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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

In re DEPARTMENT OF TAXATION, ADMINSTRATIVE DIRECTIVE NO. 2021-01. TAX FOUNDATION OF HAWAI'I, a Hawai'i nonprofit corporation, Plaintiff, vs. DEPARTMENT OF TAXATION, STATE OF HAWAI'I, Defendant.	CIVIL NO. 1CCV-24-0000661 DEFENDANT DEPARTMENT OF TAXATION, STATE OF HAWAII'S ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT FILED ON MAY 20, 2024; CERTIFICATE OF SERVICE

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DEFENDANT DEPARTMENT OF TAXATION, STATE OF HAWAII'S ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT FILED ON MAY 20, 2024

The DEPARTMENT OF TAXATION, STATE OF HAWAII (hereinafter the "Department"), Defendant named herein, by and through its undersigned attorneys, answers the Complaint for Declaratory Judgment filed on May 20, 2024 ("Complaint") as follows:

FIRST DEFENSE:

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE:

2. This Court lacks subject matter jurisdiction.

THIRD DEFENSE:

3. The Department may rely upon each and every available and relevant defense pursuant to Rule 8(c) of the Hawaii Rules of Civil Procedure.

FOURTH DEFENSE:

4. In answer to paragraph 1 of Complaint, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraph and, on that basis, denies these allegations and leaves Plaintiff to its proof.

5. In answer to paragraph 2 of the Complaint, the Department states that *Tax Foundation of Hawaii v. State*, 144 Hawaii 175, 439 P.3d 127 (2019) speaks for itself. The Department is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in said paragraph and, on that basis, denies these allegations and leaves Plaintiff to its proof.

6. The Department admits the allegation in paragraph 3 of the Complaint.

7. In answer to paragraphs 4, 5, and 6 of the Complaint, the Department states that the allegations in said paragraphs contain allegations and/or conclusions of law to which no

response is required and, on that basis, denies the allegations in said paragraphs and leaves Plaintiff to its proof.

8. In answer to paragraph 7 of the Complaint, the Department admits in part that Administrative Directive No. 2021-01 is dated April 27, 2021 and contains the words "FOR INTERNAL USE ONLY". The Department states that Exhibit 1 speaks for itself. The Department is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in said paragraph and, on that basis, denies these allegations and leaves Plaintiff to its proof.

9. In answer to paragraph 8 of the Complaint, the Department states that on May 4, 2024, the Department emailed a copy of Administrative Directive No. 2021-01 to Tom Yamachika, Tax Foundation of Hawaii, in response to a Uniform Information Practices Act, chapter 92F, HRS, request. The Department is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in said paragraph and, on that basis, denies these allegations and leaves Plaintiff to its proof.

10. In answer to paragraphs 9, 10, and 14 of the Complaint, the Department states that Administrative Directive No. 2021-01 speaks for itself. The Department is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in said paragraphs and, on that basis, denies these allegations and leaves Plaintiff to its proof.

11. In answer to paragraph 11 of the Complaint, the Department states that there are no allegations contained in said paragraphs and thus, no answer is required. To the extent an answer is required, the Department is without knowledge or information sufficient to form a belief as to the truth of any allegation in said paragraphs and, on that basis, denies these allegations and leaves Plaintiff to its proof.

12. In answer to paragraph 12 of the Complaint, the Department states that "The Negligence Penalty" and the "Failure to Respond Condition" speak for themselves. The Department is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in said paragraph and, on that basis, denies these allegations and leaves Plaintiff to its proof.

13. The Department denies the allegations in paragraphs 13, 17, 18, 19, 22, 23, 25, and 28 and leaves Plaintiff to its proof.

14. In answer to paragraphs 15, 21, 26, and 27 of the Complaint, the Department is without knowledge or information sufficient to form a belief as to the truth of the allegations in said paragraphs and, on that basis, denies these allegations and leaves Plaintiff to its proof.

15. In answer to paragraph 16 of the Complaint, the Department states that HRS § 91-1 speaks for itself and on that basis, denies these allegations and leaves Plaintiff to its proof.

16. In answer to paragraph 20 of the Complaint, the Department states that "The Failure to Respond Condition" is not a rule within the meaning of Chapter 91, HRS, and is therefore not subject to the rulemaking procedures of Chapter 91, HRS, and on that basis, the Department denies these allegations and leaves Plaintiff to its proof.

17. In answer to paragraph 24 of the Complaint, the Department states that "The Four Other Circumstances" are not rules within the meaning of Chapter 91, HRS, and are therefore not subject the rulemaking procedures of Chapter 91, HRS, and on that basis, the Department denies these allegations and leaves Plaintiff to its proof.

18. The Department denies any and all allegations not specifically admitted above and leaves Plaintiff to its proof.

FIFTH DEFENSE:

19. To the extent they may apply, the Department asserts the defenses described in Rule 12(h), Hawaii Rules of Civil Procedure.

SIXTH DEFENSE:

20. Plaintiff's claim is not ripe for judicial review.

SEVENTH DEFENSE:

21. Plaintiff is requesting an impermissible advisory opinion.

EIGHTH DEFENSE:

22. The Complaint is barred by Hawaii Revised Statutes § 632-1 and Rule 57 of the Hawaii Rules of Civil Procedure.

NINTH DEFENSE:

23. Plaintiff lacks standing to bring this action.

WHEREFORE, the DEPARTMENT prays that this Court (i) dismisses the case with prejudice and/or finds and adjudges that the Department of Taxation Administrative Directive No. 2021-01 is valid and proper (ii) the Department be awarded their reasonable attorneys fees and costs, and (iii) grants any other relief to the Department as this Honorable Court may deem just and equitable.

DATED: Honolulu, Hawaii, _____June 7, 2024_____.

/s/ Janine R. Udui_____
NATHAN S. C. CHEE
JANINE R. UDUI
Deputy Attorneys General

Attorneys for Defendant
DEPARTMENT OF TAXATION,
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

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In re DEPARTMENT OF TAXATION, ADMINSTRATIVE DIRECTIVE NO. 2021-01. TAX FOUNDATION OF HAWAI'I, a Hawai'i nonprofit corporation, Plaintiff, vs. DEPARTMENT OF TAXATION, STATE OF HAWAI'I, Defendant.	CIVIL NO. 1CCV-24-0000661 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that on June 7, 2024, a copy of the foregoing was duly served on the following party/parties via the Hawaii State Judiciary Electronic Filings and Service System (JEFS) as indicated on the corresponding Notice of Electronic Filing:

THOMAS YAMACHIKA, ESQ.
ALOHA STATE TAX
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Attorney for Plaintiff

DATED: Honolulu, Hawaii, __June 7, 2024__.

/s/ Janine R. Udui
NATHAN S. C. CHEE
JANINE R. UDUI
Deputy Attorneys General

Attorneys for Defendant
DEPARTMENT OF TAXATION,
STATE OF HAWAII