together with supporting pleadings. On June 21, 2012, FTB filed a Notice of Related Case. On June 26, 2012, a Renewed Demurrer of FTB to First Amended Complaint was filed. On June 26, 2012, a Memorandum of Points and Authorities in Support of Renewed Demurrer to First Amended Complaint was filed. On June 26, 2012, the Declaration of Steven J. Green in Support of Renewed Demurrer of FTB to First Amended Complaint was filed. On June 26, 2012, a Request for Judicial Notice in Support of Renewed Demurrer of FTB to First Amended Complaint was filed. On July 2, 2012, a Notice of Hearing on Renewed Demurrer of FTB was filed. On August 8, 2012, FTB's renewed Demurrer was overruled. The Motion to Compel was continued to November 1, 2012.

| 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 | Tony Sgherzi |
| 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 December 30, 2011. On January 27, 2012, FTB responded to Plaintiff's First Set of Special Interrogatories. On March 9, 2012, FTB's Reply to Plaintiffs' Opposition to Demurrer was filed. The Request for Judicial Notice of SBE's Denial of Taxpayer Petition for Rehearing was filed on March 9, 2012. The Cross-Complaint for Unpaid Penalties, Fees and Interest on Tax Liability was filed March 14, 2012. On March 21, 2012, an Order After Hearing on FTB's Demurrer to Plaintiffs' Complaint was filed sustaining FTB's Demurrer without Leave to Amend. On April 11, 2012, the Cross-Defendants' Verified Answer to FTB's Cross-Complaint was filed. On August 9, 2012, Stipulation for Judgment on the Cross-Complaint of the Cross-Complainant Franchise Tax Board was filed.

| COMCON PRODUCTION SERVICES I, INC. v. Franchise Tax Board | Filed: 8/6/2012 |
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| Los Angeles County Superior Court Case No. BC489779 | |
| *Taxpayer's Counsel* | *FTB's Counsel* |
| Carly Roberts | Anthony Sgherzi |
| Sutherland, Asbill, Brennan LLP | Stephen Lew |

Issues:
1. Whether Comcast and QVC were a single unitary business during the years at issue.
2. Whether Comcast's receipt of a Termination Fee at the conclusion of its unsuccessful attempt to merge with Media One constitutes nonbusiness income.

Years: 1998, 1999

Amount
1998: $2,831,920.30
1999: $24,866,811.05

Status: Summons and Verified Complaint filed August 6, 2012.

| DENNIS & BONNY CONFORTO v. Franchise Tax Board | Filed: 4/24/2012 |
|---|---|
| San Diego County Superior Court Case No. 37-2012-00092895 | |
| *Taxpayer's Counsel* | *FTB's Counsel* |
| Paul W. Rowe, Esq. | Leslie Branman Smith |

Issues:
1. Whether Appellant's investment in ShopA-Z.com Inc. became totally worthless in 2001.

Years: 2001, 2003

Amount
2001: $53,661.00
2003: $28,733.00

Status: Summons & Complaint filed on February 27, 2012. First Amended Complaint was filed April 24, 2012. On June 1, 2012, a Certificate of Progress: Inability to Default is Granted. On June 8, 2012, an Order to Show Cause for failure to file Certificate of Service was filed. On June 8, 2012, Certificate of Service was filed by the Confortos. On July 10, 2012, the Civil Case Management Conference was scheduled for August 24, 2012. On August 24, 2012, it was decided that Civil Court Trial would be held February 22, 2013, and the Trial Readiness Conference was scheduled for February 8, 2012 .

CUTLER, FRANK v. Franchise Tax Board
Los Angeles Superior Court Case No. BC421864 Filed – 09/15/09
Court of Appeal Second Appellate District B233773

| *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. Respondent's Brief was filed February 16, 2012. On April 30, 2012, Appellant's Reply Brief was filed. Oral Arguments before the Court of Appeal were presented on July 31, 2012. On August 28, 2012, the Court of Appeal issued it's Opinion, finding California's Qualified Small Business Stock Statute to be unconstitutional and remanding the matter to Superior Court for further proceedings.

