

S206587

In the Supreme Court of the State of California

THE GILLETTE COMPANY & SUBSIDIARIES,
Plaintiffs and Appellants,
v.
CALIFORNIA FRANCHISE TAX BOARD, AN
AGENCY OF THE STATE OF CALIFORNIA,
Defendant and Respondent.

Case No.

SUPREME COURT
FILED

NOV 14 2012

Frank A. McGuire Clerk

Deputy

First Appellate District Division Four, Case No. A130803
San Francisco County Superior Court, Case No. CGC-10-495911
The Honorable Richard A. Kramer, Judge

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE
MOTION, MEMORANDUM AND SUPPORTING PAPERS

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MOTION

The Franchise Tax Board (“FTB”), the Defendant and Respondent in the above-captioned appeal, moves this Court for an order granting its request to take judicial notice of the below-listed documents, pursuant to Evidence Code section 459 and Rule 8.252, subdivision (a), of the California Rules of Court:

1. Multistate Tax Commission document entitled “Minutes of the Meeting of the Multistate Tax Commission,” dated December 1, 1972, a true and correct copy of which is attached hereto as Exhibit 1.

These documents are attached to this motion as required by Rule 8.252 of the California Rules of Court. The motion is based on the attached memorandum, filed herewith.

Dated: November 13, 2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOYCE E. HEE
Supervising Deputy Attorney General



LUCY F. WANG
Deputy Attorney General
*Attorneys for Defendant and Respondent
Franchise Tax Board*

MEMORANDUM

Evidence Code section 459 provides that “[a] reviewing court may take judicial notice of any matter specified in Section 452.” Evidence Code section 452, in turn, provides that:

Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.

(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

* * *

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

The documents described above and attached hereto fall into these categories and judicial notice is proper as to these documents.

MULTISTATE TAX COMMISSION DOCUMENT (EXHIBIT 1)

Exhibit 1 is a document from the Multistate Tax Commission. The document is the minutes from a December 1, 1972 meeting of the Multistate Tax Commission. These minutes include a resolution by Compact member states and the Multistate Tax Commission affirming Florida’s legislative action in repealing Articles III and IV of the Compact, and confirming Florida’s continued good standing as a Compact member state. This resolution is relevant to construing member states’ construction and interpretation of the Compact as agreed to by California. This

document is the proper subject of judicial notice as an official act of a governmental agency or public entity and as a matter not reasonably subject to dispute and capable of immediate and accurate determination. (Evid. Code § 452, subsections (c) and (h).)

Pursuant to Rule 8.252(a)(2)(B) of the California Rules of Court, this document was not presented to the trial court. This matter was appealed upon demurrer and the parties had not engaged in any discovery. After the matter had been submitted for decision to the Court of Appeal, counsel for the Multistate Tax Commission reviewed its files related to the Multistate Tax Compact, and uncovered the meeting minutes, above, including the Florida resolution. The Commission then forwarded the document to the Board. There has been no opportunity to present this document prior to this Petition. The document does not relate to proceedings occurring after the order or judgment that is the subject of the appeal.

For the reasons stated above, Respondent respectfully requests that this Court take judicial notice of the foregoing documents pursuant to Evidence Code sections 452.

Dated: November 13, 2012 Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JOYCE E. HEE
Supervising Deputy Attorney General



LUCY F. WANG
Deputy Attorney General
*Attorneys for Defendant and Respondent
Franchise Tax Board*

BYRON L. DORGAN, Chairman
Tax Commissioner
State of North Dakota

WILLIAM E. PETERS, Vice Chairman
State Tax Commissioner
State of Nebraska

MALISSON GREEN, Treasurer
Treasurer, Department of Treasury
State of Michigan

Multistate Tax Commission



EUGENE F. CORRIGAN, Executive Director

EXECUTIVE COMMITTEE
VERNON HOLMAN
Chairman, State Tax Commi
State of Utah
EWING H. LITTLE
Chairman, State Tax Commis
State of Idaho
CHARLES H. MACK
Director, Department of Reve
State of Oregon
JAMES T. McDONALD
Director, Department of Reven
State of Kansas

MINUTES OF THE MEETING OF THE MULTISTATE TAX COMMISSION

GENERAL SESSION
December 1, 1972
Denver, Colorado

Chairman Byron L. Dorgan called the meeting to order at 9:13 a.m. December 1, 1972, at the Radisson Hotel, Denver, Colorado.

