



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

### **February 28, 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](http://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 – FEBRUARY 28, 2005**

**Case Name**

**Court Number**

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**FRANCHISE AND INCOME TAX**  
**New Cases – FEBRUARY 28, 2005**

**Case Name**

**Court Number**

Andrew, Delmar L.

Sacramento Superior Court No. 03As05305

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

**FEBRUARY 2005**

**ACKERMAN, PETER & JOANNE v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC296334

Filed - 05/23/03

Court of Appeal, 2<sup>nd</sup> 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' representative, Karen R. Browdon, filed a Change of Address, with a Notice of Additional Attorney on February 15, 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: **Proposed Revised Statement of Decision filed February 18, 2005; hearing set for March 16, 2005.**

**ANDREW, DELMAR L. v. Franchise Tax Board**  
Tuolumne County Superior Court, Case No. CV49500  
Sacramento Superior Court Docket No.03AS05305

Taxpayer's Counsel

Michael Weisberg

The Law Offices of Michael Weisberg

Filed – 01/02/03

FTB's Counsel

Michael Cornez

**Issues:** 1. Whether tax, penalties, fees and interest were properly assessed.  
2. Whether letters sent by the taxpayer constituted claims for refund and, if they were claims, whether they set forth grounds why the tax and other amounts were erroneous?

**Years:** 1989-1992 and 1995

**Amount** \$42,590.84

**Status:** Summons and Complaint for Money filed on February 5, 2003. On July 3, 2003, a Hearing on Demurrer to First Amended Complaint and Motion for Change of Venue was held. Plaintiff also filed a Second Amended Complaint on July 3, 2003. Defendant's Answer to Second Amended Complaint was filed on July 7, 2003. On July 11, 2003, Defendant's Notice of Entry of Order Sustaining Demurrer and Granting Motion for Change of Venue was filed. Defendant's Notice of Motion and Motion for Summary Judgment and Supporting documents filed on November 5, 2003. Plaintiff's Opposition filed on November 14, 2003. Defendant's Reply sent by mail on January 23, 2005. As of February 28, 2005, Plaintiff is now claiming a Claim for Refund of tax, penalty and interest.

**BRESLOW, BARRY & WENDY v. Franchise Tax Board**

Los Angeles Superior Court Docket No. 03K20961

Taxpayer's Counsel

Charles P. Rettig, Steven D. Blanc & Sharyn Fisk

Hochman, Salkin, Rettig, Toscher & Perez, P.C.

Filed - 12/02/03

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:** Hearing on Order to Show Cause held. Minute Order filed on December 16, 2004.

**COLGATE-PALMOLIVE, CO. & SUBSIDIARIES v. Franchise Tax Board**

Sacramento Superior Court Docket No. 03AS00707

Taxpayer's Counsel

Eric J. Coffill, Carley A. Roberts

Morrison & Foerster, LLP

Filed - 02/07/03

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: Order to Stay Proceeding signed by Judge Virga on November 29, 2004, until a decision is reached in the *General Motors v. FTB* case.

**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

FTB's Counsel

R. Todd Luoma

Anne Michelle Burr

Law Office of Richard Todd Luoma

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

Years: 1994 & 1995 Amount \$973,101.00

Status: Defendant's Answer to Complaint filed December 13, 2004.

**EDUCATIONAL EMPLOYEES CREDIT UNION, et al. v. Franchise Tax Board**

Sacramento Superior Court Docket No. 511821

Filed - 12/20/89

Court of Appeal, 3<sup>rd</sup> Appellate District, No. 3-CV-C020733

Taxpayer's Counsel

FTB's Counsel

Joanne Garvey, & Teresa Maloney

Benjamin F. Miller

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, 1<sup>st</sup> 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 FTB's Request for an Extension to file Reply Brief filed on February 7, 2005. Extension granted on February 8, 2005, to Defendant/Appellant FTB to file Reply Brief on March 4, 2005.**

**GALASKI, GREGORY JOHN v. Franchise Tax Board**

San Diego Superior Court Docket No. IC833950

Taxpayer's Counsel

Gregory Galaski, In Pro Per

Filed – 08/09/04

FTB's Counsel

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: 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<sup>nd</sup> Appellate District No. B165665

California Supreme Court No. S127086

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: **Appellant FTB's Reply Brief on the merits filed on February 15, 2005. Supreme Court's Order granting GM an extension of time to file its Reply Brief to April 1, 2005, and for leave to file an oversized Reply filed February 17, 2005.**

**HAMEETMAN, FRED AND JOYCE v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC 305968

Taxpayer's Counsel

Eric L. Troff, Esq.

