



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

STEVE WESTLY
Chair

JOHN CHIANG
Member

TOM CAMPBELL
Member

January 31, 2005, 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 Rosters for the last twelve months will be on the Internet site.

FRANCHISE AND INCOME TAX
Closed Cases – JANUARY 31, 2005

Case Name

Court Number

Fujitsu IT Holdings, Inc. (Amdahl Corporation) San Francisco Superior Court No. 321296

FRANCHISE AND INCOME TAX
New Cases – JANUARY 31, 2005

Case Name

Court Number

Northwest Energetic Services, LLC San Francisco Superior Court No. CGC05-437721

**FRANCHISE AND INCOME TAX
MONTHLY REFUND LITIGATION ROSTER**

JANUARY 2005

ACKERMAN, PETER & JOANNE v. Franchise Tax Board

Los Angeles Superior Court Docket No. BC296334

Filed - 05/23/03

Court of Appeal, 2nd Appellate Dist. Div P No. B178750

Taxpayer's Counsel

FTB's Counsel

Holly Kendig, Christopher W. Campbell

Brian Wesley

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/Appellants' Stipulation of Extension of Time to file Brief, filed on January 26, 2005.**

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, Robert 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 **Defendant's Evidentiary Objections to Stipulation of Facts as well as Defendant's Objections and Response to Plaintiff's Proposed Statement of Decision filed on January 14, 2005.**

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, 1 st Appellate District, No. A106315	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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 **Respondent's Brief and Appendix filed on January 21, 2005.**

GALASKI, GREGORY JOHN v. Franchise Tax Board	
San Diego Superior Court Docket No. IC833950	Filed – 08/09/04
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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 **Answer of Gregory John Galaski to Cross-Complaint for Collection of California Personal Income Tax involving years 2002 and 2003, mailed on January 11, 2005. Trial Readiness Conference scheduled for July 8, 2005; Trial scheduled August 5, 2005.**

GENERAL MOTORS CORPORATION, et al. v. Franchise Tax Board	
Los Angeles Superior Court Docket No. BC269404	Filed - 03/06/02
Court of Appeal, 2 nd Appellate District No. B165665	
California Supreme Court No. S127086	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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.

JIM BEAM BRANDS CO. v. Franchise Tax Board		Filed - 05/21/02
San Francisco Superior Court No. CGC-02-408203		
Court of Appeal, 1 st Appellate District Court No. A107209		
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>
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 Brief and Request for Judicial Notice filed on January 31, 2005.**

K-MART, CORPORATION, et al. v. Franchise Tax Board		Filed - 04/11/03
U.S. Bankruptcy Court for the Northern District of Illinois		
Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420		
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>
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 **Hearing held on January 25, 2005.**

LAVINE, ELIZABETH v. Franchise Tax Board		
Sacramento Superior Court Docket No. 04AS03347		Filed - 09/07/04
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>
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 **Motion to Amend First Amended Complaint mailed on January 4, 2005. Plaintiff's Notice of Hearing scheduled for February 14, 2005.**

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

MARKEN, DONALD W. & CLAUDINE H v. Franchise Tax Board	
San Francisco Superior Court Docket No. 302520	Filed - 04/05/99
Court of Appeal, 1 st Appellate Dist. No. A091644	
California Supreme Court No. S 104529	
<u>Taxpayer's Counsel</u> William E. Taggart, Jr. Taggart & Hawkins	<u>FTB's Counsel</u> Marguerite Stricklin

Issue Whether plaintiffs were residents of California in 1993.

Year 1993 Amount \$244,012.00

Status **Judgment determining additional California source income entered on January 18, 2005.**

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
<u>Taxpayer's Counsel</u> Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang Pillsbury Winthrop, LLP	<u>FTB's Counsel</u> 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 **Plaintiffs' Motion for Summary Judgment denied and Defendant's Motion for Summary Judgment granted on January 26, 2005. Court removed Settlement Conference date and Trial date. Case Management Conference scheduled for April 15, 2005.**

MICROSOFT CORPORATION v. Franchise Tax Board	
San Francisco Superior Court Docket No. 400444	Filed - 10/19/01
Court of Appeal, 1 st Appellate Dist. Div. 3 No. A105312	
<u>Taxpayer's Counsel</u> James P. Kleier, Esq. Preston Gates & Ellis, LLP	<u>FTB's Counsel</u> 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 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

Kevin P. Duthoy, Esq.

