STATE OF CALIFORNIA
FRANCHISE TAX BOARD
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November 2005, Franchise Tax Board Litigation Roster

All currently active cases and those recently closed are listed on the roster. Activity or changes with respect to a case appear in bold-face type. Any new cases will appear in bold-face type.

A list of new cases that have been added to the roster for the month is also provided, as well as a list of cases that have been closed and will be dropped from the next report.

The Franchise Tax Board posts the Litigation Roster on its Internet site. The Litigation Roster can be found at: http://www.ftb.ca.gov/law/litrstr/index.html.

The Litigation Rosters for the last twelve months may be found on the Internet site.

FRANCHISE AND INCOME TAX
Closed Cases – November 2005

Case Name	**Court Number**
Hamlin, Sheryl	Sacramento Superior Court No. 05AS04545

FRANCHISE AND INCOME TAX
New Cases – November 2005

Case Name	**Court Number**
	None

FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER

November 2005

ACKERMAN, PETER & JOANNE v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC296334 — Filed - 05/23/03
Court of Appeal, 2nd Appellate Dist. Div P No. B178750

Taxpayer's Counsel	*FTB's Counsel*
Holly Kendig, Christopher W. Campbell	Brian Wesley
O'Melveny & Myers, LLP	

Issues:
1. Whether plaintiffs are entitled to a refund of taxes similar to that allowed by the Internal Revenue Service as the result of the settlement of a lawsuit against them for misappropriating the income of various partnerships.
2. Whether plaintiffs filed timely claims for refund with respect to the years 1992 and 1993.
3. Whether plaintiffs timely filed the suit for refund.

Years: 1992 and 1993 — Amount $4,912,037.26

Status: **Unpublished Opinion of Appellate Court in favor of Defendant/Respondent FTB filed on November 29, 2005.**

AMERICAN GENERAL REALTY INVESTMENT CORP., INC. v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC03425690 — Filed - 10/23/03

Taxpayer's Counsel	*FTB's Counsel*
Roy E. Crawford, Roburt J. Waldow	David Lew
Heller, Ehrman, White & McAuliffe, LLP	

Issues:
1. Whether dividends received from insurance subsidiaries are, as a matter of law and fact, nonbusiness income.
2. Whether section 24344(b) controls the allocation of interest expense.
3. Whether section 24425 was properly applied to allocate expenses to insurance company dividends.
4. Whether the insurance subsidiaries constitute a separate unitary business of the taxpayer.
5. Whether the increase in the income assigned to California fairly reflects the taxpayer's business in this state.

Year: 1991 — Amount $2,824,983.00

Status: Order Awarding Plaintiff Reasonable Litigation Costs filed on September 14, 2005.

CITY NATIONAL CORPORATION v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC334772 — Filed – 06/10/05

Taxpayer's Counsel	*FTB's Counsel*
Kenneth R. Chiate, Mary S. Thomas	Donald R. Currier
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP	Joseph M. O'Heron
Sherrill Johnson	
Offices of the General Counsel City National Bank	

Issues:
1. Whether Plaintiff improperly engaged in tax shelter transaction involving Regulated Investment Trusts (REITs) and Regulated Investment Companies (RICs) during the subject years.
2. Whether certain subsidiaries were exempt from California taxation as IRC 501(c)(15) entities.
3. Whether Plaintiff has satisfied the requirement of exhausting all administrative remedies in order to maintain a lawsuit.

Years: 1999 through 2003 — Amount $84,676,129.00

Status: **Stipulation and Order filed on November 18, 2005. Hearing on Demurrer and Case Management Conference held on November 21, 2005, and continued to January 13, 2006.**

COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board

Sacramento Superior Court Docket No. 03AS00707 — Filed - 02/07/03

Taxpayer's Counsel	*FTB's Counsel*
Eric J. Coffill, Carley A. Roberts	Steven J. Green
Morrison & Foerster, LLP	

Issues:
1. Whether the sales factor was properly calculated by excluding proceeds from short-term financial instruments and value added taxes assessed by foreign countries.
2. Whether the property factor needs to be adjusted to value property at its appreciated value to fairly reflect its activities in California.