Gibbs, Giden, Locher & Turner, LLP

Filed - 11/12/03

FTB's Counsel

Donald Currier

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

Years: 1990 & 1993

Amount \$65,738.00

Status: **Trial Setting Conference held on February 4, 2005, trial set for March 16, 2005 (2-day court trial estimated).**

**HARDIE, GEORGE G. v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC292256

Taxpayer's Counsel

Richard E. Posell, Gregory P. Korn

Greenberg, Glusker, Fields, Claman

Filed - 03/18/03

FTB's Counsel

Anthony Sgherzi

George M. Takenouchi

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

Year: 1993

Amount \$1,172,932.00

Status: **Request for Dismissal (entire action with prejudice) filed on February 24, 2005. Order to Show Cause vacated on February 28, 2005.**

**HYATT, GILBERT P. v. Franchise Tax Board**

Clark County Nevada District Court No. A382999

Taxpayer's Counsel

Thomas L. Steffen & Mark A. Hutchison

Hutchison & Steffen, H. Bartow Farr III

Filed - 01/06/98

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 \$7,545,492.00 Tax  
\$5,659,119.00 Penalty

Status: Clark County District Court:  
Discovery still proceeding.

**IDLEMAN, HURBERT AND JOANN, v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BS093240

Taxpayer's Counsel

Warren Nemiroff, Esq.

Filed – 10/21/04

FTB's Counsel

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: Notice of Case Management Conference filed by clerk of the court on January 27, 2005.

**JIBILIAN, TONY & DOROTHY v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC298685

Court of Appeal 2<sup>nd</sup> Appellate District Court No. B175952

Taxpayer's Counsel

Derek L. Tabone, Esq.

Law Offices of Tabone, APC

Filed – 07/09/03

FTB's Counsel

Brian Wesley

Elisa Wolfe-Donato

Issue: Whether Plaintiffs have taxable income for the years involved.

Years: 1999-2001 Amount \$208,742.00

Status: **Defendant/Respondent's Extension of Time to File Brief on March 24, 2005, granted on February 15, 2005.**

**JIM BEAM BRANDS CO. v. Franchise Tax Board**

San Francisco Superior Court No. CGC-02-408203

Court of Appeal, 1<sup>st</sup> Appellate District Court No. A107209

Taxpayer's Counsel

Edwin P. Antolin

Silverstein & Pomerantz, Jordan M. Goodman

Brian L. Browdy, Horwood, Marcus & Berk

Filed - 05/21/02

FTB's Counsel

George C. Spanos

Issues: 1. Whether the gain realized on the sale of all of the stock of a subsidiary was properly classified as business income.  
2. Assuming the gain on the sale of all of the stock was business, whether the FTB properly computed the basis of the stock.

Year: 1987 Amount \$133,042.00

Status: Defendant/Respondent's Request for Judicial Notice filed on February 14, 2005.  
Plaintiff/Appellant's Stipulation of Extension of Time to file Reply Brief on March 16, 2005, filed on February 15, 2005. Defendant/Respondent's Request for Judicial Notice granted by the court on February 15, 2005.

**K-MART, CORPORATION, et al. v. Franchise Tax Board**

U.S. Bankruptcy Court for the Northern District of Illinois  
Bankruptcy No. 02-B02474 – Adversary Proceeding No. 03A01420

Filed - 04/11/03

Taxpayer's Counsel

Charles F. Smith

Skadden, Arps, Slate, Meagher & Flom

FTB's Counsel

Michael Cornez

Larry Fischer

- Issues:
1. Whether gain realized on the sale of 20+% interest in an Australian retailer, Coles, was business income.
  2. Whether the gain realized on the sale of the interest in Coles was properly treated for AMT purposes.
  3. Whether dividends and interest received with respect to Coles was business income.
  4. Whether the taxpayer's request to account for its Canadian inventory on a LIFO basis was properly denied.
  5. Whether two insurance subsidiaries were properly excluded from the combined report.
  6. If the insurance subsidiaries were includible in the combined report, whether adjustments need to be made to the property and sales factors.
  7. Whether proceeds from the short-term investment of financial assets were properly excluded from the sales factor.
  8. Whether section 24402 is constitutional.
  9. Whether adjustments based upon federal RAR's were correctly made.
  10. Whether there were other unspecified errors in adjustments made or not made to the taxpayer's returns.
  11. Whether an under-payment penalty was properly imposed.

Years: 1986-1989, 1992-1994, 1999 & 2000

Amount \$3,524,625.00 – Tax  
\$ 82,590.01 – Penalty

Status: Hearing held on January 25, 2005.

**LAVINE, ELIZABETH v. Franchise Tax Board**

Sacramento Superior Court Docket No. 04AS03347

Filed - 09/07/04

Taxpayer's Counsel

Elizabeth Lavine, In Pro Per

FTB's Counsel

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: **Defendant's Case Management Conference Statement filed on February 3, 2005.**

**THE LIMITED STORES, INC. AND AFFILIATES v. Franchise Tax Board**

Alameda Superior Court Docket No. 837723-0  
Court of Appeal, 1<sup>st</sup> Appellate District Court No. A102915  
*Taxpayer's Counsel*  
Edwin P. Antolin  
Morrison & Foerster, LLP

Filed - 04/09/01  
*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: 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  
*Taxpayer's Counsel*  
Jeffrey G. Varga, Ethan Lipsig  
Paul, Hastings, Janofsky & Walker, LLP

Filed - 03/12/04  
*FTB's Counsel*  
Donald R. Carrier

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  
Court of Appeal, 1<sup>st</sup> Appellate Dist. No. A091644  
California Supreme Court No. S 104529  
*Taxpayer's Counsel*  
William E. Taggart, Jr.  
Taggart & Hawkins

Filed - 04/05/99  
*FTB's Counsel*  
Marguerite Stricklin

Issue: Whether plaintiffs were residents of California in 1993.

