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

STEVE WESTLY
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Member

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Member

August 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 – AUGUST 2003**

| **Case Name** | **Court Number** |
| --- | --- |
| In The Club, Inc. & Pure Class, Inc. | Los Angeles Superior Court No. BC293295 |

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FRANCHISE AND INCOME TAX

**NEW CASES – AUGUST 2003**

| **Case Name** | **Court Number** |
| --- | --- |
| Jibilian, Tony and Dorothy | Los Angeles Superior Court No. BC298685 |
| OTN, Inc. & Affiliates | Los Angeles Superior Court No. BC301102 |
| Ventas, Inc. & Subsidiaries | San Francisco Superior Court No. CGC03423154 |
| Weaver, John H. & Lois R. | Los Angeles Superior Court No. BC 296238 |

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

**AUGUST 2003**

**ACKERMAN, PETER & JOANNE v. Franchise Tax Board**
Los Angeles Superior Court Docket No. BC296334 — Filed – 05/23/03

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

*FTB's Counsel*
Anthony Sgherzi

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: **Status Conference held on August 27, 2003.**

**AGUA CALIENTE BAND OF CAHUILLA INDIANS v. Franchise Tax Board**
U.S. District Court Central District of California No. 03-4116-GAF — Filed – 06/11/03

*Taxpayer's Counsel*
Art Bunce, Kathryn Clenney
Law Offices of Art Bunce

*FTB's Counsel*
Herbert A. Levin

Issues
1. Whether individuals living on land located within the boundaries of an Indian reservation, but where title is held by an individual, are exempt from state taxation.
2. Whether income received by individuals living on land located within the boundaries of an Indian reservation, but where title is held by individuals as the result of Indian tribal activity, is exempt from state taxation.

Years: Unknown — Amount: $1.00 or more

Status: Plaintiff's Complaint for Declaratory Relief filed on June 11, 2003. Extension obtained so that FTB's Answer is due on September 15, 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 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 — Filed – 09/29/00
Court of Appeal, 2nd Appellate District Court No. 160061
California Supreme Court No. S117131

| *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: **Defendant/Appellant's Petition for Review denied on August 27, 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* | *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: **Waiting for Judge Goldsmith's Statement of Decision.**

**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. Borcherding |

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. Borcherding |

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, 2nd 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 **Defendant/Respondent's Request for Judicial Notice, Defendant/Respondent Brief and Appendix filed August 21, 2003. Plaintiff/Appellant's Opposition to Request to Take Judicial Notice filed August 28, 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 **Discovery proceeding.**

**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.

**J.H. MCKNIGHT RANCH, INC. v. Franchise Tax Board**
San Francisco Superior Court Docket No. 303484
Court of Appeal, 1st Appellate District No. A098729
*Taxpayer's Counsel*
Jon S. Siamas, Esq., Carl J. Stoney, Esq.
Crosby, Heafey, Roach & May

Filed - 05/13/99
*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 Petition for Rehearing filed August 6, 2003. Plaintiff/Respondent's Answer to Petition for Rehearing filed August 14, 2003. Amended Proof/Service for Answer to Petition for Rehearing filed August 18, 2003. Order Denying Petition for Rehearing, Modification of Opinion filed (no change in judgment). The Request to Depublish was denied on August 19, 2003.**

**JIBILIAN, TONY & DOROTHY v. Franchise Tax Board**
**Los Angeles Superior Court Docket No. BC298685** **Filed – 07/09/03**

| ***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 through 2001** **Amount** **$208,742.00**

**Status** **Summons and Complaint filed July 9, 2003, and served personally on the Franchise Tax Board on August 20, 2003.**

**JIM BEAM BRANDS CO. v. Franchise Tax Board**
San Francisco Superior Court No. CGC-02-408203 Filed - 05/21/02

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Charles J. Moll III | George C. Spanos |
| Edwin P. Antolin | |
| Morrison & Foerster LLP | |

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 Filed – 04/11/03
Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Charles F. Smith | Michael Cornez |
| Skadden, Arps, Slate, Meagher & Flom | 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 & 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
**Court of Appeal, 1st Appellate District Court No. A102915**

| *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 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.

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 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 **Defendant's Stipulation for Extended Time to File Briefs on Appeal filed August 8, 2003, and Motion to Transfer Appeal to the Court of Appeal for the First Appellate District filed August 21, 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 — Filed – 08/27/01

*Taxpayer's Counsel*
Steve Mather.
Kajan, Mather and Barish

*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 — Filed – 08/27/01

*Taxpayer's Counsel*
Steve Mather.
Kajan, Mather and Barish

*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 — Filed – 12/30/02

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

*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 — Filed – 05/27/03

*Taxpayer's Counsel*
Spencer T. Malysiak
Spencer T. Malysiak Law Corp.

