



STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
P. O. Box 1720
Rancho Cordova, CA 95741-1720

STEVE WESTLY
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CAROLE MIGDEN
Member
STEVE PEACE
Member

April 30, 2003 Franchise Tax Board Litigation Roster

All cases currently active 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 is also provided of new cases that have been added to the roster for the month 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: www.ftb.ca.gov/legal/Lit_roster.pdf

The Litigation Roster on the Internet site will be the latest version. It is normally revised on a monthly basis.

FRANCHISE AND INCOME TAX
CLOSED CASES – APRIL 2003

Case Name

Court Number

Rautenberg, Erwin

Los Angeles Superior Court No. BC254725

FRANCHISE AND INCOME TAX
NEW CASES – APRIL 2003

Case Name

Court Number

Hardie, George G.

Los Angeles Superior Court Docket No. BC292256

K-Mart Corporation

U.S. Bankruptcy Court for the Northern District of Illinois Eastern
Division Case No. 02-B02474 - Adversary Proceeding. No. 03A01420

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

APRIL 2003

AMDAHL CORPORATION v. Franchise Tax Board

San Francisco Superior Court Docket No. 321296

Filed – 05/14/01

Appellate Court 1st District Court No. A101101 (FTB)

Appellate Court 1st District Court No. A101203 (Amdahl)

Taxpayer's Counsel

Timothy K. Roake

Fenwick & West LLP

FTB's Counsel

Kristian Whitten

- Issues
1. Whether Section 25106 was properly applied to the facts of this case in a manner which does not discriminate against foreign commerce.
 2. Whether Section 24411 was properly applied in this case.
 3. Whether Section 24411 discriminates against foreign commerce.
 4. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is a dividend for purposes of Sections 24411 and 25106 of the Revenue and Taxation Code.
 5. Whether the amount received from the United Kingdom as a credit for amounts paid under the United Kingdom's Advanced Corporate Tax is gross income.

Years 1988, 1989, 1991 and 1992 Amount \$2,935,439.00

Status **Defendant/Appellant's Opening Brief filed April 28, 2003. Order Granting Motion for Attorneys' Fees filed April 29, 2003.**

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

Sacramento Superior Court Docket No. 03AS00707

Filed – 02/07/03

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts

Morrison & Foerster, LLP

FTB's Counsel

Steven J. Green

- Issue
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 **Discovery proceeding.**

DAVIS, CRYSTAL TIFFANY v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC261559

Filed – 11/09/01

Taxpayer's Counsel

Martin N. Segal, Esq.

FTB's Counsel

Elisa B. Wolfe

Issue Whether a portion of an amount received in the settlement of a lawsuit was properly characterized as punitive damages and included in taxable income.

Year 1991 Amount \$5,038.00

Status **Notice of Continuance of Order to Show Cause Re: Dismissal filed April 28, 2003.**

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

Joanne Garvey, & Teresa Maloney
Heller, Ehrman, White & McAuliffe

FTB's Counsel

Steven J. Green

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 Waiting for Court of Appeal to set date for Oral Argument.

FARMER BROS. CO. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC237663 Filed - 09/29/00

Court of Appeal, 2nd Appellate District Court No. 160061

Taxpayer's Counsel

Robin C. Campbell, Esq.
Anglin, Flewelling, Rasmussen, Campbell & Trytten, LLP

FTB's Counsel

Dean Freeman

Issue Whether Section 24402 of the Revenue and Taxation Code is unconstitutional under the United States Constitution.

Years 06/30/92 through 6/30/98 Amount \$814,705.00

Status **Oral Argument held on April 23, 2003.**

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC-02-404182 Filed - 02/06/02

Taxpayer's Counsel

John E. Cassinat & Ronald L. Carello
Cassinat Law Corporation

FTB's Counsel

Marguerite Stricklin

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 Trial continued on March 17, 2003.

FREYERMUTH, JANINE v. Franchise Tax Board

San Francisco Superior Court Docket No. 308985

Taxpayer's Counsel

Janine Freyermuth, In Pro Per

Filed – 01/04/00

FTB's Counsel

Randall P. Borcharding

Issue Whether the taxpayer was a resident of California.

Years 1986 and 1987 Amount \$47,471.00

Status Order to Show Cause Re: Dismissal (CRC225).

FREYERMUTH, REED v. Franchise Tax Board

San Francisco Superior Court Docket No. 308973

Taxpayer's Counsel

Joel K. Belway, Esq.

Filed – 01/04/00

FTB's Counsel

Randall P. Borcharding

Issue Whether the taxpayer was a resident of California.

