



STATE OF CALIFORNIA  
**FRANCHISE TAX BOARD**  
Legal Branch  
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Rancho Cordova, CA 95741-1720

STEVE WESTLY  
Chair

JOHN CHIANG  
Member

TOM CAMPBELL  
Member

### **March 2005, and April 2005, Franchise Tax Board Litigation Roster**

All currently active cases 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 of new cases that have been added to the roster for the month is also provided, 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 maybe found on the Internet site.

**FRANCHISE AND INCOME TAX**  
**Closed Cases – March 2005**

<b><u>Case Name</u></b>	<b><u>Court Number</u></b>
Breslow, Barry & Wendy	Los Angeles Superior Court Docket No. 03K20961
Hardie, George G.	Los Angeles Superior Court Docket No. BC292256
The Pillsbury Company	San Francisco Superior Court No.414931

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**FRANCHISE AND INCOME TAX**  
**New Cases – March 2005**

<b><u>Case Name</u></b>	<b><u>Court Number</u></b>
General Mills, Inc. & Subsidiaries	San Francisco Superior Court No. CGC05-439929

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**FRANCHISE AND INCOME TAX**  
**Closed Cases – April 2005**

<b><u>Case Name</u></b>	<b><u>Court Number</u></b>
The Long Term Investment/Trustee JPMorgan Chase Bank	Los Angeles Superior Court No. Bc312094
Pacific Telesis Group, Inc.	San Francisco Superior Court No. 319008

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**FRANCHISE AND INCOME TAX**  
**New Cases – April 2005**

<b><u>Case Name</u></b>	<b><u>Court Number</u></b>
Ventas Finance I, LLC	San Francisco Superior Court No. 05-440001

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

**March 2005 and April 30, 2005**

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

Los Angeles Superior Court Docket No. BC296334

Court of Appeal, 2<sup>nd</sup> Appellate Dist. Div P No. B178750

*Taxpayer's Counsel*

Holly Kendig, Christopher W. Campbell

O'Melveny & Myers, LLP

Filed - 05/23/03

*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/Appellants' Opening Brief filed on March 11, 2005. Defendant/Respondent's Application for Extension of Time to File Brief filed on April 8, 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*

Roy E. Crawford, Robert 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: **Defendant's Objections and Responses to Draft Statement of Decision filed March 8, 2005.**

**ANDREW, DELMAR L. v. Franchise Tax Board**

Tuolumne County Superior Court, Case No. CV49500  
Sacramento Superior Court Docket No.03AS05305

Filed – 01/02/03

Taxpayer's Counsel

Michael Weisberg

The Law Offices of Michael Weisberg

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: **Settlement Conference Statement served by mail on April 5, 2005. Settlement conference held on April 13, 2005; no settlement agreement was reached. Trial to be rescheduled.**

**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: 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

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 & 1995

Amount \$973,101.00

Status: **Mandatory Settlement Conference held on April 22, 2005; Court trial scheduled for May 8, 2005.**

**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

Joanne Garvey, & Teresa Maloney

Heller, Ehrman, White & McAuliffe

FTB's Counsel

Benjamin F. Miller

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

John E. Cassinat & Ronald L. Carello

Cassinat Law Corporation

FTB's Counsel

Marguerite Stricklin

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 Reply Brief filed on March 4, 2005; case now fully briefed. Oral Argument Waiver Notice sent by the court on March 16, 2005. Plaintiff/Respondent's Request for Oral Argument filed on March 28, 2005.**

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

San Diego Superior Court Docket No. IC833950

Filed - 08/09/04

Taxpayer's Counsel

Gregory Galaski, In Pro Per

FTB's Counsel

Gregory S. Price

Issues: 1. Whether Plaintiff 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.  
**Declaration of Mark McEvilly in Support of Defendant's Motion for Summary Judgment or Summary Adjudication on First Amended Complaint filed April 8, 2005.**

**GENERAL MILLS, INC. & SUBSIDIARIES v. Franchise Tax Board**

San Francisco Superior Court Docket No. CGC05-439929

Filed – 03/29/05

Taxpayer's Counsel

Thomas H. Steele

Andres Vallejo, Jeffrey S. Terraciano

Morrison & Foerster LLP

FTB's Counsel

Marguerite Stricklin

- Issues:**
1. Whether the taxpayer's payroll factor was properly computed by excluding foreign employee stock options.
  2. Whether the taxpayer's sales factor was properly calculated by excluding receipts from commodities transactions and short-term financial instruments.
  3. Whether federal RAR adjustments were properly taken into account.

