



**STATE OF CALIFORNIA
FRANCHISE TAX BOARD**

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FTB NOTICE-2022-02

SUBJECT: Proposed Settlement of Class Action Lawsuit: *Franchise Tax Board Limited Liability Corporation Tax Refund Cases*, California Superior Court, City and County of San Francisco, CJC-12-004742; Included Actions: *Bakersfield Mall, LLC v. California Franchise Tax Board* and *CA-Centerside II, LLC v. California Franchise Tax Board*.

PURPOSE:

To inform limited liability companies (LLCs) and the public that the parties have entered into a proposed settlement of the above-referenced class action litigation (the Settlement).

BACKGROUND:

The LLC Fee Prior to January 1, 2007

Prior to the enactment of Assembly Bill 198 (Stats. 2007, ch. 381, effective on October 10, 2007, and operative for taxable years beginning on or after January 1, 2007), LLCs paid an annual fee based on the LLC's total income from all sources reportable to the state. The LLC fee was in addition to the annual tax set forth in California Revenue and Taxation Code (RTC) section 17941. Former RTC section 17942, subdivision (b)(1), defined total income as "gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer." Therefore, an LLC doing business within and outside of California was required to pay the LLC fee based on its worldwide total income, regardless of the fact that a portion of its income was attributable to non-California sources.

The LLC Fee Beginning On or After January 1, 2007

After the enactment of Assembly Bill 198, RTC section 17942 was revised. The LLC fee is now determined by reference to the total income derived from or attributable to California.

The LLC Fee Litigation and Proposed Settlement

The California Court of Appeal has determined that former RTC section 17942 was unconstitutional as applied to LLCs which had no income attributable to activities within California (*Northwest Energetic Services, LLC v. Franchise Tax Board* (2008) 159 Cal.App.4th 841, opn. mod. Mar. 3, 2008, review den. June 11, 2008 (NES)), and to LLCs with income attributable to activities from within and outside California (*Ventas Finance I, LLC v. Franchise Tax Board* (2008) 165 Cal. App. 4th 1207 (Ventas)). In NES, the Court of

Appeal determined the LLC was entitled to a refund of the entire fee paid by the LLC. In *Ventas*, the Court of Appeal determined the LLC was entitled to a refund of the amount the LLC fee “exceeds the amount it would have been assessed, without violating the Commerce Clause, using a method of fair apportionment.”

Through Public Service Bulletin (PSB) 2006-03-21, PSB 2007-07-13, [FTB Notice 2008-02](#) and [FTB Notice 2009-04](#), FTB issued guidance to LLCs as to how to file protective claims for refund of LLC fees they may have paid under former RTC section 17942. Following the Court of Appeal decision in *NES* and *Ventas*, FTB processed thousands of claims for refund submitted by or on behalf of LLCs claiming to have been in circumstances substantially similar to those of *NES* and *Ventas*. FTB did not, however, process thousands of protective claims for refund from LLCs which it believed were submitted by or on behalf of LLCs which received income only from activities attributable to California (non-processed claims).

The case entitled *Franchise Tax Board Limited Liability Corporation Tax Refund Cases* was certified as a class action on or about September 23, 2019. Discovery conducted in that litigation has revealed that there are claims for refund contained within the non-processed claims which may rightfully be entitled to refunds or partial refunds of fees paid by LLCs under the guidance of *NES* and *Ventas*. The Settlement was reached to resolve the claims of such class members. The Settlement establishes a fund which will be used to provide payments to LLCs with valid claims for refund that are still pending.

PROCEDURE:

The Settlement requires a Settlement Administrator to mail notice of the Settlement to all class members. All LLCs in the class will be mailed notice of the Settlement and a claim form by the Settlement Administrator on or before May 6, 2022. If you believe you are in the class but did not receive the notice of settlement, or you have other questions, you may contact the Settlement Administrator by telephone at 1-888-874-5887 or by e-mail at www.FTBLLCTaxSettlement.com.

Please do not contact FTB as FTB will have no role in the issuance of that Notice or the processing of refund claims approved by the Settlement Administrator.

The principal author of this notice is William C. Hilson, Jr. of the Franchise Tax Board, Legal Division. For further information regarding this notice, contact Raymond Rouse of the Franchise Tax Board Legal Division at P.O. Box 1720, Rancho Cordova, CA 95741-1720.