Bewley, Lassleben & Miller, LLP

Paul D. Draper, Esq.

Law Offices of Paul D. Draper

FTB's Counsel

Stephen Lew

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 **Appellant's and Cross-Respondent's (FTB) Combined Reply and Opposition Brief filed on January 14, 2005, (D044362—costs).**

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

Kevin P. Duthoy, Esq.

Bewley, Lassleben & Miller, LLP

Paul D. Draper, Esq.

Law Offices of Paul D. Draper

FTB's Counsel

Stephen Lew

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 **Appellant's and Cross-Respondent's (FTB) Combined Reply and Opposition Brief filed on January 14, 2005, (D044362—costs).**

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

Antolin, Pilar M. Sansone, Amy Silverstein

Silverstein & Pomerantz, 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 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.

NORTHWEST ENERGETIC SERVICES, LLC v. Franchise Tax Board
 San Francisco Superior Court Docket No. CGC05-437721 Filed - 01/15/05
Taxpayer's Counsel FTB's Counsel
 Amy L. Silverstein, Edwin Antolin Marguerite Stricklin
 Silverstein & Pomerantz

Issue **Whether Revenue and Taxation Code section 17942, which imposes a tax upon the "total income from all sources reportable to this state" of LLC registered with the Secretary of State, violates the Due Process Clause and Commerce Clauses.**

Years 12/31/97-12/31/01 Amount \$25,067.00 Tax
 \$ 3,764.29 Penalty

Status Verified Complaint for Refund of Taxes served by mail on the Franchise Tax Board on January 19, 2005.

ORDLOCK, BAYARD M. & LOIS S. v. Franchise Tax Board	
Los Angeles Superior Court Case No. BC278386	Filed - 07/25/02
Court of Appeal, 2 nd Appellate Dist. No. B169465	
California Supreme Court No. S127649	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
Clayton Vreeland	Gregory S. Price
Bingham McCutchen LLP	

Issue Whether the tax involved was timely assessed.

Year 1983 Amount \$12,350.00

Status Court granted Defendant/Petitioner FTB an extension of time for filing of opening Brief to March 4, 2005.

PACIFIC TELESIS GROUP, INC. v. Franchise Tax Board	
San Francisco Superior Court Docket No. 319008	Filed - 02/20/01
Court of Appeal, 1 st Appellate Dist. Div. 2 No. A104602	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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 **On January 27, 2005, Court set Oral Argument for February 15, 2005.**

THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board	
San Francisco Superior Court Docket No. 414931	Filed – 11/21/02
Appellate Court – 1 st Appellate Dist. Court No. A105155	
California Supreme Court No. S130757	
<u>Taxpayer's Counsel</u>	<u>FTB's Counsel</u>
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 **Appellant/Petitioner's Petition for Review with the California Supreme Court filed on January 18, 2005.**

SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board		
Los Angeles Superior Court Docket No. BC 316070		Filed – 05/25/04
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>
W. Patrick O'Keefe, Jr.		Anthony F. Sgherzi
W. Patrick O'Keefe, Jr. Incorporated		

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

<u>Year</u>	1992	<u>Amount</u>	\$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. **Defendant's Notice of Hearing (March 7, 2005) on Motion for Imposition of Temporary Stay of Proceedings and To Vacate Trial Date filed with the court on January 11, 2005. Non-opposition to Defendant/Respondent's Motion filed by Plaintiff/Petitioner on January 18, 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
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>
Mark A. Staples, In Pro Per		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.

<u>Year</u>	1998	<u>Amount</u>	\$1,141.00
-------------	------	---------------	------------

Status **Hearing on Defendant's Demurrer held on 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, 4 th Appellate Court No. C045386		
<u>Taxpayer's Counsel</u>		<u>FTB's Counsel</u>
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 On December 6, 2004, an Association of Attorneys was filed on behalf of Yoshinoya West, Inc.