

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 FRANCHISE TAX BOARD)
4 OF THE STATE OF CALIFORNIA,)

No. 53264

5 Appellant/Cross-Respondent,)

FILED

6 vs.)

JUL 22 2009

7 GILBERT P. HYATT,)

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

8 Respondent/Cross-Appellant.)
9)

10
11 MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT
12 OF APPELLANT/CROSS-RESPONDENT FRANCHISE TAX BOARD
13 OF THE STATE OF CALIFORNIA
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15 The Multistate Tax Commission (“the Commission”) respectfully moves
16 this Court for leave to file a brief in this matter as *Amicus Curiae* in support of
17 Appellant/Cross Respondent Franchise Tax Board of the State of California. The
18 Motion is made pursuant to Rule 29 of the Nevada Rules of Appellate Procedure.
19 The Commission has conditionally submitted its proposed brief
20 contemporaneously with this Motion as permitted by that Rule. This motion is
21 opposed by Respondent/Cross-Appellant Gilbert B. Hyatt (“Hyatt”).
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24 In support of this Motion, the Commission shows the Court:

25 1. The Multistate Tax Commission is the administrative agency for the

26 Multistate Tax Compact (“Compact”), which became effective in 1967. (See RIA
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1 State & Local Taxes: All States Tax Guide ¶ 701 *et seq.* (2005).) Nineteen states
2 and the District of Columbia have adopted the Compact through the enactment of
3 legislation that makes the Compact a part of their respective statutory law. Healy
4 & Schadenwald, *Multistate Corporate Tax Guide*, I-1043-1046 (2006 CCH).
5
6 Forty-seven states and the District of Columbia are now members of the
7 Commission. *Id.*

8
9 2. One of the primary goals of the Commission is the protection of the
10 States' sovereignty interests in matters pertaining to taxation under our system of
11 federalism. Indeed, the Compact arose as a direct result of threatened federal
12 legislation that would have imposed significant limitations on state taxation of
13 interstate commerce. See, e.g., H.R. Rep. No. 89-952, Pt. VI, at 1143 (1965).
14
15 The Compact was the States' response to claims that inconsistent taxing systems
16 imposed undue burdens on taxpayers subject to multi-jurisdictional taxing
17 authority. Acting through its member states, the Commission develops model
18 uniform laws and regulations pertaining to common issues in state taxation where
19 the Commission believes that uniformity will benefit the states and the taxpaying
20 community. The Commission also files briefs as a friend of the court in certain
21 cases where, as here, the Commission believes that important state tax
22 administration and policy-making principles are at stake.
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25 3. The Commission's primary interest in submitting its brief in this case
26 arises from its mission of preserving our system of federalism, which demands
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1 that states respect one another's sovereignty interests and policy determinations.
2 Those sovereignty interests are undermined where the courts of one state are
3 permitted to review the discretionary actions and policy determinations of an
4 agency of another state. In addition, the Commission has a fundamental objection
5 to proceedings which constitute collateral attacks on the administrative and
6 adjudicative functions established by states to determine the tax liabilities of its
7 taxpayers. Such collateral attacks significantly hamper the proper administration
8 of the States' taxing systems and undermine the public's confidence in the
9 impartial and prompt administration of tax laws.
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12 4. The Commission also has an interest in this case because of its role as
13 an agent for the States in conducting audits of multi-jurisdictional taxpayers
14 pursuant to Article VIII of the Compact. The Commission regularly sends
15 auditors into multiple states and conducts audits in those states according to the
16 established laws and practices of its member states. The Commission is
17 concerned by any proceedings which would impose liability by supplanting those
18 established laws and procedures with *ad hoc* determinations of applicable
19 standards of care for tax agencies.
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22 5. The Commission also has an interest in this case arising from the
23 imposition of substantial punitive damages by the citizens of one state against the
24 government, and thus the citizens, of another state. The Commission believes
25 that the continued independence of state tax systems is vitally dependent on
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1 interstate cooperation and comity, and that the allowance of such damages would
2 be deeply harmful to those interstate relationships.

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

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

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18 Respectfully Submitted By:

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11 * *Pending ruling on Motion for Leave to Associate*

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of this Motion to Allow Association of Counsel and Proposed Order Granting Motion were served on the following counsel of record this 20th day of July, 2009, by first class mail, postage pre-paid to the addresses show below:

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