Years: 1974-1982, 1984-1987, 1989-1991 — Amount $2,912,696.00

Status: Order to Stay Proceeding signed by Judge Virga on November 29, 2004, until a decision is reached in the *General Motors v. FTB* case.

DILTS, WALTER B. JR. AND PHYLLIS A. KAPPELER v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC04436496 — Filed - 11/19/04

Taxpayer's Counsel	*FTB's Counsel*
R. Todd Luoma	Anne Michelle Burr
Law Office of Richard Todd Luoma	

Issue: Whether Plaintiffs ceased to be California residents as of December 16, 1994.

Years: 1994 & 1995 — Amount $973,101.00

Status: Discovery proceeding. Trial rescheduled to May 8, 2006.

EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board
Sacramento Superior Court Docket No. 511821 — Filed - 12/20/89
Court of Appeal, 3rd Appellate District, No. 3-CV-C020733

Taxpayer's Counsel	*FTB's Counsel*
Joanne Garvey, & Teresa Maloney	Benjamin F. Miller
Heller, Ehrman, White & McAuliffe	

Issue: Whether defendant's determination as to the methodology for deduction of indirect expenses against taxable investment income was proper.

Years: 1980 through 1985 — Amount $1,137,006.98

Status: **Oral Argument held and submitted on November 18, 2005**.

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board
San Francisco Superior Court Docket No.CGC-02-404182 — Filed - 02/06/02
Court of Appeal, 1st Appellate District, No. A106315

Taxpayer's Counsel	*FTB's Counsel*
John E. Cassinat & Ronald L. Carello	Marguerite Stricklin
Cassinat Law Corporation	

Issues:
1. Whether Plaintiffs' "horse breeding and racing business expenses" were deductible as business expenses in the years involved.
2. Whether expenses incurred by plaintiffs in horse breeding and racing activities were deductible as business expenses in the years involved.

Years: 1991 through 1994 — Amount $149,696.00

Status Remittitur issued by the Court of Appeal on September 28, 2005.

GALASKI, GREGORY JOHN v. Franchise Tax Board
San Diego Superior Court Docket No. IC833950 — Filed – 08/09/04

Taxpayer's Counsel	*FTB's Counsel*
Gregory Galaski, In Pro Per	Gregory S. Price

Issues:
1. Whether Plaintiff filed claims for refund for each of the years.
2. Assuming claims for refund were filed whether there was an overpayment of tax.

Years: 1999 through 2003 — Amount $13,092.37

Status: **Plaintiff filed Notice of Appeal on November 15, 2005, on Court Order Denying Plaintiff's Motion for Reconsideration of Motion to Vacate. Defendant's Supplemental Opposition to Plaintiff's Motion for Reconsideration of Order Denying Motion to Vacate and for New or Further Trial filed November 23, 2005.**

GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC05-439929 — Filed – 03/29/05

Taxpayer's Counsel	*FTB's Counsel*
Thomas H. Steele	Marguerite Stricklin
Andres Vallejo, Jeffrey S. Terraciano	
Morrison & Foerster LLP	

Issues:
1. Whether the taxpayer's payroll factor was properly computed by excluding foreign employee stock options.
2. Whether the taxpayer's sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
3. Whether federal RAR adjustments were properly taken into account.

Years: 1992-1997 — Amount $3,550,367.00

Status: Discovery proceeding. Mandatory Settlement Conference scheduled for May 26, 2006. Trial is scheduled for June 12, 2006.

