

BROWNSTEIN HYATT FARBER SCHRECK
9210 Prototype Drive, Suite 250
Reno, Nevada 89521
Telephone: 775-622-9450

Joshua J. Hicks, Nevada Bar No. 6679
Clark V. Vellis, Nevada Bar No. 5533
Sean D. Lyttle, Nevada Bar No. 11640
BROWNSTEIN HYATT FARBER SCHRECK, LLP
9210 Prototype Drive, Suite 250
Reno, Nevada 89521
Telephone: 775-622-9450
Facsimile: 775-622-9554
Email: jhicks@bhfs.com
Email: slyttle@bhfs.com

Brandi L. Jensen, Nevada Bar No. 8509
Fernley City Attorney
OFFICE OF THE CITY ATTORNEY
595 Silver Lace Blvd.
Fernley, Nevada 89408

Attorneys for the City of Fernley, Nevada

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CITY OF FERNLEY, NEVADA, a
Nevada municipal corporation,

Plaintiff,

v.

STATE OF NEVADA ex rel. THE NEVADA
DEPARTMENT OF TAXATION; THE
HONORABLE KATE MARSHALL, in her
official capacity as TREASURER OF THE
STATE OF NEVADA; and DOES 1-20,
inclusive,

Defendants.

Case No.:
Dept. No.:

COMPLAINT

For its Complaint against Defendants the State of Nevada ex rel. the Nevada Department of Taxation (the "Department") and the Honorable Kate Marshall, in her official capacity as Treasurer of the State of Nevada ("Treasurer") (collectively "Defendants"), Plaintiff the City of Fernley, Nevada ("Fernley") alleges as follows:

PARTIES

1. Fernley is a Nevada municipal corporation, located in Lyon County, Nevada.

2. The Department is an executive branch agency of the State of Nevada. The Department's responsibilities include general supervision and control over the entire revenue system of the State of Nevada.

3. The Treasurer is a constitutional officer in the executive branch of the State of Nevada. The Treasurer's responsibilities include, *inter alia*, the disbursement of public monies.

JURISDICTION

4. Original jurisdiction of the United States District Court is proper pursuant to 28 U.S.C. § 1331, as the instant action arises under the Constitution of the United States.

BACKGROUND

5. In 1997, the State of Nevada, through its Legislature, established a system, unique to Nevada, known as the Consolidated Tax (the "C-Tax") system. At the time the C-Tax system was established fifteen years ago, Fernley was an unincorporated town, with a population of approximately 8,000 people.

6. The C-Tax system was intended to provide revenue stability and an equitable distribution of certain tax revenues among Nevada's counties and local governments, and the Defendants are responsible for administering the C-Tax system to achieve those ends.

7. C-Tax revenues are comprised of the following six (6) taxes collected in Nevada: (i) the Cigarette Tax; (ii) the Liquor Tax; (iii) the Government Services Tax (the "GST"); (iv) the Real Property Transfer Tax (the "RPTT"); (v) the Basic City County Relief Tax (the "BCCRT"); and (vi) the Supplemental City County Relief Tax (the "SCCRT"). The BCCRT and SCCRT are percentages of the overall Sales and Use Tax rate, 0.50% and 1.75%, respectively, of the 6.85% statewide Sales and Use Tax.

8. The revenues collected from the six (6) taxes described in Paragraph 7 above are consolidated by the Department and then distributed by the Treasurer, at the direction of the Department, on a monthly basis as follows: (i) the Cigarette Tax is distributed to Nevada's counties based on population; (ii) the Liquor Tax is distributed to Nevada's counties based on population; (iii) the GST is distributed to the county in which it was collected; (iv) the RPTT is distributed to the county in which it was collected; (v) the BCCRT is distributed, when collected

BROWNSTEIN HYATT FARBER SCHRECK
9210 Prototype Drive, Suite 250
Reno, Nevada 89521
Telephone: 775-622-9450

1 from in-state companies, to the county in which the in-state company is located and, when
2 collected from out-of-state companies, to Nevada's counties based on population; and (vi) the
3 SCCRT is distributed to Nevada's counties based on a statutory formula found at Nevada Revised
4 Statutes ("NRS") 377.057. Pursuant to NRS 377.057, nine (9) of Nevada's seventeen (17)
5 counties, including Lyon County, receive a guaranteed monthly allocation of SCCRT revenues,
6 regardless of their SCCRT receipts.

