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## IN THE SUPREME COURT OF THE STATE OF NEVADA

2 FRANCHISE TAX BOARD 3 OF THE STATE OF CALIFORNIA, 4 No. 53264 FILED Appellant/Cross-Respondent, 5 vs. 6 JUL 2 0 2009 7 GILBERT P. HYATT, 8 Respondent/Cross-Appellant. 9

## MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF APPELLANT/CROSS-RESPONDENT FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA

The Multistate Tax Commission ("the Commission") respectfully moves this Court for leave to file a brief in this matter as *Amicus Curiae* in support of Appellant/Cross Respondent Franchise Tax Board of the State of California. The Motion is made pursuant to Rule 29 of the Nevada Rules of Appellate Procedure. The Commission has conditionally submitted its proposed brief contemporaneously with this Motion as permitted by that Rule. This motion is opposed by Respondent/Cross-Appellant Gilbert B. Hyatt ("Hyatt").

In support of this Motion, the Commission shows the Court:

- 1. The Multistate Tax Commission is the administrative agency for the Multistate Tax Compact ("Compact"), which became effective in 1967. (See RIA State & Local Taxes: All States Tax Guide ¶ 701 et seq. (2005).) Nineteen states and the District of Columbia have adopted the Compact through the enactment of legislation that makes the Compact a part of their respective statutory law. Healy & Schadenwald, Multistate Corporate Tax Guide, I-1043-1046 (2006 CCH). Forty-seven states and the District of Columbia are now members of the Commission. Id.
- 2. One of the primary goals of the Commission is the protection of the States' Overeighty prefers in matters pertaining to taxation under our system of federalism. Indeed, the Compact arose as a direct result of threatened federal legislation that would have imposed

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significant limitations on state taxation of interstate commerce. See, e.g., H.R. Rep. No. 89-952, Pt. VI, at 1143 (1965). The Compact was the States' response to claims that inconsistent taxing systems imposed undue burdens on taxpayers subject to multi-jurisdictional taxing authority. Acting through its member states, the Commission develops model uniform laws and regulations pertaining to common issues in state taxation where the Commission believes that uniformity will benefit the states and the taxpaying community. The Commission also files briefs as a friend of the court in certain cases where, as here, the Commission believes that important state tax administration and policy-making principles are at stake.

- 3. The Commission's primary interest in submitting its brief in this case arises from its mission of preserving our system of federalism, which demands that states respect one another's sovereignty interests and policy determinations. Those sovereignty interests are undermined where the courts of one state are permitted to review the discretionary actions and policy determinations of an agency of another state. In addition, the Commission has a fundamental objection to proceedings which constitute collateral attacks on the administrative and adjudicative functions established by states to determine the tax liabilities of its taxpayers. Such collateral attacks significantly hamper the proper administration of the States' taxing systems and undermine the public's confidence in the impartial and prompt administration of tax laws.
- 4. The Commission also has an interest in this case because of its role as an agent for the States in conducting audits of multi-jurisdictional taxpayers pursuant to Article VIII of the Compact. The Commission regularly sends auditors into multiple states and conducts audits in those states according to the established laws and practices of its member states. The Commission is concerned by any proceedings which would impose liability by supplanting those established laws and procedures with *ad hoc* determinations of applicable standards of care for tax agencies.
- 5. The Commission also has an interest in this case arising from the imposition of substantial punitive damages by the citizens of one state against the government, and thus the citizens, of another state. The Commission believes that the continued independence of state tax

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systems is vitally dependent on interstate cooperation and comity, and that the allowance of such damages would be deeply harmful to those interstate relationships.

6. The Commission submits that its 42 years of experience in multistate tax administration, auditing, rule-making and interstate dispute resolution on behalf of states and taxpayers gives it a unique perspective on the issues raised in this appeal and that its experience and expertise can be of material assistance and guidance to this Court.

WHEREFORE, The Commission respectfully prays for an order granting it leave to file its Brief as *Amicus Curiae* on behalf of Appellant/Cross-Respondent Franchise Tax Board of the State of California conditionally submitted with this motion.

Respectfully submitted this 20<sup>th</sup> day of July 2009.

CATHERINE CORTZ MASTO/ Attorney General for the State of Nevada

By:

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## **CERTIFICATE OF SERVICE**

2	I hereby certify that true and correct copies of this Motion for Leave to File Brief as
3	Amicus Curiae in Support of Appellant/Cross-Respondent Franchise Tax Board of the State of
4	California was served on the following counsel of record this 20 <sup>th</sup> day of July, 2009, by first
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