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. On February 8, 2012, FTB responded to Plaintiff's First Request for Production of Documents and First Set of Special Interrogatories. On February 10, 2012, FTB filed a Demurrer to Plaintiff's First Amended Complaint together with pleadings supporting the Demurrer. On April 13, 2012, the Opposition to Motion to Compel Further Responses to Special Interrogatories and Request for Production of Documents was filed by FTB. On April 24, 2012, a Reply Memorandum in Support of Motion to Compel Responses to Special Interrogatories and Request for Production of Documents was filed by Plaintiff. On April 24, 2012, a Reply Brief in Support of Demurrer was filed by FTB. A Case Management Conference was held on May 25, 2012. Trial of this matter was set to commence on January 28, 2013. An Objection to Notice and Time and Place of Trial was filed by Plaintiff. The Court reset Trial to commence on May 13, 2013.**

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 that its commercial domicile is not in California.

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 scheduled to occur on July 6, 2012. The Parties are to participate in a non-binding Mediation prior to trial. A Post-Mediation Status Conference that was scheduled for February 6, 2012, was continued to March 6, 2012. On April 16, 2012, an Ex-Parte Application for an Order Advancing the Hearing Date on Plaintiff's Motion to Compel Defendant's Further Production of Documents and Monetary Sanctions and Memorandum of Points and Authorities was filed. On April 16, 2012, a Minute Order was issued by the Court denying the Ex-parte Application and on the Court's own Motion continuing the Post-Mediation Status Conference and Mediation Cut-Off date to June 18, 2012. On June 18, 2012, it was decided that a further mediation status conference was needed and scheduled for July 6, 2012. On July 16, 2012 a Minute Order was issued setting the trial for November 5, 2012, with the Final Status Conference to be held on October 26, 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 | | Marla Markman |
| 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. On February 1, 2012, the Supreme Court issued a Notice assigning the case for Oral Argument. Oral Arguments were heard on March 6, 2012, and the matter was taken under submission. On March 19, 2012, Dicon filed an Application to vacate Submission and File

Post-Argument Brief. On March 23, 2012, an Objection to the Application to Vacate Submission was filed. On April 11, 2012, the Application to Vacate Submission and Post Argument Brief were denied. On April 26, 2012, the California Supreme Court rendered a unanimous Opinion in FTB's favor and remanded the case to Superior Court.

| 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. FTB served Discovery on February 16, 2012. A Status Conference is scheduled to occur on September 10, 2012. Trial is scheduled to commence on December 10, 2012. An Order was filed on August 15, 2012, confirming that the Hearing of Plaintiff's Motion for Summary Judgment is set for November 20, 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. Appellant's Reply Brief was filed February 2, 2012. The matter is now fully briefed. On February 15, 2012, General Mills requested Oral Argument. On June 6, 2012, the Oral Argument Notice was filed scheduling oral arguments for July 19, 2012. Oral Arguments were presented on July 19, 2012. The Opinion was filed on August 29, 2012, the Court of Appeal issued it's Opinion in favor of FTB.

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 Appellant's 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. A Notice from the Court of Appeal regarding the determination of the two Motions for Summary Judgment filed by both Gillette and by the Franchise Tax Board was filed on February 3, 2012. The Reply of Multistate Tax Commission to Appellants' Response to Amicus Brief of the Multistate Tax Commission was filed on February 6, 2012. Both the Brief of Jeffrey B. Litwak in Reply to FTB's Joint Response to Amici Briefs and the Response Brief of Amici Curiae the Interstate Commission for Juveniles and the Association of Compact Administrators of the Interstate Compact on the Placement of Children to Respondent FTB's Consolidated Reply Brief were filed on February 8, 2012. On April 17, 2012, Oral Argument occurred on May 8, 2012. On July 24, 2012, the Court of Appeal issued a for publication opinion in favor of the taxpayers. On August 8, 2012, Franchise Tax Board filed a Petition for Rehearing. On August 9, 2012, the Court of Appeal on it's own Motion issued an Order Vacating it's Opinion. The matter is again under submission.

