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

STEVE WESTLY
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STEVE PEACE
Member

October 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 – OCTOBER 2003

Case Name	**Court Number**
Agua Caliente Band of Cahuilla Indians	U.S. Dist. Ct. Central District No. CV034116-GAF

FRANCHISE AND INCOME TAX

NEW CASES – OCTOBER 2003

Case Name	**Court Number**
American General Realty Inv. Corp., Inc.	San Francisco Superior Court No. CGC03425690
The McGraw-Hill Companies, Inc.	San Francisco Superior Court No. CGC 03424737

FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER

OCTOBER 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 **Request for Judicial Notice filed by Defendant on October 7, 2003.**

AGUSTIN, REMIGIO I. v. Franchise Tax Board
Alameda County Superior Court Docket No. HG03114558 Filed – 09/02/03

Taxpayer's Counsel
Remigio I. Agustin, In Pro Per

FTB's Counsel
Paul Gifford

Issues
1. Whether application of the statute of limitations in section 19306 of the Revenue and Taxation Code in the circumstance of this case is in violation of the United States Constitution.
2. Whether the doctrine of equitable tolling should be applied in the circumstances of this case to allow plaintiff's claim for refund.

Year 1996 — Amount $1,607.38

Status **Defendant's Demurrer filed October 17, 2003. Plaintiff's Opposition to Demurrer filed October 21, 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 **FTB's Request for Oral Argument in Court of Appeal, First Appellate District, Div. 2, mailed to all parties on October 8, 2003; Amdahl's Request for Oral Argument mailed to all parties on October 10, 2003.**

AMERICAN GENERAL REALTY INVESTMENT CORP., INC. v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC03425690 **Filed – 10/23/03**
Taxpayer's Counsel ***FTB's Counsel***
Roy E. Crawford, Roburt J. Waldow **David Lew**
Heller, Ehrman, White McAuliffe, LLP

Issues 1. Whether dividends received from insurance subsidiaries are, as a matter of law and fact, nonbusiness income.
2. Whether section 24244(b) controls the allocation of interest expense.
3. Whether section 24425 was properly applied to allocate expenses to insurance company dividends.
4. Whether the insurance subsidiaries constitute a separate unitary business of the taxpayer.
5. Whether the increase in the income assigned to California fairly reflects the taxpayer's business in this state.

Year 1991 Amount $2,824,983.00

Status Summons and Complaint served personally on Franchise Tax Board on October 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
Joanne Garvey, & Teresa Maloney
Heller, Ehrman, White & McAuliffe

FTB's Counsel
Steven 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
California Supreme Court No. S117131

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 California Supreme Court, Remittitur transferring jurisdiction back to trial court dated September 9, 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 **Tentative Decision issued in favor of Plaintiffs on October 2, 2003. Defendant's Objections to Tentative Decision filed on October 2, 2003. Defendant's Controverter Issues and Proposals for Statement of Decision filed on October 15, 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. Borcherding

Issue Whether the taxpayer was a resident of California.

Years 1986 and 1987 Amount $47,471.00

Status **Dismissal of case after last payment received by Franchise Tax Board filed on October 7, 2003.**

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 **Plaintiffs/Appellants' Reply Brief filed on October 27, 2003.**

HARDIE, GEORGE G. v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC292256 Filed – 03/18/03

Taxpayer's Counsel
Richard E. Posell, Gregory P. Korn
Greenberg, Glusker, Fields, Claman,
Machtinger & Kinsella, LLP

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 Conference-Case Management held on September 24, 2003.

HYATT, GILBERT P. v. Franchise Tax Board
Clark County Nevada District Court No. A382999 Filed - 01/06/98

Taxpayer's Counsel
Thomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen
H. Bartow Farr III

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:
Request for Leave of Court to File FTB's Reply in Support of Its Counter-Motion to Strike Hyatt's Motion to Strike filed with the court on September 11, 2003.

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
Paul D. Fogel, Esq..
Reed Smith Crosby Heafey, LLP

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 Request to California Supreme Court for Depublication filed September 3, 2003. Plaintiff/Respondent's Opposition to Request for Depublication filed September 15, 2003.

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

Taxpayer's Counsel
Derek L. Tabone, Esq.
Law Offices of Tabone, APC

FTB's Counsel
Brian Wesley
Elisa Wolfe-Donato

Issue Whether Plaintiffs have taxable income for the years involved.

Years 1999-2001 — Amount $208,742.00

Status **Hearing on Demurrer held on October 21, 2003. Notice of Ruling Sustaining Defendant's Demurrer to Complaint filed on October 23, 2003.**

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.

Year 1987 — Amount $133,042.00

Status Defendant's Notice of Motion and Motion for Summary Judgment, or in the Alternative, for Summary Adjudication; Memorandum of Points and Authorities; Statement of Undisputed Material Facts in Support of FTB's Motion for Summary Judgment; Stipulation of Facts filed on September 17, 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 Judgment Pursuant to CCP § 437c filed September 15, 2003. Notice of Entry of Judgment in favor of FTB filed September 17, 2003.

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	*FTB's Counsel*
William E. Taggart, Jr. Taggart & Hawkins	Marguerite Stricklin

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount $244,012.00

Status Status Conference held on 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	*FTB's Counsel*
Donald C. Marro, In Pro Per	Kristian Whitten

Issue Whether assessments based on federal adjustments were timely made.

