

COURTS: FTB VIOLATED COURT ORDER DURING DISPUTE WITH HYATT, NEW YORK SUPREME COURT RULES

The Franchise Tax Board violated court orders by filing certain documents with the State Board of Equalization as part of its opposition to inventor Gilbert Hyatt's high-profile income tax appeal, but the FTB will not be sanctioned for the violation, a New York State Supreme Court judge ruled September 8.

In her 13-page decision, Judge Joan Lefkowitz wrote: "Here, petitioner Hyatt has demonstrated by clear and convincing evidence that the Tax Board violated the orders of this court which held that certain identified documents and information produced by nonparty U.S. Philips in the California Tax Appeal, pursuant to an out-of-state subpoena served on U.S. Philips in New York, were improperly produced as irrelevant to the Tax Appeal and should not be submitted in the Tax Appeal. Notably, the Tax Board has conceded that certain documents and information produced by U.S. Philips, which this court held were irrelevant to the Tax Appeal, were erroneously submitted in the Tax Appeal. Although the Tax Board asserts that the submissions in the Tax Appeal of the irrelevant information and documents obtained from U.S. Philips were inadvertent, a finding of willful violation of a court order is not an element of a civil contempt. Rather the mere violation regardless of motive is sufficient."

However, the judge denied Mr. Hyatt's request that the FTB be found in contempt of court, and that the tax agency pay a \$250 fine and reimburse him for his legal costs in the New York litigation.

A finding of civil contempt is not warranted, Judge Lefkowitz said, because Mr. Hyatt "has not demonstrated that he has sustained any prejudice to date from the Tax Board's filings in the Tax Appeal." Appeals have been pending at the State Board of Equalization for more than seven years, since January 2008, likely delayed by the New York litigation, and the administrative proceedings have been pending for almost a quarter of a century, since 1993.

The judge added: "This court, however, reminds the Tax Board that it has a continuing obligation to fully review its briefs and exhibits in the Tax Appeal to ensure that its submissions comply with this court's orders"

Mr. Hyatt and the FTB have been involved in extensive litigation since the 1990s, when the FTB claimed that Mr. Hyatt, an inventor, owed California income tax on income received from patents with U.S. Philips in 1991 and 1992. During the period in question, Mr. Hyatt said he was a resident of Nevada, having moved from California, while the FTB alleges that he remained a California resident with taxable income.

The Nevada Supreme Court last year upheld a jury verdict that the FTB committed fraud against Mr. Hyatt during a residency audit, and intentionally inflicted emotional distress upon him. The FTB has appealed to the U.S. Supreme Court. The inventor also sued in federal court, alleging civil rights violations, and that case also is under appeal, after initially being rejected by a federal judge in Sacramento.

Meanwhile, Mr. Hyatt's appeal of the disputed tax has been before the BOE since January 2008, and the case is still being briefed.

The New York case centers on subpoenas served by the FTB in New York upon U.S. Philips and its in-house counsel. In a series of decisions from 2011 to 2014, the courts granted Mr. Hyatt's motions to narrow the scope of the subpoenas to issues concerning his residency, his relationship with U.S. Philips, and income received from specified patents in 1991 and 1992.

The FTB acknowledged that after the court ordered certain information to be suppressed, it sent the information to the BOE. The FTB claimed that the information was sent inadvertently, and that Mr. Hyatt had not shown that any of the information harmed his case. Mr. Hyatt argued that the burden should be on the FTB to comply with court orders, and that it was an unduly high burden for a taxpayer to have to sort through more than 30,000 pages of documents submitted to the BOE by the FTB to check for suppressed information.