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IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF THE STATE
OF CALIFORNIA,

Appellant/Cross Respondent,

v.

GILBERT P. HYATT,

Respondent/Cross Appellant

Case No. 53264 Electronically Filed
Mar 06 2012 04:52 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**REPLY IN SUPPORT OF MOTION TO POSTPONE ORAL ARGUMENT FOR 30
DAYS**

Respondent Gilbert P. Hyatt files this brief reply in response to the opposition to this motion filed March 6 by Appellant FTB.

The FTB's first argument in opposition to Hyatt's requested 30 day postponement is that the Court might not have another en banc hearing date in approximately 30 days such that oral argument may be postponed until the fall of 2012. That is neither Hyatt's intent nor desire. Hyatt seeks only a 30 day postponement for the reasons stated in his moving papers. It is wild speculation with no basis for the FTB to conclude that Hyatt's requested 30 day postponement will turn into a six month postponement.

The FTB next argues that this Court's scheduling order identifying eight issues severely limits the issues for oral argument. With due respect to the FTB's assertion, the eight issues identified by the Court encompass the most significant issues addressed by the parties in their hundreds of pages of briefing. The focus provided by the Court certainly assists the parties in preparing for oral argument. But these eight issues, even with certain issues being interrelated, are complex and diverse. Hyatt submits that based on the record of the case, good cause exists for his requested 30 day postponement of the oral argument.

1 The FTB then devotes a significant amount of its opposition to addressing the conflict
2 the current date creates with Hyatt lead trial counsel Mark Hutchison. Only a brief response is
3 required to the FTB's argument on this point. First, Mr. Hutchison is representing the State of
4 Nevada and expects to have some role in helping to prepare for oral argument in the United
5 States Supreme Court scheduled to commence March 26, 2012. Second, in regard to this case,
6 it has been pending since 1998 and during that entire time, Mr. Hutchison has taken a leading
7 role in the case, including as lead trial lawyer during the four- month trial in 2008. Mr.
8 Hutchison's participation in preparation for the oral argument in this appeal is important. His
9 limited availability until after March 28, 2012 also creates good cause for the requested 30 day
10 postponement.
11

12 Lastly, the FTB makes the unsupported and untrue assertion that Hyatt requested the 30
13 day postponement for "tactical" reasons related to the administrative tax appeals pending in
14 California. The FTB's assertion is baseless, and postponing the oral argument in this appeal by
15 30 days will have absolutely no effect on the administrative tax proceedings in California.
16 Indeed, nothing this Court does in this appeal will affect those proceedings. Through the life of
17 this case Hyatt (as well as the District Court, this Court, and the United States Supreme Court)
18 has recognized that this case is a separate proceeding from the tax proceedings in California.
19 The FTB has never recognized, nor accepted, this simple jurisdictional point.
20

21 In that regard, the FTB falsely states that Hyatt is seeking to have the administrative tax
22 appeals summarily decided by the findings of the jury in this case. That is a patently false
23 statement by the FTB. Hyatt has merely alerted the California State Board of Equalization
24 about the results of the trial in this case. It is for that board to consider what, if any, weight is to
25 be given the factual findings from the trial in this matter. The administrative tax appeal pending
26 in California will be decided on its own merits, just as this appeal will be so decided.
27
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1 Based on the foregoing and Hyatt's moving papers, good cause exists for the requested
2 30 day postponement.
3

4 Dated this 6th day of March, 2012

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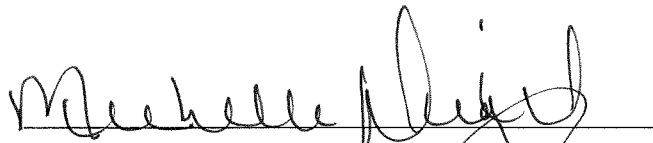
CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Kaempfer Crowell Renshaw Gronauer & Fiorentino, and that I served true and correct copies of the foregoing **REPLY IN SUPPORT OF MOTION TO POSTPONE ORAL ARGUMENT FOR 30 DAYS** on this 6th day of March, 2012 by depositing said copies in the United States Mail, postage prepaid thereon, upon the following:

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