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 of Appeal was entered. On January 19, 2012, a Motion to Use Settled Statement filed by Plaintiff was filed. On January 23, 2012, Appellant's Notice Designating Record on Appeal was filed. On January 27, 2012, Motion to Stay was filed. On February 14, 2012, Opposition to Motion to Stay was filed. On February 16, 2012, Memorandum in Support of Motion to Stay was filed. On February 16, 2012, a Reply to Opposition to Motion to Stay was filed. On February 22, 2012, a Notice of Erratum was filed by Respondent. On March 1, 2012, an Order to Show Cause was filed. On March 1, 2012, Record on Appeal was filed. On March 15, 2012, Appellant's Amended Notice Designating Record on Appeal was filed. On May 17, 2012, Appellant filed his Opening Brief. On May 17, 2012, Appellant filed his Appendix. On June 14, 2012, a Stipulation of Extension of Time was filed. On August 7, 2012, an Application for Further Extension of Time to File Respondent's Brief was filed. Respondent's Brief is now due September 19, 2012.

| 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. FTB's Notice of Hearing on Demurrer and related pleadings was filed on 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. On February 27, 2012, the Opposition to Demurrer and related pleadings were filed. On March 2, 2012, the Reply to Opposition of to Demurrer was filed by FTB. On March 8, 2012, Tentative Ruling for Demurrer/Motion to Strike was published. On March 12, 2012, a Minute Order was issued sustaining FTB's Demurrer to the first Two Causes of action without leave to amend; and sustaining FTB's Demurrer to the Third Cause of action with Leave to Amend. On March 21, 2012, an Amended Complaint was filed by Harley Davidson. On April 19, 2012, the FTB's Answer to Second Amended Complaint for Refund of Taxes was filed. On June 6, 2012, a Case Management Statement was filed by Plaintiff. On June 22, 2012, the Civil Court scheduled trial for February 15, 2013. On June 22, 2012 the Court scheduled the Motion for Summary Judgment to be heard on January 11, 2013. On June 22, 2012, the Court scheduled the Trial Readiness Conference to be heard on February 1, 2013.

| | |
|---|---|
| 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. On February 27, 2012, the Nevada Supreme Court issued a Notice specifying that Oral Argument was to be held April 3, 2012, in Las Vegas, Nevada, which Order was later modified to specify that Oral Argument would be held on May 7, 2012. In Carson City Nevada the Oral Argument was held on May 7, 2012, and on May 14, 2012, the Nevada Supreme Court issued an Order scheduling additional Oral Argument to be heard on June 18, 2012. The additional Oral Argument was presented and the matter is now under

Post-Argument Brief. On March 23, 2012, an Objection to the Application to Vacate Submission was filed. On April 11, 2012, the Application to Vacate Submission and Post Argument Brief were denied. On April 26, 2012, the California Supreme Court rendered a unanimous Opinion in FTB's favor and remanded the case to Superior Court.

| 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. FTB served Discovery on February 16, 2012. A Status Conference is scheduled to occur on September 10, 2012. Trial is scheduled to commence on December 10, 2012. An Order was filed on August 15, 2012, confirming that the Hearing of Plaintiff's Motion for Summary Judgment is set for November 20, 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

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, Alameda County. Notice of Receipt of Transfer was filed on November 8, 2011.**

MERCEDES-BENZ USA INC. v. Franchise Tax Board Filed 01/11/12
Sacramento County Superior Court Case No.34-2012-00116949

