

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA,

Case No.: 53264

Appellant/Cross-Respondent,

vs.

GILBERT P. HYATT,

Respondent/Cross-Appellant.

FILED

MAY 18 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

MOTION TO SUSPEND BRIEFING SCHEDULE PENDING DETERMINATION OF

MOTION FOR PREHEARING CONFERENCE PURSUANT TO NRAP 33

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RECEIVED
MAY 18 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

1 Appellant Franchise Tax Board of the State of California ("FTB") hereby moves to
2 suspend the briefing schedule pending the court's ruling on FTB's motion for a prehearing
3 conference pursuant to NRAP 33 (which motion is being filed concurrently with the present
4 motion).

5 This is an appeal from a judgment against FTB, which is a California state government
6 agency, in the amount of approximately \$490 million. The judgment was entered after ten years
7 of litigation in the district court, in this court, and in the United States Supreme Court, all as set
8 forth in more detail in FTB's Rule 33 motion. There were scores of pretrial motions; the trial
9 lasted four months, with more than 50 witness and thousands of pages of exhibits; and there are
10 literally dozens of significant issues FTB has identified for appeal. The briefs and the appendix
11 will reflect the massive district court record and the enormous complexity and unusual nature of
12 the legal issues.

13 FTB's opening brief is presently due on June 18, 2008. FTB has filed a motion
14 requesting the court to schedule a prehearing conference, pursuant to NRAP 33. As indicated in
15 the Rule 33 motion, FTB seeks a prehearing conference with a member of this court and with
16 counsel for respondent Gilbert P. Hyatt, all for the purpose of streamlining the appeal, possibly
17 bifurcating the briefing of dispositive issues, establishing procedural requirements and new due
18 dates for the briefs and the appendix, and otherwise establishing procedures for the best and
19 most efficient ways to process this highly unusual and complex case -- bearing in mind the
20 need for this court ultimately to decide the case justly, fairly and correctly within the law.

21 Because the Rule 33 conference, if scheduled, will deal with issues directly involving the
22 form, content and due dates for the briefs and the appendix, FTB's attorneys respectfully request
23 that they not be required to comply with the present briefing schedule. Accordingly, FTB
24 respectfully requests that the court suspend the briefing schedule, pending the outcome of the
25 motion to schedule a Rule 33 prehearing conference (and if such a conference is scheduled,
26 pending the order issued as a result of the prehearing conference).

27 ////

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1 Dated this 15th day of May, 2009.

2
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CERTIFICATE OF MAILING

Pursuant to NRAP 25, I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date I caused to be deposited for mailing at Reno, Nevada, and via facsimile, a true copy of the foregoing addressed to:

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DATED: 5/15/09

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