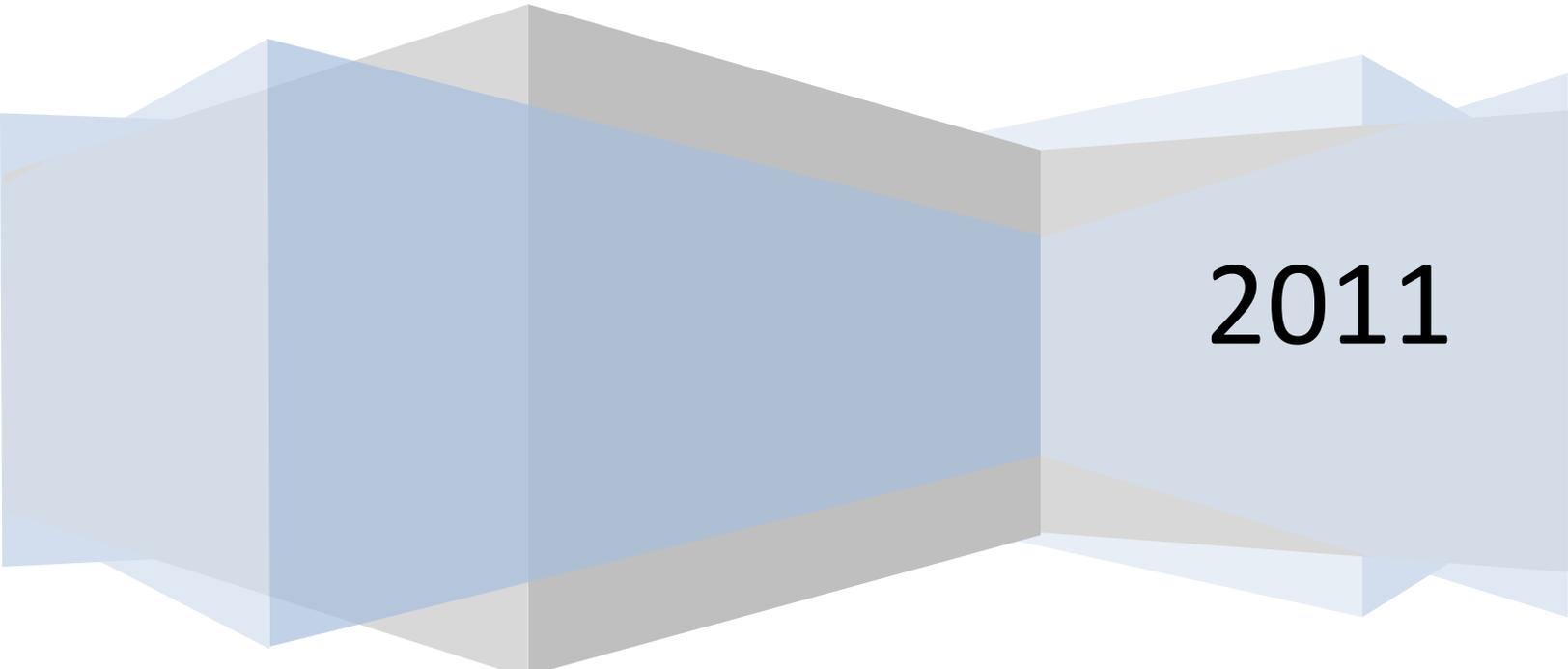


**Franchise Tax Board**

# **Caseload Summary**

**Geoff Way**  
**Chief Counsel**



**2011**

**Franchise Tax Board**  
**Number of Assessments, Protests, Appeals and Settlements**  
**Calendar Year 2010**

	Number of Assessments Issued	Number of Protests Received	Number of Appeals Received	Number of Settlements Reached
<b>Filing Enforcement Section</b>				
Personal Income Tax	678,180	140		
Corporation	17,401	99		
<b>Audit Division</b>				
<b><u>Professional Audit</u></b>				
Personal Income Tax	2,274	442		
Corporation	1,652	126		
<b><u>Automated Audit *</u></b>	306,786	17,277		
<b>Accounts Receivable Mgmt Division</b>				
**	1,414	82		
<b>Legal Division</b>				
Personal Income Tax		81	673	67
Corporation		59	103	54
<b>Totals</b>	<b>1,007,707</b>	<b>18,306</b>	<b>776</b>	<b>121</b>
	NPAs	Protests	Appeals	Settlements

