

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF THE	)	Supreme Court 53264
STATE OF CALIFORNIA,)	
	)	Electronically Filed
Appellant/Cross-Respondent,,	)	Aug 25 2016 01:27 p.m.
	)	Tracie K. Lindeman
v.	)	Clerk of Supreme Court
)	
GILBERT P. HYATT,)	
)	
Respondent/Cross-appellant.)	
_____)	

APPEAL

from the Eighth Judicial District Court, Clark, County
THE HONORABLE JESSIE WALSH, District Judge

**RESPONDENT'S MOTION FOR AN EXTENSION OF TIME TO FILE
SUPPLEMENTAL ANSWERING BRIEF
(FIRST REQUEST)**

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*Attorneys for Respondent/Cross-Appellant
Gilbert P. Hyatt*

**RESPONDENT'S MOTION FOR AN EXTENSION OF TIME TO FILE
SUPPLEMENTAL ANSWERING BRIEF**

Respondent Gilbert P. Hyatt respectfully moves this Court for an extension of time for a period of 30 days from the current due date within which to file its Supplemental Answering Brief. Respondent does not anticipate opposition to this motion, because appellant already stipulated to the requested relief.

On June 24, 2016, in response to the remand in this matter from the United States Supreme Court, this Court issued an order directing the parties to file supplemental briefs. Exhibit A. This Court's order set a briefing schedule allowing each party 30 days within which to file their initial briefs, *i.e.*, 30 days for the supplemental opening brief followed by 30 days for the supplemental answering brief. Counsel for the parties discussed the schedule and concluded based on the complexity of the case and the issues, that they would jointly ask this court for an extension of the briefing schedule that would allow each party an extra 30 days to file their respective briefs, *i.e.*, a total of 60 days to file the opening brief followed by 60 days to file the answering brief. Appellant then filed an unopposed motion for this mutual extension of time, Exhibit B, and respondent filed notice of non-opposition. Exhibit C.

Although the motion requested “the Court to extend the deadline for the supplemental opening brief and supplemental answering brief by 30 days each,” in order to give each party 60 days within which to prepare their respective briefs, the order of this Court granting the motion afforded appellant 60 days to file its brief, but still restricted respondent to a period of 30 days thereafter to file his answering brief. Exhibit D. Immediate inquiry was made by undersigned counsel, and I was told by the staff member who prepared the order that the motion only requested 30 days total for both briefs. This was a clerical misreading of appellant’s unopposed motion, which requested (albeit somewhat ambiguously) that both parties be allowed 60 days within which to prepare and file their respective briefs.¹

Appellant’s supplemental opening brief was served and filed on August 22, 2016. Based on this Court’s prior order, respondent’s supplemental answering brief is due on or before September 21, 2016. Pursuant to the stipulation of the parties, respondent respectfully requests a 30 day extension of that deadline. This

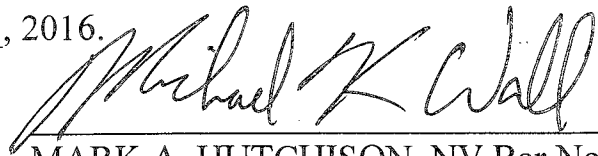
¹Respondent intends no criticism of appellant, of this Court, or of its staff in setting forth the history of this mistake. It is intended only to inform this Court of the stipulation of the parties, and of the fact that this Court’s order did not grant all of the relief to which the parties had agreed and stipulated.

extension of time would make the supplemental answering brief due on or before Friday, October 21, 2016.

This is appellant's first request for an extension of time.

This request is presented in good faith, and not for purposes of delay or any other improper reason.

DATED: August 25, 2016.



