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

November 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 – NOVEMBER 2004

Case Name	Court Number
Ventas, Inc. & Subsidiaries	San Francisco Superior Court No. CGC03423154

FRANCHISE AND INCOME TAX
New Cases – NOVEMBER 2004

Case Name	Court Number
Dilts, Walter B. Jr. & Phyllis A. Kappeler	San Francisco Superior Court No. CGC04436496
Idleman, Hurbert & Joann	Los Angeles Superior Court No. BS093240

FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER

NOVEMBER 2004

ACKERMAN, PETER & JOANNE v. Franchise Tax Board
Los Angeles Superior Court Docket No. BC296334 — Filed - 05/23/03
Court of Appeal, 2nd Appellate District, No. B178750

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 **Court Clerk's Notice sent to court reporter on November 22, 2004, to prepare transcript.**

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 **Plaintiff's Supplemental Trial Brief re: Distortion filed along with Appendix of Federal Authorities in Support thereof filed November 1, 2004. Plaintiff's Request for Admission of Evidence filed November 4, 2004. On November 17, 2004, trial continued and will be concluded at a date to be determined in January or February.**

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 **Stipulation of Dismissal filed by Defendant Franchise Tax Board on November 12, 2004.**

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 The Trial Setting Conference was postponed to December 6, 2004. **Plaintiff counsel's letter dated November 15, 2004, to Judge Virga requesting, on behalf of all parties, that any further action be deferred until a decision is reached in the *General Motors v. FTB* case, and that the only remaining issue is the gross receipts issue. Plaintiff counsel's letter to Judge Virga enclosing the Order to Stay Proceedings as requested by the judge's clerk on November 23, 2004.**

DILTS, WALTER B. JR. AND PHYLLIS A. KAPPELER v. Franchise Tax Board
San Francisco Superior Court Docket No. CGC04436496 — **Filed - 11/19/04**

Taxpayer's Counsel
R. Todd Luoma
Law Office of Richard Todd Luoma

FTB's Counsel
Anne Michelle Burr

Issue **Whether Plaintiffs ceased to be California residents as of December 16, 1994.**

Years **1994 and 1995** — **Amount** **$973,101.00**

Status **Complaint served personally on November 23, 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 Defendant/Respondent's Association of Counsel sent by mail on October 25, 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 **Plaintiffs/Respondents' Request for Extension of Time to file Reply Brief filed on November 29, 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)
California Supreme Court No. S127167

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 Petition for Review and Depublication request denied on October 20, 2004.

GALASKI, GREGORY JOHN v. Franchise Tax Board
San Diego Superior Court Docket No. IC833950 Filed – 08/09/04

Taxpayer's Counsel	*FTB's Counsel*
Gregory Galaski, In Pro Per	Gregory S. Price

Issues
1. Whether Plaintiff has filed claims for refund for each of the years.
2. Assuming claims for refund were filed whether there was an overpayment of tax.

Years 1999 through 2003 Amount $13,092.37

Status **Filing and mailing of Notice of Ruling on Demurrer by Defendant's counsel on November 18, 2004, in which the Court confirmed its tentative ruling posted on October 9, 2004. Said Ruling sustained Defendant's Demurrer to the 1st and 5th Causes of Action with ten court days for Plaintiff to amend filing; also sustained without leave to amend was Defendant's Demurrer on the ground that the Court lacks jurisdiction to issue either injunctive or declaratory relief. Plaintiff filed First Amended Complaint for Refund of Overpayment of Taxes Already Paid Against Earning From Withholding, along with Proof of Service by mail on November 22, 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
California Supreme Court No. S127086

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 **Plaintiff/Appellant's Opening Brief on the Merits filed on November 12, 2004. Defendant/Respondent FTB's Application for Extension of Time to File Answer Brief on the Merits filed November 30, 2004, and Declaration of Stephen Lew.**

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 **Motion for Summary Judgment denied on November 18, 2004. Final Status Conference completed on November 24, 2004. Trial continued to December 14, 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

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 December 14, 2004, Trial scheduled for December 20, 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	James W. Bradshaw
Hutchison & Steffen, H. Bartow Farr III	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:
Discovery proceeding. Status Conference held on October 27, 2004, and continued to December 1, 2004.

IDLEMAN, HURBERT AND JOANN, v. Franchise Tax Board
Los Angeles Superior Court Docket No. BS093240 **Filed – 10/21/04**

Taxpayer's Counsel	***FTB's Counsel***
Warren Nemiroff, Esq.	**Marla K. Markman**

Issue **Whether or not the taxpayers are entitled to a refund as a result of federal adjustments to a SubChapter S corporation.**

Year **1995** **Amount** **$86,458.00**

Status **Complaint served by mail on November 4, 2004.**

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	*FTB's Counsel*
Derek L. Tabone, Esq.	Brian Wesley
Law Offices of Tabone, APC	Elisa Wolfe-Donato

Issue Whether Plaintiffs have taxable income for the years involved.