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC269404 — Filed - 03/06/02
Court of Appeal, 2nd Appellate District No. B165665
California Supreme Court No. S127086

Taxpayer's Counsel	*FTB's Counsel*
Charles R. Ajalat	Stephen Lew
Law Office of Ajalat, Polley & Ayoob	Donald Currier
	Joseph O'Heron

Issues:
1. Whether gross receipts from the disposition of marketable securities were properly excluded from the sales factor.
2. Whether interest income was properly characterized as business income.
3. Whether dividends received with respect to stock representing less than a 50% voting interest were properly classified as business income.
4. Whether the limitation on deductions prescribed by sections 24402 and 24410 resulted in unconstitutional discriminatory taxation.
5. Whether various receipts from intangible assets were properly excluded from the sales factor.
6. Whether research tax credits were properly limited to the entity incurring the expense.
7. Whether a deduction was properly denied with respect to foreign country taxes withheld on dividends.
8. Whether the taxpayer is entitled to an increased deduction with respect to depreciation on assets held by foreign country subsidiaries.
9. Whether the taxes determined to be owing by the Franchise Tax Board were properly computed and assessed.

Years: 1986 through 1988 — Amount $10,692,755.00

Status: Defendant/Respondent FTB's Letter to California Supreme Court re: the Arizona Supreme Court's denial of review of the *Walgreen Arizona Drug Co. v. Arizona Dept of Revenue* (Ariz. Ct. App. 2004) 97 P.3d 896 decision filed on behalf of the Franchise Tax Board on July 1, 2005.

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC 305968 — Filed - 11/12/03
Court of Appeal, 2nd Appellate District No. B187278

Taxpayer's Counsel	*FTB's Counsel*
Eric L. Troff, Esq.	Donald Currier
Gibbs, Giden, Locher & Turner, LLP	

Issue: Whether Plaintiffs were entitled to a business bad debt reduction.

Years: 1990 & 1993 — Amount $65,738.00

Status: **Plaintiffs/Appellants' Notice of Appeal filed on November 20, 2005.**

HEPNER, GERSHON v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC334679 — Filed – 06/08/05

Taxpayer's Counsel	*FTB's Counsel*
Dennis N. Brager, Kneaver Riggall	Herbert A. Levin
Law Offices of Dennis N. Brager	

Issue:
1. Whether the taxpayer filed a valid claim for refund when there is an unpaid balance on the account.
2. If the taxpayer filed a valid claim for refund, is the amount refundable limited to the amount paid within one year of the date of the claim?
3. Whether the notice of proposed assessment was timely issued.
4. Whether the penalty for fraud was properly imposed.

Years: 1987 — Amount $22,065.00 Tax
$23,902.00 Penalty

Status: Final Status Conference and Jury Trial (2 days) scheduled for February 1, 2006. **Defendant's Motion for Judgment on the Pleadings filed on November 2, 2005. Hearing scheduled for December 8, 2005.**

HYATT, GILBERT P. v. Franchise Tax Board
Clark County Nevada District Court No. A382999 — Filed - 01/06/98

Taxpayer's Counsel	*FTB's Counsel*
Thomas L. Steffen & Mark A. Hutchison	James W. Bradshaw
Hutchison & Steffen, H. Bartow Farr III	McDonald, Carano,
	Wilson LLP
	Las Vegas, Nevada

Issues:
1. Whether plaintiff was a resident of California from September 26, 1991 through April 2, 1992.
2. Whether the Franchise Tax Board committed various torts with respect to plaintiff and is subject to a claim for damages.
3. Whether the Nevada courts have or should exercise jurisdiction over the Franchise Tax Board.

Years: 1991 and 1992 Amount $7,545492.00 Tax
$5,659,119.00 Penalty

Status: Clark County District Court:
Discovery proceeding

IDLEMAN, HURBERT AND JOANN v. Franchise Tax Board
Los Angeles Superior Court Docket No. BS093240 Filed – 10/21/04

Taxpayer's Counsel	*FTB's Counsel*
Warren Nemiroff, Esq.	Marla K. Markman

Issue: Whether or not the taxpayers are entitled to a refund as a result of federal adjustments to a SubChapter S corporation.