*FTB's Counsel*
Michael J. Cornez

Issue
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.

Years 1996 — Amount $2,562.93

Status **Defendant's Motion to Dismiss granted on August 11, 2003. The Court gave Plaintiffs Leave to Amend the Complaint.**

**NOBLE, HOMER E. AND STEPHANIE F. v. Franchise Tax Board**
Los Angeles Superior Court Docket No. BC273634 — Filed - 05/09/02
Court of Appeal, 2nd Appellate Dist. No. B167881

*Taxpayer's Counsel*
Richard W. Craigo

*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 — Filed – 07/25/02
**Court of Appeal, 2nd Appellate Dist. No. B169465**

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Richard C. Field | David Bornstein |
| Bingham McCutchen LLP | |

Issue: Whether the tax involved was timely assessed.

Year: 1983 — Amount: $12,350.00

Status: **Plaintiffs' Notice of Appeal filed August 22, 2003. Civil Case Information Statement filed on August 29, 2003.**

**OTN, INC. & AFFILIATES v. Franchise Tax Board**
**Los Angeles Superior Court Docket No. BC301102** — **Filed – 08/20/03**

| ***Taxpayer's Counsel*** | ***FTB's Counsel*** |
|---|---|
| **Thomas K. Bourke** | **Anthony Sgherzi** |
| **Law Office of Thomas K. Bourke** | |

**Issue**: **Whether Plaintiff is entitled to a deduction for bad debts.**

**Year**: **1995** — **Amount**: **$1,447,375.00**

**Status**: **Summons and Complaint filed on August 20, 2003, and served personally on Franchise Tax Board on August 22, 2003.**

**PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board**
San Francisco Superior Court Docket No. 319008 — Filed – 02/20/01

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| Allan L. Schare | David Lew |
| McDermott, Will & Emery | 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: **Plaintiff filed Statement of Objection to Proposed Statement of Decision on August 18, 2003.**

**PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board**
San Francisco Superior Court Docket No. 324518 — Filed – 09/13/01

| *Taxpayer's Counsel* | *FTB's Counsel* |
|---|---|
| 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 Stipulation to Extend Time to File Appellant's Opening Brief filed on August 7, 2003.**

**THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board**
San Francisco Superior Court Docket No. 414931 Filed – 11/21/02

*Taxpayer's Counsel*
Jeffrey M. Vesely, Esq.
Richard E. Nielsen, Esq.
Pillsbury Winthrop, LLP

*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 Hearing scheduled for September 13, 2003, and Settlement Conference scheduled for September 29, 2003. Trial set for October 20, 2003. **Plaintiff's Opposition to Motion for Summary Judgment filed on August 28, 2003. Defendant's Opposition to Motion for Summary Judgment filed August 29, 2003.**

**TOY'S "R" Us, Inc. & Affiliates v. Franchise Tax Board**
Sacramento Superior Court Docket No. 01AS04316 Filed - 07/17/01

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

*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 **Ruling in favor of FTB on Submitted Matter on August 26, 2003.**

**U.S. AIRWAYS GROUPS, INC. et al. v. Franchise Tax Board**
U.S. Bankruptcy Court, Eastern Dist. of Virginia No. 02-83984-SSM Filed – 05/13/03

*Taxpayer's Counsel*
John Wm Butler, Jr., John K. Lyons, Esq.
Skadden, Arps, Slate, Meagher & Flom

*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.

**VENTAS, INC. & SUBSIDIARIES v. Franchise Tax Board**
**San Francisco Superior Court Docket No. CGC03423154**
***Taxpayer's Counsel***
**Amy L. Silverstein**
**Silverstein & Pomerantz, LLP**

**Filed – 08/05/03**
***FTB's Counsel***
**Paul Gifford**

**Issue** **Whether Plaintiff elected to use the mark-to-market method of accounting for California purposes.**

**Year** **1997** **Amount** **$205,874.00**

**Status** **Summons and Complaint filed August 5, 2003, and served personally on FTB on August 6, 2003.**

**WEAVER, JOHN & LOIS v. Franchise Tax Board**
**Los Angeles Superior Court Docket No. BC296238**
***Taxpayer's Counsel***
**David E. Kenney, Esq.**
**Karns & Karabian**

**Filed – 07/18/03**
***FTB's Counsel***
**Donald R. Currier**

**Issues**
1. **Whether the taxpayer filed a timely claim for refund with respect to the assessment for the tax year 1999.**
2. **Whether limitations contained in section 18152-5 violate various provisions of the United States Constitution.**

**Year** **1999** **Amount** **$118,503.00**

**Status** **Summons and Amended Complaint was filed on July 18, 2003, and served by mail on Franchise Tax Board on August 6, 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.

**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 Discovery proceeding.

**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 **Discovery proceeding.** Trial Scheduled for November 12, 2003.