



**BDO Seidman, LLP**  
Accountants and Consultants

## Subject:

**California LLC Fee**  
Court Decision Affecting the  
Constitutionality of the  
California Limited Liability  
Company ("LLC") Fee  
Expected on February 17, 2006

# State Tax Alert

The Tax Practice at **BDO Seidman, LLP** is among the largest tax advisory practices in the United States. With more than 30 offices and 250 independent alliance firm locations in the United States, BDO Seidman, LLP has the bench strength and coverage to serve you.

**Background and Facts** – Northwest Energetic Services LLC ("Northwest") has filed suit against the California Franchise Tax Board ("FTB") in San Francisco Superior Court challenging the constitutionality of the LLC fee. The California LLC fee is imposed on all LLCs that are organized, registered to do business or operating in California. The fee is based on annual total income from all sources of \$250,000 or more with an annual maximum fee per LLC of \$11,790. Northwest stated in their suit that other than registering to do business in California, it did not conduct any business activity in the state between 1997 to 2001. By registering to do business in the state, Northwest became subject to California's LLC fee which is imposed on an LLC's worldwide income under California's current tax rules. Northwest has paid the LLC fee for the aforementioned years and is suing for a refund claiming that the fee violates the Commerce Clause and Due Process Clause of the U.S. Constitution. A trial was held on January 23, 2006, in which both sides presented arguments supporting their respective positions. The matter is currently under consideration by the Superior Court judge who is scheduled to render a decision on February 17, 2006. It is unclear which way the judge will rule, but BDO Seidman's National State and Local Tax Practice will continue to monitor the situation and keep you informed on any new developments.

**Potential Refund Claim Profile** – LLCs that have paid an LLC fee in prior years and whose California source income was less than their income for all other sources.

**What You Can Do** - Identify those companies and/or clients that may be affected by this ruling and inform them of this potential refund opportunity.

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