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

STEVE WESTLY
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DONNA ARDUIN
Member

April 30, 2004 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/law/Lit_roster.pdg.

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 – APRIL 2004

Case Name	**Court Number**
Jibilian, Tony and Dorothy	Los Angeles Superior Court No. BC 298685

FRANCHISE AND INCOME TAX

NEW CASES – APRIL 2004

Case Name	**Court Number**
JPMorgan Chase Bank, as Trustee of The Long Term Investment	Los Angeles Superior Court No. BC 312094

FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER

APRIL 2004

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 Trial scheduled for June 3, 2004. **Plaintiffs' Ex-Parte Application to Continued Trial Date filed April 5, 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	*FTB's Counsel*
Timothy K. Roake	Kristian Whitten
Fenwick & West LLP	

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

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

Status **Oral Argument scheduled for May 19, 2004.**

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 24344(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 Mandatory Settlement Conference scheduled for September 1, 2004. Court Trial set for September 20, 2004. **Discovery proceeding.**

BRESLOW, BARRY & WENDY v. Franchise Tax Board
Los Angeles Superior Court Docket No. 03K20961 — Filed – 12/02/03

Taxpayer's Counsel	*FTB's Counsel*
Charles P. Rettig, Steven D. Blanc & Sharyn Fisk	Felix E. Leatherwood
Hochman, Salkin, Rettig, Toscher & Perez, P.C.	

Issues
1. What portion of the Program Area Sales and Use Tax Credit passes through to shareholders in an S Corporation?
2. Whether the Franchise Tax Board should be equitably estopped from denying the claim for refund.

Year 1994 — Amount $49,500.00

Status **Case Management Review scheduled for September 13, 2004.**

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 Trial Setting Conference scheduled for July 6, 2004. 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 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 On Appeal for decision in favor of Defendant/Respondent, 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
U.S. Supreme Court No. 03-776

Taxpayer's Counsel	*Counsel of Record*
Robin C. Campbell, Esq.	Benjamin F. Miller
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 Petition for Writ of Certiorari denied on February 23, 2004.

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 Plaintiffs' Memorandum of Costs and Disbursements for Total Costs, filed March 3, 2004.

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 **Awaiting Court of Appeal Ruling.**

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 **Trial scheduled for November 29, 2004.**

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: Final Status Conference scheduled for July 8, 2004; Trial scheduled for July 12, 2004.

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

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

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:
Hearing on Motion for Pretrial Conference held on January 26, 2004, and Scheduling Order entered.

JPMORGAN CHASE BANK, as Trustee of The Long Term Investment v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC 312094 — Filed – 03/12/04

Taxpayer's Counsel	***FTB's Counsel***
Jeffrey G. Varga, Ethan Lipsig	**Donald R. Currier**
Paul, Hastings, Janofsky & Walker, LLP	

Issue: Whether Revenue and Taxation Code section 17651 is preempted by 29 USC § 1144 (a).

Years: 1994, 1997 through 2000 — Amount: $2,905,255.00

Status: Plaintiff's Summons and Complaint filed on March 12, 2004, and served on Franchise Tax Board on April 22, 2004.

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*
Edwin P. Antolin	George C. Spanos
Silverstein & Pomerantz	
Jordan M. Goodman, Brian L. Browdy	
Horwood, Marcus & Berk	

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 Trial scheduled for May 24, 2004.

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 **Complaint Under 11 U.S.C. § 505 U.S. For Determination of Tax Liability and Refund of Tax Overpayments filed 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 Plaintiff/Appellants' Reply Brief to be filed on May 10, 2004.

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 **Joint Stipulation of Facts for Trial on Remand filed April 4, 2004.**
Defendant/Petitioner's Supplemental Trial Brief filed on April 22, 2004.

MARRO, DONALD C. AND LILLIAN S. CLANCY v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC 02-414788 — Filed – 11/18/02
Court of Appeal, 1st Appellate District Court No. A104139

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' Petition for Review to the California Supreme Court filed April 6, 2004.**
Defendant/Respondent's Answer to Petition for Review filed April 22, 2004.

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 Trial scheduled for August 23, 2004. **Discovery proceeding.**

MICROSOFT CORPORATION v. Franchise Tax Board
San Francisco Superior Court Docket No. 400444 — Filed – 10/19/01
Court of Appeal, 1st Appellate Dist. Div. 3 No. A105312

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 **Defendant/Appellant's Request for Extenstion of Time to file Brief, filed on April 23, 2004. Extension of Time to file Brief granted on April 30, 2004.**

MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board
San Diego Superior Court Docket No. GIC772282 — Filed – 08/27/01
Court of Appeal, 4th Appellate Dist. Division 1, No. D035601

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 Defendant/Appellants' Opening Brief filed with the Court of Appeal on March 1, 2004.

