

**SCHLEY LOOK  
GUTHRIE & LOCKER** LLP

A T T O R N E Y S   A T   L A W

**LEGAL BULLETIN**

To: California LLC Clients and  
Interested Parties

From: Michael D. Schley

Date: June 3, 2009

Re: **California LLC Refunds -- ELECTION REQUIRED BY AUGUST 20**

Reply to  
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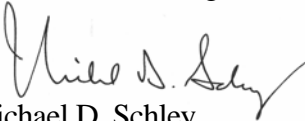
You will recall from our earlier bulletins that several limited liability companies (“LLCs”) doing interstate business challenged the legality of California’s LLC revenue tax, claiming it was unconstitutional because it was based on total revenue from all sources, not just California-source income. One issue of concern to many of our clients was whether the Franchise Tax Board (“FTB”) could legally assess revenue taxes based on out-of-state income earned by California LLCs. The issue was resolved when the California Court of Appeal held the tax to be unconstitutional (*Ventas Finance I, LLC v. Franchise Tax Board* (2008) 165 Cal.App.4th 1207). This ruling became final when the U.S. Supreme Court declined to hear an appeal.

As a result, LLCs that have paid California revenue taxes calculated on sources of income outside of California for years prior to 2007 are entitled to a refund from the FTB. The statute of limitations will only permit LLCs to seek refunds from years 2004 forward, unless they filed protective refund claims before the statute of limitations ran for earlier years (as we advised our clients to do, beginning in 2006).

The Franchise Tax Board has issued [FTB Notice 2009-04](#) describing how refunds will be processed. The FTB will use a “Default Method” to calculate an LLC revenue tax refund unless the LLC elects to use the “Alternative Method.” This election must be made **no later than August 20, 2009**.

We encourage our LLC clients that had out-of-state income in years prior to 2007 to review with their tax accountants whether refunds might be due, and how to file for them, including possible use of the Alternative Method.

If you would like additional information about these legal decisions and how they might apply to your LLC, we would be glad to assist.

  
Michael D. Schley