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Eric Coffill | Jill Bowers |
| Morrison & 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. On February 27, 2012, FTB filed it's General Denial with Affirmative Defenses. The parties have agreed to go to Mediation. The parties have not yet selected a Mediator. On April 30, 2012, Notice of Case Management Conference and Order to Appear was filed. On June 19, 2012, a Designation Statement was filed by Plaintiff. A Stipulation and Order was filed July 2, 2012. On July 2, 2012, a Case Management Statement was filed jointly. The Court posted a Tentative Case Management Order on July 19, 2012. On July 19, 2012, a Stipulation and Order to submit the matter to Mediation was filed.**

MERCEDES-BENZ USA INC. v. Franchise Tax Board Filed 05/17/12
Sacramento County Superior Court Case No.34-2012-00124506

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Eric Coffill | Jill Bowers |
| Morrison & Foerster | Steven Green |

Issues:
1. Whether FTB properly determined that Mercedes-Benz USA Inc. and ABB Daimler-Benz transportation GMBH (Adtranz) were not a single unitary business.
2. Whether FTB properly denied Plaintiff's request to correct an erroneous mark to market adjustment on it's California return.
3. Whether FTB properly treated a portion of Plaintiff's pension asset income as non-business income.
4. Whether FTB properly denied certain net operating losses claimed by Plaintiff.

Years: 1998-1999

Amount:
1998: $10,580,243.00
1999: $6,116,155.00

Status: **Summons and Complaint filed May 17, 2012. On July 31, 2012, a Stipulation and Order to submit the matter to Mediation was filed. On July 16, 2012, the General Denial 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. On February 8, 2012, Appellant's Reply Brief was filed. On March 7, 2012, Appellant Microsoft Corporation's Request for Judicial Notice was filed. On March 8, 2012, an Amicus Curiae Brief was filed. On March 14, 2012, the Opposition to Appellant's**

**Request for Judicial Notice was filed. On March 29, 2012, FTB filed its Response to Amicus Brief. The matter is now fully briefed. Oral Argument has been set for October 1, 2012.**

| DAN PICKELL v. Franchise Tax Board | |
|---|---|
| United States District Court Case No. CV00373 | Filed: 2/28/12 |
| *Taxpayer's Counsel* | *FTB's Counsel* |
| Dan Pickell | Jane O'Donnell. |

Issues: 1. Whether Franchise Tax Board's Executive Director and the Contactor's Licensing Board's Director have the authority to revoke, rescind, suspend or otherwise interfere with Plaintiff's contractor's license which has caused him the inability to work and thus owe an unpaid tax liability.

Years: 2000-2008 Amount: $150,000.00

Status: **Summons & Complaint filed February 28, 2012. A Notice of Hearing on Motion of Defendants Sands and Stanislaus to Dismiss Civil Complaint was filed on April 9, 2012. A Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss was filed on April 9, 2012. On May 23, 2012, the Plaintiff's Request to File a Sur Reply to Defendants' Motion to Dismiss or, in the Alternative, to Have the Defendants' Motion Converted to a Motion for Summary Judgment Giving Leave to the Plaintiff Additional Time to Respond Thereto was filed. On May 23, 2012, Plaintiff's Sur Reply to Defendants' Reply to Plaintiff's Motion to Dismiss was filed. On June 27, 2012, Defendant's Designation of Counsel was filed.**

| ROBERT & GAIL POLL v. Franchise Tax Board | |
|---|---|
| Los Angeles County Superior Court Case No. BC 485069 | Filed: 5/22/12 |
| *Taxpayer's Counsel* | *FTB's Counsel* |
| Abelson/Herron LLP | Stephen Lew |
| Leslie A. Pereira | |

Issues: 1. Whether Plaintiff's were nonresidents of the State of California for income tax purposes for the time period of September 29, 2000 to December 31, 2000 .