Year: 1995 Amount $86,458.00

Status: **Hearing on Defendant's Motion to Compel held on November 3, 2005. Motion is denied. Court Trial scheduled for January 9, 2006.**

JIBILIAN, TONY & DOROTHY v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC298685 Filed – 07/09/03
Court of Appeal 2nd Appellate District Court No. B175952

Taxpayer's Counsel	*FTB's Counsel*
Derek L. Tabone, Esq.	Brian Wesley
Law Offices of Tabone, APC	Elisa Wolfe-Donato

Issue: Whether Plaintiffs have taxable income for the years involved.

Years: 1999-2001 Amount $208,742.00

Status: Plaintiffs/Appellants' Reply Brief filed on October 3, 2005.

JIM BEAM BRANDS CO. v. Franchise Tax Board
San Francisco Superior Court No. CGC-02-408203 Filed - 05/21/02
Court of Appeal, 1st Appellate District Court No. A107209

Taxpayer's Counsel	*FTB's Counsel*
Edwin P. Antolin	George C. Spanos
Silverstein & Pomerantz, Jordan M. Goodman	
Brian L. Browdy, Horwood, Marcus & Berk	

Issues:
1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.
2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year: 1987 Amount $133,042.00

Status: **Petitioner's Petition for Review to California Supreme Court filed on November 22, 2005.**

KIM, PAUL M. v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC333465 — Filed – 05/13/05

Taxpayer's Counsel	*FTB's Counsel*
Yoon Han Kim	Donald R. Currier
Law Offices of Yoon Han Kim & Assoc.	

Issue:
1. Whether taxpayer had income from payments received as the result of a lawsuit.
2. Whether taxpayer had a loss arising from foreclosure of property.
3. Whether the taxpayer filed a claim for refund.

Years: 1993 — Amount $16,098.46

Status: Trial Setting Conference held on October 4, 2005. Trial date set for April 26, 2006.

KUHN, DAVID & ELIZABETH v. Franchise Tax Board
Alameda Superior Court Docket No. WG05212795 — Filed – 05/13/05

Taxpayer's Counsel	*FTB's Counsel*
David N. Kuhn	David Lew
Attorney at Law	

Issue:
1. Whether Plaintiffs timely filed claims for refund.
2. Whether estoppel should lie against the Board for failing to notify Plaintiffs of the statute of limitations.

Years: 1994 through 1996 — Amount $18,090.48

Status: Demurrer to Complaint overruled on October 3, 2005. Answer to Complaint filed by Defendant on October 13, 2005.

LAVINE, ELIZABETH v. Franchise Tax Board
Sacramento Superior Court Docket No. 04AS03347 — Filed - 09/07/04

Taxpayer's Counsel	*FTB's Counsel*
Elizabeth Lavine, In Pro Per	Amy J. Winn

Issues:
1. Whether the suit for refund was filed timely.
2. Whether Plaintiff was a resident of California in 1999.

Year: 1999 — Amount $4,579.91

Status: Discovery proceeding.

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board
Alameda Superior Court Docket No. 837723-0 — Filed - 04/09/01
Court of Appeal, 1st Appellate District Court No. A102915
California Supreme Court No. S136922

Taxpayer's Counsel	*FTB's Counsel*
Edwin P. Antolin	Joyce Hee
Morrison & Foerster, LLP	

Issues:
1. Whether gross receipts from the sale of short-term financial instruments should be included in the sales factor.
2. Whether gain realized on the sale of a partial interest in a limited partnership formed from three subsidiaries constitutes business income.

Years: 1993 and 1994 — Amount $2,185,718.00

Status: Plaintiffs/Petitioner Petition for Review granted on October 26, 2005. Action deferred pending General Motors and Microsoft.

