

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

GENERAL MOTORS CORPORATION
et al.,

Plaintiffs and Appellants,

v.

FRANCHISE TAX BOARD,

Defendant and Appellant.

B165665

(Los Angeles County
Super. Ct. No. BC269404)

**ORDER MODIFYING OPINION
AND DENYING REHEARING**

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein June 30, 2004, be modified as follows:

1. The third sentence on page 2, beginning “We conclude that,” is modified so that it reads:

We conclude that, in calculating the amount of income apportionable to California, the Franchise Tax Board properly excluded returns of principal from certain securities transactions denominated as gross receipts.

2. On page 3, line 2 of the second paragraph beginning on that page, the phrase “§25130 et seq.” is changed to “§25120 et seq.”

3. On page 7, footnote 4 is changed by deleting the first close quotation mark (immediately after the word “minor”).

4. On page 8, the second sentence is changed by adding the word “to” after the word “as” and before the word “two” so that the sentence reads:

The court also granted the FTB's cross-motion for summary adjudication as to two causes of action.

5. The last sentence of the first full paragraph on page 9 is modified by adding the name "Treasury Department" so that the sentence reads:

Thus, approximately \$497 million of GM's Treasury Department income was agreed to be business income apportionable to California.

6. On page 9, the statutory reference to "section 24134" in the second sentence of the fourth full paragraph is changed to "section 25134."

7. On page 14, delete the period before the close parenthesis mark at the end of the third sentence of the last paragraph and insert a period immediately after the close parenthesis mark.

8. The last sentence beginning on page 17 is modified by deleting the phrase "from taxes" so that the sentence now reads:

GM's argument that these dividends are not "on or according to or measured by income" is premised on taking into account "intercompany eliminations" under section 25106.

9. On page 21, on the third line of the second full paragraph, the statutory reference to "section 24404" is changed to "section 24402."

10. In the Appendix to the opinion replace Table A with the version of Table A attached to this order.

There is no change in the judgment.

The petition for rehearing filed by appellants and cross-respondents General Motors Corporation et al., is denied.

APPENDIX

TABLE A

1986

	U.S. Agencies	T-Bills	T-Notes	CDs	Corp. Securities	Total
Direct Sales	\$725,320,275	\$23,260,847,776	\$551,715,605	\$0	\$0	\$24,537,883,656 (6.6%)
Maturities	1,444,276,542	6,453,162,487	82,000,000	836,000,000	4,043,310,000	\$12,858,749,029 (3.5%)
Repurchases	287,650,000	100,547,409,545	230,686,701,228	0	0	\$331,521,760,774 (89.9%)
TOTAL	\$2,457,246,817	\$130,261,419,808	\$231,320,416,835	\$836,000,000	\$4,043,310,000	\$368,918,393,459

1987

	U.S. Agencies	T-Bills	T-Notes	CDs	Corp. Securities	Total
Direct Sales	\$312,740,587	\$8,583,576,790	\$1,130,001,710	\$0	\$159,956,721	\$10,366,275,809 (4.4%)
Maturities	55,860,000	4,000,000	0	3,064,100,000	4,133,216,871	\$7,257,176,871 (3%)
Repurchases	0	56,203,779,391	165,342,918,179	0	0	\$221,546,697,571 (92.6%)
TOTAL	\$368,600,588	\$64,791,356,182	\$166,652,919,890	\$3,064,100,000	\$4,293,173,592	\$239,170,150,251

1988

	U.S. Agencies	T-Bills	T-Notes	CDs	Corp. Securities	Total
Direct Sales	\$406,276,600	\$2,150,723,277	\$249,928,711	\$50,000,000	\$20,555,400	\$2,877,483,987 (8%)
Maturities	363,941,378	6,500,000	2,500,000	6,773,899,480	35,234,812,305	\$42,381,653,163 (11.7%)
Repurchases	50,697,621	35,249,485,506	279,985,900,781	0	100,000,000	\$315,386,083,908 (87.5%)
TOTAL	\$820,915,599	\$37,406,708,784	\$280,238,329,492	\$6,823,899,480	\$35,355,367,705	\$360,645,221,059