

## **COURTS: INVENTOR GILBERT HYATT SUES FTB AND BOE FOR ALLEGED VIOLATION OF DUE PROCESS AND EQUAL PROTECTION CONSTITUTIONAL RIGHTS**

Nevada inventor Gilbert Hyatt [filed suit April 4](#) under federal civil rights provisions, alleging that the Franchise Tax Board and State Board of Equalization are violating his 14<sup>th</sup> Amendment due process and equal protection rights by taking more than 20 years without completing the administrative process in his high-profile income tax dispute.

The suit, filed in the U.S. District Court in Sacramento by a legal team that includes noted constitutional scholar Erwin Chemerinsky, dean of the University of California at Irvine School of Law, alleges that the delay has “irreparably prejudiced” Mr. Hyatt, as “material witnesses have passed away, memories of witnesses have faded, and documents relevant and important to Hyatt are no longer available.”

The FTB has intentionally delayed administrative proceedings to make it harder for Mr. Hyatt to present his case before the BOE (and, should he lose his appeal before the BOE, in court), the suit charges.

Additionally, the suit states that the FTB “is unabashedly adding new positions and new theories 20 years after the proceeding started,” and that this will drag out the process even more. Additional delay will further harm the taxpayer, the suit says, since California law presumes the FTB’s position to be correct, and it will be difficult – if not impossible – for Mr. Hyatt to overcome this presumption on new issues after key witnesses and documents no longer are available.

The suit seeks a permanent injunction forbidding the FTB and BOE (identified in the litigation by its other common abbreviation, SBE) from continuing the investigation and administrative proceedings against Mr. Hyatt for the tax years in dispute.

The underlying dispute dates back to the 1991 and 1992 tax years. Mr. Hyatt, inventor of a computer microprocessor chip and data storage system, said he moved from California to Nevada in September 1991, and he received \$40 million in patent royalties shortly after the move. In 1993, during the administration of FTB Executive Officer Gerald Goldberg, FTB auditors read about Mr. Hyatt in a newspaper and decided to examine his records, then began a formal audit. In 1995 and 1996, the FTB issued determination letters claiming that Mr. Hyatt was a California resident in 1991 and part of 1992, and that he owed substantial taxes and massive penalties for fraud. The determination letters were followed by formal proposed assessments in April 1996 (for the 1991 tax year) and September 1997 (for 1992). In 1996 and 1997, Mr. Hyatt filed protests for both years, but his appeal has yet to be heard by the BOE.

“Hyatt is now 76 years old, and every indication is that the FTB – with the SBE’s sanction – has been simply waiting for the ultimate prejudice to occur to Hyatt and leave it for his estate to try and fend off the FTB’s claims, old and new, without the benefit of Hyatt,” the suit states.

“A line has long since been crossed by the FTB and due process can no longer be had by Hyatt,” the suit adds. “A prime example is the FTB’s new assessments for tens of millions of dollars in taxes, penalties and interest in 2013 for the time period extending beyond the 1992 disputed period and the prejudice to Hyatt based on the massive loss of documents and witness memories due to the passage of time.”

Another recent change by the FTB is cited in the suit: “In 2007, sixteen years after his move to Nevada, the FTB added an additional and new legal theory for investigating and assessing Hyatt, a legal theory premised on ‘sourcing’ Hyatt’s patent royalty income to California. ... In this regard, the FTB was so determined to tax Hyatt that it determined a basis to tax Hyatt *if he was* a California resident during the disputed period and a basis to tax Hyatt *if he was not* a California resident during the disputed period. The FTB, therefore, had effectively determined that whether or not Hyatt was a resident of California during the disputed period he must pay California tens of millions of dollars in state income taxes, penalties and interest.”

The suit claims that delays in completing the administrative process “fall squarely and primarily at the feet of the FTB,” and cites e-mails and an internal FTB event log in which FTB protest officers indicated that they had been instructed not to do any work on the case.

Spokespersons for the FTB and BOE said their agencies do not comment on pending litigation.

Steven Greenhut, a columnist for the *San Diego U-T*, wrote in an April 7 column about the suit: “It’s hard not to conclude that California’s tax agency is out of line as it continues to run up administrative and legal fees – not to mention risking potential multimillion-dollar liabilities – to pursue a decades-old dispute over where a taxpayer lived for six months. There’s a troubling lesson here for wannabe entrepreneurs, who might want to think carefully about their residency before they hit the big time.”

While the residency appeal is still pending in California, litigation involving the conduct of FTB employees during the residency audit is pending in Nevada. In 1998, Mr. Hyatt sued the FTB in Nevada for intentional infliction of emotional distress and other torts. After the U.S. Supreme Court rejected FTB’s claim that its employees are immune to prosecution for acts carried out as part of their jobs, the case went to trial, and in late 2008 a jury ordered the FTB to pay Mr. Hyatt damages totaling almost \$490 million. The FTB appealed to the Nevada Supreme Court, which heard two rounds of oral arguments in 2012, but has not yet released a decision.

Mr. Chmerinsky said it is too early to predict a timetable for the federal case. Asked if he knows of any other cases in which taxpayers have gone to federal court over due process and equal protections claims against a state tax agency, Mr. Chmerinsky said, “This is a unique case based on the extreme facts shown by the more than 20-year delay in the administrative proceeding and the manner in which the FTB has treated Mr. Hyatt.”