Years 1986 and 1987 Amount \$47,471.00

Status U.S. Bankruptcy Court Order – Discharge of Debtor granted on February 19, 2003.

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC269404

Court of Appeal, 2nd Appellate District No. B165665

Taxpayer's Counsel

Charles R. Ajalat

Law Office of Ajalat, Polley & Ayoob

Filed – 03/06/02

FTB's Counsel

Stephen Lew, 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 **Respondent and Cross-Appellant Franchise Tax Board's Proposed Briefing Sequence Pursuant to Rule 16(a) of California Rules of Court filed April 25, 2003.**

HARDIE, GEORGE G. v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC292256
Taxpayer's Counsel
Richard E. Posell, Gregory P. Korn
Greenberg, Glusker, Fields, Claman,
Machtinger & Kinsella, LLP

Filed – 03/18/03
FTB's Counsel
Anthony Sgherzi
George M. Takenouchi

Issue **Whether Plaintiff was a resident of California of the year in issue.**

Year 1993 Amount \$1,172,932.00

Status **Summons and Complaint served by mail on the Franchise Tax Board on April 4, 2003. Plaintiff served the same complaint personally on April 17, 2003.**

HYATT, GILBERT P. v. Franchise Tax Board
Clark County Nevada District Court No. A382999
Nevada Supreme Court Case No. 35549 – Docket No. 36390 & 39274
U.S. Supreme Court No. 02-42
Taxpayer's Counsel
Thomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen
H. Bartow Farr III

Filed - 01/06/98

FTB's Counsel
Felix Leatherwood

- 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 \$13,204,611.00

Status **United States Supreme Court:
 Supreme Court Affirmed in favor of Respondent and against Franchise Tax Board on April 23, 2003.**

Nevada Supreme Court:

Docket No. 35549: Appellant's Notice of Firm Name Change from McDonald Carano Wilson, McCune Bergin, Frankovich & Hicks LLP to McDonald Carano Wilson LLP, filed November 20, 2002.

Clark County District Court:

Trial scheduled for February 3, 2004.

IN THE CLUB, INC. AND PURE CLASS, INC. v. Franchise Tax Board

Los Angeles Superior Court Docket No. 02K17484

Filed – 09/20/02

Los Angeles Superior Court No. BC293295

Taxpayer's Counsel

Charles P. Rettig, Steven D. Blanc, Sharyn Fisk
Hochman, Salkin, Rettig, Tocher & Perez, P.C.

FTB's Counsel

George M. Takenouchi

Issue Whether penalties for the late payment of taxes were properly assessed.

Year 1999 Amount \$12,819.00 Penalty

Status **Notice of Incoming Transfer filed April 8, 2003, assigned to Judge Mel Recana in Dept. 45.**

J.H. MCKNIGHT RANCH, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 303484

Filed - 05/13/99

Court of Appeal, 1st Appellate District No. A098729

Taxpayer's Counsel

Jon S. Siamas, Esq.
Carl J. Stoney, Esq.
Crosby, Heafey, Roach & May

FTB's Counsel

David Lew

Issues

1. Whether the court has jurisdiction when the interest owing with respect to the underlying assessment has not been paid.
2. Whether the "tax benefit" rule operates to allow income realized from the cancellation of indebtedness to be disregarded.
3. Whether the "contested liability doctrine" allows deductions incurred in prior years to be reported in the year the indebtedness was discharged.

Year 1990 Amount \$97,258.00

Status Defendant/Appellant's Reply Brief filed on March 28, 2003. **Letter Brief to Hon. Barbara J. R. Jones, FTB Opposes McKnight's Request to "strike or disregard" pages 14 through 17 of Appellant's Reply Brief.**

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Taxpayer's Counsel

Charles J. Moll III

Edwin P. Antolin

Morrison & Foerster LLP

Filed - 05/21/02

FTB's Counsel

George C. Spanos

- 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 Defendant's Case Management Statement filed on March 7, 2003.

