

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 * * * *

3 FRANCHISE TAX BOARD OF THE
4 STATE OF CALIFORNIA,

Case No. 53264

5 Appellant/Cross-Respondent,
6 vs.

7 GILBERT P. HYATT,

Electronically Filed
Sep 29 2009 10:02 a.m.
Tracie K. Lindeman

8 Respondent/Cross-Appellant.
9

10
11 **MOTION FOR LEAVE TO FILE A SUPPLEMENTAL APPENDIX**

12 Pursuant to NRAP 27, appellant/cross-respondent Franchise Tax Board of the
13 State of California ("FTB") moves for leave of Court to file the Supplemental
14 Appellant's Appendix, attached hereto as Exhibit A.

15 On August 7, 2009, FTB's Opening Brief was filed. FTB's Opening Brief
16 contained some typographical errors related to certain factual citations. There were
17 citations in FTB's Opening Brief to "54 AA 13401." The document cited was a notice
18 sent by FTB to Hyatt in 1996. These citations, however, should have referred to
19 Plaintiff's Trial Exhibit 112. After a thorough review of the current appellate record, it
20 appears that this particular notice was inadvertently omitted from Appellant's Appendix
21 and does not currently appear in the record on appeal.

22 On September 17, 2009, FTB wrote to counsel for Hyatt explaining this error.
23 FTB specifically requested that counsel for Hyatt inform FTB whether they intend to
24 include this document in his Respondent's Appendix. Counsel for Hyatt has not
25 responded.
26
27
28

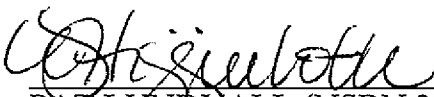
 MCDONALD-CARANO-WILSON
100 WEST LIBERTY STREET, 10TH FLOOR • RENO, NEVADA 89501
PO BOX 2670 • RENO, NEVADA 89505-2670
PHONE 775-788-2000 • FAX 775-788-2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

It is critical that the inadvertent errors in FTB's Opening Brief are corrected prior to the court's review of this appeal. Moreover, it is important that this document is properly made a part of the appellate record because it provides the foundation for some of Hyatt's claims. Therefore, FTB respectfully requests leave of court to file the attached Supplemental Appellant's Appendix, which contains the document inadvertently omitted from the Appellant's Appendix.

Dated this 29th day of September 2009.

McDONALD CARANO WILSON LLP

By: 
PAT LUNDVALL (NSBN 3761)
CARLA HIGGINBOTHAM (NSBN 8495)
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Telephone No. (702) 873-4100
lundvall@mcdonalddcarano.com
chigginbotham@mcdonalddcarano.com

ROBERT L. EISENBERG (NSBN 0950)
LEMONS, GRUNDY, & EISENBERG
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Telephone No.: (775) 786-6868
Facsimile No. (702) 873-9966
rle@lge.net

Attorneys for Defendant
Franchise Tax Board of the State of California

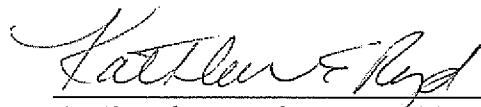
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I hereby certify that I am an employee of McDonald
3 Carano Wilson LLP, and that I served true and correct copies of the foregoing
4 **MOTION FOR LEAVE TO FILE A SUPPLEMENTAL APPENDIX** on this 29 day
5 of September, 2009 by depositing said copies with Federal Express for overnight
6 delivery, upon the following:

7
8 Peter C. Bernhard, Esq.
Kaempfer Crowell Renshaw Gronauer & Fiorentino
3800 Howard Hughes Parkway, Seventh Floor
9 Las Vegas, Nevada 89169
Facsimile: (702) 796-7181

10
11 Mark A. Hutchison, Esq.
Hutchison & Steffen
Peccole Professional Park
12 10080 West Alta Drive, Suite 200
Las Vegas, NV 89145
13 Facsimile: (702) 385-2086

