



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

July 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

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 – JULY 2003

Case Name

Court Number

Davis, Crystal Tiffany

Los Angeles Superior Court No. BC261559

Robinson, Cherish F.

Los Angeles Superior Court No. BC261557

Tiffany, Alex A. & Patricia A.

Los Angeles Superior Court No. BC261558

FRANCHISE AND INCOME TAX

NEW CASES – JULY 2003

Case Name

Court Number

Ackerman, Peter & Joanne Leedom-Ackerman Los Angeles Superior Court Docket No. BC296334

- 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 Plaintiff/Respondent's Request for Judicial Notice, [Proposed] Order Granting Request for Judicial Notice, Combined Respondent's Brief and Cross-Appellant's Opening Brief of Amdahl Corporation filed June 27, 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

- 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 Discovery proceeding.

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 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
Court of Appeal, 2nd Appellate District Court No. 160061
California Supreme Court No. S117131

Filed – 09/29/00

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 **Response of Farmer Bros. Co. to Petition for Review to the California Supreme Court filed July 17, 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 completed on May 22, 2003. **Judge to review pleadings and issue a statement of decision by August 7, 2003.**

FREYERMUTH, JANINE v. Franchise Tax Board

San Francisco Superior Court Docket No. 308985

Filed – 01/04/00

Taxpayer's Counsel

Janine Freyermuth, In Pro Per

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 **Approval of Extension of Time to File Combined Opening Brief granted on July 18, 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
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 Clark County District Court:
 FTB's Consolidated Reply in Support of Its Motions to Compel Deposition Responses and Production of Documents re: Kern and Cowan filed June 30, 2003. Defendant's Consolidated Reply in Support of Its Motions to Compel Deposition, Responses and Production of Documents Re: Kern and Cowan filed June 30, 2003.

IN THE CLUB, INC. AND PURE CLASS, INC. v. Franchise Tax Board
 Los Angeles Superior Court Docket No. 02K17484
 Los Angeles Superior Court No. BC293295
Taxpayer's Counsel
 Charles P. Rettig, Steven D. Blanc, Sharyn Fisk
 Hochman, Salkin, Rettig, Tocher & Perez, P.C.

Filed – 09/20/02
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 Joint Stipulation for Settlement; Payment and Dismissal; Order Thereon filed June 2, 2003. Defendant's Notice of Entry of Order for Joint Stipulation for Settlement, Payment and Dismissal filed June 4, 2003.

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

San Francisco Superior Court Docket No. 303484
Court of Appeal, 1st Appellate District No. A098729

Filed - 05/13/99

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.

<u>Year</u>	1990	<u>Amount</u>	\$97,258.00
-------------	------	---------------	-------------

Status **Appellate Court Decision rendered on July 22, 2003, affirming the judgment in favor of Plaintiff.**

JIM BEAM BRANDS CO. v. Franchise Tax Board

San Francisco Superior Court No. CGC-02-408203

Filed - 05/21/02

Taxpayer's Counsel

Charles J. Moll III
Edwin P. Antolin
Morrison & Foerster LLP

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.

<u>Year</u>	1987	<u>Amount</u>	\$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

Filed – 04/11/03

Taxpayer's Counsel

Charles F. Smith
Skadden, Arps, Slate, Meagher & Flom

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
--------------	--------------------------------------	---------------	--

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
Andres Vallejo
Morrison & Foerster, LLP

Joyce Hee

- | | |
|---------------|--|
| <u>Issues</u> | <ol style="list-style-type: none"> 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
--------------	---------------	---------------	----------------

Status **On June 6, 2003, a Request for Dismissal on Plaintiffs' third and fourth causes of action set forth on the First Amended Complaint was filed; Plaintiffs also filed a Notice of Appeal, Notice of Election to Proceed Under Rule 5.1, and Notice Designating Reporter's Transcript.**

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
--------------	---------------	---------------	--------------------

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 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 **On July 25, 2003, the judge made a decision on some procedural issues and set a status conference for September 8, 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 Plaintiffs' Notice of Appeal filed May 23, 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 **Judge's Order issued granting Defendant's Motion to Dismiss on July 1, 2003.**

MICROSOFT Corporation v. Franchise Tax Board

San Francisco Superior Court Docket No. 400444

Filed – 10/19/01

Taxpayer's Counsel

James P. Kleier, Esq.

Preston Gates & Ellis, LLP

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 **Parties' Post-Trial Briefs filed on July 14, 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 Ruling After Submission of Matter for Decision filed June 13, 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 Ruling After Submission of Matter for Decision filed June 13, 2003.

MONTGOMERY WARD LLC v. Franchise Tax Board

San Diego Superior Court Docket No. GIC802767

Taxpayer's Counsel

Charles 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 Discovery proceeding.

NEW GAMING SYSTEMS, INC. v. Franchise Tax Board

U.S. District Court For The Eastern Dist. No. CIVS-03-1126

Taxpayer's Counsel

Spencer T. Malysiak

Spencer T. Malysiak Law Corp.

Filed – 05/27/03

FTB's Counsel

Michael J. Cornez

Issues 1. Whether the federal courts have jurisdiction to review a denial of a claim for refund of state taxes and issue a declaratory judgment as to plaintiff's liability for state taxes.
2. Whether the Indian Gaming Regulatory Act (25 U.S.C. 2701) pre-empts state taxation of income earned by non-Indians from operating a casino.

Year 1996 Amount \$2,562.93

Status Plaintiff's Complaint for Declaratory Judgment; Refund of Taxes Paid filed May 27, 2003, and served on Franchise Tax Board on June 2, 2003. Defendant's Notice of Motion and Motion to Dismiss Complaint for Lack of Subject Matter Jurisdiction, Memorandum of Points and Authorities in Support of Its Motion to Dismiss filed June 17, 2003.

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

Los Angeles Superior Court Docket No. BC273634

Court of Appeal, 2nd Appellate Dist. No. B167881

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 Notice of Appeal filed by Plaintiff on June 16, 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 **On July 2, 2003, the Judgment Granting Motion of Defendant FTB for Summary Judgment was filed. Notice of Entry of Judgment filed on July 9, 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 **Judge's Tentative Decision was issued on July 1, 2003, determining that judgment be rendered for defendant FTB and against plaintiff Pacific Telesis.**

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 **By letter dated July 8, 2003, FTB informed by the court that its opening brief is due on August 8, 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 **Parties' Motions for Summary Judgment filed on July 3, 2003, and hearing date set for September 13, 2003, with a Settlement Conference set for September 29, 2003. Trial set for October 20, 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 All Post-Trial Reply Briefs filed by June 12, 2003; awaiting court's decision.

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

John Wm Butler, Jr., John K. Lyons, Esq.

Skadden, Arps, Slate, Meagher & Flom

Filed - 05/13/03

FTB's Counsel

Lawrence K. Keethe

Mark D. Silvershotz

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

Year 1988 Amount \$2,651,934.78

Status **Status hearing re: Debtor's objection to FTB's claim set for September 18, 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

- Issues
1. Whether the Board of Equalization followed proper procedures in considering the taxpayer's appeal.
 2. Whether taxpayer's real estate investments were subject to passive activity loss limitations.
 3. Whether FTB properly calculated depreciation with respect to various properties.
 4. Whether FTB properly calculated the sales price of a piece of property sold by the taxpayer.
 5. Whether penalties were improperly imposed.

Years 1987 through 1989 Amount \$88,966.00 Tax
\$22,241.75 Penalty

Status Answer to Complaint filed October 27, 1998.