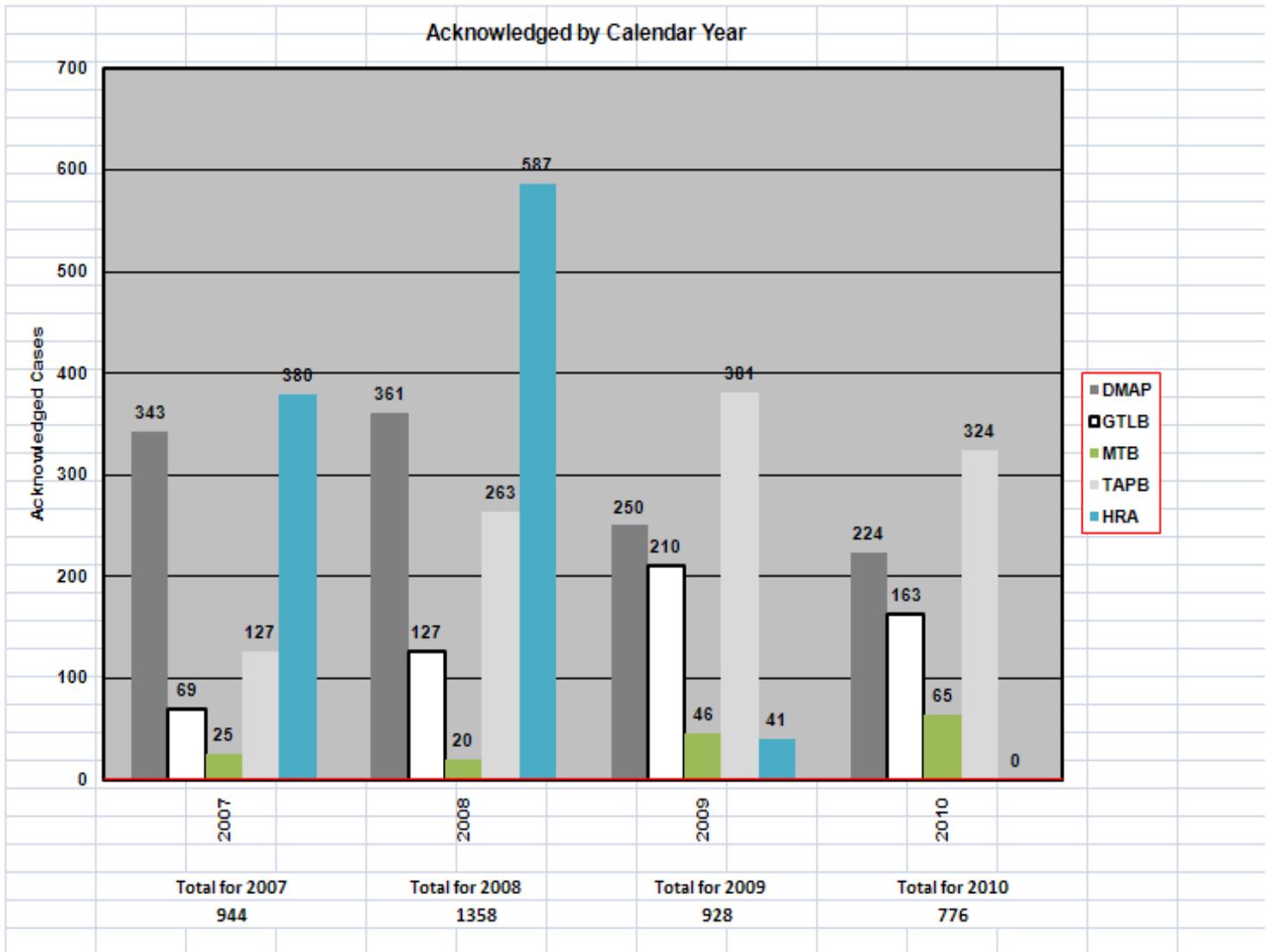
**Notes:**

Above numbers account for the majority of the assessments that are issued throughout the department.

