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SCWC-22-0000441

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

BOOKING.COM B.V., Petitioner/Appellant, vs. GARY S. SUGANUMA, in his official capacity as the Director of Taxation, and STATE OF HAWAIʻI DEPARTMENT OF TAXATION, Respondents/Appellees.	CIVIL NO. 19-1-0107-01 GWBC CAAP-22-0000441 First Circuit Court, State of Hawaiʻi Judge : Hon. Gary W.B. Chang

MOTION OF TAX FOUNDATION OF HAWAIʻI FOR LEAVE TO FILE SUPPLEMENTAL AMICUS CURIAE BRIEF

EXHIBIT "1"

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MOTION OF TAX FOUNDATION OF HAWAIʻI
FOR LEAVE TO FILE SUPPLEMENTAL AMICUS CURIAE BRIEF

Amicus curiae Tax Foundation of Hawaiʻi (the "Foundation"), hereby moves this Court, pursuant to Rules 27 and 28(g) of the Hawaiʻi Rules of Appellate Procedure, for leave to file a brief responsive to the supplemental briefing order filed on December 23, 2025, in the form attached hereto as Exhibit "1".

The Foundation participated in oral argument in this matter at which questions were raised giving rise to the supplemental briefing ordered. The Foundation would like to present its views on the questions raised.

For the above reasons, the Foundation respectfully requests that this Court grant its motion to submit a brief *amicus curiae* and set a schedule for its filing.

DATED: Honolulu, Hawaiʻi, December 28, 2025.

/s/Thomas Yamachika
THOMAS YAMACHIKA
Counsel for Movant

SCWC-22-0000441

IN THE SUPREME COURT OF THE STATE OF HAWAIʻI

BOOKING.COM B.V., Petitioner/Appellant, vs. GARY S. SUGANUMA, in his official capacity as the Director of Taxation, and STATE OF HAWAIʻI DEPARTMENT OF TAXATION, Respondents/Appellees.	CIVIL NO. 19-1-0107-01 GWBC CAAP-22-0000441 First Circuit Court, State of Hawaiʻi Judge : Hon. Gary W.B. Chang

SUPPLEMENTAL AMICUS CURIAE BRIEF OF TAX FOUNDATION OF HAWAIʻI

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EXHIBIT "1"

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SUPPLEMENTAL AMICUS CURIAE BRIEF
OF TAX FOUNDATION OF HAWAIʻI

Pursuant to this Court's Order Granting Motion for Leave to File *Amicus Curiae* Brief, and Rule 28(g), Hawai'i Rules of Appellate Procedure, the Tax Foundation of Hawai'i ("Foundation") submits this brief responsive to the questions raised in this Court's Order of December 23, 2025.

I. ARGUMENT

A. HRS § 91-7 SHOULD BE INTERPRETED IN A MANNER THAT AVOIDS CONSTITUTIONAL INFIRMITY.

HRS § 91-7, as interpreted in *Hawaii Home Infusion Associates v. Befitel,* 114 Haw. 87, 157 P.3d 526 (2007), confers subject matter jurisdiction upon the circuit court of the county where the plaintiff resides or has its principal place of business.

If the statute were to be interpreted to bar jurisdiction where the plaintiff was a nonresident of the State or had its headquarters outside the State, then the statute would be vulnerable to challenge under the Commerce Clause of the U.S. Constitution for discrimination against interstate commerce, *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354-55 (1951); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521-22 (1935), or under the Privileges and Immunities Clause if a nonresident is so barred, *McKnett v. St. Louis & S.F. Ry.*, 292 U.S. 230, 233 (1934) ("The privileges and immunities clause requires a state to accord to citizens of other states substantially the same right of access to its courts as it accords to its own citizens."); *Chambers v. Balt. & Ohio R.R.,* 207 U.S. 142, 148 (1907) ("The right to sue and defend in the courts is … one

of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens.").

"The doctrine of 'constitutional doubt,' a well-settled canon of statutory construction, counsels that 'where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, [the court's] duty is [to] adopt the latter.'" *Morita v. Gorak*, 145 Haw. 385, 391, 453 P.3d 205, 211 (2019) (quoting *In re Doe*, 96 Haw. 73, 81, 26 P.3d 562, 570 (2001)). Under this principle, then, an interpretation barring access should be disfavored.

To start with, a business entity's "principal place of business" does not have to be its only headquarters. HRS § 454F-22(e), for example, states that a mortgage loan originator company that maintains its principal office outside the State shall designate a "principal place of business in this State." HRS § 514E-2.5(c)(2), referring to timeshare sales, refers to "***a*** principal place of business" (emphasis added), meaning that there may be more than one.

