

## **California Superior Court Rules that California's LLC fee is unconstitutional.**

The California Franchise Tax Board (CFTB) insists on imposing a state tax on all of the world-wide income of any LLC formed or registered in California. The concept would seem to be unconstitutional, as if the CFTB is completely ignoring the U.S. Constitution, and were imposing all the tax that they can get away with.

Northwest Energetic Services, LLC, a company organized in the state of Washington had registered to do business in California with the Secretary of State. This triggered the application of the LLC fee, computed on worldwide income without apportionment. Northwest took it to court. [Northwest Energetic Services, LLC v. FTB (San Francisco Superior Court Case No. CGC-05-437721)]

The San Francisco Superior court issued a Statement of Decision ruling that California's LLC fee IS unconstitutional because it is an unapportioned tax on income. The court ruled that the fee violates the Commerce Clause and the Due Process Clause of the U.S. constitution, as well as the Due Process Clause of the California Constitution. The LLC fee, which is imposed by R&TC §17942, computes the fee based on worldwide income, over and above the “minimum” franchise tax fee of \$800.00 per year.

As a result, LLC's formed or registered in California that have previously paid California taxes on world-wide income are able to file for tax refunds:

<http://www.ftb.ca.gov/professionals/taxnews/article/llcfee.html>

The CFTB will defer action on all claims for tax refunds pending a final appellate decision.

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