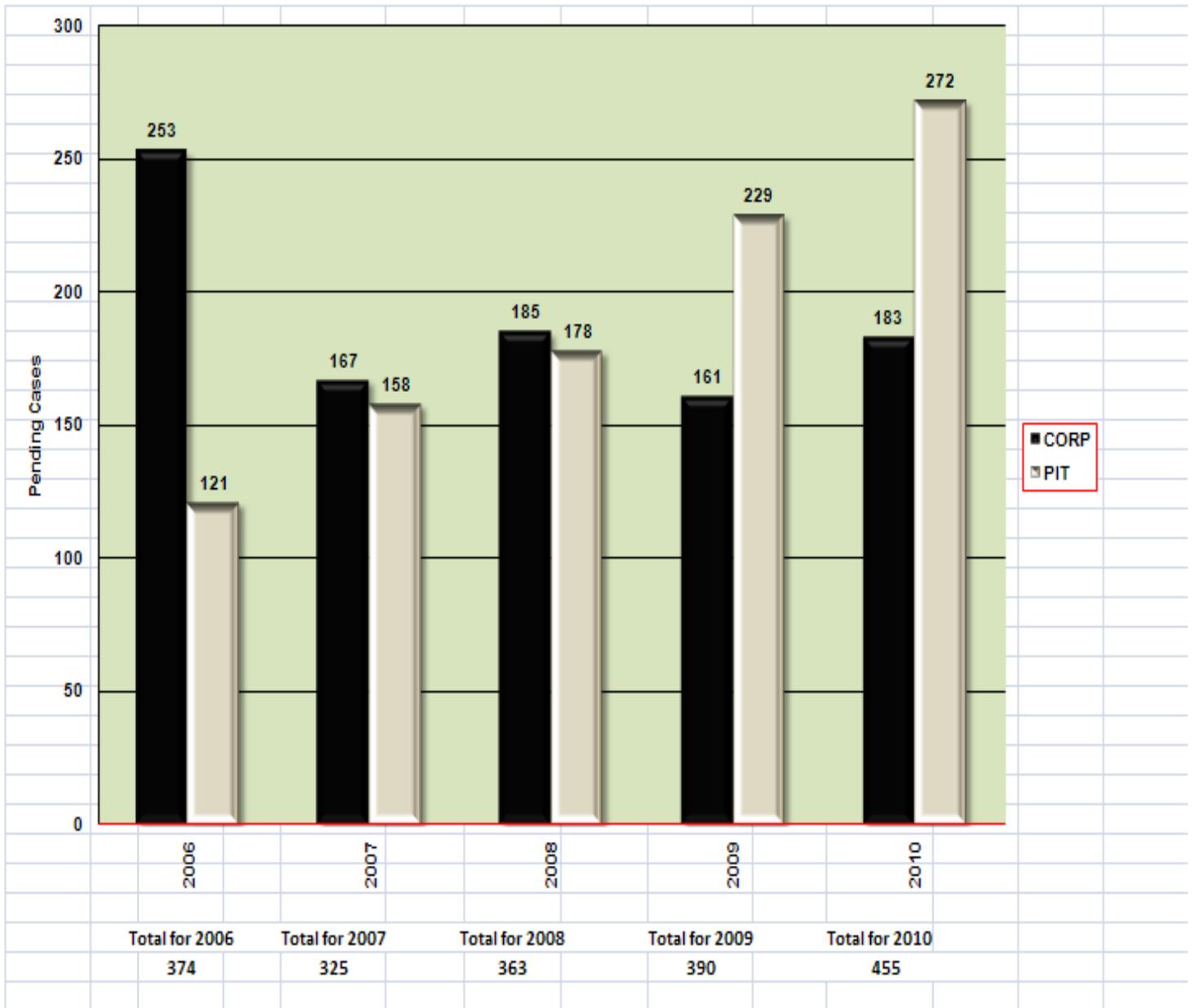
\* Includes both Personal Income Tax and Corporation assessments, and includes assessments based on IRS adjustments and FTB's Head of Household audits.

\*\* Primarily Personal Income Tax assessments.