Mr. Corrigan then took the roll call, which showed the following states present, two being recorded shortly after the roll call:

Regular Member States

Alaska
Arkansas
Colorado
Hawaii
Idaho
Illinois
Kansas
Michigan
Montana
Nebraska
Nevada
New Mexico
North Dakota
Oregon
Texas
Utah
Washington

Associate Member States

Alabama
Arizona
California

Mr. Corrigan noted that regular member Indiana, associate members Minnesota, Ohio and Tennessee, and non-members Kentucky and New York had been taking part in the meeting during the week, making a total of 20 regular members, 6 associate members and 2 non-members in attendance.

Approval of Minutes

The minutes of the last meeting of the Commission having been mailed to the member states more than 30 days prior to this meeting in accordance with the requirements of the By-laws, and no proposed objections, changes or alterations being submitted from the floor, the Minutes were approved as presented.

Resolutions

Chairman Dorgan had, on November 30, appointed the following men to be members of the Resolutions Committee:

Arthur Fulmer, Florida, Chairman
Jene Bell, Montana
Sydney Goodman, Michigan
Nolan Humphrey, Arkansas
William Peters, Nebraska

On behalf of the Committee, Chairman Fulmer submitted resolutions for approval as follows:

RESOLUTION No. 1

WHEREAS, the State of Florida views its position as fully consistent with the principles of the Multistate Tax Compact and the Multistate Tax Commission as enunciated in Article I of the Compact; and

WHEREAS, the State of Florida has repealed Articles III and IV of the Multistate Tax Compact, while still legislatively, adhering to the spirit of the Compact; and

WHEREAS, the State of Florida will continue to strive together with tax administrators, national tax groups, and representatives of the business community to develop new and additional methods of resolving multistate tax problems;

NOW, THEREFORE, BE IT RESOLVED that the State of Florida be recognized as a regular member in good standing of the Multistate Tax Compact and the Multistate Tax Commission.

On motion made and seconded, the resolution was unanimously approved, Florida abstaining.

RESOLUTION No. 2

WHEREAS, the purpose of the Multistate Tax Commission is to bring uniformity to the tax laws of the various states of the United States insofar as said laws affect multistate business; and

WHEREAS, the Commission believes that the business community and the States should have a single place to which to take their tax problems;

NOW, THEREFORE, BE IT RESOLVED that the Multistate Tax Commission invite the business community to attend all

sessions of the Commission, serve on Commission Committees, and assist the Multistate Tax Commission in promoting good relations with said business community; and

MAY IT FURTHER BE RESOLVED that the Multistate Tax Commission extend its thanks and appreciation to the business community for its assistance given to the Commission in all its endeavors to this date.

Upon motion made and seconded, the resolution was unanimously approved.

RESOLUTION No. 3
(Amending By-law 4(a))

WHEREAS, notice of a proposed change in By-law 4(a) was duly given in accordance with the provisions of By-law 12 at the Bismarck meeting on June 9, 1972;

NOW, THEREFORE, BE IT RESOLVED that said By-law be, and it is hereby, amended to read as follows:

4(a) The annual meeting of the Commission shall be the regular meeting of the Commission in each calendar year next preceding the fiscal year period. All regular meetings of the Commission shall be held on dates and at places to be fixed by the Executive Committee unless otherwise ordered by the Commission.

Upon motion made and seconded, the resolution was unanimously approved.

RESOLUTION No. 4

WHEREAS, paragraph (d) of By-law 7 provides that notice of the public hearings of the Commission shall be given by "publication in at least three metropolitan daily newspapers having substantial nationwide or regional circulation and in at least one tax journal or publication"; and

WHEREAS, the Commission believes that the publicity given to such hearings through the extensive mailing list of the Commission and through the major tax service publications is sufficient for the purposes of all parties interested in or affected by the Commission's hearings; and

WHEREAS, the Commission desires to eliminate the requirement for publication in the metropolitan daily newspapers;

NOW, THEREFORE, BE IT RESOLVED that paragraph (d) of By-law 7 be, and it hereby is, amended to read as follows:

"(d) All hearings shall be open to the public and, in addition to any other notice required, shall be announced no less than 30 days in advance of such hearing, (by publication in at least three metropolitan daily newspapers having substantial nationwide or regional circulation and in at least one tax journal or publication.) in a mailing to the names on the mailing list maintained by the office of the Multistate Tax Commission, and in such other manner as the Executive Director shall deem appropriate.

Mr. Corrigan noted that this resolution would amend By-law 7(d) and that notice of such a proposed by-law change is required to be given at the meeting previous to the meeting at which the vote on such a change is taken. Accordingly, he requested that Mr. Fulmer's reading of the resolution constitute such notice so that the vote on it could be taken at the next meeting of the Commission. The request was unanimously approved.