MILHOUS, ROBERT E. & GAIL P. v. Franchise Tax Board
San Diego Superior Court Docket No. GIC773381 — Filed – 08/27/01
Court of Appeal, 4th Appellate Dist. Division 1, No. D035601

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/Appellants' Opening Brief filed with the Court of Appeal on March 1, 2004.

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

Taxpayer's Counsel	*FTB's Counsel*
Antolin, Pilar M. Sansone, Amy Silverstein	Gregory Price
Silverstein & Pomerantz, 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 Case Management Conference held on January 9, 2004.

NEW GAMING SYSTEMS, INC. v. Franchise Tax Board
U.S. District Court For The Eastern Dist. No. CIVS-03-1126 — Filed – 05/27/03
First Amended Complaint — Filed – 08/25/03

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.
3. Whether an action can be maintained in federal court against the Board members and Executive Officer as individual under the *Ex Parte Young* doctrine to enjoin the collection of state taxes.

Year 1996 Amount $2,562.93

Status Defendants Steve Westly, Carole Migden Steve Peace, and Gerald H. Goldberg's Motion to Dismiss Complaint for Lack of Subject Matter Jurisdiction and supporting documents filed March 19, 2004.

NEW GAMING SYSTEMS, INC. & AKA INDUSTRIES, INC. v. Franchise Tax Board
Sacramento Superior Court Docket No. 03AS05705 Filed – 10/10/03

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

FTB's Counsel
Michael Cornez

Issues
1. Whether New Gaming Systems, Inc., timely filed its suit for refund for the income year ended March 31, 1996.
2. Whether a declaratory relief action can be brought to prevent the collection of tax.
3. Whether a suit for refund can be maintained for a year in which the amount of tax has not been paid in full.
4. Whether Plaintiffs are liable for California taxes on income generated from leases for operating Indian casinos.

Years 1996 and 1997 Amount $90,773.05

Status **Joint Stipulation to allow Plaintiff to file Second Amended Complaint and to drop the hearing on the Demurrer, filed on April 1, 2004. Order Reflecting Stipulation entered by the Court on April 5, 2004. Plaintiff's Second Amended Complaint for Declaratory Judgment; Injunctive Relief, and Refund of Taxes Paid, filed on April 14, 2004. Case Management Conference held on April 22, 2004. Hearing scheduled for May 4, 2004.**

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
Attorney At Law

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 Defendant/Respondent's Brief filed on January 14, 2004. Plaintiffs/Appellants' Reply Brief filed on January 30, 2004.

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	Michael R. Weiss
Bingham McCutchen LLP	

Issue: Whether the tax involved was timely assessed.

Year: 1983 — Amount: $12,350.00

Status: **Defendant/Respondent's Brief filed on April 2, 2004. Plaintiff/Appellants' Reply Brief filed on April 22, 2004.**

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: Further Status Conference scheduled for June 22, 2004. Final Status Conference scheduled for September 7, 2004. Trial scheduled for September 13, 2004.

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board
San Francisco Superior Court Docket No. 319008 — Filed – 02/20/01
Court of Appeal, 1st Appellate Dist. Div. 2 No. A104602

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: **Defendant/Respondent's Stipulation of Extension of Time to file Reply Brief, filed April 19, 2004.**

PAINE, THOMAS & TERESA A. NORTON v. Franchise Tax Board
San Francisco Superior Court Docket No. 324518 — Filed – 09/13/01
Appellate Court – 1st Appellate Dist. Court No. A102401

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 **Oral Argument held on April 7, 2004. Opinion by the court; Judgment is reversed on April 28, 2004, in favor of Defendant/Respondent.**

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board
San Francisco Superior Court Docket No. 414931 — Filed – 11/21/02
Appellate Court – 1st Appellate Dist. Court No. A105155

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 $1,133,040.00

Status **Plaintiff/Appellant's Opening Brief and Joint Appendix filed April 1, 2004.**

TOY'S "R" US, Inc. & Affiliates v. Franchise Tax Board
Sacramento Superior Court Docket No. 01AS04316 — Filed - 07/17/01
Court of Appeal, 4th Appellate Court No. C045386

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 Plaintiffs/Appellants' Opening Brief filed March 19, 2004.

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

Taxpayer's Counsel
Amy L. Silverstein
Silverstein & Pomerantz, LLP

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: Defendant's Answer to Amended Complaint filed on March 3, 2004.

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

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

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 — 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: Trial held on January 16, 2004, and continued to January 20, 2004, and January 21, 2004.

YOSHINOYA WEST, INC. v. Franchise Tax Board	
Los Angeles Superior Court, Central District No. BC274343	Filed - 05/22/02
Taxpayer's Counsel	*FTB's Counsel*
Dwayne M. Horii	Donald R. Currier
William C. Choi	
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 **Trial continued and concluded on April 15, 2004.**