The Foundation suggests that for purposes of HRS § 91-7, "principal place of business" should be interpreted as the plaintiff's principal place of business in Hawaii. This would take care of nonresident proprietors and foreign entities doing business in Hawaii with employees here or a bricks-and-mortar presence. For entities that have neither, a foreign entity is required by law to register to do business in Hawaii before availing itself of the benefits provided by the court system. *See, e.g.*, HRS §§ 414-432(a) (for-profit

corporation); 414D-272(a) (nonprofit corporation); 425-161(a) (limited liability partnership); 428-1008(a) (limited liability company). Upon registering, a foreign entity must designate an agent in the State upon whom process may be served. *See, e.g.,* HRS §§ 414-433(a)(4) (for-profit corporation); 414D-273(a)(4) (nonprofit corporation); 425-158(3) (limited liability partnership); 428-1002(a)(4) (limited liability company); 425R-3, -4(a) (designating registered agent in Hawaii). The address of the Hawaii agent so designated should be sufficient for this purpose. And if an entity required to register does not and nevertheless uses the court system, the court need not dismiss the case but may stay it to allow the affected entity to register with the DCCA. *See, e.g.,* HRS §§ 414-432(c) (for-profit corporation); 414D-272(c) (nonprofit corporation). Registration requirements to do business in the state, even if they included consent to local court jurisdiction, have been held to comport with the Constitution. *Mallory v. Norfolk Southern Ry. Co.,* 600 U.S. 122 (2023); *Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.,* 243 U.S. 93 (1917).

B. IF HRS § 91-7 IS INTERPRETED TO BAR PLAINTIFF'S SUIT HERE, THE COMMERCE CLAUSE MAY BE VIOLATED.

For the reasons set forth in the previous section, an interpretation of HRS § 91-7 that bars Plaintiff's suit here would be discrimination against interstate commerce that may well be forbidden by the Commerce Clause of the U.S. Constitution.

C. THIS COURT SHOULD NOT OVERRULE *HAWAII HOME INFUSION ASSOCIATIONS V. BEFITEL*, 114 HAW. 87, 92, 157 P.3D 526, 531 (2007), AS THERE IS NO COMPELLING JUSTIFICATION TO DO SO.

This Court has previously stated that "a court should not overrule its earlier decisions unless the most cogent reasons and inescapable logic require it." *In re 'Iao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications,* 128 Haw. 228, 276 n.38, 287 P.3d 129, 177 n.38 (2012); *Dairy Rd. Partners v. Island Ins. Co.,* 92 Haw. 398, 421, 992 P.2d 93, 116 (2000). This is because the doctrine of *stare decisis* "furnishes a clear guide for the conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; eliminates the need to relitigate every relevant proposition in every case; and maintains public faith in the judiciary as a source of impersonal and reasoned judgments." *State v. Garcia*, 96 Haw. 200, 205, 29 P.3d 919, 924 (2001) (cleaned up) (quoting *Robinson v. Ariyoshi*, 65 Haw. 641, 653 n. 10, 658 P.2d 287, 297 n. 10 (1982)). "Considerations of stare decisis have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and the legislative branch remains free to alter what we have done." *Garcia,* 96 Haw. at 201, 29 P.3d at 925. (quoting *Hilton v. South Carolina Public Ry. Commission,* 502 U.S. 197, 202 (1991)).

This Court's holding in *Hawaii Home Infusion Associates* is a matter of statutory interpretation, has been left in place by the Legislature for the eighteen years since that case was decided, and creates no manifest injustice.

That case, furthermore, reaffirms that interested parties other than taxpayers threatened with an assessment of taxes[1] have an independent jurisdictional basis, not barred by the Declaratory Judgment Act's prohibition against such suits in the tax context, to obtain judicial review of regulatory action by the tax authority, similar to the holding in *Cohen v. United States*, 650 F.3d 717, 721 (D.C. Cir. 2011) (where the appellants represented a class of taxpayers who lacked the resources or expertise necessary to individually seek refunds), *discussed in Tax Foundation of Hawaii v. State*, 144 Haw. 175, 439 P.3d 127 (2019). In that way, such interested parties may "actually serve to uphold the legislature's intent in the … area." *Asato v. Procurement Policy Board,* 132 Haw. 333, 345, 322 P.3d 228, 240 (2014).

Thus, this Court's holding in *Hawaii Home Infusion Associates* should not be overruled.

II. CONCLUSION

For these reasons, the Foundation submits that if Plaintiff has registered with the Hawaii DCCA in Hawaii, that the address of its registered agent for service of process be considered its principal place of business in Hawaii for purposes of HRS § 91-7; and if it has not, that the Court stay this action until Plaintiff does so register.

DATED: Honolulu, Hawai'i, December 28, 2025.

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[1] Plaintiff is in this category as well because Plaintiff filed suit approximately two years and ten months before being assessed.

/s/Thomas Yamachika
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document will be served on counsel of record indicated below through JEFS upon the filing hereof:

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DATED: Honolulu, Hawai‘i, December 28, 2025.

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