

LITIGATION ROSTER

FRANCHISE AND INCOME TAX

FEBRUARY 2010

**Franchise and Income Tax  
February 2010**

**NEW CASES**

Case Name

Court/Case Number

None

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**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

## LITIGATION ROSTER

February 2010

### **ANDERSON, WILLIAM AMONETTE v. California Franchise Tax Board, Board of Equalization**

United States District Court, No. Dist. CA No. CV 09 4015 SBA

Filed – 08/28/09

Plaintiff's Counsel

William Amonette Anderson

In Pro Per

BOE's Counsel

Anne Michelle Burr

BOE Attorney

Amy Kelly

Issue(s): Plaintiff contends he did not receive due process during the Franchise Tax Board (FTB) protest process or during the subsequent appeal with the BOE. Plaintiff requests that the Court issue an order finding that the FTB's assessment is arbitrary and vacating the FTB's assessment and BOE's decision sustaining the FTB action. Plaintiff further requests that the Court issue a permanent injunction against the FTB and BOE forbidding them from proceeding against plaintiff. BOE contends the court lacks subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). Further, the State Agency's sovereign immunity bars federal subject matter jurisdiction. (U.S. Const., 11<sup>th</sup> Amend.; *Alden v. Maine* (1999) 527 U.S. 706, 728-729; *Pennhurst State School & Hospital v. Halderman* (1984) 465 U.S. 89, 100; *Cory v. White* (1982) 457 U.S. 85, 91.)

Audit/Tax Period: 2004

Amount: Unspecified

Status: Defendants' Motion to Dismiss was granted. Order entered January 28, 2010.

### **MALEKSALEHI, NEMAT, Maryam Maleksalehi v. State Board of Equalization**

Sacramento County Superior Court No. 34-2009-80000365

Filed – 10/29/09

Plaintiff's Counsel

Barzin Barry Sabahat

Anchor Law Group, APC

BOE's Counsel

Jill Bowers

BOE Attorney

Amy Kelly

Issue(s): Petitioners contend writ relief is necessary to correct the BOE's 'clearly erroneous' determination in petitioners' appeal. Petitioners further contend that the BOE erroneously: (1) denied petitioners' appeal; (2) assessed income taxes against the petitioners; and (3) is illegally collecting income taxes from petitioners. BOE contends a writ of mandate is not the proper and exclusive remedy provided under the California Constitution and Revenue and Taxation Code to litigate a disputed income tax; the proper and exclusive remedy is a tax refund suit. ([Cal. Const., art. XIII, section 32](#), Revenue & Taxation Code sections [19381](#), [19382](#); *Nast v. Board of Equalization* (1996) 46 Cal.App. 4th 343.) BOE is not a proper defendant in this action and no cause of action can be stated against BOE; the proper defendant in tax refund litigation is the FTB. (*Id.*) In addition, the complaint is not timely filed pursuant to Revenue & Taxation Code section [19384](#), and is therefore time barred.

Audit/Tax Period: 2001

Amount: \$115,870.00

Status: Hearing on BOE's Demurrer is scheduled for May 28, 2010.

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

Sacramento County Superior Court Case No. 34-2008-00023624

Court of Appeal, Third Appellate District No. C062318

Plaintiff's Counsel

Donnie Schroeder

In Pro Per

Filed – 10/02/08

BOE's Counsel

Stephen Pass

BOE Attorney

Kiren Chohan

Issue(s): Plaintiff contends that the State of California, by and through the Franchise Tax Board (FTB) and State Board of Equalization (BOE), made intentional settling determinations of plaintiff's tax liability during the period 1995 to the present. Further, FTB and BOE ignored plaintiff's rights to judicial review in violation of plaintiff's constitutional rights. FTB published personal and private information with the Sacramento County Recorder's Office, allowing public viewing of plaintiff's private information to the general public.

Audit/Tax Period: None

Amount: Unspecified

Status: Judgment in favor of State defendants was entered May 14, 2009. Plaintiff's Notice of Appeal was served on June 22, 2009. The case is currently being briefed in the Court of Appeal.

**FRANCHISE AND INCOME TAX  
CLOSED CASES  
LITIGATION ROSTER  
February 2010**

**No cases were closed in February 2010**

**DISCLAIMER**

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