

SCAP No. 17-0000367

Electronically Filed

IN THE SUPREME COURT OF THE STATE OF HAWAII

Supreme Court

SCAP-17-0000367

31-OCT-2017

10:54 AM

IN THE MATTER OF THE TAX APPEAL

OF

PRICELINE.COM, INC., *et al.*,
Appellants.

T. X. No. 13-1-0269
(AND CONSOLIDATED CASES:
13-1-0261 through 13-1-0270;
14-1-0001 through 14-1-0010;
14-1-0243 through 14-1-0251)

APPEAL AND CROSS-APPEAL FROM THE
STIPULATED ORDER AND FINAL
JUDGMENT DISPOSING OF ALL ISSUES
AND CLAIMS OF ALL PARTIES FILED ON
APRIL 25, 2017 (AND UNDERLYING
ORDERS)

TAX APPEAL COURT

HONORABLE GARY W.B. CHANG

**APPELLANT/CROSS-APPELLEE DIRECTOR OF TAXATION, STATE OF
HAWAII'S OPPOSITION TO TAX FOUNDATION OF HAWAII'S MOTION FOR
LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS [SIC]**

CERTIFICATE OF SERVICE

DOUGLAS S. CHIN 6465

Attorney General

CYNTHIA M. JOHIRO 5445

HUGH R. JONES 4783

Deputy Attorneys General

Department of the Attorney General

425 Queen Street

Honolulu, Hawai'i 96813

Phone: (808) 586-1473

WARREN PRICE III 1212

KENNETH T. OKAMOTO 2068

ROBERT A. MARKS 2163

Special Deputy Attorneys General

707 Richards Street, Suite PH 4

Honolulu, Hawai'i 96813

Phone: (808) 538-1113

E-mail: wprice@pohlhawaii.com

kokamoto@pohlhawaii.com

ram@pohlhawaii.com

GARY CRUCIANI admitted *pro hac vice*

STEVEN D. WOLENS admitted *pro hac vice*

Special Deputy Attorneys General

300 Crescent Court, Suite 1500

Dallas, Texas 75201

Phone: (214) 978-4000

E-mail: gcruciani@mckoolsmith.com

swolens@mckoolsmith.com

Attorneys for Appellee-Appellant/Cross-Appellee Director of Taxation, State of Hawai'i

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

IN THE MATTER OF THE TAX APPEAL
OF
PRICELINE.COM, INC., *et al.*,
Appellants.

T. X. No. 13-1-0269
(AND CONSOLIDATED CASES:
13-1-0261 through 13-1-0270;
14-1-0001 through 14-1-0010;
14-1-0243 through 14-1-0251)

APPEAL AND CROSS-APPEAL FROM THE
STIPULATED ORDER AND FINAL
JUDGMENT DISPOSING OF ALL ISSUES
AND CLAIMS OF ALL PARTIES FILED ON
APRIL 25, 2017 (AND UNDERLYING
ORDERS)

TAX APPEAL COURT
HONORABLE GARY W.B. CHANG

**APPELLANT/CROSS-APPELLEE DIRECTOR OF TAXATION, STATE OF
HAWAI‘I’S OPPOSITION TO TAX FOUNDATION OF HAWAI‘I’S MOTION FOR
LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANTS [SIC]**

Pursuant to Rule 27(a) of the Hawai‘i Rules of Appellate Procedure, Appellant/Cross-Appellee Director of Taxation, State of Hawai‘i (“Director”) opposes Tax Foundation of Hawai‘i’s (“TFH’s”) Motion for Leave to File Amicus Curiae Brief (“Motion”) because TFH’s proposed amicus brief cannot aid the Court in the disposition of this dispute.

TFH’s proposed brief fails to take into account that the Appellees/Cross-Appellants Online Travel Companies (“OTCs”)¹ did not file tax returns, including “annual reconciliation

¹ The OTCs to this appeal and cross-appeal are Appellants-Appellees/Cross-Appellants Expedia, Inc., Hotwire, Inc., Orbitz, LLC, Trip Network, Inc. (d/b/a Cheaptickets.com), and priceline.com, Inc.

returns,” for the periods to which any res judicata argument might apply.² The broad principles of res judicata that TFH urges the Court to adopt are not properly asserted when the taxpayers utterly fail to meet their filing obligations. Rather, principles of res judicata should have no application to taxpayers that flaunt their reporting obligations, like the OTCs here. For this reason TFH’s motion should be denied because it fails to aid the Court in any way. See, e.g., United States v. Michigan, 940 F.2d 143, 165 (6th Cir. 1991) (“Classical participation as an amicus to brief and argue as a friend of the court was, and continues to be a privilege within ‘the sound discretion of the courts,’ [citation omitted] depending upon a finding that the proffered information of amicus is timely, useful, or otherwise necessary to the administration of justice.”).

If the Court grants TFH’s Motion, the Director respectfully requests that TFH be directed to file its brief in the form attached as Exhibit 1 to the Motion, and that the Director be given leave to respond.

DATED: Honolulu, Hawai‘i, October 31, 2017.

DOUGLAS S. CHIN
Attorney General

By: /s/ Robert A. Marks
CYNTHIA M. JOHIRO
HUGH R. JONES
Deputy Attorneys General
WARREN PRICE III
KENNETH T. OKAMOTO
ROBERT A. MARKS
GARY CRUCIANI
STEVEN D. WOLENS
Special Deputy Attorneys General
Attorneys for Appellee-Appellant/Cross- Appellee
Director of Taxation, State of Hawai‘i

² The OTCs’ res judicata argument applies only to the years 2000-2011. OTC Opening Brief at 2. The OTCs admit that they filed no tax returns for calendar years 2000 through 2010 (R19:200-201, 349-50; R29:345). The OTCs’ 2011 returns did not reflect any income for car rentals (id.) and were not timely filed. R25:115.

CERTIFICATE OF SERVICE

I certify that on October 31, 2017, a copy of the *Appellant/Cross-Appellee Director of Taxation, State of Hawai‘i’s Opposition to Tax Foundation of Hawai‘i’s Motion for Leave to File Amicus Curiae Brief in Support of Appellants (sic)*, was served on the following persons via JEFS at the following email addresses:

RONALD I. HELLER
Rheller@torkildson.com

PAUL ALSTON
palston@ahfi.com
PAMELA BUNN
pbunn@ahfi.com

Attorneys for Appellants-Appellees/Appellees-Cross Appellants Online
Travel Companies

THOMAS YAMACHIKA
tom@tfhawaii.org

Attorney for Movant Tax Foundation of Hawai‘i

Dated: Honolulu, Hawai‘i, October 31, 2017.

DOUGLAS S. CHIN
Attorney General

By: /s/ Robert A. Marks
CYNTHIA M. JOHIRO
HUGH R. JONES
Deputy Attorneys General
WARREN PRICE III
KENNETH T. OKAMOTO
ROBERT A. MARKS
GARY CRUCIANI
STEVEN D. WOLENS
Special Deputy Attorneys General
Attorneys for Appellee-Appellant/Cross- Appellee
Director of Taxation, State of Hawai‘i