14
15 Donald J. Kula, Esq.
Perkins Coie
1888 Century Park East, Suite 1700
16 Los Angeles, CA 90067-1721
Facsimile: (310) 788-3399

17
18
19
20
21 

22 An Employee of McDonald Carano Wilson LLP
23
24
25
26
27
28

EXHIBIT “A”

EXHIBIT “A”

IN THE SUPREME COURT OF THE STATE OF NEVADA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FRANCHISE TAX BOARD)
OF THE STATE OF CALIFORNIA,)
Appellant/Cross-Respondent,)
vs.)
GILBERT P. HYATT,)
Respondent/Cross-Appellant.)

No. 53264

APPEAL FROM JUDGMENT – EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE JESSIE WALSH, DISTRICT JUDGE

* * * * *

SUPPLEMENTAL APPELLANT'S APPENDIX
VOLUME 1

ROBERT L. EISENBERG (NSBN 0950)
LEMONS, GRUNDY, & EISENBERG
6005 Plumas Street, Suite 300
Reno, Nevada 89519
Telephone No. (775) 786-6868
Facsimile No. (775) 786-9716

PAT LUNDVALL (NSBN 3761)
CARLA HIGGINBOTHAM (NSBN 8495)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Telephone No. (702) 873-4100
Facsimile No. (702) 873-9966

ATTORNEYS FOR APPELLANT/
CROSS-RESPONDENT

SUPPLEMENTAL INDEX TO APPELLANT'S APPENDIX

<u>Document</u>	<u>Date</u>	<u>Vol.</u>	<u>Page Nos.</u>
Trial Exhibit 112	08/06/08	1	SAA00001-5



STATE OF CALIFORNIA

FRANCHISE TAX BOARD
6150 VAN NUYS BLVD., ROOM 100
VAN NUYS, CA 91401-3381
TELEPHONE: (818) 901-5225

For Privacy Act Notice, See Form FTB 1131

Date: June 17, 1993

Gilbert P. Hyatt
P.O. Box 60028
Las Vegas, NV 89160

Years: 1989 & 1990 & 1991

Your returns have been assigned to this office for examination. We hope to complete the examination as soon as possible, but our workload sometimes requires that our audits be delayed for some time. Answers to the questionnaire on the reverse side will assist us in scheduling an appointment on a mutually convenient date, and in expediting the examination of your returns.

Please complete the questionnaire and return it to our office within 10 days. If additional information is needed, you or your designated representative will be contacted.

Your cooperation is appreciated.

Marc Shayer
Marc Shayer
Tax Auditor

H 014905

AUDIT SCHEDULING INFORMATION

- Personal Income Tax
- Franchise Tax

INCOME YEARS

TAXPAYER	
TAXPAYER ADDRESS	ADDRESS LOCATION WHERE RECORDS CAN BE EXAMINED
	<input type="checkbox"/> Same as Taxpayer address <input type="checkbox"/> _____

Individual to contact to conduct this audit

NAME	TITLE	TELEPHONE & EXTENSION
ADDRESS		

Have you signed a consent to extend the federal statute of limitations for any of the years involved or any prior year? Yes No If Yes, list each year and application expiration date:

Year							
Expiration Date							

Has the Federal Government examined any of the returns for the year(s) involved? Yes No
 Is an examination in progress? Yes No

If Yes, years under examination: _____

To your knowledge, is an examination planned? Yes No

If an examination has been completed, a copy of the report should be forwarded to this office in accordance with Section 25432 of the Bank and Corporation Law or Section 18451 of the Personal Income Tax Law. This may make our independent examination unnecessary.

CORPORATE TAXPAYERS COMPLETE THE FOLLOWING				
Name of corporate affiliates (subsidiary or parent)	Percent of Ownership	Files California Returns		If Yes, California Identification No.
		Yes	No	

Please enclose reports to stockholders for each reference year (if available) in order that we may study them beforehand.

