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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

In re DEPARTMENT OF TAXATION, ADMINISTRATIVE DIRECTIVE NO. 2021-01. TAX FOUNDATION OF HAWAI‘I, a Hawai‘i nonprofit corporation, Plaintiff, vs. DEPARTMENT OF TAXATION, Defendant.	Civil No. 1CCV-24-0000661 (KLH) **SCHEDULING ORDER - NON-JURY TRIAL** Track Assignment: Expedited ☒ Non-Expedited ☐ JUDGE: The Honorable Karin L. Holma

SCHEDULING ORDER - NON-JURY TRIAL

Pursuant to Rule 16(b)(1) of the Hawai‘i Rules of Civil Procedure (HRCP) and Rule 12(a)(1) of the Rules of the Circuit Courts of the State of Hawai‘i (RCCH), a scheduling conference was held on July 8, 2024 before the Honorable Karin L. Holma. Parties appearing remotely by video were Tom Yamachika and Deputy Attorney General Janine Udui.

Pursuant to HRCP 16(b)(1) and RCCH 12(a)(1), the Court enters this scheduling order:

TRACK ASSIGNMENT

1. ☒ By agreement of the parties, the case is designated for an expedited track with trial to commence within 9 months.

☐ The case is designated as non-expedited with trial to commence within:

☐ 12 months; or

☐ 18 months (at the request of a party at the initial scheduling conference and with the court having reviewed and considered the materials submitted, including the parties' Scheduling Conference Statements and Joint Report of the Parties, the relative positions of all parties, and the relative complexity of the case).

TRIAL AND PRETRIAL CONFERENCE SCHEDULING:

2. NON-JURY trial in this matter shall commence on February 3, 2025. Estimated length of trial: 2 days.

3. A final pretrial conference shall be held on December 16, 2024 at 1:30pm via Zoom.

4. (Reserved).

5. Pursuant to RCCH 12.1, each party shall file and serve a separate final pretrial statement no later than 7 days before the final pretrial conference, but if no such conference has been set, then no later than 14 days before trial.

MOTIONS:

6. All motions to join additional parties or to amend the pleadings shall be filed by July 12, 2024. (30 weeks minus 4 days before trial).

7. Other non-dispositive motions, except for motions in limine and discovery motions, shall be filed by November 4, 2024 (13 weeks plus 1 day before trial).

8. Dispositive motions shall be filed by December 16, 2024 (50 days before trial).

9. Motions in limine, if permitted by the Court, shall be filed by January 13, 2025. (3 weeks before trial). Any opposition memorandum to a motion in limine shall be filed by January 20, 2025. (2 weeks before trial).

Unless otherwise instructed by the court, two courtesy copies of any filed motion, response to a motion, or other document pertaining to a motion shall be delivered to judge's chambers pursuant to RCCH 7.2(g)(6).

DISCOVERY:

10. Unless and until otherwise ordered by the Court, the parties shall follow the discovery plan agreed to by the parties herein pursuant to HRCP 26(f) and RCCH 12(a)(6).

11. (Reserved)

12. Pursuant to HRCP 26(a)(2), each party shall disclose to each other party the identity of any person who may testify at trial as an expert and provide a written report from that expert under Rule 702 of the Hawai‘i Rules of Evidence. The disclosures pursuant to this paragraph shall be according to the following schedule:

a. All parties having the burden of proof on a claim for relief or an affirmative defense must comply by September 6, 2024 (150 days before trial)

b. All parties opposing a claim for relief or an affirmative defense must comply by October 7, 2024 (120 days before trial)

c. All parties intending to present evidence solely to rebut evidence on the subject matter identified for the first time by another party pursuant to subparagraph b above must comply by November 5, 2024 (90 days before trial)

13. Pursuant to RCCH 12(j), the discovery cut-off shall be December 5, 2024 (60 days before the assigned trial date). Unless otherwise permitted by the Court, all discovery pursuant to HRCP Rules 26 through 37 inclusive, must be completed by the discovery deadline. Unless otherwise permitted by the Court, all discovery motions and conferences made or requested pursuant to HRCP Rules 26 through 37 inclusive, shall be filed no later than thirty (30) days prior to the discovery deadline.

14. Pursuant to RCCH 12(d), Plaintiff(s) must name all theretofore unnamed witnesses by October 7, 2024 (60 days before discovery cut-off). Defendant(s) must name all theretofore unnamed witnesses by November 5, 2024 (30 days before discovery cut-off).

SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION:

15. A settlement conference shall be:

☐ held on _____ at _____ __.m.