MARKEN, DONALD W. & CLAUDINE H. v. Franchise Tax Board
San Francisco Superior Court Docket No. 302520 — Filed - 04/05/99
Court of Appeal, 1st Appellate Dist. No. A091644
California Supreme Court No. S 104529
Court of Appeal, 1st Appellate Dis. No. A109715
Court of Appeal, 1st Appellate District No. A110668 (Attorneys' Fees)

Taxpayer's Counsel	*FTB's Counsel*
William E. Taggart, Jr.	Marguerite Stricklin
Taggart & Hawkins	

Issue: Whether plaintiffs were residents of California in 1993.

Year: 1993 — Amount $244,012.00

Status: Plaintiffs/Appellants' Opening Brief is due 30 days from filing of records in A110668.

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC 03424737 — Filed - 09/24/03
Court of Appeal, 1st Appellate Dist. Div. One No. A109907

Taxpayer's Counsel	*FTB's Counsel*
Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang	Anne Michelle Burr
Pillsbury Winthrop, LLP	

Issues:
1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.
2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

Years: 1993 and 1994 — Amount $606,744.00

Status: **Defendant/Respondent's Brief to be filed December 5, 2005.**

MICROSOFT CORPORATION v. Franchise Tax Board
San Francisco Superior Court Docket No. 400444 — Filed - 10/19/01
Court of Appeal, 1st Appellate Dist. Div. 3 No. A105312
California Supreme Court No. S133343

Taxpayer's Counsel	*FTB's Counsel*
James P. Kleier, Esq. Reed Smith LLP	Julian O. Standen
Joseph Patton Powers Baker & McKenzie	

Issues:
1. Whether the denominator of the receipts factor was properly calculated by excluding receipts from marketable securities.
2. Whether the limitation on the deduction of dividends provided for in Section 24402 discriminates.
3. Whether adjustments made to increase the income of controlled foreign corporations included in the combined report were proper.

Year: 1991 — Amount $1,879,809.00

Status: **Plaintiff/Respondent's Request for Extension of Time to File Reply Brief on the Merits filed on November 10, 2005. Extension granted on November 14, 2005, to December 5, 2005.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board
San Diego Superior Court Docket No. GIC772282 — Filed - 08/27/01
Court of Appeal, 4th Appellate Dist. Division 1, No. D043058 (Covenant Not to Compete)
Court of Appeal, 4th Appellate Dist. Division 1, No. D044362 (Costs/Attorneys' Fees)

Taxpayer's Counsel	*FTB's Counsel*
Kevin P. Duthoy, Esq. Bewley, Lassleben & Miller, LLP	Stephen Lew
Paul D. Draper, Esq. Law Offices of Paul D. Draper	

Issue: Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year: 1993 — Amount $227,246.00

Status: Remittitur issued on October 17, 2005 (D044362).

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board
San Diego Superior Court Docket No. GIC773381 Filed - 08/27/01
Court of Appeal, 4th Appellate Dist. Division 1, No. D043058 (Covenant Not to Compete)
Court of Appeal, 4th Appellate Dist. Division 1, No. D044362 (Costs/Attorneys' Fees)

Taxpayer's Counsel	*FTB's Counsel*
Kevin P. Duthoy, Esq.	Stephen Lew
Bewley, Lassleben & Miller, LLP	
Paul D. Draper, Esq.	
Law Offices of Paul D. Draper	

Issue: Whether the taxpayers had California source income arising from the execution of a covenant-not-to-compete as part of the sale of plaintiffs' minority interest in a business.

Year: 1993 Amount $670,825.00

Status: Remittitur issued on October 17, 2005 (D044362).

MONTGOMERY WARD LLC v. Franchise Tax Board v. Franchise Tax Board
San Diego Superior Court Docket No. GIC802767 Filed - 12/30/02

Taxpayer's Counsel	*FTB's Counsel*
Antolin, Pilar M. Sansone, Amy Silverstein	Gregory Price
Silverstein & Pomerantz, LLP	

Issues:
1. Whether proceeds from the sale, maturity or other disposition of short-term financial instruments were properly excluded from the sales factor.
2. Whether section 24402 Rev. & Tax. Code is constitutional.