Years: 2000 Amount: $1,520,083.00

Status: **Summons & Complaint filed May 22, 2012. The Answer to Complaint for Declaratory Relief was filed June 19, 2012.**

| 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 |
| Court of Appeal First Appellate District A134734 | |
| *Taxpayer's Counsel* T*axpayer'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 Plaintiffs 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. Case Management Conference previously set for May 22, 2012 has been rescheduled to May 23, 2012. The Petition for Writ of Mandate and/or Prohibition or Other Appropriate Relief; Request for Stay, Memorandum of Points and Authorities was filed March 1, 2012. Notice of Appeal filed March 1, 2012. Appellant's Notice Designating Record on Appeal was filed March 1, 2012. Plaintiff's Preliminary Opposition for Petition for Writ of Mandate was filed March 8, 2012.The Case Information Statement sheet was filed March 13, 2012. An Application permitting Matthew D. Lerner to be admitted to practice before the Court Pro Hac Vice was filed on March 13, 2012. On March 28, 2012, the Appeal Record was sent to the Court of Appeal. On April 30, 2012, a Joint Stipulation Regarding Briefing Schedule was filed. FTB's Opening Brief is due May 29, 2012, and Quellos Financial Advisors Brief is due July 20, 2012. On July 13, 2012, an Order was issued dismissing the Appeal, but permitting the Writ Proceeding to continue. On July 30, 2012, an Order was filed, which ordered the briefing be temporarily held in abeyance pending the Court's determination of appealability. As that issue has been decided, the Order holding briefing in abeyance is lifted. The return shall be served and filed on or before August 20, 2012. On August 17, 2012, the return was filed.

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.

| 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<br>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.**

| WILLIAM SHINE as TRUSTEE OF THE LINDSKOG TRUST v. Franchise Tax Board | Filed 03/13/12 |
|---|---|
| San Francisco Superior Court Case No. CGC-12-519142 | |
| *Taxpayer's Counsel* | *FTB's Counsel* |
| Laura J. O'Kane<br>O'Kane & McKee LLP. | Karen Yiu |

Issues:
1. Whether FTB properly determined that a loan from a bank to a closely held corporation should be considered a taxable corporate distribution to the corporation's shareholder president.

Years: 2002 Amount: $182,932.44

Status: **Summons & Complaint filed March 3, 2012. On August 10, 2012, the Notice of Continuance of Case Management Conference was filed. Case Management Conference to be held on September 26, 2012.**

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 | 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.

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. On February 8, 2012, FTB responded to Plaintiff's First Request for Production of Documents and First Set of Special Interrogatories. On February 10, 2012, FTB filed a Demurrer to Plaintiff's First Amended Complaint together with a Memorandum of Points and Authorities supporting the Demurrer. On February 10, 2012, a Notice of Hearing on FTB's Demurrer to First Amended Complaint was filed. On February 10, 2012, FTB's Request for Judicial Notice in Support of Demurrer to First Amended Complaint was filed. Hearing is set for April 11, 2012. On April 3, 2012, a Demurrer to the First Amended Complaint was filed, On April 13, 2012, the Opposition to Motion to Compel Further Responses to Special Interrogatories and Request for Production of Documents was filed by FTB. On April 13, 2012, the Declaration of Marguerite C. Stricklin in Support of Opposition to Motion to Compel was filed by FTB. On April 13, 2012, a Request for Judicial Notice in Opposition to Motion to Compel Further Responses to Special Interrogatories and Request for Production of Documents was filed by FTB. On April 24, 2012, a Reply Memorandum in Support of Motion to Compel to Special Interrogatories and Request for Production of Documents was filed. On April 24, 2012, a Reply Brief in Support of Demurrer was filed by FTB. On May 25, 2012, an Order Overruling Defendant FTB's Demurrers and Tentative Decision Granting Plaintiff's Motion to Compel Discovery was filed. A Case Management Conference was held on May 25, 2012, and the matter was continued to July 18, 2012. On June 8, 2012, an Order Granting in Part and Denying in Part Plaintiff's Motion to Compel (Special Interrogatories and Document Requests) was filed. On July 3, 2012, FTB's Response to First Set of Special Interrogatories Following Court's Order Granting in part Plaintiff's Motion to Compel was filed. On July 3, 2012, FTB's Response to First Request for production of Documents Following Order Granting in Part Plaintiff's Motion to Compel was filed. On July 18, 2012, Trial was scheduled to commence on February 4, 2013. An Objection to Notice and Time and Place of Trial was filed by Plaintiff. The Court rescheduled Trial to commence on May 13, 2013.

