CALIFORNIA

*Carley A. Roberts**

FRANCHISE INCOME TAX

APPORTIONMENT AND ALLOCATION OF BUSINESS AND NONBUSINESS INCOME

In *General Motors Corp. v. Franchise Tax Board*, 120 Cal. App. 4th 114 (2004), the first of the six "gross receipts" cases in court in California to be decided in the Court of Appeal, the Second Appellate District addressed the issue of what the term "sales" means, as used and defined in Revenue and Taxation Code sections 25120 and 25134. The court affirmed the ruling of the trial court

> that the return of principal from securities transactions in the repurchase agreements and maturities categories should not be included as 'gross receipts' in the denominator of the sales factor in apportioning income to California. The reason for this conclusion is that such return of principal does not arise out of a sales transaction.

On October 13, 2004, the California Supreme Court granted review in the case, and briefing is proceeding. The other five "gross receipts" cases pending in the California courts include three at the Court of Appeal level—*Toys "R" Us, Inc. & Affiliates v. Franchise Tax Board*; *The Limited Stores, Inc. & Affiliates v. Franchise Tax Board*; *Microsoft Corp. v. Franchise Tax Board*—and two at the Superior Court level: *Montgomery Ward LLP v. Franchise Tax Board* and *Colgate-Palmolive Co. et al. v. Franchise Tax Board*.

PROCEDURAL

2004 Statutes of California, chapter 412 (AB 1416), extends the sunset date from January 1, 2005 until January 1, 2009 on California's conforming to federal statutes protecting the confidentiality of certain communications between a "federally authorized tax practitioner" and clients. The confidentiality applies only to administrative proceedings in noncriminal tax matters before the Franchise Tax Board, Board of Equalization, or Employment Development Department. It generally does not apply to tax shelters and it is not a judicial privilege applicable in court proceedings.

PERSONAL INCOME TAX

In *Noble v. Franchise Tax Board*, 118 Cal. App. 4th 560 (2004), for the first time in over twenty years, the Court of Appeal issued a published decision interpreting the California residency provisions of Revenue and Taxation Code

*Attorney, Morrison & Foerster LLP; Brigham Young University, B.S., 1996; McGeorge School of Law, University of the Pacific, J.D., 1999.

section 17014. The court specifically addressed whether the taxpayers were residents of California for personal income tax purposes. Despite the taxpayers' clear intent to change their domicile and residence to Colorado, the court held the taxpayers were still California residents. See Roberts, "California Residency: Intent Not Enough to Change a Taxpayer's Residence," INSIGHTS, Oct. 1, 2004.

In *Appeal of Bagley* (Cal. St. Bd. of Equalization, June 30, 2004), unpublished letter decision, the SBE granted partial relief to the taxpayers in a residency dispute with the Franchise Tax Board. The residency appeal involved four years, 1994-1997, and the SBE ruled the taxpayers established residency in Texas and were not subject to California tax for the first year in issue, 1994. However, in the same decision, the SBE ruled the taxpayers were subject to California tax for the last three years in issue, 1995-1997, as California residents.