STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Legal Branch
P. O. Box 1720
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STEVE WESTLY
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CAROLE MIGDEN
Member

STEVE PEACE
Member

November 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 – NOVEMBER 2003

Case Name	**Court Number**
Longbrook, Michael G. & Barbara J.	Los Angeles Superior Court No. 02K21208
Martin, Scott R.	U.S. Dist. Ct., Northern District of California Case No. C02-05446

FRANCHISE AND INCOME TAX

NEW CASES – NOVEMBER 2003

Case Name	**Court Number**
Hameetman, Fred & Joyce	Los Angeles Superior Court No. BC305968

FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER

NOVEMBER 2003

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

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

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 **Plaintiffs' First Amended Complaint filed November 5, 2003. Plaintiffs' Opposition to defendant's Demurrer and Defendant's Notice of Taking Hearing on Demurrer Off Calendar filed November 10, 2003. Defendant's Answer to First Amended Complaint filed on November 26, 2003.**

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

Taxpayer's Counsel	*FTB's Counsel*
Remigio I. Agustin, In Pro Per	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 Reply to plaintiff's Opposition to Demurrer filed November 4, 2003. Plaintiff's Reply to Defendant's Opposition to Demurrer filed November 7, 2003. Demurrer Sustained Without Leave to Amend. Notice of Order Sustaining Demurrer to Complaint filed on November 18, 2003. Case Management Conference scheduled for January 6, 2004.**

AMDAHL CORPORATION v. Franchise Tax Board
San Francisco Superior Court Docket No. 321296 Filed – 05/14/01
Appellate Court 1st District Court No. A101101 (FTB)
Appellate Court 1st District Court No. A101203 (Amdahl)

Taxpayer's Counsel
Timothy K. Roake
Fenwick & West LLP

FTB's Counsel
Kristian Whitten

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

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

Status Defendant/Appellant FTB's Request for Oral Argument mailed to all parties on October 8, 2003. Plaintiff/Respondent Amdahl Corporation'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
Roy E. Crawford, Roburt J. Waldow
Heller, Ehrman, White McAuliffe, LLP

FTB's Counsel
David Lew

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 **Defendant's General Denial filed November 25, 2003.**

COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board
Sacramento Superior Court Docket No. 03AS00707 — Filed – 02/07/03

Taxpayer's Counsel
Eric J. Coffill, Carley A. Roberts
Morrison & Foerster, LLP

FTB's Counsel
Steven J. Green

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 **Petitioner FTB's Petition for Writ of Certiorari filed with the United States Supreme Court on November 28, 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
Janine Freyermuth, In Pro Per

FTB's Counsel
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
Joel K. Belway, Esq.

FTB's Counsel
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
Charles R. Ajalat
Law Office of Ajalat, Polley & Ayoob

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 **Defendant/Respondent Reply Brief filed on November 25, 2003.**

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

Taxpayer's Counsel	*FTB's Counsel*
Richard E. Posell, Gregory P. Korn	Anthony Sgherzi
Greenberg, Glusker, Fields, Claman,	George M. Takenouchi
Machtinger & Kinsella, LLP	

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

Year 1993 Amount $1,172,932.00

Status **Court Order filed on November 26, 2003, Conference-Post Mediation Status, Further Status Conference continued to January 7, 2004.**

HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC 305968 **Filed – 11/12/03**

Taxpayer's Counsel	***FTB's Counsel***
Eric L. Troff, Esq.	**Donald Currier**
Gibbs, Giden, Locher & Turner, LLP	

Issue **Whether Plaintiffs were entitled to a business bad debt reduction.**

Years **1990 and 1993** **Amount** **$65,738.00**

Status **Plaintiffs' Summons and Complaint served personally on the Franchise Tax Board on November 25, 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 **California Supreme Court denies Defendant/Appellant's Request for Depublication on November 14, 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 **Plaintiffs' Amended Complaint filed on November 7, 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 Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment; Second Request for Judicial Notice in Support of Defendant's Motion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment sent by mail to Plaintiff on November 20, 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
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.

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
Edwin P. Antolin
Morrison & Foerster, LLP

FTB's Counsel
Joyce Hee

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 **Plaintiffs/Appellants' Opening Brief and Request for Judicial Notice filed on November 18, 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 **Status Conference held on November 6, 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/Appellants' Reply Brief filed and Request for Oral Argument filed on October 22, 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
Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang
Pillsbury Winthrop, LLP

FTB's Counsel
Anne Michelle Burr

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 Case Management Conference scheduled for February 24, 2004. **Defendant's Answer to Complaint filed on November 13, 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 **Court's Statement of Decision in favor of Plaintiff filed on November 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 **Plaintiffs/Respondents Notice of Appeal filed on November 4, 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 **Plaintiffs/Respondents Notice of Appeal filed on November 4, 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. 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
Spencer T. Malysiak
Spencer T. Malysiak Law Corp.

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 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
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 **Record on Appeal filed by Plaintiff on November 18, 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
Richard C. Field
Bingham McCutchen LLP

FTB's Counsel
David Bornstein

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
Thomas K. Bourke
Law Office of Thomas K. Bourke

FTB's Counsel
Anthony Sgherzi

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
Allan L. Schare
McDermott, Will & Emery

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 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
Edward Winslow
Layman, Lempert & Winslow

FTB's Counsel
Marguerite Stricklin

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

Years 1990, 1996 through 1999 Amount $144,278.00

Status **Defendant/Appellant's Reply Brief filed on November 13, 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 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
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 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
Daniel J. Cooper, Esq.
Law Offices of Daniel J. Cooper

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 — Filed - 05/22/02

Taxpayer's Counsel
Dwayne M. Horii
William C. Choi
Rodriguez, Horii & Choi

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