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

STEVE WESTLY
Chair

CAROLE MIGDEN
Member

DONNA ARDUIN
Member

June 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.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 – JUNE 2004

Case Name	**Court Number**
Farmer Bros. Co.	Los Angeles Superior Court No. BC237663
Noble, Homer E. & Stephanie F.	Los Angeles Superior Court No. BC273634
OTN, Inc., & Affiliates	Los Angeles Superior Court No. BC301102
Yoo, Won s. & Insook	San Diego Superior Court No. GIC807106

FRANCHISE AND INCOME TAX

NEW CASES – JUNE 2004

Case Name	**Court Number**
Shafran, Allen J. & Toby	Los Angeles Superior Court No. BC316070

FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER

JUNE 2004

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
Brian Wesley

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' Trial Brief filed June 1, 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
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 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 Discovery proceeding. Mandatory Settlement Conference scheduled for September 1, 2004, and Trial scheduled for September 20, 2004.

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

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

FTB's Counsel
Felix E. Leatherwood

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 Discovery proceeding. **Trial Setting Conference continued to September 20, 2004.**

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. **Supplemental Briefing on New Authorities scheduled for August 30, 2004.**

FREIDBERG, EDWARD & TRACI E. REYNOLDS v. Franchise Tax Board
San Francisco Superior Court Docket No.CGC-02-404182 Filed – 02/06/02
Court of Appeal, 1st Appellate District, No. A106315

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 Defendant/Appellant's Notice of Appeal filed on April 30, 2004.

FUJITSU IT HOLDINGS, INC. v. Franchise Tax Board
[Amdahl Corporation v. Franchise Tax Board] 120 Cal.App.4th 459
San Francisco Superior Court Docket No. 321296 Filed – 05/14/01
Court of Appeal, 1st Appellate District Court Div. 2, No. A101101 (FTB)
Court of Appeal, 1st Appellate District Court Div. 2, No. A101203 (Amdahl)
Court of Appeal, 1st Appellate District Court Div. 2, No. A102558 (Attorney's fees)

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 Errata to Combined Respondent's Brief and Cross-Appellant's Opening Brief of Amdahl Corporation filed on May 14, 2004. Oral Argument held on May 19, 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
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 **Opinion: Appellate Court affirmed the trial court and sustained in favor of FTB on June 30, 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 Trial scheduled for November 29, 2004. **Discovery proceeding.**

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
Thomas L. Steffen & Mark A. Hutchison
Hutchison & Steffen
H. Bartow Farr III

FTB's Counsel
James W. Bradshaw
McDonald, Carano,
Wilson LLP,
Las Vegas, Nevada

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.

JIBILIAN, TONY & DOROTHY v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC298685 — Filed – 07/09/03
Court of Appeal 2nd Appellate District Court No. B175952

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 through 2001 — Amount $209,742.00

Status **Plaintiffs' Notice of Appeal filed on June 7, 2004.**

JIM BEAM BRANDS CO. v. Franchise Tax Board
San Francisco Superior Court No. CGC-02-408203 — Filed - 05/21/02
Court of Appeal, 1st Appellate District Court No. A107209

Taxpayer's Counsel
Edwin P. Antolin
Silverstein & Pomerantz
Jordan M. Goodman, Brian L. Browdy
Horwood, Marcus & Berk

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 **Court Order; Granting Defendant Franchise Tax Board's Motion for Summary Judgment filed June 28, 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 **Status Conference rescheduled for August 31, 2004.**

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 **Court of Appeal's Order Denying Plaintiffs/Appellants' Request to Delay Oral Argument, but granting their request for supplemental briefing to address the applicability of the *General Motors* case filed June 20, 2004.**

THE LONG TERM INVESTMENT/Trustee Chase Bank 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 **Answer to the Complaint filed June 21, 2004. Case Management Conference continued to August 30, 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	*FTB's Counsel*
William E. Taggart, Jr.	Marguerite Stricklin
Taggart & Hawkins	

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount $244,012.00

Status **Defendant's Opening Brief for Trial on Remand filed on June 15, 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	*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 Trial scheduled for August 23, 2004. Plaintiff's Motion for Summary filed May 7, 2004.

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	*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 Defendant/Appellant's Opening Brief filed May 10, 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. D043058
Court of Appeal, 4th Appellate Dist. Division 1, No. D044362

Taxpayer's Counsel	*FTB's Counsel*
Steve Mather.	Leslie Branman-Smith
Kajan, Mather and Barish	
Kevin Duthoy & Joseph A. Vinatieri	
Bewley, Lassenben & Miller, LLP	

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' Opening Brief filed May 17, 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. D043058
Court of Appeal, 4th Appellate Dist. Division 1, No. D044362

Taxpayer's Counsel	*FTB's Counsel*
Steve Mather.	Leslie Branman-Smith
Kajan, Mather and Barish	
Kevin Duthoy & Joseph A. Vinatieri	
Bewley, Lassenben & Miller, LLP	

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' Opening Brief filed May 17, 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 — Status Conference held on May 14, 2004; Case deferred pending outcome of General Motors. Case Management Conference scheduled for September 17, 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 individuals 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, Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint filed May 7, 2004. Hearing on Motion to Dismiss held on May 17, 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 Defendants Steve Westly, Carole Migden Steve Peace, and Gerald H. Goldberg's Reply to Plaintiffs' Opposition to Defendant's Motion to Dismiss Complaint filed May 7, 2004. Hearing on Motion to Dismiss; Judgment in favor of Defendant on May 17, 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
Richard C. Field
Bingham McCutchen LLP

FTB's Counsel
Michael R. Weiss

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.

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
California Supreme Court No. S 125369

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' Petition for Review to the California Supreme Court filed on June 8, 2004.**

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	*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: $1,133,040.00

Status: **Defendant/Respondent's Brief filed on June 10, 2004.**

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC 316070 — **Filed – 05/25/04**

Taxpayer's Counsel
W. Patrick O'Keefe, Jr.
W. Patrick O'Keefe, Jr. Incorporated

FTB's Counsel
Anthony F. Sgherzi

Issue **Whether the denial of a deduction for depreciation based upon a federal adjustment was proper.**

Year **1992** **Amount** **$45,415.00 Tax**
9,083.00 Penalty

Status **Summons and Complaint filed on May 25, 2004, and served improperly on Los Angeles Franchise Tax Board office on June 2, 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 **Trial held on June 30, 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 **Minutes Entered; Court's Ruling in favor of Defendant filed June 22, 2004. Defendant's Proposed Statement of Decision filed June 28, 2004.**