

NOTICE OF PENDENCY OF ACTION

**BAHL MEDIA, LLC v. CALIFORNIA FRANCHISE TAX BOARD;
WEIN REALTY, LLC v. CALIFORNIA FRANCHISE TAX BOARD**

San Francisco Superior Court, Case Nos. CGC-16-554150 (Lead Case), CGC-19-576007

This is a Court approved Legal Notice.

Please read this Notice carefully. It contains information about your legal rights.

This Notice relates to entities that paid the \$800 minimum tax under California Revenue and Taxation Code § 23153 (“Minimum Tax”) but were not actually doing business in California. Specifically, this Notice is to all entities that (i) paid the \$800 Minimum Tax and (ii) timely filed a refund claim for the Minimum Tax (iii) on grounds that they were not doing business in California because their only connection to California was holding a passive interest in a limited liability company (“LLC”) doing business in California, and (iv) either had their refund claim denied or constructively denied by July 21, 2023. This includes claims for a refund against the California Franchise Tax Board (“FTB”) dating back to **tax year 2012 or potentially earlier**.

Purpose of This Notice

This Notice is given pursuant to California Rules of Civil Procedure and the Orders of the City and County of San Francisco Superior Court. The lawsuits mentioned above, *Bahl Media, LLC v. FTB* and *Wein Realty, LLC v. FTB* (the “Lawsuit”) have been consolidated and certified as class actions on behalf of the Class. The purpose of this Notice is to inform you that you are likely a member of the Class, and that these class actions will affect the rights of all members of the Class (the “Class Members”). This Notice describes your legal rights and what steps you may take in relation to these actions. This Notice is not an expression of any opinion by the Court as to the merits of any claims asserted by Plaintiffs on behalf of the Class or any defenses asserted by the FTB.

The Class potentially includes any entity organized or domiciled outside of California that held a passive investment in a California LLC. The Class does not include entities that were *actively* doing business in California as defined by California Revenue and Taxation Code § 23101(a) (by, for example, running a business in California), but rather includes entities whose only contact with California was a passive investment in a California LLC. The entity must have also paid the \$800 Minimum Tax and thereafter unsuccessfully sought a refund. If you are unsure whether you are included in the Class, or whether you have a tax claim that qualifies you for a refund, or have any other questions regarding this case, before August 20, 2024, please Contact Plaintiffs’ counsel listed below under the heading entitled “Plaintiffs’ Counsel.”

As a member of the Class, you may be entitled to a tax refund if the Lawsuit is successful. If you do not want your rights to be determined by the Lawsuit, and do not want to be a member of the Class, you can exclude yourself from the Class as explained below. Read this entire Notice carefully. There is a deadline of August 20, 2024, for you to exclude yourself from the Class. You must exclude yourself in writing. If you wish to remain in the Class, you do not need to do anything.

Background of the Litigation

Prior to the California Court of Appeal's decision in *Swart Enterprises, Inc. v. Franchise Tax Board*, 7 Cal.App.5th 497 (2017) ("*Swart*"), the FTB took the position that an out-of-state entity that had an ownership interest in a California LLC was considered to be "doing business" in California under California Revenue and Taxation Code § 23101 and thus subject to the Minimum Tax. However, in *Swart*, the California Court of Appeal held that the plaintiff, which was an out-of-state entity whose only connection with California was owning a passive 0.2% investment interest in a California LLC, was not "doing business" in California. Plaintiffs interpreted *Swart* to have held that an out-of-state entity whose only connection with California was owning a passive investment interest in a California LLC is not doing business in California, while the FTB interpreted *Swart* to apply *only* to the taxpayer in that action and at best out-of-state investors whose interest in California LLCs are 0.2% or less.

Class action lawsuits were filed against the FTB in 2016 and 2019. Both cases alleged that the Minimum Tax was wrongly imposed on them because they were out-of-state passive investors in California LLCs and therefore were not "doing business" in California under California Revenue and Taxation Code § 23101, despite holding investment interests in California LLCs of greater than 0.2%. The lawsuits also alleged that the imposition of the Minimum Tax was unconstitutional. The Plaintiffs are Bahl Media, LLC and Wein Realty, LLC. Plaintiffs argue that they and all similarly-situated Class Members should receive a refund of the Minimum Tax that they paid.

The Court certified the Class on January 25, 2024. The Class is defined as:

All entities in the United States, that (i) paid the Minimum Tax and related interest and penalties, if any, to FTB; (ii) timely filed a refund claim of the foregoing amount; (iii) either had their refund claim denied after June 10, 2016 and before July 21, 2023, or have not had their refund claim approved or denied and filed it by January 21, 2023, and (iv) are not doing business in California because their only connection to California is holding a passive interest in a limited liability company doing business in California (including but not limited to within the meaning of *Swart*).