Years: 1989 through 1994 Amount $2,694,192.00

Status: Status Conference continued to March 17, 2006.

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board
Sacramento Superior Court Docket No. 03AS05705 Filed - 10/10/03

Taxpayer's Counsel	*FTB's Counsel*
Spencer T. Malysiak	Michael Cornez
Spencer T. Malysiak Law Corp.	

Issues:
1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.
2. Whether a declaratory relief action can be brought to prevent the collection of tax.
3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years: 1996 and 1997 Amount $90,773.05

Status: Notice of Trial Setting Conference continued to March 20, 2006, filed on September 14, 2005.

NISSAN NORTH AMERICA, INC. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC334313	Filed – 06/01/05
Taxpayer's Counsel	*FTB's Counsel*
Richard J. Ayoob	Stephen Lew
Ajalat, Polley & Ayoob	Lisa Chao

Issues:
1. Whether income from various sources was properly classified as business income.
2. Whether the Franchise Tax Board properly calculated income, expenses and the apportionment factors.
3. Whether the Franchise Tax Board erroneously disallowed credits to which Plaintiff was entitled.
4. Whether proposed assessments were properly made within the statute of limitation.

Years: 1990 & 1991 Amount $3,250,949.00

Status: Defendant's Answer to Complaint filed September 30, 2005. Amended Answer to Complaint filed on October 26, 2005. Trial scheduled for April 11, 2006.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board

San Francisco Superior Court Docket No.CGC05-437721	Filed – 01/15/05
Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	Marguerite Stricklin
Silverstein & Pomerantz	

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clauses.

Years: 12/31/97-12/31/01 Amount $25,067.00 Tax
$ 3,764.29 Penalty

Status: **Trial set for November 22, 2005 off calendar and continued to January 23, 2006. Stipulation of Facts filed by Defendant Franchise Tax Board on November 22, 2005.**

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board

Los Angeles Superior Court Case No. BC278386	Filed - 07/25/02
Court of Appeal, 2nd Appellate Dist. No. B169465	
California Supreme Court No. S127649	
Taxpayer's Counsel	*FTB's Counsel*
Clayton Vreeland	Gregory S. Price
Bingham McCutchen LLP	

Issue: Whether the tax involved was timely assessed.

Year: 1983 Amount $12,350.00

Status: Defendant/Appellant FTB's Reply Brief on the Merits filed May 20, 2005.

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC 316070 — Filed – 05/25/04
Court of Appeal, 2nd Appellate Dist. No.B186947

Taxpayer's Counsel	*FTB's Counsel*
W. Patrick O'Keefe, Jr.	Anthony F. Sgherzi
W. Patrick O'Keefe, Jr. Incorporated	

Issue: Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.

Year: 1992 — Amount $45,415.00 Tax

Status: **Plaintiffs/Appellants' Notice of Appeal filed November 3, 2005.**

SQUARE D COMPANY v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC05442465 — Filed – 06/21/05

Taxpayer's Counsel	*FTB's Counsel*
Allan L. Schare, Kimberly M. Reeder	Paul Gifford
McDermott Will & Emery LLP	
Palo Alto, Ca.	
Richard A. Hanson	
McDermott Will & Emery LLP	
Chicago, IL	

Issue:
1. Whether Palatine Hills Leasing, which invested in leverage lease transactions, was part of the unitary business conducted by Square D Company.
2. Whether the income of Palatine Hills Leasing constituted business income of the unitary business conducted by Square D Company.
3. How the proceeds from the short-term investment of funds should be reflected in the sales factor of the apportionment formula.