K-MART, CORPORATION, et al. v. Franchise Tax Board

U.S. Bankruptcy Court for the Northern District of Illinois

Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420

Taxpayer's Counsel

Charles F. Smith

Skadden, Arps, Slate, Meagher & Flom

Filed – 04/11/03

FTB's Counsel

Michael Cornez

Larry Fischer

- Issues
1. Whether gain realized on the sale of 20+% interest in an Australian retailer, Coles, was business income.
 2. Whether the gain realized on the sale of the interest in Coles was properly treated for AMT purposes.
 3. Whether dividends and interest received with respect to Coles was business income.
 4. Whether the taxpayer's request to account for its Canadian inventory on a LIFO basis was properly denied.
 5. Whether two insurance subsidiaries were properly excluded from the combined report.
 6. If the insurance subsidiaries were includible in the combined report, whether adjustments need to be made to the property and sales factors.
 7. Whether proceeds from the short-term investment of financial assets were properly excluded from the sales factor.
 8. Whether section 24402 is constitutional.
 9. Whether adjustments based upon federal RAR's were correctly made.
 10. Whether there were other unspecified errors in adjustments made or not made to the taxpayer's returns.
 11. Whether an under-payment penalty was properly imposed.

Years 1986-1989, 1992-1994, 1999 and 2000 Amount \$3,524,625.00 - Tax
\$ 82,590.01 - Penalty

Status Summons and Complaint Under 11 U.S.C. § 505 U.S. Bankruptcy Court for the Northern District of Illinois Eastern Division was filed by fax on April 17, 2003.

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board

Alameda Superior Court Docket No. 837723-0

Filed – 04/09/01

Taxpayer's CounselFTB's Counsel

Amy L. Silverstein, Anthony P. Canini and

Joyce Hee

Andres Vallejo

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 **Order on Motions for Summary Judgment, Granting Defendant's Motion and Denying Plaintiffs' Motion filed April 11, 2003. Trial scheduled for June 23, 2003.**

Longbrook, Michael G. & Barbara J. v. Franchise Tax Board

Los Angeles Superior Court Docket No. 02K21208

Filed – 11/18/02

Taxpayer's CounselFTB's Counsel

Michael G. & Barbara J. Longbrook, In Pro Per

Elisa Wolfe

Issue Whether the frivolous return penalty provided by § 19179 has been properly assessed.

Years 1997 and 1998 Amount \$1,000.00 Penalty

Status Hearing on Plaintiffs' Request for Default; Default granted \$2.00 given to Plaintiffs on February 14, 2003.

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

Taxpayer's CounselFTB'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 **Trial scheduled for June 9, 2003.**

MARRO, DONALD C. AND LILLIAN S. CLANCY v. Franchise Tax Board

San Francisco Superior Court Docket No. CGC 02-414788 Filed – 11/18/02

Taxpayer's Counsel

Donald C. Marro, In Pro Per

FTB's Counsel

Kristian Whitten

Issue Whether assessments based on federal adjustments were timely made.

Years 1993 and 1994 Amount \$9,267.00

Status **Hearing on Defendant's Demurrer - Order Sustaining Demurrer to First Amended Complaint Without Leave to Amend and Judgment Thereon in favor of FTB filed April 2, 2003. Notice of Entry of Judgment filed April 2, 2003. Defendant's Case Management Statement filed April 8, 2003.**

MARTIN, SCOTT R. v. Franchise Tax Board

US Dist. Ct, Northern District of California Case No. C02-05446

Filed – 11/18/02

Taxpayer's Counsel

Scott R. Martin, In Pro Per

FTB's Counsel

Anne Michelle Burr

Issue Whether 46 USC § 11108 AND 11109 exempts the income of a merchant seaman from taxation.

Year 1999 Amount \$9,399.00

Status **Hearing on the Motion to Dismiss scheduled for June 17, 2003.**

MCMENAMIN, JAMES & KATHRYN v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC223616

Filed – 01/25/00

Taxpayer's Counsel

Kathryn McMenamin-Torres

Callero & McMenamin-Torres

FTB's Counsel

Thomas Heller

- Issues
1. Whether the plaintiffs were residents of California during the subject years.
 2. Whether the consideration of certain facts in making a determination of residency was constitutional.
 3. Whether the amount of net operating loss claimed on a 1989 nonresident return was properly calculated.
 4. Whether dividend income from a particular investment fund was exempt from California taxation.
 5. Whether a negligence penalty was properly imposed.
 6. Whether a failure to furnish information penalty was properly imposed.
 7. Whether interest should be abated on any deficiencies which may exist.
 8. Whether plaintiffs are entitled to attorney's fees.

Years 1986 through 1989 Amount \$99,663.00 Tax
\$69,383.55 Penalty

Status Minute Order, Judgment in favor of Plaintiffs filed March 17, 2003.

MICROSOFT Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444

Taxpayer's Counsel

James P. Kleier, Esq.

Preston Gates & Ellis, LLP

Filed – 10/19/01

FTB's Counsel

Julian O. Standen

- 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 Trial postponed to May 19, 2003.