Plaintiffs' Claims and FTB's Response

In the Lawsuit, Plaintiffs allege that the FTB's application of the Minimum Tax violates California Revenue and Taxation Code § 23101 and the constitutions of the United States and California, and that the required remedy is a full refund of the Minimum Tax (as well as any fees and penalties assessed) for all out-of-state passive investors in California LLCs. Plaintiffs contend that out-of-state passive investors in California LLCs are not "doing business" in California, even if their investment interest exceeds the 0.2% interest held by the plaintiff in *Swart*. The FTB's position is that *Swart* addresses only the situation of the taxpayer at issue in that action and at best might apply to entities whose investment interests are less than or equal to 0.2%. The FTB asserts that Plaintiffs' claims of constitutional violations are meritless. The FTB contends that no refunds are due to the Plaintiffs or the putative Class Members. The Court has not decided whether the Plaintiffs or the FTB is correct. By certifying the Class and issuing this Notice, the Court is not suggesting that the Plaintiffs will win or lose this case.

Your Legal Rights and Options

You must decide if you want to continue to be a member of the Class. The judgment in this case, whether favorable or not, will bind all Class Members who do not request exclusion. Any Class Member who does not request exclusion from the Class may, if they so desire, enter an appearance through counsel. If you have any other questions related to excluding yourself from the class, please contact Plaintiffs' Counsel listed below prior to August 20, 2024, so that your questions can be timely answered.

If you do nothing, you will be included in the Class, and you will be bound by the judgment entered in the case (whoever wins).

If you wish to be excluded from the Class, you must submit a written request via mail postmarked on or before August 20, 2024. Excluding yourself from the Class is the only option that allows you to retain your right to bring another lawsuit against the FTB about the claims in this lawsuit or to pursue your own appeal with the Office of Tax Appeals.

To exclude yourself from the Class you **must** send a written statement by mail to the FTB address specified below that is postmarked on or before August 20, 2024, saying that you want to be excluded from the lawsuit entitled **BAHL MEDIA, LLC v. FTB; WEIN REALTY, LLC v. FTB**.

Your request must include:

- Your name and address;
- The name and address of the entity that sought a tax refund;
- If applicable, the name and address of any person claiming to be legally entitled to submit an exclusion request on your behalf and the basis for such entitlement;
- A statement that you want to be excluded from the Class; and
- Your personal signature and relationship to the entity.

The address to which requests for exclusion from the Class should be sent is:

Bahl Media/Wein Realty Class Action – MS F340
Franchise Tax Board
PO BOX 1998
Rancho Cordova, CA 95741-1998

Disclosure of Confidential Taxpayer Information

Generally, California laws prohibit FTB from disclosing taxpayers' confidential information such as their name, address, taxpayer identification number, Federal Employer Identification Number, documents required to be filed with the FTB, and certain other confidential information contained in documents submitted to FTB. See California Revenue and Taxation Code section 19545. However, for Plaintiffs' counsel to represent class members in pursuing the tax refunds requested in their claims for refund, the court may order certain confidential information of class members to be disclosed to the court or to the Plaintiffs' counsel, solely for purposes of this Lawsuit, and, again strictly subject to the court's order.

If You Need More Information

The foregoing is only a summary of the Lawsuit. The pleadings and other records in the Lawsuit may be examined online on the website for the City and County of San Francisco Superior Court, at <https://sf.courts.ca.gov/>. Click on "Online Services," then "Case Information," and then "Case Query." Next click "Search by Case Name" and enter "Bahl Media" and click "SEARCH." Images of every document filed in the case may be viewed free of charge. To review additional documents related to the Wein Realty case, enter "Wein Realty."

If you have any questions, please contact Plaintiffs' Counsel listed below.

PLEASE DO NOT CONTACT THE CLERK OF THE COURT OR THE JUDGE WITH INQUIRIES ABOUT THE CASE.

Plaintiffs' Counsel

The Court decided that (1) Silverstein & Pomerantz LLP and (2) Calvo Jacob & Pangelinan LLP represent all Class Members. Together these law firms are called "Plaintiffs' Counsel" or "Class Counsel." More information about these law firms is available at <https://sptaxlaw.com> and www.calvojacob.com. If you have questions, please contact Plaintiffs' Counsel Amy Silverstein at asilverstein@sptaxlaw.com or Alex Freeman at afreeman@calvojacob.com.