Year: 1993 Amount \$244,012.00

Status: **Notice of Motion for Recovery of Litigation Costs per Rev. & Tax. Code section 19717, and all supporting documents, filed by Plaintiffs Marken on February 3, 2005. Notice of Setting of Date for Hearing on Motion for Recovery filed by Plaintiffs on February 25, 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

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: Judgment for Defendant on First Cause of Action and Judgment for Plaintiff on Second Cause of Action filed February 8, 2005. Notice of Entry of Judgment filed February 8, 2005.

**MICROSOFT CORPORATION v. Franchise Tax Board**

San Francisco Superior Court Docket No. 400444

Filed - 10/19/01

Court of Appeal, 1<sup>st</sup> 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: **Oral Argument held on February 28, 2005. Court of Appeal Opinion in favor of Defendant/Appellant FTB filed February 28, 2005, reversing Statement of Decision for Plaintiff/Respondent on September 9, 2003.**

**MILHOUS, PAUL B. & MARY A. v. Franchise Tax Board**

San Diego Superior Court Docket No. GIC772282

Filed - 08/27/01

Court of Appeal, 4<sup>th</sup> Appellate Dist. Division 1, No. D043058 (Covenant Not to Compete)

Court of Appeal, 4<sup>th</sup> Appellate Dist. Division 1, No. D044362 (Costs/Attorneys' Fees)

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 (Paul Milhous) Reply Brief filed February 7, 2005 (D044362—Costs). Request for Oral Argument filed by Appellant and Cross-Respondent; Request for Oral Argument also filed February 17, 2005, by Respondent/Cross-Appellant (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, 4<sup>th</sup> Appellate Dist. Division 1, No. D043058 (Covenant Not to Compete)

Court of Appeal, 4<sup>th</sup> Appellate Dist. Division 1, No. D044362 (Costs/Attorneys' Fees)

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 (Paul Milhous) Reply Brief filed February 7, 2005 (D044362—Costs). Request for Oral Argument filed by Appellant and Cross-Respondent; Request for Oral Argument also filed February 17, 2005, by Respondent/Cross-Appellant (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: **Answer to Complaint filed by Defendant FTB on February 18, 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<sup>nd</sup> Appellate Dist. No. B169465

California Supreme Court No. S127649

Taxpayer's Counsel

FTB's Counsel

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<sup>st</sup> 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: **Oral argument held on February 15, 2005; matter taken under submission.**

**THE PILLSBURY COMPANY, a Delaware Corp. v. Franchise Tax Board**

San Francisco Superior Court Docket No. 414931

Filed – 11/21/02

Appellate Court – 1<sup>st</sup> Appellate Dist. Court No. A105155

California Supreme Court No. S130757

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 FTB's Answer to Petition for Review filed February 4, 2005.  
Appellant/Petitioner's Reply to Answer to Petition filed on February 14, 2005.**

**SHAFRAN, ALLEN J. & TOBY v. Franchise Tax Board**

Los Angeles Superior Court Docket No. BC 316070

Filed – 05/25/04

Taxpayer's Counsel

FTB's Counsel

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.

Year: 1992

Amount \$45,415.00 Tax

Status: Final status conference set for July 25, 2005, and three-day trial to commence on August 8, 2005.  
**Plaintiffs/Petitioners' Notice that Motion for Summary Judgment be taken off calendar.**

**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

FTB's Counsel

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.

Year: 1998

Amount \$1,141.00

Status: Plaintiff's First Amended Complaint for Refund of Individual Income Tax filed on February 3, 2005. Answer of Defendant Franchise Tax Board filed February 22, 2005. Case Management Statement of Defendant FTB filed February 28, 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<sup>th</sup> 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  
Court of Appeal, 2<sup>nd</sup> Appellate Dist. No. B178751

Filed - 05/22/02

*Taxpayer's Counsel*

Dwayne M. Horii,  
William C. Choi  
Rodriguez, Horii & Choi

*FTB's Counsel*

Donald R. Currier

- Issues:
1. Whether Yoshinoya West, Inc. is involved in a unitary business with its Japanese parent company.
  2. Whether application of the standard allocation and apportionment provision of the Revenue and Taxation Code disproportionately taxed Yoshinoya West.

Years: 1986 and 1987

Amount \$1,741,534.00

Status: On December 6, 2004, an Association of Attorneys was filed on behalf of Yoshinoya West, Inc.