

IN THE SUPREME COURT OF THE STATE OF NEVADA

GILBERT P. HYATT,

Appellant.

v.

FRANCHISE TAX BOARD OF  
THE STATE OF CALIFORNIA,

Respondent.

Docket No. 84707

Electronically Filed  
Sep 26 2022 04:39 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
APPELLANT'S REPLY IN  
SUPPORT OF  
MOTION FOR EXTENSION  
OF TIME TO FILE  
OPENING BRIEF AND  
APPENDIX

Appellant Gilbert P. Hyatt, by and through his counsel of record, replies to the FTB's Opposition to Hyatt's Motion for Extension of Time. FTB writes that it "has never opposed giving Hyatt a 30-day extension by which to file his Opening Brief and Appendix." Therefore, Hyatt's Motion for Extension of Time for his Opening Brief and Appendix should be granted, giving Hyatt the 30-day extension that FTB "has never opposed", *i.e.*, through October 13, 2022. Had the FTB ended its Opposition then, at the end of its first paragraph, then this Reply would have been unnecessary.

FTB, instead, opposes what it calls an "implication in Hyatt's Motion that FTB somehow unreasonably withheld the same", when Hyatt

proposed the 30-day extension. Then, FTB acknowledges that it imposed a condition at that time, “that Hyatt would not move for further extensions of the same deadline.” FTB is correct that Hyatt would not agree to FTB’s condition that he give up his rights to seek further extensions. Those rights are embedded in NRAP 26(b) “Extending Time” and 31(b) “Extensions of time for filing briefs”, and Hyatt was unwilling to give up those rights if unforeseen circumstances made the 30-day extension impossible to meet.<sup>1</sup>

Also, the FTB argues that “Hyatt sued FTB yet again in California”. While unclear, the only litigation the FTB could be referencing is not related to this litigation. In the administrative tax proceedings in California, Hyatt prevailed on the FTB’s claim regarding residency as the California State Board of Equalization determined that Hyatt moved to Nevada precisely when he said he did in 1991, and the taxes sought by the FTB based on residency were not owed. The FTB’s attempt to appeal that loss in the administrative proceeding was denied by the California Tax Appeal Court. In the only pending “litigation” in California, it is the FTB’s

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<sup>1</sup> Notably, FTB’s Opposition is the first time FTB raises a concern about “having to prepare an answering brief over the upcoming holiday periods”, nor does the NRAP allow such as a stated ground for extensions.

attempt to tax Hyatt on an alternative basis that is at issue, not torts or other Hyatt claims that he brought in Nevada, and not remotely related to this appeal.

FTB goes on for three pages to argue its substantive view of the current appeal. This is not only improper in an opposition to a motion to extend briefing, but it also fails to note Hyatt's disagreement with its characterizations and analysis. FTB argues Nevada case law and tries to frame the appeal as involving "a single, straightforward issue".<sup>2</sup> The FTB will have plenty of time and space to argue in its Responding Brief, once it sees Hyatt's Opening Brief. But it cannot and should not characterize the merits of Hyatt's appeal in the guise of an opposition to a motion to extend, especially where it admits that it does not oppose the extension.

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<sup>2</sup> FTB Opposition at 2-4. Hyatt's Motion for an Extension did not argue the merits of his appeal or cite case law purporting to govern the substance of the issues on appeal. Hyatt disagrees with FTB's assertions on the merits and will rely on his Opening Brief to show why the appeal is meritorious.

Therefore, the Court should accept FTB's consent to Hyatt's requested extension through October 13, 2022, and grant Hyatt's motion.

Dated this 26th day of September, 2022.

By: /s/ Joseph C. Reynolds

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## CERTIFICATE OF SERVICE

I certify that This APPELLANT'S REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE OPENING BRIEF AND APPENDIX was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

Dated this 26th day of September, 2022.

By: /s/ Madelyn Carnate-Peralta  
an Employee of  
HUTCHISON & STEFFEN PLLC