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*Attorneys for Respondent/Cross-Appellant
Gilbert P. Hyatt*

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **RESPONDENT'S MOTION FOR AN EXTENSION OF TIME TO FILE SUPPLEMENTAL ANSWERING BRIEF (FIRST REQUEST)** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:


Carla Higginbotham
James A. Bradshaw
Patricia K. Lundvall
Robert L. Eisenberg
Peter Bernhard
Megan Starich
Daniel Polsenberg
Charles Howle
Debbie Leonard

And mailed to the following via U.S. Regular mail:

Clark L. Snelson
Utah Assistant Attorney General
160 East 300 South 5th Floor
Salt Lake City, UT 84114

Bruce J. Fort, Counsel
Multistate Tax Commission
444 N. Capitol Street, N.E.
Suite 425
Washington, D.C. 20001-8699

DATED this 25th day of August, 2016.


An employee of Hutchison & Steffen, LLC

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EXHIBIT A

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 53264

FILED

JUN 24 2016

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

ORDER DIRECTING SUPPLEMENTAL BRIEFING

Appellant/cross-respondent Franchise Tax Board has filed a motion requesting leave to file a motion for supplemental briefing with excess pages. A response and reply have been filed. We grant the motion and direct the clerk of this court to file the proposed motion for supplemental briefing received in this court on May 23, 2016. Further, we grant the motion for supplemental briefing. *See* NRAP 27(b) (noting that this court may grant a procedural motion without waiting for a response). As part of the supplemental briefs, the parties shall address the scope of the United States Supreme Court's opinion concerning what portions of this court's prior opinion should be reconsidered on remand from the Supreme Court.

Franchise Tax Board shall have 30 days from the date of this order to file and serve an opening supplemental brief. Gilbert Hyatt shall have 30 days from service of the supplemental opening brief to file and serve a supplemental answering brief. Franchise Tax Board shall then

have 15 days following service of the supplemental answering brief to file and serve any supplemental reply brief.

It is so ORDERED.

1. J. J. J. J., A.C.J.

cc: McDonald Carano Wilson LLP/Reno
Lemons, Grundy & Eisenberg
Hutchison & Steffen, LLC
Kaempfer Crowell Renshaw Gronauer & Fiorentino
Perkins Coie LLP
Lewis Roca Rothgerber Christie LLP/Las Vegas

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EXHIBIT B

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA

Electronically Filed
Jun 28 2016 04:06 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appellant/Cross-Respondent,

v.

GILBERT P. HYATT,

Respondent/Cross-Appellant

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

**APPELLANT’S UNOPPOSED MOTION TO EXTEND BRIEFING
DEADLINES REGARDING SUPPLEMENTAL BRIEFS**

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*Attorneys for Appellant/Cross-Respondent
Franchise Tax Board of the State of California*

Pursuant to NRAP 26(b)(1), appellant/cross-respondent Franchise Tax Board of the State of California (“FTB”) moves to extend the briefing deadlines associated with the supplemental briefing recently granted by the Court. Specifically, on June 24, 2016, the Court entered an order granting supplemental briefing requested by FTB, including briefs that “address the scope of the United States Supreme Court’s opinion” in this case. *See* Order Directing Supplemental Briefing, Doc. No. 16-19810. The Order set FTB’s deadline for filing and serving a supplemental opening brief at 30 days, with respondent/cross-appellant Gilbert Hyatt’s (“Hyatt”) supplemental answering brief due 30 days after service of FTB’s supplemental opening brief. *See id.* FTB was then to file its reply within 15 days after service of Hyatt’s supplemental answering brief.

FTB now asks the Court to extend the deadline for the supplemental opening brief and supplemental answering brief by 30 days each, with no additional change to the 15 days allowed for FTB to file its reply brief. On June 24, 2016, FTB’s counsel conferred with Hyatt’s counsel regarding extending the deadlines for these supplemental briefs, and Hyatt’s counsel informed FTB’s counsel that there is no opposition to the extension requested by FTB.

NRAP 26(b) allows the court to extend the time prescribed by its Order upon a showing of good cause. FTB respectfully submits that good cause exists here to extend the deadlines. The mandate issued by the United States Supreme Court

vacates the entirety of this Court's 2014 Opinion as unconstitutional because it was based on "a special rule of Nevada law that is hostile to its sister States." *Franchise Tax Bd. of Calif. v. Hyatt* ("Hyatt II"), 136 S.Ct. 1277, 1283 (U.S. 2016). As discussed in FTB's motion, supplemental briefing is necessary to assist the Court to comply with the Supreme Court's mandate, which remanded the case "for further proceedings not inconsistent" with the Supreme Court's opinion. To provide the Court with full and diligent analysis of the issues, both parties will need additional time beyond the 30 days granted by the Court and therefore submit that good cause for these extensions exists.

