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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAIʻI

In re DEPARTMENT OF TAXATION, ADMINISTRATIVE DIRECTIVE NO. 2021-01. TAX FOUNDATION OF HAWAIʻI, a Hawaiʻi nonprofit corporation, Plaintiff, vs. DEPARTMENT OF TAXATION, STATE OF HAWAIʻI, Defendant.	CASE NO. 1CCV-24-0000661 PLAINTIFF'S SCHEDULING CONFERENCE STATEMENT and CERTIFICATE OF SERVICE (Other Civil Action)

PLAINTIFF'S SCHEDULING CONFERENCE STATEMENT

Pursuant to Circuit Court Rule 12(a)(7), Plaintiff TAX FOUNDATION OF HAWAIʻI (the Foundation) hereby submits its Scheduling Conference Statement.

A. BRIEF DESCRIPTION OF THE CASE

This is a declaratory judgment action. Defendant Department of Taxation ("Department") issued an Administrative Directive containing directions to its staff as to how to interpret the Negligence Penalty under HRS section 231-39. The Foundation contends that certain policy pronouncements and taxpayer-facing interpretations in the Directive are rules as defined in the Hawaii Administrative Procedure Act, and must be invalidated because of (1) failure to follow proper rulemaking procedures and/or (2) the pronouncements are inconsistent with the statute they purport to interpret. In other words, the Foundation seeks a judgment from this Court that some or all of the Administrative Directive contains improper instructions to the Department's staff.

B. STATEMENT OF JURISDICTION AND VENUE

This Court possesses jurisdiction to issue declaratory relief pursuant to HRS §§ 632-1 and 91-7. The Foundation believes that, as a recognized taxpayer watchdog organization, it qualifies as an interested party for purposes of HRS § 91-7 and has standing to seek a declaratory judgment under HRS § 632-1.

Venue in the Circuit Court of the First Circuit is proper. The Foundation is domiciled in Hawai'i in the First Judicial Circuit and the Department has its principal office in the First Circuit.

C. JURY OR NON-JURY TRIAL

This is a non-jury trial case.

D. ASSIGNMENT OF CASE TO AN EXPEDITED OR NON-EXPEDITED TRACK UNDER RULE 16.1, HRCP

The Foundation believes that this case would qualify for expedited track.

E. APPROPRIATENESS, EXTENT AND TIMING OF DISCLOSURES

The Foundation believes that this case is purely a legal determination of the significance and validity of a single document under the Hawaii Administrative Procedure Act and the Declaratory Judgment Act. The Foundation anticipates no discovery or witnesses, and that the case will be decided by motion.

F. DISCOVERY, MOTIONS PENDING AND HEARING DATE(S)

The Foundation has conducted no discovery and has no pending discovery.:

The Foundation has filed a Motion for Summary Judgment that is set for hearing on July 10, 2024, at 10:30 a.m. before the Honorable Karin L. Holma.

G. SPECIAL PROCEDURES

The Foundation does not anticipate any special procedures.

H. RELATED CASES

The Foundation is not aware of any related cases.

I. ANY ADDITIONAL MATTERS

The Foundation does not believe that there are additional matters that need to be brought before the Court at this time.

J. CERTIFICATION OF CONFERRAL

On July 1, 2024, the parties conferred and agreed that the issues involved in this case will probably be resolved by motion. The parties have not conferred specifically on (1) the nature and basis of their claims and defenses; (2) the possibilities for promptly settling or resolving the case; (3) making of arranging for disclosures required by HRCP 26(a)(1) and 26(a)(2); (4) preserving discoverable and electronically stored information; and (5) a proposed discovery plan. The Foundation believes that no discovery is required and that the possibility of settlement is slim or nonexistent.

DATED: Honolulu, Hawai‘i, July 1, 2024.

/s/ Thomas Yamachika
THOMAS YAMACHIKA
Attorney for Plaintiff
TAX FOUNDATION OF HAWAI‘I

CERTIFICATE OF SERVICE

I hereby certify that on this date the foregoing document will be served on counsel of record as indicated below upon the filing hereof:

Counsel for Defendant:

ANNE E. LOPEZ, ESQ. Via JEFS
NATHAN S.C. CHEE, ESQ.
JANINE R. UDUI, ESQ.

DATED: Honolulu, Hawaii, July 1, 2024.

/s/ Thomas Yamachika
THOMAS YAMACHIKA
Attorney for Plaintiff
TAX FOUNDATION OF HAWAIʻI