7 9. C-Tax revenues are distributed monthly in tiers. Tier 1 Distributions go to
8 Nevada's seventeen (17) counties, in varying amounts based on the factors described in Paragraph
9 8 above. Tier 2 Distributions are distributions of the Tier 1 amounts and are made to the various
10 local governments and special districts within that county. Tier 2 Distributions are made according
11 to statutory "Base" and "Excess" allocation formulas, found at NRS 360.680 and 360.690,
12 respectively. There are no restrictions on what C-Tax revenues can be used for by a county or
13 local government, and in fact C-Taxes are commonly used for general operating expenses.

14 10. Fernley incorporated in 2001. Fernley is the only municipality to incorporate in
15 Nevada since the C-Tax system was implemented in 1997. No meaningful adjustments were made
16 to Fernley's C-Tax distribution after its incorporation in 2001 and, even today, despite significant
17 growth in population and assessed property valuation, Fernley receives a C-Tax distribution
18 similar to its distributions as an unincorporated town in 1997. For example, in 1997, Fernley, then
19 an unincorporated town, received approximately \$86,000 in C-Tax distributions. In 2001, the year
20 Fernley incorporated, it received \$110,685 in C-Tax distributions. In 2011, Fernley received
21 \$143,143 in C-Tax distributions.

22 11. Today, Fernley, home to a major Amazon.com distribution center since 1999, is the
23 seventh most populous city in Nevada, with a population of approximately 19,000 people. Lyon
24 County, within which Fernley is located, is Nevada's fourth most populous county, with a
25 population of approximately 52,000 people, some 36% of whom live in Fernley.

26 12. Despite experiencing population growth of approximately 250% since the C-Tax
27 system was established, Fernley's current C-Tax distributions are not significantly different from
28 what it received as an unincorporated town in the late 1990s.

BROWNSTEIN HYATT FARBER SCHRECK
9210 Prototype Drive, Suite 250
Reno, Nevada 89521
Telephone: 775-622-9450

13. Comparisons of C-Tax distributions to comparably sized jurisdictions in Nevada are striking. C-Tax distributions for 2010-2011 to comparably sized Nevada towns or cities include: Fallon (\$1,409,664); Boulder City (\$7,935,323); Elko (\$11,015,989); West Wendover (\$2,275,011); Winnemucca (\$3,552,393); Mesquite (\$7,046,690); and Ely (\$1,142,528). The average C-Tax distribution to these jurisdictions in 2010-2011 was \$4,910,571. Again, Fernley's C-Tax distribution for the same year was just \$143,143.

14. Of the \$14.836 million Lyon County received in Tier 1 C-Tax Distributions in 2011, Fernley received a total of only \$143,000 in Tier 2 Distributions, which is 1% of Lyon County's 2011 Tier 1 C-Tax Distributions. Put another way, in 2011, Fernley received approximately \$7 in C-Tax revenue per resident. By comparison, in Clark County, Boulder City and Mesquite, both of which are less populous than Fernley, received 2011 Tier 2 C-Tax Distributions totaling \$7.935 million and \$7.047 million, respectively (between \$450 and \$550 per resident). In Elko County, the City of Elko, the population of which is comparable to Fernley's, received \$11.016 million in 2011 Tier 2 C-Tax Distributions, roughly one hundred times more than Fernley.

15. The C-Tax system is not designed to allow for any meaningful adjustment to distributions. The Department has no ability to adjust Tier 1 Distributions, and can only make minor adjustments to Tier 2 Distributions if local governments agree to a transfer of services. Other adjustments are permanently barred to a municipality if they are not requested within 12 months of incorporation. What this means is that a jurisdiction like Fernley, that begins with a low base allocation, has no hope of ever obtaining a meaningful adjustment.

16. Fernley has been rebuffed in its efforts to obtain a larger share of the distribution to Lyon County.

17. Fernley has been rebuffed in its efforts to obtain relief from the Nevada Legislature. In 2011, Fernley promoted a bill to increase its base C-Tax allocation. That bill received one committee hearing and died, never receiving even so much as a committee vote.

18. Fernley has exhausted all of its options to obtain an adjustment to its C-Tax distribution, leaving Fernley in the position of having no choice but to seek relief from this court.

19. Fernley's inability to obtain any adjustment to its C-Tax distribution severely limits Fernley's ability to operate and plan for its future.

20. As administered by the Defendants, Nevada's C-Tax system denies Fernley equal protection, in violation of Section 1 of Amendment XIV of the United States Constitution. Nevada's C-Tax system further violates the separation of powers, creates a special law, operates in a non-uniform and non-general fashion, and imposes non-uniform and unequal taxation within the State of Nevada, all in violation of the Nevada Constitution and to Fernley's harm.

FIRST CLAIM FOR RELIEF

(Denial of Equal Protection in Violation of Section 1 of the Fourteenth Amendment to the United States Constitution)

21. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 20 as though fully set forth herein.

