ANNE E. LOPEZ 7609
Attorney General of Hawaii

NATHAN S. C. CHEE 6368
JANINE R. UDUI 6676
Deputy Attorneys General
Department of the Attorney General, State of Hawaii
Hale Auhau Building
425 Queen Street
Honolulu, Hawaii 96813
Telephone: (808) 586-1470
Email: Nathan.S.Chee@hawaii.gov
Janine.R.Udui@hawaii.gov

Attorneys for Defendant
DEPARTMENT OF TAXATION,
STATE OF HAWAII

Electronically Filed
FIRST CIRCUIT
1CCV-24-0000661
09-DEC-2024
04:29 PM
Dkt. 91 PTS

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 PRETRIAL STATEMENT; CERTIFICATE OF SERVICE Judge: The Honorable Karin L. Holma TRIAL: February 3, 2025

DEFENDANT DEPARTMENT OF TAXATION, STATE OF HAWAII'S
PRETRIAL STATEMENT

Defendant DEPARTMENT OF TAXATION, STATE OF HAWAII ("Department"), by and through its undersigned attorney, hereby submits this responsive pretrial statement pursuant to Rule 12.1 of the Rules of the Circuit Courts.

I. PARTIES

This Pretrial Statement is filed on behalf of the Defendant Department of Taxation, State of Hawaii.

II. SUBSTANCE OF ACTION

This is declaratory judgment action in which Plaintiff Tax Foundation of Hawaii ("Plaintiff") alleges the Department issued an administrative directive containing rules that were not promulgated pursuant to the Hawaii Administrative Procedures Act, Chapter 91, Hawaii Revised Statutes ("HRS") and as such, the administrative directive is invalid.

The Department intends to rely on the defenses and claims contained in its Answer to Complaint for Declaratory Judgment, including but not limited to the following:

1. This Court lacks subject matter jurisdiction to adjudicate this matter as it is a controversy related to taxes. Tax Appeal Court has exclusive jurisdiction over challenges to the amount of taxes assessed.

2. Plaintiff's claims are barred by HRS § 632-1.

3. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

4. Plaintiff cannot state a claim for relief pursuant to HRS § 91-7.

5. Plaintiff lacks standing to bring this action.

6. Plaintiff's claims are not ripe for adjudication.

The Department asserts as a defense that the Director has statutory discretion to impose penalties pursuant to HRS § 231-39(b)(2)(A).

The Department asserts as a defense that the Director is not required to promulgate rules related to HRS § 231-39(b)(2)(A).

III. UNDISPUTED FACTS

1. The Department is the government agency of the State of Hawaii charged with enforcing the State's tax laws.

2. The Department issued Administrative Directive No. 2021-01 ("AD 2021-01") on April 27, 2021 and it contains the words "FOR INTERNAL USE ONLY."

3. For the purposes of this case, the document filed as Exhibit 1 *[Dkt.65]* to the Stipulation of Facts *[Dkt. 64]* is a true and correct copy of Department's AD 2021-01.

4. For the purposes of this case, AD 2021-01 was placed on the Department's internal shared drive and accessible to employees of the Department.

5. For the purposes of this case, AD 2021-01 was not uploaded onto the Department's internet website or otherwise made readily accessible to the public.

6. For the purposes of this case, AD 2021-01 has not been superseded or obsoleted, and currently remains in effect.

IV. DISPUTED FACTS

Other than what is set forth above, Plaintiff's action for declaratory relief states no set of admissible material facts that support an actual case in controversy or its claims for declaratory relief. To the extent Plaintiff's remaining allegations or claims can be construed as facts, the Department disputes all material facts and claims asserted by the Plaintiff against the Department.

V. RELIEF PRAYED

The Department seeks a dismissal of the Plaintiff's Complaint for Declaratory Judgment.

Plaintiff seeks declaratory judgment that the AD 2021-01 related to tax penalties is invalid.