☒ assigned to another judge to conduct the settlement conference. Parties have been instructed to contact the 12th Division to set a settlement conference. An order setting the date/time of the settlement conference and identifying the settlement judge will be issued within 30 days of the scheduling conference.

16. Each party shall deliver directly to the settlement judge a confidential settlement conference letter at least 5 working days before the settlement conference. The letter shall include copies of the settlement offers exchanged as set forth in paragraph 17 below. The parties are directed to RCCH 12.2(b) for the requirements of the confidential settlement conference letter.

17. The parties shall exchange written bona fide and reasonable settlement offers and shall discuss settlement on or before the date on which the confidential settlement conference letters are due to the settlement judge. The parties shall exchange their settlement offers according to the following schedule:

☒ Plaintiff(s) to send a written offer to defendant(s) 21 days before the settlement conference;

☒ Defendant(s) to respond with a written offer to plaintiff(s) 7 days after receiving plaintiff's(s') offer;

☐ The parties must exchange written settlement offers 5 working days before the settlement conference.

18. Alternative dispute resolution options, including mediation, were discussed.

☐ The parties are already engaged in mediation.

☐ The parties will engage in mediation no later than _____.

☐ Mediation is not appropriate at this time.

☒ Other: ADR upon agreement of the parties, or per further order of the court.

TRIAL SUBMISSIONS:

19. (Reserved)

20. (Reserved)

21. (Reserved)

22. (Reserved)

23. (Reserved)

WITNESSES:

24. By January 13, 2025, (3 weeks before trial) each party shall serve and file a final comprehensive witness list indicating the identity of each witness that the party will call at trial and describing concisely the substance of the testimony to be given and the estimated time required for the testimony of the witness on direct examination.

25. The parties shall make arrangements to schedule the attendance of witnesses at trial so that the case can proceed with all due expedition and without any unnecessary delay.

26. The party presenting evidence at trial shall give notice to the other party or parties the day before of the names of the witnesses who will be called to testify the next day and the order in which the witnesses will be called.

EXHIBITS:

27. By January 6, 2025, (4 weeks before trial) the parties shall pre-mark for identification all exhibits and shall exchange or, when appropriate, make available for inspection all exhibits to be offered, other than for impeachment or rebuttal, and all demonstrative aids to be used at trial.

28. The parties shall meet and confer regarding stipulations to the authenticity and admissibility of proposed exhibits by January 13, 2025. (3 weeks before trial).

29. By January 20, 2025, the parties shall file any objections to the admissibility of exhibits. (2 weeks before trial).

30. The original set of exhibits (in individual manila folders) and two copies (in binders and tabbed) and a list of all exhibits shall be submitted to the Court by January 30, 2025. (Thursday before trial).

DEPOSITION DESIGNATIONS:

31. By January 6, 2025, the parties shall file statements designating excerpts from depositions (specifying the witness and page and line referred to) to be used at trial other than for impeachment or rebuttal. (30 days before trial).

32. Statements counter-designating other portions of depositions or any objections to the use of the depositions shall be filed by January 19, 2025. (14 days after #31 above date).

33. Objections to counter-designations shall be filed by January 27, 2025. (7 days after #32 above date).

34. Two filed copies of the designations (with transcripts attached), counter-designations, and objections must be submitted to the Court. The court shall schedule ruling on objections with the parties.

TRIAL BRIEFS:

35. By January 20, 2025, each party may file a trial brief on all significant disputed issues of law, including foreseeable procedural and evidentiary issues setting forth briefly the party's position and the supporting arguments and authorities. (2 weeks before trial).

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:

36. Each party shall file and serve proposed findings of fact and conclusions of law as directed by the Court.

OTHER MATTERS:

37. (Reserved).

38. Pursuant to RCCH 12(k), any party joining a new party after trial has been set must serve, with the initiating pleading, a copy of the current order(s) setting the trial date and pretrial deadlines. Within 30 days of filing a responsive pleading, any newly joined party may move for a continuance of the trial date or other deviation from the time requirements under the RCCH or orders setting pretrial deadlines.

SANCTIONS:

39. Failure of a party or the party's attorney to comply with any section of this order is deemed an undue interference with orderly procedures and unless good cause is shown, the court may, in its discretion, impose sanctions in accord with HRCP 26(f).

IT IS SO ORDERED:

DATED: July 9, 2024.

/s/Karin L. Holma

Judge of the Above-Entitled Court

TAX FOUNDATION OF HAWAII v. STATE OF HAWAII DEPARTMENT OF TAXATION; Civil No. 1CCV-24-0000661 (KLH); First Circuit Court; SCHEDULING ORDER