Years: 1985 through 1990 — Amount $5,635,087.40

Status: **Mandatory Settlement Conference scheduled for April 26, 200. Trial scheduled for May 15, 2006.**

STAPLES, MARK A. v. Taxpayer Advocate Bureau, Franchise Tax Board, and State Board of Equalization
Sacramento Superior Court Docket No.04AS03598 — Filed – 09/03/04

Taxpayer's Counsel	*FTB's Counsel*
Mark A. Staples, In Pro Per	Michael J. Cornez

Issues: 1. Whether the method used by California to compute the tax owed by part-year resident violates various provisions of the United States Constitution.
2. Whether the department's review and disposition of the plaintiff's objections to additional tax were properly handled.

Year: 1998 Amount $1,141.00

Status: **Defendant's Notice of Motion for Summary Judgment or in the Alternative Summary Adjudication filed on November 14, 2005**.

TOY'S "R" US, INC. & AFFILIATES v. Franchise Tax Board
Sacramento Superior Court Docket No. 01AS04316 Filed - 07/17/01
Court of Appeal, 4th Appellate Court No. C045386

Taxpayer's Counsel	*FTB's Counsel*
Eric J. Coffill	Michael J. Cornez
Carley A. Roberts	
Morrison & Foerster, LLP	

Issue: Whether gross receipts from the sale of short-term financial investment were properly excluded from the documentation of the sales factor.

Years: 1991 through 1994 Amount $5,342,122.00

Status: Plaintiffs/Appellants' Reply Brief filed on August 19, 2004.

UNION BANK OF CALIFORNIA v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC 05441957 Filed – 06/06/05

Taxpayer's Counsel	*FTB's Counsel*
James P. Kleier, Brian Toman, John R. Messenger	Anne Michelle Burr
Reed Smith, LLP	

Issue: 1. Whether additions to the bad debt reserves of the taxpayer's unitary business were properly calculated.
2. Whether there were losses arising from the exchange of loans for bonds that are deductible as ordinary losses.
3. Whether the water's-edge election fee assessed violated the Commerce Clause of the United State Constitution.

Years: 1991 Amount $15,953,167.00

Status: **Court Notice filed on November 7, 2005. Mandatory Settlement Conference scheduled for October 26, 2006. Trial scheduled for November 13, 2006.**

VENTAS FINANCE I, LLC v. Franchise Tax Board
San Francisco Superior Court Docket No. 05-440001 — Filed – 04/01/05

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein, Edwin Antolin	Marguerite Stricklin
Silverstein & Pomerantz, LLP	

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax based upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clause.

Years: 2001 through 2003 — Amount $29,580.00

Status: Notice of Time and Place of Trial sent by the Court on September 6, 2005, and Short Cause Trial scheduled for March 6, 2006.

VERTULLO, JOHN & BARBARA v. Franchise Tax Board
San Diego Superior Court Docket No. GIC848577 — Filed – 06/07/05

Taxpayer's Counsel	*FTB's Counsel*
Denis W. Retoske, Esq.	Leslie Branman Smith

Issue:
1. Whether Plaintiffs are entitled to a deduction with respect to funds allegedly embezzled by a business associate during the years at issue.
2. Whether Notices of Proposed Assessment mailed with an incorrect zip code were adequate.
3. Whether Plaintiffs failure to raise the address issue in their appeal of a denial of a Claim for Refund to the Board of Equalization limits their use of that ground in a suit for refund after denial of their appeal.

Years: 1975 & 1978 — Amount $56,155.95

Status: Defendant's Answer to Complaint filed on August 8, 2005.

YOSHINOYA WEST, INC. v. Franchise Tax Board
Los Angeles Superior Court, Central District No. BC274343 — Filed - 05/22/02
Court of Appeal, 2nd Appellate Dist. No. B178751

Taxpayer's Counsel	*FTB's Counsel*
Dwayne M. Horii,	Donald R. Currier
William C. Choi	
Rodriguez, Horii & Choi	

Issues:
1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years: 1986 and 1987 — Amount $1,741,534.00

Status: Defendant/Respondent's Brief filed on September 26, 2005.