From the desk of Jeanne M. Kerkstra, Esq., CPA

Viewpoint
When Changing Residency, Proceed With Caution

There are many reasons why individuals and business entities move their residency to another state, including rate (or lack) of state income tax, labor pool and climate. It is a decision not to be taken lightly. I have many clients who have decided to cease being "snowbirds" in Florida or Nevada and instead to establish full-time residency in these states. The recent case of *Hyatt v. California Franchise Tax Board*[1] should be read by every individual or business entity that seeks to make a change in residency.

In *Hyatt,* a Nevada jury recently awarded an individual who was an inventor and engineer **$138 million in compensatory damages and $250 million in punitive damages** in his lawsuit against the California Franchise Tax Board ("CFTB"). [As an aside, it is important to note that the CFTB is an aggressive taxing board. Not too long ago, it had an amnesty program for allegedly abusive tax shelters which raised billions of dollars in tax revenues.]

In 1991, Mr. Hyatt was a California resident. A short time prior to receiving a $40 million royalty payment, he moved to Nevada, which does not have any state income tax. Consequently, he did not pay any California state income tax on the royalty payment. The CFTB disagreed with Mr. Hyatt. Throughout their investigation, they were not trying to prove that Mr. Hyatt was a Nevada resident, they were trying to prove that he was not a non-resident of California.

The CFTB audited Mr. Hyatt's 1991 tax return. It is alleged that during their investigation, they contacted Mr. Hyatt's neighbors and family members concerning his move. They did this both in person and via mailed correspondence. They also allegedly dug through his garbage and gave out the address to his secret lab. Mr. Hyatt brought a lawsuit alleging emotional distress and invasion of privacy, among other things.

How would you like it if a state auditor came in and poured through your confidential documents and then went and published to your competitors, neighbors and family your client list, pricing and other trade secrets? It would truly be devastating.

The CFTB raised as an affirmative defense that under California law, California government officials had complete immunity from lawsuits for intentional torts. However, the CFTB could not prevent the case from being heard by a Nevada jury, although they tried. And it certainly seems that politics is at play here. In a 1979 case, a Nevada government official got into a car accident in California whereby he injured California residents. The California courts refused to apply a Nevada statute that would have capped the damages. It would appear that it was payback time for the Nevada courts. The Nevada courts in the Hyatt case refused to apply the California statute under which the California government officials had immunity from their intentional torts. Consequently, the Nevada courts have slapped a judgment against the CFTB that with interest will surpass $400 million.

[1] Nev. Dist. Ct, No. A382999, 8/6/08.

Jeanne M. Kerkstra, Esq., CPA KERKSTRA LAW OFFICES LLC 53 W. Jackson Blvd. Suite 1530 Chicago, IL 60604 312.427.0493 312.675.0500 (fax) jmk@kerkstralaw.com	KERKSTRA LAW OFFICES LLC Problem? Solved. ® asset protection • estate planning corporate work • business succession planning forensic investigation• litigation and more

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