22. The Fourteenth Amendment to the United States Constitution prohibits a State from denying equal protection of its laws to any person within its jurisdiction.

23. As administered by the Defendants, Nevada's C-Tax system results in Fernley receiving distributions that are substantially less than what is received by other, comparably populated and similarly situated Nevada towns and cities.

24. As administered by the Defendants, Nevada's C-Tax system is non-uniform and unequal in its effect upon Fernley as compared to other similarly situated Nevada towns and cities.

25. As administered by the Defendants, Nevada's C-Tax system denies Fernley and its citizens the equal protection of Nevada's laws.

26. The denial of Fernley's equal protection of the law by the Defendants has proximately caused damages to Fernley, in an amount to be determined at trial.

27. The C-Tax system is unconstitutional, both on its face and as applied to Fernley.

28. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

///

SECOND CLAIM FOR RELIEF**(Violation of the Separation of Powers Clause of the Nevada Constitution)**

29. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 28 as though fully set forth herein.

30. Article 3, Section 1 of the Nevada Constitution provides that the powers of the State government are divided into three branches and that no person charged with the exercise of powers properly belonging to one of those branches may be exercised by either of the other branches.

31. Legislative authority in Nevada is vested in the Nevada Legislature, including the power to control the raising and distribution of revenues.

32. The Nevada Legislature is empowered to direct the distribution of C-Tax revenues to counties and local governments.

33. The C-Tax system, which is administered by the executive branch of the state government, is set up so that the legislative authority over the C-Tax system is abdicated to and exercised by the executive branch of state government.

34. As administered by Defendants, the C-Tax system violates the Separation of Powers Clause of the Nevada Constitution.

35. The violation of the separation of powers clause has proximately caused damages to Fernley, in an amount to be determined at trial.

36. The C-Tax system is unconstitutional, both on its face and as applied to Fernley.

37. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

THIRD CLAIM FOR RELIEF**(Creation of a Special Law in Violation of Article 4, Section 20 of the Nevada Constitution)**

38. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 37 as though fully set forth herein.

49. The C-Tax system is unconstitutional, both on its face and as applied to Fernley.

50. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

FIFTH CLAIM FOR RELIEF

(Denial of Due Process in Violation of Section 1 of the 14th Amendment to the United States Constitution)

51. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 50 as though fully set forth herein.

52. The Fourteenth Amendment to the United States Constitution prohibits a State from denying due process of law to any person within its jurisdiction.

53. As administered by the Defendants, Nevada's C-Tax system results in Fernley receiving tax revenue distributions that are substantially less than what is received by other local governments and provides no process by which Fernley can obtain a meaningful and effective adjustment of such tax distributions .

54. As administered by the Defendants, Nevada's C-Tax system prevents Fernley and its citizens from any meaningful adjustment to C-Tax distributions.

55. As administered by the Defendants, Nevada's C-Tax system denies Fernley and its residents of due process of law.

56. The denial of due process by the Defendants has proximately caused damages to Fernley, in an amount to be determined at trial.

57. The C-Tax system is unconstitutional, both on its face and as applied to Fernley.

58. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

SIXTH CLAIM FOR RELIEF

(Declaratory Relief)

59. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 58 as though fully set forth herein.

BROWNSTEIN HYATT FARBER SCHRECK
9210 Prototype Drive, Suite 250
Reno, Nevada 89521
Telephone: 775-622-9450

1 60. As set forth above, through the operation of Nevada's C-Tax system, as
2 administered by the Defendants, Fernley has been deprived of its rights under the United States
3 and Nevada Constitutions.

4 61. Fernley has inquired of Defendants in writing regarding what remedies Defendants
5 would be able to afford Fernley.

6 62. Defendants have indicated that they will not and cannot provide adequate remedies
7 to Fernley.

8 63. As such, an actual justiciable controversy has arisen with respect to the following
9 issues:

10 a) Whether Nevada's C-Tax system, as administered by the Defendants, gives
11 Fernley the equal protection of Nevada's laws;

12 b) Whether Nevada's C-Tax system, as administered by the Defendants,
13 violates the Separation of Powers Clause of the Nevada Constitution;

14 c) Whether Nevada's C-Tax system, as administered by the Defendants,
15 operates as a local or special law for the assessment and collection of taxes for state, county and
16 township purposes;

17 d) Whether Nevada's C-Tax system, as administered by the Defendants,
18 violates the mandate of the Nevada Constitution that all laws be of general and uniform operation
19 throughout the State; and

20 g) Whether Nevada's C-Tax system, as administered by the Defendants, gives
21 Fernley due process.