| 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.**

| TAIHEIYO 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 | |
| California Supreme Court Case No, S201948 | |
| *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 were heard on February 14, 2012. On March 13, 2012, the Court of Appeal issued a unanimous published Opinion affirming the Judgment in favor of FTB. On April 2, 2012, the Respondent's Answer to Petition for Rehearing was filed. On April 2, 2012, Respondent's Objections to Appellant's Request for Judicial Notice was filed. On April 4, 2012, the Order Modifying the Opinion and Denying Rehearing was filed. On April 24, 2012, Plaintiff filed Petition for Review with the California Supreme Court. The Answer to Petition for Review was filed on May 11, 2012. On June 13, 2012, the Court Denied the Petition for Review. On June 26, 2012, the Court issued a Remittiter.

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<br>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. On March 20, 2012, Plaintiff's Request for Temporary Injunction Against Defendants IRS and FTB was filed. On March 20, 2012, a Proposed Order Approving Plaintiff's Request for Temporary Injunction Against the IRS and FTB was filed. An Order was issued April 18, 2012, appointing a pro bono counsel to

assist the Plaintiff. On April 19, 2012, the Plaintiff's Reply to Defendant's Opposition to Appellee's Request for Temporary Injunction Against Defendant's Internal Revenue Service and Franchise Tax Board was filed.

| TRIVEDI, MRUDULA & RAMNIK v. Franchise Tax Board | | |
|---|---|---|
| Los Angeles County Superior Court Case No. BC481592 | | 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. Hearing held on Motion to Transfer on February 1, 2012. The Court granted the Trivedi's waiver of the transfer fees and costs. The Case will be transferred transfer to Los Angeles County Superior Court. On April 13, 2012, a Notice of Transfer Out from the Ventura County Court was filed. On April 23, 2012, a Notice of Incoming Transfer was filed in Superior Court County of Los Angeles. On April 23, 2012, the Trivedi Case Summary was filed. On April 30, 2012, Plaintiff's Notice of Motion and Motion for Writ of Mandate Relief: memorandum of Points and Authorities in Support of the Motion; Declaration of Mrudula Trivedi; Declaration of Ramnik Trivedi and Proposed Order After Hearing was filed. On May 11, 2012, Plaintiff's Notice of Motion Hearing Date was filed changing it to June 29, 2012. On May 12, 2012, a Case Management Statement was filed by Plaintiff requesting the Court to arrange a Case Settlement Conference with Defendant before Discovery begins. On May 14, 2012 a Case Management Statement was filed by Defendant requesting mediation. On May 16, 2012, a Notice of Motion Hearing Date Change was filed by the Plaintiff. On May 23, 2012, the Demurrer to Complaint was filed by the Franchise Tax Board. On June 13, 2012, an Opposition of FTB to Motion for Writ of Mandate Relief was filed. On June 16, 2012, Plaintiff's Reply Memorandum to Defendant's Opposition of Writ of Mandate Relief was filed. On June 28, 2012, a Notice of Ruling on Demurrer was filed favoring FTB. On August 14, 2012, a Notice of Motion and Motion to Strike Portion of the First Amended Complaint was filed. On August 14, 2012, a Notice of Demurrer and Demurrer to the First Amended Complaint was filed.