

**NOTICE OF PENDENCY OF CLASS ACTION**

***FTB LIMITED LIABILITY CORPORATION TAX REFUND CASES***

**Judicial Council Coordination Proceeding No. 4742 (City & County of SF  
Superior Court Case No. CGC-07-462728; Fresno County Superior Court Case  
No. 10CECG00434)**

**This is a Court approved Legal Notice.**

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

This Notice is to all LLCs that have derived their income from business operations solely within California or within and without California, that have filed timely claims for a tax refund of the levy pursuant to Revenue and Taxation Code ("Rev. & Tax. Code") § 17942 or its predecessor Rev. & Tax. Code § 23092, that have had their claim for a refund deemed denied or denied and whose period for filing a lawsuit under Rev. & Tax. Code § 19382 remained open as of April 25, 2007 or February 4, 2010 (the "Class"). This potentially includes claims for a refund **for tax years 1994 through 2006.**

**Purpose of This Notice**

This Notice is given pursuant to California Rules of Civil Procedure and Orders of the Superior Court of California. The lawsuit called "FTB Limited Liability Corporation Tax Refund Cases" (the "Lawsuit") has been certified as a class action 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 this class action 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 this action. This Notice is not an expression of any opinion by the Court as to the merits of any claims or defenses asserted by Plaintiffs on behalf of the Class or the California Franchise Tax Board ("FTB").

The Class potentially includes any LLC that filed one or more claims for a refund of the levy pursuant to Rev. & Tax. Code § 17942 or its predecessor Rev. & Tax. Code § 23092, for tax years 1994 through 2006, and did not receive a 100% refund based on such claims. 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, please contact Plaintiffs' counsel listed below under the "Contacting Plaintiffs' Counsel" heading before July 10, 2020.

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 July 24, 2020 for you to exclude yourself from the Class. If you wish to remain in the Class, you do not need to do anything.

### **Background of the Litigation**

Prior to 2007, Rev. & Tax. Code § 17942 required LLCs to pay an annual fee based on their worldwide total income, regardless of whether they had income attributable to activities in California. This law was found unconstitutional as applied to two taxpayers in two separate prior lawsuits.<sup>1</sup> The California legislature amended Rev. & Tax. Code § 17942, and the fee is now determined by reference to the total income derived from or attributable to California. The California legislature also enacted Rev. & Tax. Code § 19394, which states that taxpayers that sought a refund of the annual LLC fee were eligible for an apportioned refund. Bakersfield Mall, LLC and CA-Centerside II, LLC each brought a class action lawsuit in 2007 and 2010 respectively, seeking full refunds of annual LLC fees paid pursuant to the prior version of Rev. & Tax. Code § 17942. Those lawsuits were combined into the *FTB LIMITED LIABILITY CORPORATION TAX REFUND CASES*, which is the Lawsuit to which this Notice relates. FTB contends that class members are entitled to an apportioned refund of the fees paid prior to 2007, as required by Rev. & Tax. Code § 19394, and that it has already provided these refunds. Plaintiffs argue that class members should receive a full refund of fees paid prior to 2007, and that Rev. & Tax. Code § 19394 cannot be applied to class members.

### **Plaintiffs' Claims and FTB's Response**

In the Lawsuit, Plaintiffs allege that fees imposed under former Rev. & Tax. Code § 17942 violated the constitutions of the United States and California and that the required remedy is a full refund of the LLC fee for all Class Members. This includes

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<sup>1</sup>*Northwest Energetic Services, LLC v. California Franchise Tax Bd.* (2008) 159 Cal.App.4th 841 and *Ventas Finance I, LLC v. Franchise Tax Bd.* (2008) 165 Cal.App.4th 1207.

claims for a refund of the annual LLC fee **for tax years 1994 through 2006**. FTB takes the position that only an apportioned refund is required and that all refunds that are due have been paid. The Court has not decided whether the Plaintiffs or FTB is correct. By establishing 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 July 10, 2020 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).**
- **The Court will exclude you from the Class if you so request via mail postmarked on or before July 24, 2020.**

To exclude yourself from the Class you **must** send a written statement by mail to the FTB that is postmarked on or before July 24, 2020 saying that you want to be excluded from the lawsuit entitled *FTB LIMITED LIABILITY CORPORATION TAX REFUND CASES*. Your request must include:

- Your name and address;
- The name and address of the LLC 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.

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

LLC Fee Class Action MS F340  
Franchise Tax Board  
PO BOX 1998  
Rancho Cordova, CA 95741-1998

### **If You Need More Information**

The foregoing is only a summary of the Lawsuit. The pleadings and other records in the consolidated Lawsuit and the Bakersfield Mall, LLC lawsuit may be examined online on the website for the City and County of San Francisco Superior Court, at <https://www.sfsuperiorcourt.org/>. After arriving at the website, click on "Online Services," then "Case Query." Then enter CJC-12-004742 or CGC-07-462728 as the case number for documents related to the combined lawsuit or Bakersfield Mall, LLC

lawsuit, respectively, and click "SEARCH." Images of every document filed in such case may be viewed free of charge. Additional information related to the CA-Centerside II, LLC lawsuit can be found on the website for the County of Fresno, at <http://www.fresno.courts.ca.gov>. After arriving at the website, click on "Case Information Portal," then "Click Here for Case Information" and then "Smart Search." Then enter 10CECG00434, click on "Submit," then "10CECG00434."

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 and (2) Calvo Fisher & Jacob LLP, represent all Class Members. Together these law firms are called "Plaintiffs' Counsel" or "Class Counsel." They are experienced in handling similar cases against other individuals, companies and public agencies. More information about these law firms, their practices, and their lawyers' experience is available at <https://sptaxlaw.com> and [www.calvofisher.com](http://www.calvofisher.com).

### **Contacting Plaintiffs' Counsel**

If you have any questions, you can get free help by calling or writing to the Plaintiffs' lawyers in this case, at one of the phone numbers or addresses listed below. All inquiries should be made by July 10, 2020 so they can be responded to in a timely manner. Please note that Plaintiffs' lawyers might refer you to FTB for additional information if necessary.

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