RESOLUTION No. 5

WHEREAS, notice of a proposed change in By-law 10 was duly given, in accordance with the provisions of By-law 12, at the Bismarck meeting, on June 9, 1972;

NOW, THEREFORE, BE IT RESOLVED that said By-law be, and it is hereby, amended to read as follows:

10. The order of business at regular meetings of the Commission shall be:

1. Roll call of the states.
2. Communications.
3. Approval of the minutes of the last regular meeting and of any special meetings held since the last regular meeting.
4. Report of Treasurer.
5. Report of Executive Director.
6. Report of Standing Committees.
7. Unfinished business.
8. New business.
9. Report of Resolutions Committee.
10. Report of Nominating Committee (at Annual Meeting).
11. Election of officers and Executive Committee (at Annual Meeting).
12. Report of Chairman.
13. Comments by Chairman-elect (at Annual Meeting).
14. Adjournment.

The Commission may order any matter placed on the agenda for any meeting as special business, or in his discretion, the Chairman may place upon the agenda any matter which he deems of sufficient or pressing importance.

Upon motion made and seconded, the resolution was unanimously approved.

RESOLUTION No. 6

WHEREAS, notice of a proposed change in By-law 3(g) was duly given in accordance with the provisions of By-law 12, at the Bismarck meeting on June 9, 1972;

NOW, THEREFORE, BE IT RESOLVED that said By-law be, and it is hereby, amended to read as follows:

3(g) The Executive Director shall be selected by the Chairman with the approval of the Executive Committee, and shall serve at the pleasure of the Chairman and the Executive Committee. The Executive Director shall be in general administrative charge of the affairs of the Commission. Subject to any directions given by the Commission and within its policies, he shall hire, promote, supervise, discharge and fix the duties of members of the Commission staff. He shall prepare the annual report required by Article VI, 1(1) of the Compact, in time to be submitted to the members on or before October 31 and transmitted to the governors and legislatures of the party states prior to the first day of January next following. In addition, the Executive Director shall have such other duties as are conferred upon him elsewhere in these bylaws and by action of the Commission. During any time when the Commission does not have an Executive Director, the Chairman may act as such on a temporary basis or may select an Acting Executive Director.

At Mr. Corrigan's request, Mr. Fulmer then offered an amendment to change the proposed date included in the resolution from October 31 to November 30. Upon motion made and seconded, this proposed amendment to the resolution was unanimously approved. Upon motion made and seconded, the resolution, as so amended, was also unanimously approved.

RESOLUTION No. 7

WHEREAS, Section III of the current Multistate Tax Commission Travel Regulations provides that authorized air transportation shall be of the "economy" type; and

WHEREAS, it is the desire of the Commission to substitute the words "tourist or coach" therefor; and

WHEREAS, said Section III of the current regulations requires that the Executive Director retain in his custody all credit cards and issue them to individual travellers only as required; and

WHEREAS, said limitation is not practical in view of the travel needs of the Audit Coordinator and in view of the travel needs of the audit personnel in the New York and Chicago audit offices; and

WHEREAS, the Commission desires to authorize the Executive Director to issue travel cards to members in "accordance with his judgment as to the travel needs of the Commission";

NOW, THEREFORE, BE IT RESOLVED that Section III of the Multistate Tax Commission Travel Regulations be, and they are herewith, changed to read as follows:

III. Authorized Reimbursement:

a) Transportation: Commercial air tourist or coach class is normally to be utilized. However, rail or bus transportation may be substituted therefor when in the best interest of the Commission. Travel by a personal automobile may be utilized. If such automotive travel is, in the opinion of the Executive Director, in the best interest of the Multistate Tax Commission, a mileage allowance of 10 cents per mile is authorized. Taxi fares, limousine fares, toll charges, parking fees and rental car expenses will be authorized in addition to other transportation expenses. Tickets for commercial travel for employees will normally be procured by the Multistate Tax Commission Account-Clerk without personal expense to the traveler. The Executive Director is authorized to procure credit cards and to issue them to employees in accordance with his judgment as to the travel needs of the Commission. Authorized travel of other than Commission employees will be reimburseable by the Commission upon submission of approved claims.

Upon motion made and seconded, the resolution was unanimously approved.

Mr. Fulmer then thanked Jene Bell of Montana, Sydney Goodman of Michigan, and Nolan Humphrey of Arkansas, for their work with him on the Resolutions Committee.

Treasurer's Report

Chairman Dorgan noted that he had, two weeks previously, sent to each member of the Commission a detailed statement of the

Commission's financial affairs. In the absence of the Treasurer from this meeting, Chairman Dorgan requested that that financial statement be considered to be the Treasurer's Report, and that it be approved as such. On motion made and seconded, his proposal was unanimously approved.