**Years:** 1992-1997 **Amount** \$3,550,367.00

**Status:** Summons and Complaint served personally on Franchise Tax Board on March 30, 2005.  
Answer to the Complaint filed on April 29, 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 & Ayob

FTB's Counsel

Stephen Lew, Donald

Currier and 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: **Plaintiffs/Appellants GM's Reply Brief on the Merits filed on March 28, 2005. Application of Multistate Tax Commission for Permission to file Amicus Curiae Brief in Support of Defendant/Appellant, Franchise Tax Board and Brief Amicus Curiae of Multistate Tax Commission in Support of Defendant/Appellant Franchise Tax Board filed April 22, 2005. Application to file Amicus Curiae Brief and Amicus Briefs by California Business Coalition, Tax Executive Institute, Inc. and Microsoft Corporation in support of General Motors filed on April 27, 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: **On March 16, 2005, trial was rescheduled to May 3, 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: **Plaintiffs refiled Summons and Complaint on March 30, 2005, and served by mail the Franchise Tax Board on April 7, 2005. Status Conference scheduled for May 9, 2005.**

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

Los Angeles Superior Court Docket No. BC298685

Filed – 07/09/03

Court of Appeal 2<sup>nd</sup> 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: 1999-2001 Amount \$208,742.00

Status: **Defendant/Respondent's Request on March 23, 2005, for Extension to File Brief on April 25, 2005. Application by Respondent for Third Extension of Time to File Respondent's Brief on May 25, 2005.**

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

San Francisco Superior Court No. CGC-02-408203

Filed - 05/21/02

Court of Appeal, 1<sup>st</sup> 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: **Plaintiff/Appellant's Request for Extension of Time to File Brief filed to March 16, 2005. Plaintiff/Appellant's Reply Brief filed on April 19, 2005. Better Communication, Inc.'s Application to file Amicus Curiae Brief filed on April 22, 2005. Order filed granting Better Communications, Inc. leave to file Amicus Brief. Better Communication, Inc.'s Amicus Curiae Brief filed on April 27, 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: **Discovery proceeding.**

**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: **Calendar Notice sent on April 13, 2005; Oral Argument scheduled for May 19, 2005, Plaintiffs/Appellants' Request on April 20, 2005, to Change Date of Oral Argument. Order filed; Plaintiffs/Appellants' Request to continue Oral Argument is granted to June 15, 2005, or June 16, 2005, filed on April 26, 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: **Defendant FTB's Memorandum of Points and Authorities in Opposition to Motion for Litigation Costs Pursuant to Revenue & Taxation Code § 19717 mailed to opposing counsel on March 23, 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

Jeffrey M. Vesely, Richard E. Nielsen & Annie H. Huang

Pillsbury Winthrop, LLP

FTB's Counsel

Anne Michelle Burr

- Issues:
1. Whether Plaintiff was entitled to use Marked-to-Market accounting allowed under the Internal Revenue Code when those provisions had not been adopted by California.
  2. Whether other adjustments made or allowed by the Internal Revenue Service should be allowed by California.

Years: 1993 and 1994

Amount \$606,744.00

Status: **Plaintiff's Notice of Appeal filed April 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

**California Supreme Court No. S133343**

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: **Plaintiff/Appellant's Petition for Rehearing filed on March 15, 2005. Request to Publish Opinion filed with the court by FTB; Non-Opposition to Modification in Petition for Rehearing requested by Microsoft filed with the court on March 17, 2005. Order denying publication filed on March 23, 2005. Modification of Opinion (change in judgment); Respondent's Petition for Rehearing denied on March 23, 2005. Petition for Review in Supreme Court filed on April 26, 2005.**

**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

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: **Court's Order vacating the March 18, 2005, hearing date entered March 16, 2005. Oral Argument Recalendared for May 10, 2005.**

**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:** **Court's Order vacating the March 18, 2005, hearing date entered March 16, 2005. Oral Argument Recalendared for May 10, 2005.**

**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 held on March 18, 2005, and continued to September 16, 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

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: 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: **Case Management Conference scheduled for June 17, 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: **Defendant/Respondent's Opening Brief on the Merits and Request for Judicial Notice filed on March 3, 2005. Plaintiffs/Appellants' Answer Brief on the Merits filed on April 1, 2005. Defendant/Respondent's Application for Extension of Time to File Reply Brief on the Merits filed on April 12, 2005; Extension of Time granted to May 21, 2005, for Defendant/Respondent to file Reply Brief on the Merits.**

**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.

**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.

**VENTAS FINANCE I, LLC v. Franchise Tax Board**

San Francisco Superior Court Docket No. 05-440001

Filed – 04/01/05

Taxpayer's Counsel

FTB's Counsel

Amy L. Silverstein, Edwin Antolin

Marguerite Stricklin

Silverstein & Pomerantz, LLP

Issue: Whether Revenue and Taxation Code section 17942, which imposes a tax based 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 Clause.

**Years: 2001 through 2003**

**Amount \$29,580.00**

**Status: Summons and Complaint served on Franchise Tax Board on April 19, 2005.**

**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

*Taxpayer's Counsel*

Dwayne M. Horii,

William C. Choi

Rodriguez, Horii & Choi

Filed - 05/22/02

*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: Record on Appeal filed on March 7, 2005. Court grants Stipulation of Extension of Time for briefing on March 14, 2005; Appellant granted 80 days, and Respondent granted 90 days.**