Accordingly, FTB requests that the Court extend the deadlines for both FTB's supplemental opening brief and Hyatt's opening answering brief by 30 days each such that FTB's opening supplemental brief shall be due on or before August 24, 2016. FTB's reply to Hyatt's answering brief shall still be due within 15 days after Hyatt serves the brief upon FTB.

Dated this 28th day of June, 2016.

McDONALD CARANO WILSON LLP

By: /s/
PAT LUNDVALL
DEBBIE LEONARD
RORY KAY
100 W. Liberty Street, 10th Floor
P.O. Box 2670, Reno, NV 89505-2670

Attorneys for Appellant

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of McDonald Carano Wilson LLP and on the 28th day of June, 2016, I certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Peter Bernhard
Mark Hutchinson
Michael Wall
Daniel Polsenberg
Bruce J. Fort
Charles Wayne Howle
Clark Len Snelson

I further certify that on this date I served a copy, postage prepaid, by U.S.

Mail to:

Donald J. Kula
Perkins Coie
18888 Century Park East, Suite 1700
Los Angeles, California 90067-1721

/s/ Pamela Miller
An employee of McDonald Carano Wilson, LLP

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EXHIBIT C

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF THE	)	Supreme Court 53264
STATE OF CALIFORNIA,)	
	)	Electronically Filed
Appellant/Cross-Respondent,,	)	Jun 29 2016 11:19 a.m.
	)	Tracie K. Lindeman
v.	)	Clerk of Supreme Court
)	
GILBERT P. HYATT,)	
)	
Respondent/Cross-appellant.)	
_____)	

APPEAL

from the Eighth Judicial District Court, Clark, County
THE HONORABLE JESSIE WALSH, District Judge

NOTICE OF NON-OPPOSITION

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Attorneys for Respondent/Cross-Appellant
Gilbert P. Hyatt

NOTICE OF NON-OPPOSITION

Respondent does not oppose appellant's motion, filed June 28, 2016, to extend the briefing deadlines in this matter.

DATED: June 29, 2016.



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*Attorneys for Respondent/Cross-Appellant
Gilbert P. Hyatt*

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **NOTICE OF NON-OPPOSITION** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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Washington, D.C. 20001-8699

DATED this 29th day of June, 2016.



An employee of Hutchison & Steffen, LLC

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EXHIBIT D

HUTCHISON & STEFFEN

A PROFESSIONAL LLC

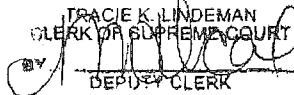
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No. 53264

FILED

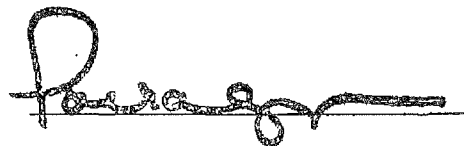
JUL 12 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER GRANTING MOTION

Appellant/cross-respondent has filed an unopposed motion to extend the briefing schedule for the supplemental briefing ordered by this court on June 24, 2016. The motion is granted. NRAP 31(b)(2). Appellant/cross-respondent shall have until August 24, 2016, to file and serve the supplemental opening brief. Respondent/cross-appellant shall have 30 days from service of the supplemental opening brief to file and serve the supplemental answering brief. Appellant/cross-respondent shall then have 15 days from service of the supplemental answering brief to file and serve a supplemental reply brief, if deemed necessary.

It is so ORDERED.

 C.J.

cc: McDonald Carano Wilson LLP/Reno
Lewis Roca Rothgerber Christie LLP/Las Vegas
Kaempfer Crowell Renshaw Gronauer & Fiorentino
Hutchison & Steffen, LLC
Perkins Coie LLP
Lemons Grundy & Eisenberg