

**Mixing Net Receipts &
Gross Receipts Fails to
Fairly Reflect Jack in the
Box's CA Activities**

Rebuttal

May 14, 2025

Franchisee Sales are Principal Driver of Jack in the Box's Profitability

- FTB Brief pages 13 - 14: “...*the third-party franchisee activities neither generate income for Taxpayer nor directly contribute to Taxpayer's profits for tax purposes.*”
- Incorrect. As shown:
 - Franchisee Income = 4X company-owned restaurants
 - 90% of systemwide sales
 - 94% of all restaurants

FTB Audit Staff Agreed Franchisee Sales are Principal Driver of Jack in the Box's Profitability

- Quotes from FTB Audit Report:³

- “[B]oth revenue streams [either franchised or company-owned] were derived from the same underlying restaurant activity.”

Thus, both revenue streams were derived from the same underlying restaurant activity and the brand equity that JIB had created in the past 60 plus years. However, Taxpayer only

- JIB “was a franchisor that was in an integrated relationship with its franchisees.”

In this case, Taxpayer was a franchisor that was in an integrated relationship with its franchisees. JIB as the franchisor established the franchises operating business, business

Third-Party Activity in the Apportionment Formula

CRTC Section 25137

“[T]he taxpayer may petition for or the Franchise Tax Board may require, in respect to all or any part of the taxpayer’s business activity, if reasonable: . . . (d) ***The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer’s income.***”

Container v. Franchise Tax Board

The question is how we fairly measure the taxpayer’s business activities so that the “*factor or factors used in the apportionment formula . . . actually reflect a reasonable sense of how income is generated.*”

Precedent Including Third-Party Activity in the Formula

- Independent Contractors
 - CCR § 25136 & *Lancaster Colony Corp. v. Limbach* (1988) 37 Ohio St. 3d 198
- Sourcing Service and Intangible Receipts:
 - CCR § 25136-2 – Dividends Sourced to Dividend Payor's Factor(s)
 - Legal Ruling 2022-01 – Claims Processing, Sourced to Third-Party Policy Holders

Precedent Including Third-Party Activity in the Formula

- Government property and natural resources even if no rent is paid (factories/timber)
 - *McDonnell Douglas Corp. v. FTB* (1968) 69 Cal.2d 506, *Proctor & Gamble*, 89-SBE-028, CCR § 25129, 25130, 25137(b)(1)(B).
- Partnerships (partners include receipts on partnership tax returns)
- Freight Forwarders (independent/third-party common carrier mileage)

FTB's Inconsistent Treatment of the Standard Formula

	Included in Formula?	Increase CA Tax?
Franchise Restaurant Sales	✗	✓
Sale of JIB Restaurants	✓	✓
Sale of Qdoba Restaurants	✗	✓
Qdoba Transitional Employee Service Income	✗	✓
Franchise Fees for Marketing	✗	✓

Our remedies are simple and consistent.

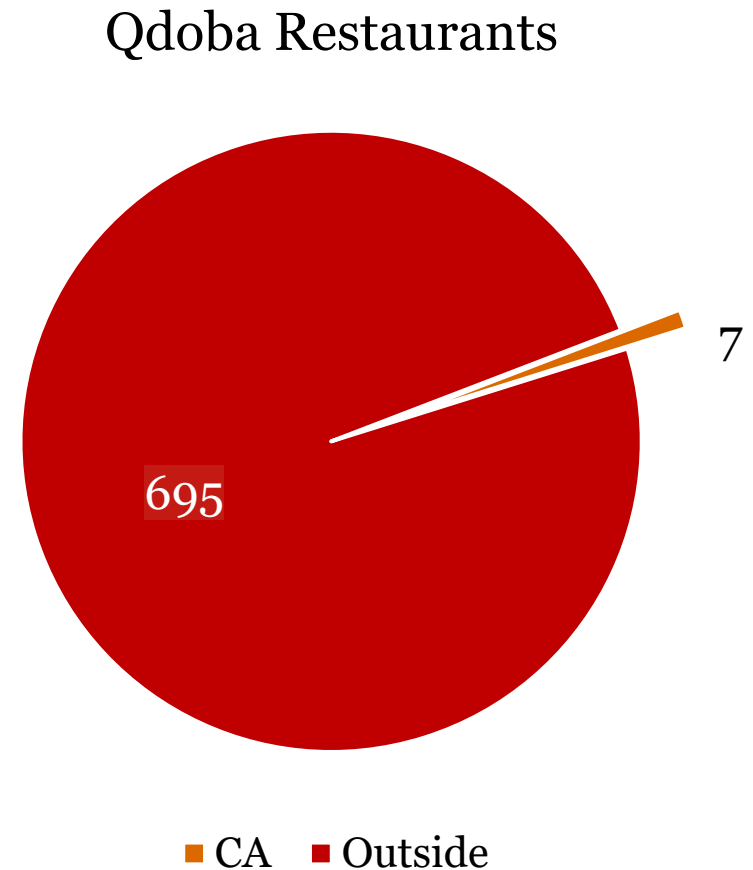
The Standard is Fair Representation - Causation is Not Relevant

“The statutory touchstone remains an **inquiry into whether the formula ‘fairly represent[s]’ a unitary business’s activities in a given state**, and when it does not, the relief provision [Section 25137] may apply.”

➤ *Microsoft Corp. v. Franchise Tax Bd. (2006) 39 Cal. 4th 750, 770.*

Qdoba Restaurant Breakdown

- 99% of Qdoba restaurants are outside of California.
 - Qdoba had 7 restaurants in California and an average of 695 outside California.
- Evenly spread between company-owned and franchised, both in California and everywhere.



JIB Restaurant Apportionment without Qdoba

	2014	2015	2016	2017	2018	2019	2020
JIB Restaurant Apportionment	56%	58%	60%	59%	58%	60%	63%
JIB Restaurants in CA	41%	41%	41%	41%	41%	41%	42%

Distortion Percentage Range: **36% - 50%**

General Mills Says 8% Unfair Apportionment Can't Be Excused as a “Rough Approximation”

	1992	1993	1994	1995	1996	1997
As Filed Apportionment	10.5%	10.8%	10.3%	9.5%	9.3%	8.9%
Post Remedy	10.9%	11.2%	11%	10.4%	10.8%	10.2%

Distortion Percentage Range: **3.5% - 13.8%**