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC772282

Taxpayer's Counsel

Steve Mather.

Kajan, Mather and Barish

Filed – 08/27/01

FTB's Counsel

Leslie Branman-Smith

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 Trial Conference held on March 14, 2003. Trial held on March 25, 2003.

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board

San Diego Superior Court Docket No. GIC773381

Taxpayer's Counsel

Steve Mather.

Kajan, Mather and Barish

Filed – 08/27/01

FTB's Counsel

Leslie Branman-Smith

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 Trial Conference held on March 14, 2003. Trial held on March 25, 2003.

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Taxpayer's CounselCharles J. Moll III, Edwin P. Antolin, Pilar M. Sansone
Morrison & Foerster LLP

Filed – 12/30/02

FTB's Counsel

Gregory Price

- 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 Answer to the Complaint filed on January 31, 2003.

NOBLE, HOMER E. AND STEPHANIE F. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC273634

Taxpayer's Counsel

Richard W. Craigo

Filed - 05/09/02

FTB's Counsel

Anthony Sgherzi

Issue The issue is on what date during 1994 did plaintiffs cease to be residents and domiciliaries of California?

Year 1994 Amount \$151,632.00

Status **Judgment After Trial in favor of Defendant filed on April 11, 2003.**

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

Los Angeles Superior Court Case No. BC278386

Taxpayer's Counsel

Richard C. Field

Bingham McCutchen LLP

Filed – 07/25/02

FTB's Counsel

David Bornstein

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status **Plaintiffs' Motion for Summary Judgment Denied on April 25, 2003. Trial scheduled for May 5, 2003.**

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board

San Francisco Superior Court Docket No. 319008

Taxpayer's Counsel

Allan L. Schare

McDermott, Will & Emery

Filed – 02/20/01

FTB's Counsel

David Lew

Anne M. Burr

Issue What is the proper amount of depreciation deduction with respect to property acquired from former unitary affiliates?

Years 1987 through 1990 Amount \$9,960,422.00

Status **Defendant's Closing Brief filed on April 2, 2003. Plaintiff's Closing Trial Brief filed April 2, 2003. Parties agreed to have the case deemed submitted on April 25, 2003.**

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board

San Francisco Superior Court Docket No. 324518

Taxpayer's Counsel

Edward Winslow

Layman, Lempert & Winslow

Filed – 09/13/01

FTB's Counsel

Marguerite Stricklin

Issues 1. Whether the plaintiffs became residents of California on April 10, 1990.
2. Whether "guaranteed payments" received by plaintiffs while residents of California from a partnership could be included in the income taxed by California.

Years 1990, 1996 through 1999 Amount \$144,278.00

Status **Defendant's Notice of Appeal filed on April 23, 2003.**

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board

San Francisco Superior Court Docket No. 414931

Taxpayer's Counsel

Jeffrey M. Vesely, Esq.

Richard E. Nielsen, Esq.

Pillsbury Winthrop, LLP

Filed – 11/21/02

FTB's Counsel

David Lew

Issue Whether California definition of gross income incorporated amendments to the Internal Revenue Code dealing with losses of Alaska Native Corporation.

Years 1986 and 1987 Amount \$1,138,512.00

Status Discovery proceeding. **Motion for Summary Judgment to be filed July 8, 2003. Trial scheduled for October 20, 2003.**

ROBINSON, CHERISH F. v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC261557

Taxpayer's Counsel

Martin N. Segal, Esq.

Filed – 11/09/01

FTB's Counsel

Elisa B. Wolfe

Issue Whether a portion of an amount received in the settlement of a lawsuit was properly characterized as punitive damages and included in taxable income.

Year 1991 Amount \$5,038.00

YOO, Won S. and Insook v. Franchise Tax Board

San Diego Superior Court Docket No. GIC807106

Taxpayer's Counsel

Daniel J. Cooper, Esq.

Law Offices of Daniel J. Cooper

Filed – 03/13/03

FTB's Counsel

Leslie Branman Smith

Issue Whether the taxpayers are entitled to a charitable deduction on the sale of property to The Nature Conservatory.

Years 1991 and 1994 Amount \$178,858.00

Status **Answer to the Complaint filed April 29, 2003.**

YOSHINOYA WEST, INC. v. Franchise Tax Board

Los Angeles Superior Court, Central District No. BC274343

Taxpayer's Counsel

Dwayne M. Horii

William C. Choi

Rodriguez, Horii & Choi

Filed - 05/22/02

FTB's Counsel

Donald R. Currier

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 Trial Scheduled for November 12, 2003.