Years 1993 and 1994 Amount $9,267.00

Status **Plaintiffs/Appellants' Reply Brief filed and Request for Oral Argument filed on October 22, 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	*FTB's Counsel*
Scott R. Martin, In Pro Per	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.

THE MCGRAW-HILL COMPANIES, INC., a New York Corporation v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC 03424737 — Filed - 09/24/03

Taxpayer's Counsel	***FTB's Counsel***
Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang	**Anne Michelle Burr**
Pillsbury Winthrop, LLP	

Issues
1. **Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.**
2. **Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.**

Years 1993 and 1994 — **Amount $606,744.00**

Status **Plaintiff's Summons and Complaint served on the Franchise Tax Board by mail on October 2, 2003. Case Management Conference scheduled for February 24, 2004.**

MICROSOFT Corporation v. Franchise Tax Board
San Francisco Superior Court Docket No. 400444 — Filed – 10/19/01

Taxpayer's Counsel	*FTB's Counsel*
James P. Kleier, Esq.	Julian O. Standen
Preston Gates & Ellis, LLP	

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 **Plaintiff's Response to Defendant's Specification of Controverted Issues and Submission of Proposals filed on October 6, 2003. Defendant's letter to Judge Mitchell requesting no action be taken on matter until return of principal counsel, filed on October 8, 2003.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board
San Diego Superior Court Docket No. GIC772282 — Filed – 08/27/01

Taxpayer's Counsel	*FTB's Counsel*
Steve Mather.	Leslie Branman-Smith
Kajan, Mather and Barish	

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 **Defendant's Notice of Appeal filed on October 10, 2003. Hearing on Defendant/Appellant's Motion to Strike or Tax Costs filed on October 14, 2003. Motion for Litigation Costs and Supporting Memorandum of Points and Authorities mailed by Plaintiffs' attorney on October 16, 2003.**

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board
San Diego Superior Court Docket No. GIC773381 — Filed – 08/27/01

Taxpayer's Counsel	*FTB's Counsel*
Steve Mather.	Leslie Branman-Smith
Kajan, Mather and Barish	

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 **Defendant's Notice of Appeal filed on October 10, 2003. Hearing on Defendant/Appellant's Motion to Strike or Tax Costs filed on October 14, 2003. Motion for Litigation Costs and Supporting Memorandum of Points and Authorities mailed by Plaintiffs' attorney on October 16, 2003.**

MONTGOMERY WARD LLC v. Franchise Tax Board
San Diego Superior Court Docket No. GIC802767 — Filed – 12/30/02

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

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. **Clerk of the Court's Notice of Case Management Conference reset for January 9, 2004, filed on October 7, 2003.**

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	*FTB's Counsel*
Spencer T. Malysiak	Michael J. Cornez
Spencer T. Malysiak Law Corp.	

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 **Hearing on Motion to Dismiss filed on October 6, 2003. Order granting FTB's Motion to Dismiss filed on October 8, 2003.**

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	*FTB's Counsel*
Richard W. Craigo	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 **Notice per Rule 5.1 with reporter's transcript filed by the Court on October 24, 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 **Notice of Case Reassignment and Order filed by Clerk of the Court on October 8, 2003. Notice of Case reassignment filed by Plaintiff's on October 15, 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 Judgment in favor of Defendant Franchise Tax Board, Notice of Entry of Judgment, and Statement of Decision filed September 9, 2003. Defendant's Memorandum of Costs (Summary) filed September 11, 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 **Plaintiffs/Respondents' Opening Brief filed on October 24, 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	*FTB's Counsel*
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 **Defendant's Motion for Summary Judgment granted on October 2, 2003, and Plaintiff's Motion for Summary Judgment is denied on October 2, 2003. Judgment by the Court in favor of Defendant Pursuant to CCP §437c filed on October 28, 2003.**

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

Sacramento Superior Court Docket No. 01AS04316 — Filed - 07/17/01

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

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 **Mailing of Notice of Entry of Judgment to Plaintiffs sent on October 31, 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	*FTB's Counsel*
John Wm Butler, Jr., John K. Lyons, Esq.	Lawrence K. Keethe
Skadden, Arps, Slate, Meagher & Flom	Mark D. Silvershotz

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

Year 1988 — Amount $2,651,934.78

Status **Continuation of Chapter 11 Bankruptcy hearing on Debtor/Taxpayer's Eighth Omnibus Objection to Claims and FTB's Amended Proof of Claim pending outcome of negotiation on October 31, 2003.**

VENTAS, INC. & SUBSIDIARIES v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC03423154 Filed – 08/05/03

Taxpayer's Counsel	*FTB's Counsel*
Amy L. Silverstein	Paul Gifford
Silverstein & Pomerantz, LLP	

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

Year 1997 Amount $205,874.00

Status Defendant's Answer to Complaint filed September 3, 2003.

WEINGARTEN, SAUL M. v. Franchise Tax Board
San Francisco Superior Court Docket No. 996766 Filed - 7/28/98

Taxpayer's Counsel	*FTB's Counsel*
Saul M. Weingarten	Marguerite Stricklin
Saul M. Weingarten & Associates	

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 Filed – 03/13/03

Taxpayer's Counsel	*FTB's Counsel*
Daniel J. Cooper, Esq.	Leslie Branman Smith
Law Offices of Daniel J. Cooper	

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	Filed - 05/22/02
Dwayne M. Horii	*FTB's Counsel*
William C. Choi	Donald R. Currier
Rodriguez, Horii & Choi	

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 **Status Conference held on October 10, 2003; trial date continued to February 25, 2004.**