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Movant

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

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N. ANAYA
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

In re

OFFICE OF INFORMATION
PRACTICES OPINION LETTER NO.
F19-05.

S.P. NO. 19-1-0191 DEO
(Special Proceeding)

REPLY MEMORANDUM IN SUPPORT
OF MOTION FOR LEAVE TO FILE
AMICUS CURIAE MEMORANDUM and
CERTIFICATE OF SERVICE

NON-HEARING MOTION
JUDGE: Hon. Dean E. Ochiai
TRIAL: No trial date set

**REPLY MEMORANDUM IN SUPPORT OF MOTION
FOR LEAVE TO FILE *AMICUS CURIAE* MEMORANDUM**

Pursuant to Rule 7.2(c) of the Rules of the Circuit Courts of the State of Hawaii, the TAX FOUNDATION OF HAWAII ("Foundation") respectfully submits this Reply Memorandum in support of its motion for leave to file an *amicus curiae* memorandum that was filed herein on July 19, 2019, and for which a Memorandum in Opposition by the Department of Taxation was served by mail on July 24, 2019.

The Department of Taxation (“Department”) makes the points that appeals of this kind are to be decided on the administrative record, and *amici curiae* generally are prohibited from introducing new factual issues. It then assails the Foundation for attaching as exhibits to its proposed *amicus* memorandum (1) a study by a Washington, D.C. think tank on other states’ laws and rules on fiscal notes in the legislative process; and (2) various examples of the Department’s own testimony before the Legislature where the Department has taken partisan positions either supporting or opposing different legislative bills.

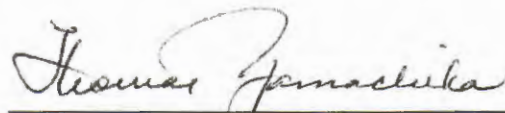
The study by the Washington, D.C., think tank is not being offered as evidence but as material to the Court to consider in deciding the questions of law, and specifically of statutory interpretation, here presented. In *Peer News LLC v. City & County of Honolulu*, 431 P.3d 1245 (Haw. 2018), a case cited often in the administrative record here, our Supreme Court’s majority and dissent discussed a Colorado case, *City of Colorado Springs v. White*, 967 P.2d 1042 (Colo. 1998). Of course, there was no discussion of whether the case was cited in the administrative record; it was being cited for its analysis of analogous law and circumstances, not because it contained facts material to the case before the court. Even the primary case cited by the Department, *State v. Palama*, No. CAAP-12-0000434 (Haw. Ct. App. 2015), specifically took judicial notice of laws and rules, including laws of the Kingdom of Hawai‘i. (Exhibit A to Department’s Memo in Opposition, at 2-3.) Thus, it should be perfectly fine to take judicial notice of the laws and rules cited in the CBPP

Study. The tables, charts, and analysis in the study organize that information in a coherent and understandable form.

As to the testimony the Department itself offered before the Legislature, the Department is arguing that it is on a level different from other testifiers because it is neutral, unbiased, and fundamentally indistinguishable from the legislative committees before whom it is testifying – at least for purposes of trying to qualify for the disclosure exemption for legislative committees. This is not the type of fact developed in the course of any UIPA disclosure case. The Foundation does not believe that this bald assertion is worthy of being taken at face value. It offers the Department’s own testimony, which is readily available from the Legislature’s website and is a proper subject of judicial notice, Haw. R. Evid. 201, as a counterpoint.

For these reasons, the Foundation does not believe that its proposed *amicus curiae* memorandum contains improper extraneous facts. It asks that the memorandum may be filed so that the Court may give the material in it such weight and consideration as the Court may believe just and proper.

DATED: Honolulu, Hawaii, July 29, 2019.



THOMAS YAMACHIKA
Attorney for Movant
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CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was duly served upon the individuals listed below by hand-delivery or U.S. Mail (as indicated):

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DATED: Honolulu, Hawaii, July 29, 2019.


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