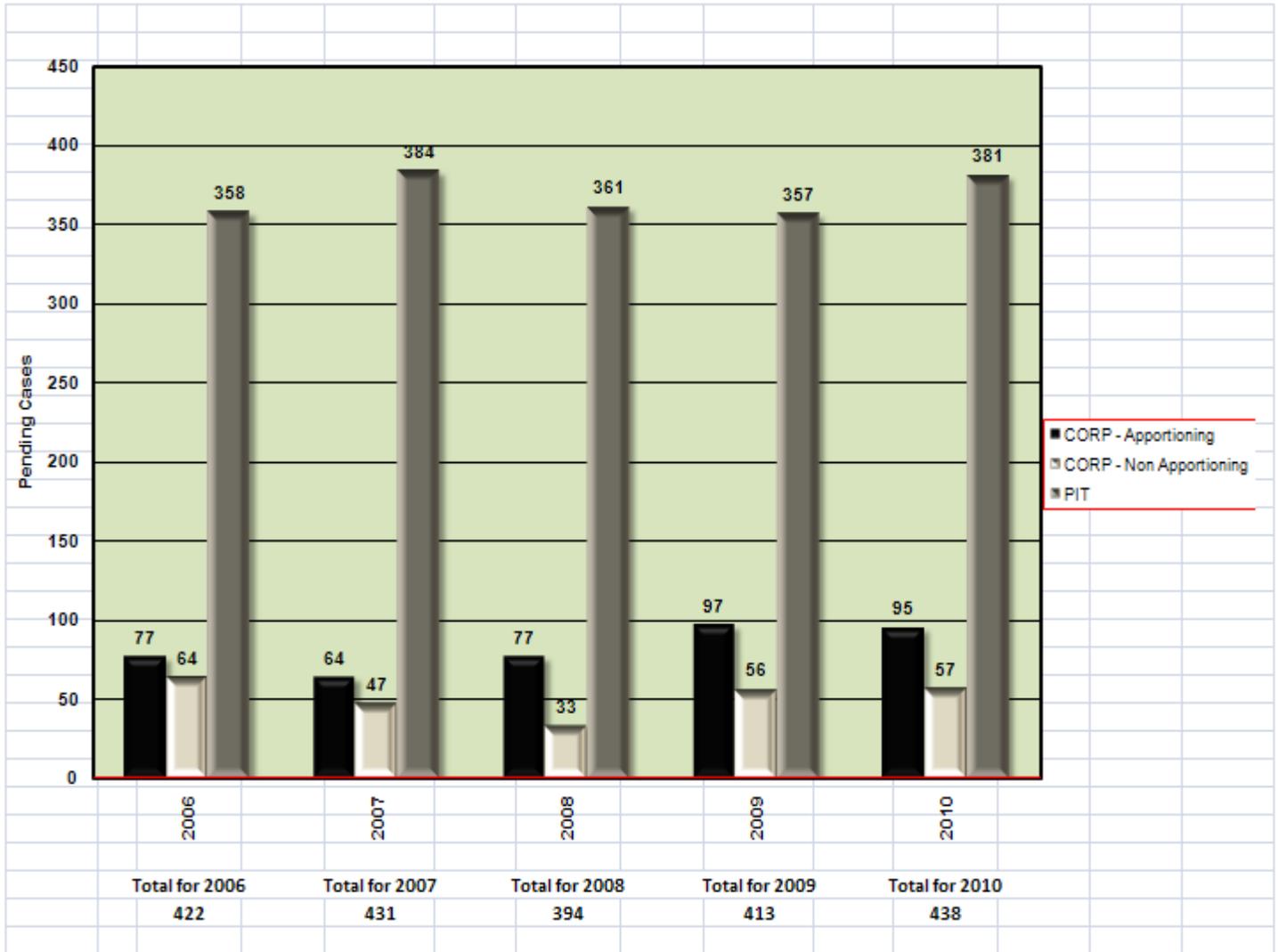
## Appeals



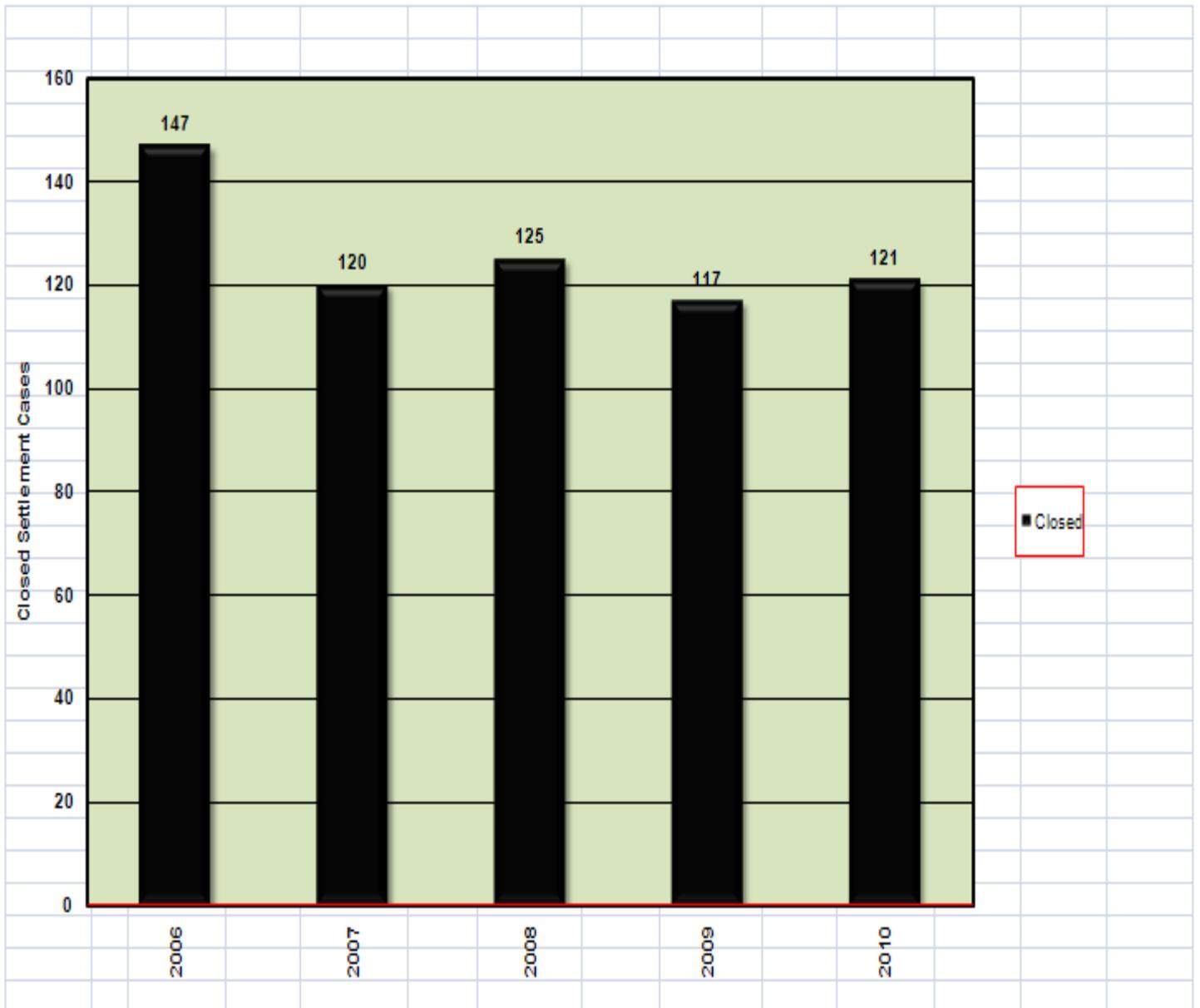
### Docketed Protest Ending Inventory by Calendar Year



### Undocketed Protest Ending Inventory by Calendar Year



### Closed Settlement Cases by Calendar Year



<b>Appeals Calendar Year Summary</b>					
<b>Docketed Protest Ending Inventory</b>					
	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>CORP</b>	253	167	185	161	183
<b>PIT</b>	121	158	178	229	272
<b>Total</b>	<b>374</b>	<b>325</b>	<b>363</b>	<b>390</b>	<b>455</b>
<b>Undocketed Protest Ending Inventory</b>					
	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>CORP - Apportioning</b>	77	64	77	97	95
<b>CORP - Non Apportion</b>	64	47	33	56	57
<b>PIT</b>	358	384	361	357	381
<b>Total</b>	<b>422</b>	<b>431</b>	<b>394</b>	<b>413</b>	<b>438</b>
<b>Settlement Closed</b>					
	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
<b>Closed</b>	147	120	125	117	121
<b>Total</b>	<b>147</b>	<b>120</b>	<b>125</b>	<b>117</b>	<b>121</b>

## Treasury Function Cases

- 2009 Appeals Initiative: 21 of 31 Taxpayers participated in the resolution program
- 2010 Protest/Audit Initiative: 31 of 46 cases participated in the resolution program

