

CA Court of Appeal - Class Action Suit Seeking Total Refund of LLC Fees May Move Forward

Overview

On July 18, 2018, the California Court of Appeal (Court of Appeal) reversed a trial court's decision to deny class certification in *Franchise Tax Board LLC Tax Refund Cases*, concluding that the plaintiffs - two limited liability companies that held title to a single property in California (and claimed that only some or all of their respective income and activities were derived from sources within California) and who had filed claims for refund of the LLC fee paid under former California Revenue and Taxation Code (CRTC) Section 17942 - had cases that were "eminently suitable for treatment" as a class.¹

This case applies only to "those LLCs that earned some or all of their income from business operations inside California, timely filed claims for refund of the taxes unconstitutionally collected pursuant to [former CRTC] Section 17942, have not received full refunds, and had open claims at the time at least one of the [plaintiffs] complaints in these coordinated cases was filed."² It does not apply to taxpayers that have previously filed claims for refund and have already received the full amount of the refund.

This tax alert summarizes the Court of Appeal's decision and provides some taxpayer considerations.

Summary of Facts in *FTB LLC Tax Refund Cases*

In early 2013, the Franchise Tax Board (FTB) had consolidated the separate cases filed by the two LLCs referenced above on the grounds that the LLC fee was unconstitutional on its face and as applied to those LLCs.³ On May 1, 2013, the two LLCs (Plaintiffs) filed a joint motion for class certification of their coordinated proceeding.⁴ Specifically, Plaintiffs sought an order certifying a class consisting of "those LLCs that earned some or all of their income from business operations inside California, timely filed claims for refund of the taxes unconstitutionally collected pursuant to [former CRTC] Section 17942, have not received full refunds, and had open claims at the time at least one of the complaints in these coordinated cases was filed."⁵

California Court of Appeal's decision

The Court of Appeal reversed the trial court's decision to deny Plaintiffs' request for class certification on the grounds that the trial court's class certification analysis was "fundamentally flawed" and concluded that the Plaintiffs' case was "eminently suitable for treatment" as a class.⁶ In arriving at its decision, the Court of Appeal explained that "although no administrative class claim was filed by Plaintiffs," the FTB had sufficient notice, consistent with the underlying purpose of CRTC Section 19322, the statute governing claims for refund, because "the FTB had actual notice—from its own records—of the identities of the thousands of individual taxpayers who exhausted their administrative remedies by filing individual claims and the bases for those claims."⁷ As such, the Court of Appeal concluded that "there is no bar to certification of a class action for refund of constitutional taxes so long as all class members have filed their own individual claims and thereby exhausted their administrative remedies."⁸

¹ *Franchise Tax Bd. LLC Tax Refund Cases*, Cal. Ct. App., 1st Dist., JCCP No. 4742 (July 18, 2018), available [here](#).

² *Franchise Tax Bd. LLC Tax Refund Cases*, JCCP No. 4742 at p.8.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Franchise Tax Bd. LLC Tax Refund Cases*, JCCP No. 4742 at p.2.

⁷ *Franchise Tax Bd. LLC Tax Refund Cases*, JCCP No. 4742 at p.17.

⁸ *Franchise Tax Bd. LLC Tax Refund Cases*, JCCP No. 4742 at pp.16-17.

Considerations

On August 27, 2018, the FTB filed a petition for review of the Court of Appeal's decision in *Franchise Tax Board LLC Tax Refund Cases* with the California Supreme Court.⁹ Notwithstanding this pending appeal, taxpayers who have previously filed protective claims for refund of the LLC fee paid on the basis that CRTS Section 17942 is unconstitutional, and who have yet to receive full refunds from the FTB for the entire amount of the LLC fee paid, should consult with their tax advisors for assistance in analyzing the implications of this decision.

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⁹ Appellate Courts Case Information, available [here](#). The FTB had ten days after the Court of Appeal's decision became final on August 17, 2018 to file a petition for review with the California Supreme Court. Cal. Rules of Ct., R. 8.500(e).