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## Nevada jury says California owes inventor \$388 million over 'outrageous' audit

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California taxpayers could be on the hook for a staggering \$388 million because of a state tax collection agency's vigorous pursuit of a former California taxpayer.

In a case that one tax expert called "completely unprecedented," jurors in a Clark County, Nev., District Court trial awarded Las Vegas inventor Gilbert P. Hyatt \$250 million in punitive damages Thursday for the "outrageous conduct" of Franchise Tax Board auditors in an investigation that began in 1993.

The award was on top of \$138.1 million in compensatory damages that jurors gave Hyatt last week for "invasion of privacy" and "emotional distress."

Hyatt's suit alleged that board auditors went through his garbage and mailbox, spread the word he was being audited to his business associates, and sent letters containing his Social Security number to third parties that included newspapers and doctors who had never treated Hyatt.

The tactics were portrayed as part of efforts to harass and intimidate Hyatt into paying a \$7.4 million California tax bill that has grown to \$49 million with interest and penalties – and the meter is still running.

Hyatt's lead counsel, Mark A. Hutchison, called the jury's awards "the shot heard 'round the world" for taxing agencies that abuse their power. "Government agencies should pause and reflect on the significance of this verdict," he said.

In a prepared statement, Hyatt said he "hoped this will prevent other taxpayers from going through the same nightmare that I have had to endure for over a decade."

A spokesman for the FTB, which contends Hyatt was a California resident when one of his inventions earned him \$40 million, said Friday that officials are mulling over their options and would have no comment.

But a former chief counsel for the board, Brian Toman, said the case was "completely unprecedented."

"As far as I know, and I've been around a long time, there has never been an award of tort damages against the Franchise Tax Board in any kind of audit," said Toman, who worked for the agency for 20 years before entering private practice in 2002.

Toman, who focused mainly on corporate tax matters at the FTB, said he didn't learn of the agency's pursuit of Hyatt until Hyatt filed his suit against the board in 1998.

In fact, the 15-week trial flew under nearly everyone's radar. Virtually the only media coverage came from California Taxpayers Association communications director David Kline, who wrote two articles for the CTA's newsletter.

"The FTB has kept this one real quiet," said Board of Equalization member Bill Leonard, a former legislator and sometimes-outspoken critic of the tax collection methods used by the FTB and BOE, which administers sales, property and some other taxes. "They (FTB auditors) made this into a vendetta on their part, and it backfired big time."

The roots of the Hyatt case, which has already cost the state more than \$8.8 million in audit and legal fees, are buried in the living room of a modest tract house in the Los Angeles County town of Northridge.

An electrical engineer educated at UC Berkeley and the University of Southern California, Hyatt worked from his home on various projects. In late 1970, he filed for a patent on a device that packed all the main components of a computer onto a single silicon chip – a microprocessor.

The patent application began a 20-year odyssey for Hyatt that included fights with computer firms such as Intel and Texas Instruments, charges and countercharges of industrial espionage, and maddening delays by the federal bureaucracy.

Finally, on July 17, 1990, Hyatt was awarded his patent. Although parts of the patent were rescinded in 1996, Hyatt made tens of millions of dollars licensing his device.

He also moved to Las Vegas – he says in October 1991 – and contends that was before he began harvesting payoffs from his patent. Nevada has no state income tax.

But state income tax collectors disagreed. After a two-year investigation, the FTB decided Hyatt owed California back taxes for 1991 and part of 1992.

In 1998, Hyatt, who is now 70 years old and the holder of more than 70 patents, filed suit against the board in Nevada, claiming that auditors' actions had hurt his business dealings and damaged his reputation.

"I've got better things to do than to take on other people," he told a Bee reporter in a 2003 interview, "but when I've got to, I defend myself. I will never submit to blackmail or extortion."

The board moved to have the lawsuit dismissed, contending it could not be sued in a Nevada court, and that under California law, FTB employees were immune from litigation for actions that were part of their jobs.

But in 2003, the U.S. Supreme Court unanimously rejected the FTB's challenge, and Hyatt's suit was allowed to proceed.

Toman, the former FTB counsel, pointed out that the jury's awards are subject to appeal by the state.

"The case is not final," he said. "It's a trial court decision."

But Leonard thinks the FTB should quit while it's behind.

In a letter to the board this week, Leonard said that rather than appeal, the board should seek a settlement with Hyatt.

"The decision to continue litigating Mr. Hyatt has already proved an epic disaster to California," he wrote. "I call on you to change course immediately."

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