22 64. Fernley contends that the answer to all of the above questions results in a
23 determination that the C-Tax system is unlawful on its face and on an as-applied basis to Fernley.
24 Thus, there presently exists a ripe case and controversy for which the parties are in need of
25 declarations from the Court to resolve their respective rights under the United States and Nevada
26 Constitutions.

65. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

SEVENTH CLAIM FOR RELIEF

(Injunctive Relief)

66. Fernley repeats and realleges the allegations set forth in Paragraphs 1 through 65 as though fully set forth herein.

67. Fernley has suffered and will continue to suffer immediate, great and irreparable injury, loss or damage if the Defendants are allowed to continue to administer Nevada's C-Tax as they have been, with the resultant deprivation of Fernley's rights under the United States and Nevada Constitutions.

68. Fernley is entitled to restrain the Defendants from administering Nevada's C-Tax system in a way which infringes upon Fernley's Constitutional rights and works to Fernley's prejudice.

69. Defendants' administration of Nevada's unconstitutional C-Tax system to Fernley's prejudice is both ongoing and imminent.

70. Fernley seeks an order from this Court enjoining the Defendants, as well as those persons acting on their behalf or in concert with them, from making or causing to be made any distributions under Nevada's C-Tax system, until such time as this Court rules upon the declaratory relief requested herein and thereafter to the extent the Court deems appropriate.

71. Fernley has been required to retain the services of Brownstein Hyatt Farber Schreck, LLP to prosecute its Constitutional claims and is therefore entitled to recover an award of reasonable attorneys' fees and costs of suit.

WHEREFORE, Fernley prays for judgment as follows:

1. On its First Claim for Relief, for damages in an amount to be proven at trial;
2. On its Second Claim for Relief, for damages in an amount to be proven at trial;
3. On its Third Claim for Relief, for damages in an amount to be proven at trial;
4. On its Fourth Claim for Relief, for damages in an amount to be proven at trial;

BROWNSTEIN HYATT FARBER SCHRECK
9210 Prototype Drive, Suite 250
Reno, Nevada 89521
Telephone: 775-622-9450

- 1 5. On its Fifth Claim for Relief, for damages in an amount to be proven at trial;
- 2 6. On its Sixth Claim for Relief, for declarations as follows:
- 3 a) That Nevada's C-Tax system, as administered by the Defendants, denies
- 4 Fernley and its residents the equal protection of Nevada's laws, in violation of Section 1 of the
- 5 Fourteenth Amendment to the United States Constitution;
- 6 b) That Nevada's C-Tax system, as administered by the Defendants, violates
- 7 the Separation of Powers Clause of the Nevada Constitution;
- 8 c) That Nevada's C-Tax system, as administered by the Defendants, operates as
- 9 a local or special law for the assessment and collection of taxes for state, county and township
- 10 purposes and therefore violates Article 4, Section 20 of the Nevada Constitution;
- 11 d) That Nevada's C-Tax system, as administered by the Defendants, violates
- 12 the mandate of Article 4, Section 21 of the Nevada Constitution that all laws be of general and
- 13 uniform operation throughout the State; and
- 14 e) That Nevada's C-Tax system, as administered by the Defendants, denies
- 15 Fernley and its residents guarantees of due process, in violation of Section 1 of the Fourteenth
- 16 Amendment to the United States Constitution.
- 17 7. On its Seventh Claim for Relief, for the issuance of an injunction enjoining the
- 18 Defendants, as well as those persons acting on their behalf or in concert with them, from making
- 19 or causing to be made any distributions under Nevada's C-Tax system, until such time as this
- 20 Court rules upon the declaratory relief requested herein and thereafter to the extent the Court
- 21 deems appropriate;
- 22 ///
- 23 ///
- 24 ///
- 25 ///
- 26 ///
- 27 ///
- 28 ///

1 8. Attorneys' fees and costs of suit; and

2 9. Any further relief this Court deems proper.

3 DATED this 6th day of April, 2012.

4 BROWNSTEIN HYATT FARBER SCHRECK, LLP

5 /s/ Joshua J. Hicks

6 Joshua J. Hicks, Nevada Bar No. 6679

7 Clark V. Vellis, Nevada Bar No. 5533

8 Sean D. Lyttle, Nevada Bar No. 11640

9 9210 Prototype Drive, Suite 250

10 Reno, Nevada 89521

11 *Attorneys for Plaintiff the City of Fernley, Nevada*

12 BROWNSTEIN HYATT FARBER SCHRECK
13 9210 Prototype Drive, Suite 250
14 Reno, Nevada 89521
15 Telephone: 775-622-9450
16
17
18
19
20
21
22
23
24
25
26
27
28