This questionnaire completed by:	SIGNATURE	TITLE	DATE
----------------------------------	-----------	-------	------

FYB 4291-39 (REV 12-85) PAGE 2



STATE OF CALIFORNIA

FRANCHISE TAX BOARD

Your tax return has been selected for audit by the California Franchise Tax Board (FTB).

What should you expect from a Franchise Tax Board audit?

- Courteous treatment by FTB employees
- Clear and concise requests for information from the auditor assigned to your case
- Confidential treatment of any personal and financial information that you provide to us
- Completion of the audit within a reasonable amount of time

At the close of the audit, you will be told in writing that

- We are accepting the return as you filed it, or
- You have additional tax due, or
- You have overpaid your tax and are entitled to a refund, or -
- We have not changed your tax amount, but you may be entitled to a refund if you correctly recompute your tax and file a claim for a refund before the Statute of Limitation expires

Please see reverse side for additional information.

FTB 1015 (REV 3-89) PAGE 1

PRIVACY NOTICE

The Information Practices Act of 1977 and the federal Privacy Act require the Franchise Tax Board to tell you why we ask you for information. The Operations and Compliance Divisions ask for tax return information to carry out the Personal Income Tax Law of the State of California. We may request additional information if we audit your return or take collection action.

If you meet the income requirements, the Revenue and Taxation Code requires you to file a return or statement in the form we prescribe (Sections 18401 and 18431). When you file these or other documents, you must include your social security number for identification and return processing (Section 18934).

It is mandatory to furnish all information requested when you are required to file a return or statement. If you do not file a return, or do not provide the information we ask for, or provide fraudulent information, the law says you may be charged penalties and interest and, in certain cases, you may be subject to criminal prosecution. We also may disallow claimed exemptions, exclusions, credits, deductions or adjustments. This could make the tax higher or delay or reduce any refund.

We may give the information you furnish us to the United States Internal Revenue Service, the proper official of any state imposing an income tax or a tax measured by income, the Multistate Tax Commission and to California government

agencies and officials, as provided by law. If you owe any monies, we may disclose the amount due to employers, financial institutions, County Recorders, vacation trust funds, process agents and other payers.

You have a right to access records containing your personal information maintained by the Franchise Tax Board. The officials responsible for maintaining the information are: 1) Filing of returns - Director, Document Processing Bureau; 2) Auditing of returns - Director, Personal Income Tax Audit Bureau; and 3) Collection of monies - Director, Enforcement Bureau. The address is: Franchise Tax Board, P.O. Box 942840, Sacramento, CA 94240-1040; telephone: (800) 852-5711.

FTB 1131 (REV 5-89/0-91)

H 014907

0112-00003

SAA00003

1741



*Place stamp here.
Post Office will
not deliver mail
without postage.*

FRANCHISE TAX BOARD
6150 VAN NUYS BLVD ROOM 100
VAN NUYS CA 91401-3381
ATTN: MARC SHAYER



H 014908

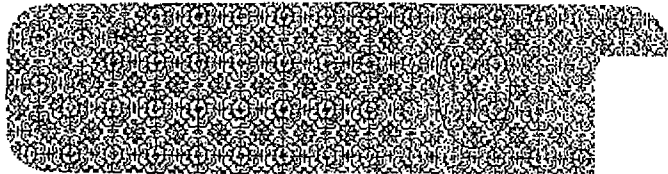
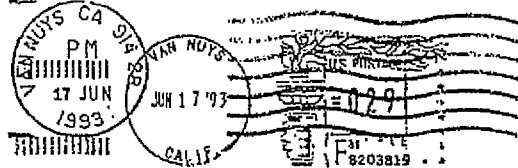
SAA00004

0112-00004

1723

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
6160 VAN NUYS BLVD., ROOM 100
VAN NUYS, CA 91401-3381

FORWARDING AND
ADDRESS CORRECTION REQUESTED



HYATTA
4012 S RAINBOW BLVD #464
LAS VEGAS NV 89102
745E MNDP
EP/12/90 BPAT P10201PB

29160-0022



H 014909

SAA00005

0112-00005