



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

STEVE WESTLY  
Chair  
CAROLE MIGDEN  
Member  
STEVE PEACE  
Member

### May 31, 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](http://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 – MAY 2003

Case Name

Court Number

McMenamin, James & Kathryn

Los Angeles Superior Court No. BC223616

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FRANCHISE AND INCOME TAX  
NEW CASES – MAY 2003

Case Name

Court Number

U.S. Airways Groups, Inc., et al.

U.S. Dist. Ct., Eastern Dist. of Virginia, No. 02-83984-SSM

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

**MAY 2003**

**AMDAHL CORPORATION v. Franchise Tax Board**

San Francisco Superior Court Docket No. 321296

Filed – 05/14/01

Appellate Court 1<sup>st</sup> District Court No. A101101 (FTB)

Appellate Court 1<sup>st</sup> District Court No. A101203 (Amdahl)

Taxpayer's Counsel

FTB's Counsel

Timothy K. Roake

Kristian Whitten

Fenwick & West LLP

- 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's Notice of (1) Appeal from Order Granting Motion for Attorneys' Fees, and (2) Related Appeals filed on May 6, 2003. Defendant's Notice Designating Reporter's Transcript on Appeal, Notice to Prepare Clerk's Transcript filed May 7, 2003. Clerk's Notice of Filing of Notice of Appeal filed May 9, 2003.**

**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

- 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

FTB's Counsel

Martin N. Segal, Esq.

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, 3<sup>rd</sup> Appellate District, No. 3-CV-C020733

Taxpayer's Counsel

FTB's Counsel

Joanne Garvey, & Teresa Maloney

Steven J. Green

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 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, 2<sup>nd</sup> Appellate District Court No. 160061

Taxpayer's Counsel

FTB's Counsel

Robin C. Campbell, Esq.

Dean Freeman

Anglin, Flewelling, Rasmussen, Campbell & Trytten, LLP

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 **Judgment affirmed by the Court of Appeal in favor of Plaintiff/Respondent on May 21, 2003. Certified for Publication.**

**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

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 Trial continued on March 17, 2003.

**FREYERMUTH, JANINE v. Franchise Tax Board**

San Francisco Superior Court Docket No. 308985

Filed – 01/04/00

Taxpayer's Counsel

FTB's Counsel

Janine Freyermuth, In Pro Per

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

Filed – 01/04/00

Taxpayer's Counsel

FTB's Counsel

Joel K. Belway, Esq.

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

Filed – 03/06/02

Court of Appeal, 2<sup>nd</sup> Appellate District No. B165665

Taxpayer's Counsel

FTB's Counsel

Charles R. Ajalat

Stephen Lew, Donald

Law Office of Ajalat, Polley & Ayoob

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 **Plaintiffs/Appellants' Opening Brief, Appendix and Request for Judicial Notice filed May 9, 2003. Court of Appeal Order Granting Plaintiffs/Appellants' Request for Judicial Notice filed May 30, 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 for the year in issue.

Year 1993 Amount \$1,172,932.00

Status **Answer of Defendant Franchise Tax Board to Complaint for Declaratory Relief Regarding Tax Residency filed May 9, 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 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.

<u>Years</u>	1986-1989, 1992-1994, 1999 & 2000	<u>Amount</u>	\$3,524,625.00 - Tax \$ 82,590.01 - Penalty
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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 Counsel

FTB'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.

<u>Years</u>	1993 and 1994	<u>Amount</u>	\$2,185,718.00
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Status Trial scheduled for June 23, 2003. **Letter dated May 6, 2003, to Hon. Robert Freedman Re: Joint Request to Vacate Mandatory Settlement Conference and Trial Date.**

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

Los Angeles Superior Court Docket No. 02K21208

Filed – 11/18/02

Taxpayer's Counsel

FTB'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.

<u>Years</u>	1997 and 1998	<u>Amount</u>	\$1,000.00 Penalty
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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  
Court of Appeal, 1<sup>st</sup> Appellate Dist. No. A091644  
California Supreme Court No. S 104529

Filed - 04/05/99

Taxpayer's Counsel  
William E. Taggart, Jr.  
Taggart & Hawkins

FTB's Counsel  
Marguerite Stricklin

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 **Judgment on Order Sustaining Demurrers to First Amended Complaint Without Leave to Amend and Order of Dismissal filed April 30, 2003. Amended Notice of Entry of Judgment filed May 13, 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. **Plaintiff's Supplemental Opposition to Motion to Dismiss; Question at Law; Memorandum of Points and Authorities in Support of the Court's Jurisdiction to Hear; Declaratory Authority filed May 27, 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. Defendant's Motion for Summary Judgment Granted on April 25, 2003.

**PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board**

San Francisco Superior Court Docket No. 319008

Taxpayer's Counsel

Allan L. Schare

McDermott, Will &amp; 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 Parties agreed to have the case deemed submitted on April 25, 2003.

<b>PAINE, THOMAS &amp; TERESA A. NORTON v. Franchise Tax Board</b>	
San Francisco Superior Court Docket No. 324518	Filed – 09/13/01
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Edward Winslow	Marguerite Stricklin
Layman, Lempert & Winslow	

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. Clerk's Notice of Filing of Notice of Appeal filed April 25, 2003.

<b>THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board</b>	
San Francisco Superior Court Docket No. 414931	Filed – 11/21/02
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Jeffrey M. Vesely, Esq.	David Lew
Richard E. Nielsen, Esq.	
Pillsbury Winthrop, LLP	

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.

<b>ROBINSON, CHERISH F. v. Franchise Tax Board</b>	
Los Angeles Superior Court Docket No. BC261557	Filed – 11/09/01
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Martin N. Segal, Esq.	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.

**TIFFANY, ALEX A. & PATRICIA A. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC261558

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 \$6,953.00

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

**TOY'S "R" Us, Inc. & Affiliates v. Franchise Tax Board**

Sacramento Superior Court Docket No. 01AS04316

Taxpayer's Counsel  
Eric J. Coffill  
Carley A. Roberts

Filed - 07/17/01

FTB's Counsel  
Michael J. Cornez

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 Trial held on May 5, 2003.

**U.S. AIRWAYS GROUPS, INC. et al. v. Franchise Tax Board**

U.S. Bankruptcy Court, Eastern Dist. of Virginia No. 02-83984-SSM

Taxpayer's Counsel

Filed – 05/13/03

FTB's Counsel

Issue What date plaintiff and several subsidiaries became a single unitary business?

Year 1988 Amount \$2,651,934.78

Status Summons and Complaint served by mail on Franchise Tax Board on May 19, 2003.

**WEINGARTEN, SAUL M. v. Franchise Tax Board**

San Francisco Superior Court Docket No. 996766

Taxpayer's Counsel  
Saul M. Weingarten  
Saul M. Weingarten & Associates

Filed - 7/28/98

FTB's Counsel  
Marguerite Stricklin