Years 1999 through 2001 Amount $209,742.00

Status **Plaintiff/Appellants' request for extension to file brief to January 14, 2005, granted on November 16, 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	*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 **Defendant/Respondent's request for extension of time to file reply brief filed on November 18, 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 held on August 29, 2004. Hearing continued to December 14, 2004.

LAVINE, ELIZABETH v. Franchise Tax Board
Sacramento Superior Court Docket No. 04AS03347 Filed - 09/07/04

Taxpayer's Counsel	*FTB's Counsel*
Elizabeth Lavine, In Pro Per	Amy J. Winn

Issues
1. Whether the suit for refund was filed timely.
2. Whether Plaintiff was a resident of California in 1999.

Year 1999 Amount $4,579.91

Status **Discovery proceeding.**

THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board
Alameda Superior Court Docket No. 837723-0
Court of Appeal, 1st Appellate District Court No. A102915 Filed - 04/09/01

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 Defendant/Respondent's letter containing decision rendered by the Arizona Court of Appeals in *Walgreen Arizona Drug Co. v. Arizona Dep't of Revenue* ("Walgreen") (September 23, 2004), 2004 WL 2110390 (Ariz.App. Div. 1) filed October 8, 2004.

THE LONG TERM INVESTMENT/Trustee JP Morgan 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 Final Status Conference scheduled for April 21, 2005, and Trial to be held on May 5, 2005. Status Conference (re: Scheduling re: Stay) completed on September 9, 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 **Plaintiff's Revised Objections to Proposed Statement of Decision filed November 24, 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 **Settlement conference continued to January 20, 2005. Trial continued to February 7, 2005.**

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 FTB filed additional cites for oral argument on October 7, 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 (costs/attorneys' fees)
Court of Appeal, 4th Appellate Dist. Division 1, No. D044362

Taxpayer's Counsel	*FTB's Counsel*
Kevin P. Duthoy, Esq.	**Stephen Lew**
Bewley, Lassleben & Miller, LLP	
Paul D. Draper, Esq.	
Law Offices of Paul D. Draper	

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/Appellant's Opening Brief re: Costs (D044362) filed November 23, 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 (costs/attorneys' fees)
Court of Appeal, 4th Appellate Dist. Division 1, No. D044362

Taxpayer's Counsel	*FTB's Counsel*
Kevin P. Duthoy, Esq.	**Stephen Lew**
Bewley, Lassleben & Miller, LLP	
Paul D. Draper, Esq.	
Law Offices of Paul D. Draper	

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/Appellant's Opening Brief re: Costs (D044362) filed November 23, 2004.**

MONTGOMERY WARD LLC v. Franchise Tax Board 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 continued to March 18, 2005.**

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

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

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 Judgment of Dismissal as to AKA Industries Inc., Following Order Sustaining Demurrer Without Leave to Amend filed on October 1, 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
California Supreme Court No. S127649

Taxpayer's Counsel	*FTB's Counsel*
Richard C. Field	**Gregory S. Price**
Bingham McCutchen LLP	

Issue Whether the tax involved was timely assessed.

Year 1983 Amount $12,350.00

Status Defendant/Petitioner Reply to Answer to Petition for Review filed October 1, 2004. On October 15, 2004, the California Supreme Court extended time to grant or deny review.

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 **Letter filed on November 8, 2004, with court from Appellant's counsel re: now available for December calendar but still not available for January calendar.**

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: **Oral Argument held on November 2, 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: **Continuance of hearing on Motion for Summary Judgment to February 15, 2005. Final status conference set for July 25, 2005, and three-day trial to commence on August 8, 2005.**

STAPLES, MARK A. v. Taxpayer Advocate Bureau, Franchise Tax Board, and State Board of Equalization
Sacramento Superior Court Docket No.04AS03598 — Filed – 09/03/04

Taxpayer's Counsel
Mark A. Staples, In Pro Per

FTB's Counsel
Michael J. Cornez

Issues:
1. Whether the method used by California to compute the tax owed by part-year resident violates various provisions of the United States Constitution.
2. Whether the department's review and disposition of the plaintiff's objections to additional tax were properly handled.

Year: 1998 — Amount: $1,141.00

Status: **Defendant's Notice of Motion and Motion for Demurrer and accompanying documents filed November 15, 2004. Hearing on Defendant's Demurrer scheduled for January 10, 2005.**

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	*FTB's Counsel*
Eric J. Coffill	Michael J. Cornez
Carley A. Roberts	
Morrison & Foerster, LLP	

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' Reply Brief filed on August 19, 2004.

YOSHINOYA WEST, INC. v. Franchise Tax Board
Los Angeles Superior Court, Central District No. BC274343 — Filed - 05/22/02
Court of Appeal, 2nd Appellate Dist. No. B178751

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: **Notice per rule 5.1 filed with reporter's transcript filed November 30, 2004.**