## Tax Shelter Cases

- 11 pending Appeals
- 199 cases in Protest with \$1B in dispute
- 100 cases in Audit
- 2010 cases grouped to implement resolution strategy
- The department has prevailed on all Appeals (15) and Litigation Cases (1) to date

## VCI II

- 2010 Legislation (AB 2498)
- 2011/2012 Governor's Budget Proposal
  - August 1, 2011 to October 31, 2011
  - File amended returns, pay tax and interest, no appeal rights (no penalties except LCUP/Amnesty)
  - Statute Limitations increase from 8 to 12 years; 50% penalty on amended return; uniform definition of ATAT

## VCI Interest Suspension cases

- Benjamin and Carmela Du v. FTB; Paul and Patricia Mickelsen v. FTB; and Edward and Anneliese Shimmon v. FTB. (October 26, 2010, California Court of Appeal, Second Appellate District)
- Du and Shimmon VCI Option 1 cases (forgo claims for refund in return for waiver all penalties). Court of Appeal held taxpayers not entitled to refund, including interest suspension, in Option 1 cases. February 2, 2011, California Supreme Court denied taxpayers' petition for review.
- Mickelsen VCI Option 2 case (maintained right to file claims for refund but subject to accuracy related penalty). Case remanded back to trial court for further proceedings on factual issues.
- Approximately 50 pending appeals on both Option 1 and Option 2 cases involving the same issue.

## R & D Credit Cases

- 50 pending Appeals,
- 25 cases in Protest,
- 275 cases in Audit
- Cases very factually specific (2 hearings in 2010 both required additional 30/30/30 briefing)

## EZ Credit Cases

- 48 pending Appeals
- 18 cases in Protest
- 250 cases in Audit
- 2011/2012 Governor's Proposed Budget repeals EZ credits and carryovers

## Litigation Results

Court decisions confirmed the determination of the Board in the following cases in 2010:

- Benjamin and Carmela Du v. FTB; Paul and Patricia Mickelsen v. FTB; and Edward and Anneliese Shimmon v. FTB. (see above)
- River Garden Retirement Home v. Franchise Tax Board
  - On July 15, 2010, the California Court of Appeal, First Appellate District, in a published opinion upheld the trial court's decision that the department properly implemented a remedy to deal with the finding that the dividends received deduction contained in Revenue and Taxation Code section 24402 was unconstitutional. The Court of Appeal also affirmed the decision of the trial court that the Amnesty Penalty was constitutional.
- Reiling, Bernard, et al. v. Franchise Tax Board
  - This is the first BellSouth leasing tax shelter case that has been litigated and the trial court issued its Proposed Statement of Decision in favor of the department on December 6, 2010.
- Mike, Angelina v. Franchise Tax Board
  - Taxpayer was a member of the 29 Palms Band of Mission Indian Tribes, received income related to tribal activity from that tribe but lived on the Aqua Caliente Band of Cahuilla Indians reservation. Taxpayer claimed residing on any reservation allowed for the exclusion of income of tribal income. In a published opinion, on February 3, 2010, the California Court of Appeal, Fourth District, held that the taxpayer was not entitled to exclude the income because she did not reside on the reservation that generated the tribal income.
- Taiheyo Cement U.S.A., Inc. v. Franchise Tax Board
  - This case concerned the definition of the term "placed in service" for purposes of claiming the enterprise zone sales and use tax credits. The trial court granted the department's Motion for Judgment on the Pleadings on July 1, 2010. The case has been appealed.
- Gribble, Stanley W. & SWG Management Company v. Franchise Tax Board
  - Issue concerned whether the taxpayer's cancellation of indebtedness income was not recognized due to the insolvency exception contained in IRC §108(a)(1)(B). The trial court granted the department's Motion to Strike and to Determine Prevailing Party on May 18, 2010.
- Gillette Company & Subsidiaries v. Franchise Tax Board
  - This case was set for hearing at the Board, but withdrawn prior to the hearing. The taxpayer argued that the double weighted sales provision enacted in California law in 1993 was elective and not mandatory due to the binding nature of the Multistate Compact. This would have allowed taxpayers to use a single weighted sales factor contained in the compact instead of the double weighted factor. On October 7, 2010, the trial court sustained the department's Demurrer to the Complaint, although a Notice of Appeal has been filed by Gillette.