Chairman's Report

Mr. Dorgan then noted that two weeks earlier he had sent to all regular members a report "detailing plans for procuring new members, outlining some thoughts on the joint audit program and other matters." At his request, on motion made and seconded, that report was unanimously accepted as the Chairman's Report.

COMMITTEE REPORTS

Sales and Use Tax Committee, Fred O'Cheskey, Chairman

Mr. Corrigan reported for Mr. O'Cheskey that the Committee had discussed priorities as to which of several suggested activities were most attractive. He said that the Committee addressed itself primarily to areas in which uniformity appeared to be possible; and that significant progress had already been made toward a uniform sales and use tax exemption certificate. He said that Gates Rubber Company had been largely responsible for the progress which had already been made in this area. He said that their cooperation with the Commission was indicative of the type which can be beneficial to both the business community and the states.

Income Tax Committee, William Peters, Chairman

Mr. Peters reported that his committee had proceeded in much the same manner as had the Sales and Use Tax Committee. It aimed at discussing and getting reactions from both business and state representatives concerning in which areas uniformity is most desirable. Statutes of limitation constituted one such area of discussion. Mr. Peters said that subcommittees would soon be appointed to attack the various problems. He invited volunteers for those subcommittees.

Rules and Regulations Committee, Theodore de Looze, Chairman

Mr. de Looze reported that his committee had met with a large group of business and state representatives on November 29. It had at that time reviewed at length the proposed revision of the Commission's corporate income tax regulations. As a result of that meeting and of subsequent executive sessions of the committee, it was unanimously agreed to recommend to the Commission that public hearings on

the proposal be conducted in accordance with the Multistate Tax Compact and the by-laws of the Multistate Tax Commission in order that, if the hearing officer's recommendations were issued promptly, the Commission might consider the proposal and the hearing officer's report with respect thereto at the February meeting of the Commission in Washington, D. C.

Joint Audit Committee, Robert Kessel, Chairman

Mr. Dorgan noted that Mr. Kessel had reported his committee's activities to the Executive Committee on a prior day. He said that he would consider that report to be incorporated into this meeting by reference.

Mr. Kessel had reported that his committee had been active in 1) creating an audit resources list consisting of corporations which the states had assigned to the Commission for audit; 2) composing a Regional Information Sharing Agreement for execution by the various states; and 3) preparing a seminar on jurisdiction. (The first presentation of this seminar was conducted at Springfield, Illinois, the following week.)

Mr. Dorgan then noted that he had appointed a Long Range Planning Committee to consider areas of activity to which the Commission should expect to devote major portions of its attention during coming years. He has appointed John Heckers as Chairman of that committee.

Mr. Dorgan then noted that the Reciprocal Information Sharing Agreement, to which Mr. Kessel had referred, had been examined by the members and that several states had already executed it. He emphasized the importance of its being executed by as many states as possible, stating that in his consideration it represents a significant milestone in furthering cooperation among the states in sharing tax information. (See attached copy.)

Mr. Norman Nowak, of the Institute for Tax Administration of the University of Southern California, then addressed the meeting. He referred to the Commission's efforts to obtain federal funding of a training program under the Intergovernmental Personnel Act. He said that the rejection of the application for the funds resulted primarily from lack of supporting materials from among the states. He noted that the Commission had sought to obtain the needed material by distributing a questionnaire (see attachment), but that only sixteen states had responded to it thus far. He urged all states to complete the questionnaire as soon as possible. He also urged all tax administrators to seek additional training funds this year from their legislatures in order to be able

to take advantage of training programs which are being made increasingly available through the Multistate Tax Commission and the University of Southern California.

Mr. Dorgan then noted that, while the December 7-8 seminar in Springfield had originally been planned for a group of 18-20 people, eighty people were now expected to attend. (Eighty five did attend and gave the seminar high grades.) He said that this was just an indication of the success of the Commission as the member states became more and more appreciative of its benefits and increased their participation in its activities.

He then adjourned the meeting.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: The Gillette Company & Subsidiaries v California Franchise Tax Board
Court of Appeal Case No.: A130803
San Francisco Superior Court Case No. CGC10495911

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On November 14, 2012, I served the attached

**RESPONDENT'S REQUEST FOR JUDICIAL NOTICE MOTION,
MEMORANDUM AND SUPPORTING PAPERS**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Amy L. Silverstein, Esq.
Edwin P. Antolin, Esq.
Silverstein & Pomerantz LLP
55 Hawthorne Street, Suite 440
San Francisco CA 94105

Clerk of the Court
Court of Appeal
First Appellate District
350 McAllister Street
San Francisco CA 94102

Clerk of the Court
San Francisco Superior Court
400 McAllister Street
San Francisco CA 94102

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 14, 2012, at San Francisco, California.

Joan Randolph
Declarant


Signature