VI. POINTS OF LAW

1. This Court lacks subject matter jurisdiction in this matter as this is a controversy with respect to taxes. Section 632-1(a), HRS, expressly prohibits declaratory relief in any controversy with respect to taxes. "Declaratory relief may be obtained in tax matters under HRS § 632-1 where such relief does not interfere with the assessment or collection of taxes." Tax Foundation of Hawaii v. State, 144 Hawaii 175, 188, 439 P.3d 127, 140 (2019). If declaratory relief interferes with the assessment or collection of taxes it is a "controversy with respect to taxes for which declaratory relief under HRS § 632-1 is not allowed." See Ocean Resort Villas Vacation Owners Ass'n v. Cnty of Maui, 147 Hawaii 544, 556, 465 P. 3d 991, 1003 (2020).

2. Section 632-1(b), HRS, prohibits declaratory relief where, as here, "a statute provides a special form of remedy for a specific type of case," and instead, requires the statutory form of remedy be followed. Tax Appeal Court has exclusive jurisdiction over challenges to the assessment of taxes. See HRS § 232-13

3. Plaintiff has made no showing that HRS § 91-7 specifically allows declaratory relief in tax cases.

4. The Legislature has given the Director of Taxation broad statutory authority to assess, collect, and enforce the tax laws of the State. See HRS § 231-3. Section 231-39(b)(2)(A), HRS, provides that "[i]f any part of any underpayment is due to negligence or intentional disregard of rules . . . there shall be added to the tax an amount up to twenty-five per cent of the underpayment as determined by the director." Penalties imposed for the failure to

pay tax "shall be added to and become part of the tax imposed by such tax or revenue law, and collected as such. . . See HRS § 231-39(b).

5. The Director was not required to promulgate rules related to HRS § 231-39(b)(2)(A). See HRS § 231-3(9).

6. Plaintiff does not have standing as "interested person" to bring an action for declaratory relief pursuant to HRS § 91-7(a) as it is not affected by the AD 2021-01. See Asato v. Procurement Policy, 132 Hawaii 333, 343, 322 P. 3d 228, 238 (2014).

VII. WITNESSES TO BE CALLED

The Department does not anticipate calling any witnesses currently but reserves the right to call any witnesses any other parties to this action have identified in their respective pretrial statement, responsive pretrial statement, settlement conference statement, final naming of witnesses, or otherwise. The Department also reserves the right to call any rebuttal witnesses.

VIII. EXHIBITS, SCHEDULES, AND SUMMARIES

The Department does not anticipate offering documents or exhibits at trial.

IX. FURTHER DISCOVERY OR MOTIONS.

The Plaintiff's Motion for Summary Judgment filed on October 28, 2024 [*Dkt. 67*] and the Department's Motion to Dismiss Complaint for Declaratory Judgment, or in the Alternative, Cross-Motion for Summary Judgment filed on November 27, 2024 [*Dkt. 81*] are scheduled to be heard together on December 19, 2024 at 2:00 p.m. [*Dkt. 88*].

X. STIPULATION AND REQUESTS FOR JUDICIAL NOTICE

A Stipulation of Facts signed by the parties was filed on October 23, 2024. *[Dkt. 64]*.

XI. AMENDMENTS, DISMISSALS

The Department's Motion to Dismiss Complaint for Declaratory Judgment, or in the Alternative, Cross-Motion for Summary Judgment filed on November 27, 2024 [*Dkt. 81*], is scheduled to be heard on December 19, 2024 at 2:00 p.m. [*Dkt. 88*].

XII. ALTERNATIVE DISPUTE RESOLUTION

None.

XIII. ESTIMATE OF TRIAL TIME

The estimated length of trial is 2 days.

XIV. MISCELLANEOUS

None.

DATED: Honolulu, Hawaii, December 9, 2024.

ANNE E. LOPEZ
Attorney General for the State of Hawaii

By: /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

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 CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned certifies that on December 9, 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
835 Ikena Circle
Honolulu, HI 96821
Attorney for Plaintiff
TAX FOUNDATION OF HAWAI'I

DATED: Honolulu, Hawaii, December 9, 2024.

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

Attorneys for Defendant
DEPARTMENT OF TAXATION,
STATE OF HAWAII