LITIGATION ROSTER

FRANCHISE AND INCOME TAX

AUGUST 2008

Franchise and Income Tax
August 2008

NEW CASES

Case Name	Court/Case Number
NONE	

CLOSED CASES

Case Name	Court/Case Number
NONE	

Please refer to the case roster for more detail regarding new and closed cases

Franchise and Income Tax

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August 2008

BATES, ALEX, et al. v. Franchise Tax Board, et al.	
Los Angeles Superior Court Case No. BC 287896	Filed – 04/14/03
Court of Appeal, Second Appellate District Case No. B169940	*BOE's Counsel*
Plaintiffs' Counsel	Brian Wesley
Derek L. Tabone	*BOE Attorney*
Law Offices of Tabone, APC	Jeff Angeja

Issue(s): This lawsuit deals with a nonfiling Franchise and Income Tax (FIT) appellant's contentions that the BOE does not comply with the Information Practices Act (IPA). Based upon the alleged violations of the IPA, plaintiffs request preliminary and permanent injunctions against all defendants to restrain them from violating the provisions of the IPA.

Audit/Tax Period: None

Amount: Unspecified

Status: At the hearing on December 3, 2007, the Court granted BOE's and FTB's Motion for Stay of this case pending the Court of Appeal decision in *Ballmer v. Franchise Tax Board.* Status conference re Stay has been continued from July 30, 2008 to October 29, 2008.

REED, RONALD EDWARD v. Franchise Tax Board, et al.	
Los Angeles Superior Court Case No. BC394059	Filed – 07/14/08
	BOE's Counsel
Plaintiff's Counsel	Elisa Wolfe-Donato
Ronald Edward Reed	*BOE Attorney*
In Pro Per	W. Gregory Day

Issue(s): This case involves the plaintiff's contentions that he was the subject of unlawful or unmeritorious notices of income tax due by the FTB; that FTB ignored his protest of the notices; that he was damaged by FTB's subsequent levies on his bank accounts; and that FTB ignored his later attempts to remedy the injury. The issues in this case are whether BOE is a proper party to the proceedings, as the First Amended Complaint makes no reference to any act or omission or involvement on the part of BOE or to any tax appeal to BOE by the taxpayer (see Revenue and Taxation Code section 19045); whether the plaintiff's suit is barred as a pre-payment suit (California Constitution, Article 13, section 32; Revenue and Taxation Code, section 19381); and whether the plaintiff's suit is barred for failure to file an administrative claim for refund of a tax payment (Revenue and Taxation Code section 19382; see *Shiseido Cosmetics (America), Ltd. V. FTB* (1991) 235 Cal. App. 3d 478, cert. den., October 19, 1992).

Audit/Tax Period: None

Amount: Unspecified

Status: Reviewing the Complaint to determine whether to answer or demur. Hearing on defendants' (BOE, FTB, State of California) Demurrers to the First Amended Complaint is scheduled for October 2, 2008.

SCHROEDER, DONNIE v. State Board of Equalization, et al.

USDC, Eastern Dist. CA 2:08-CV-0803- MCE KJM PS	Filed – 04/15/08
	BOE's Counsel
Plaintiff's Counsel	Robert E. Asperger
Donnie Schroeder	*BOE Attorney*
In pro per	Robert J. Stipe

Issue(s): This case involves the non-filer plaintiff's contentions that he was erroneously denied a jury trial and due process by the FTB and BOE in the protest and appeals process that affirmed the FTB's proposed assessments for unspecified years. The issues in this case are whether the plaintiff's suit is barred as a pre-payment suit (California Constitution, Article 13, section 32; Revenue and Taxation Code, section 19381); whether his complaint is barred by the Eleventh Amendment of the United States Constitution as a suit against a state or its agencies in the absence of an unequivocal consent to a waiver of immunity (*Yakama Indian Nation v. State of Wash. Dept. of Revenue* (9th Cir. 1999) 176 F.3d 1241, 1245); and whether the United States District Court's jurisdiction over the case is barred by the federal Tax Injunction Act (28 U.S. Code, section 1341).

Audit/Tax Period: None Amount: $10,000,000.00

Status: On July 9, 2008, the court issued its Findings and Recommendations that (1) BOE's motion to dismiss be granted, and (2) the action be dismissed. On September 2, 2008, the court ordered that the findings and recommendations filed July 9, 2008 are adopted in full; defendants' motion to dismiss is granted; and the action is dismissed. Judgment in accordance with the Court's Order was entered September 3, 2008.

TYLER-GRIFFIS, PATRICIA v. State Board of Equalization

Court of Appeal, Third Appellate District: C056745	Filed – 04/11/07
Sacramento Superior Court Case No. 07CS00449	*BOE's Counsel*
Plaintiff's Counsel	Jeff Rich
William E. Taggart, Jr.	*BOE Attorney*
Taggart & Hawkins	Amy Kelly

Issue(s): Whether the taxpayer is entitled to relief as an innocent spouse; whether innocent spouse cases are subject to the "pay now, litigate later" rule; whether the BOE is the proper agency to sue (Revenue and Taxation Code section 18533; *Appeal of Patricia Tyler-Griffis*, 2006-SBE-004, (Dec. 12, 2006)).

Audit/Tax Period: 1984 Amount: Unspecified

Status: All briefing on appeal has been filed. Oral argument was held August 20, 2008 – pending decision.

DISCLAIMER

Every attempt has been made to ensure the information contained herein is valid and accurate at the time of publication. However, the tax laws are complex and subject to change. If there is a conflict between the law and the information found, decisions will be made based on the law.

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