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**FIRST CIRCUIT**  
**1CTX-21-0001613**  
**31-JAN-2025**  
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**Dkt. 286 RESP**

IN THE TAX APPEAL COURT OF THE  
STATE OF HAWAII

IN THE MATTER OF THE TAX APPEAL

of

BOOKING.COM B.V.,

Taxpayer-Appellant.

Case No. 1CTX-21-0001613

APPELLEE DIRECTOR OF TAXATION,  
STATE OF HAWAII'S RESPONSE TO  
TAXPAYER-APPELLANT BOOKING.COM  
B.V.'S MOTION TO SEAL FILED ON  
NOVEMBER 22, 2024; CERTIFICATE OF  
SERVICE

HEARING MOTION:

DATE: February 10, 2025

TIME: 1:30 p.m.

JUDGE: The Honorable KEVIN T. MORIKONE

No Trial Date Set Yet

APPELLEE DIRECTOR OF TAXATION, STATE OF HAWAII'S  
RESPONSE TO TAXPAYER-APPELLANT BOOKING.COM B.V.'S  
MOTION TO SEAL FILED ON NOVEMBER 22, 2024

Appellee Director of Taxation, State of Hawaii (“Director”), responds to TAXPAYER-APPELLANT BOOKING.COM B.V.’S MOTION TO SEAL filed on November 22, 2024 (“Taxpayer’s Motion”) as follows:

**I. RETURN AND RETURN INFORMATION**

In Taxpayer’s Motion, among various arguments, Taxpayer-Appellee Booking.com B.V. (“Taxpayer”) argues that “tax return and return information” obtained by the Director during Taxpayer’s audit underlying the present action” should be sealed under Hawaii Revised Statutes (“HRS”) § 237-34. At the meet and confer for the Taxpayer’s Motion and Public First Law Center (“PFLC”) MOTION TO UNSEAL COURT RECORDS filed on September 18, 2024 (“PFLC’s Motion”) ordered by this Court, the Director’s counsel understood that it is Taxpayer’s position that any and all “tax return and return information” must be sealed because disclosure of any tax return and return information is unlawful under HRS § 237-34.<sup>1</sup>

Tax return and return information are generally confidential; however, not all disclosures of tax return and return information are unlawful as argued by Taxpayer. HRS § 237-34(b)<sup>2</sup> provides in relevant parts:

**§237-34 Filing of returns; disclosure of returns unlawful, penalty; destruction of returns. ...**

(b) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State ... to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of

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<sup>1</sup> Taxpayer did not make this argument in its opposition to the PFLC Motion.

<sup>2</sup> HRS § 237-34 is cited above as general excise tax is at issue in this case and the statute applies to general excise tax return and return information. There are other nondisclosure statutes applicable to other types of taxes.

any investigation of the return or of the subject matter of the return, or to wilfully permit any return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only, the taxpayer, the taxpayer's authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in the case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in the case of the estate's or decedent's return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) through (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) through (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or territory;
- (11) The Multistate Tax Commission or its authorized representative;
- (12) Members of a limited liability company; and
- (13) A person contractually obligated to pay the taxes assessed against another when the latter person is under audit by the department.

Any violation of this subsection shall be a class C felony. ... (Emphasis added)

HRS § 237-34(b) generally protects tax return and return information<sup>3</sup> from unauthorized disclosure. The Director anticipates that Taxpayer will not dispute the fact that HRS § 237-34

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<sup>3</sup> The term “return information” is not defined. Internal Revenue Code (“IRC”) § 6103(b)(2) is not adopted for Hawaii general excise tax or Hawaii income tax purposes, but the definition of the term for federal income tax purposes includes:

a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense ...

itself sets forth exceptions to the nondisclosure requirement (e.g., disclosure to the taxpayer, the taxpayer's authorized agent, a person contractually obligated to pay the taxes assessed against another when the latter person is under audit by the department, and other persons with material interest in the return, return information, or report). And, while the statute lists persons with material interest to whom the information may be disclosed for tax purposes, it also provides "[u]nless as provided by law."

Other exceptions to the nondisclosure statute are found outside of HRS § 237-34. For example, HRS § 231-32 provides that "a complete record of the *amounts of taxes assessed* in each district that have become delinquent with the *name of the delinquent taxpayer* in each case"

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It is also noted that IRC § 6103(h)(4), which is similarly not adopted for Hawaii general excise tax or Hawaii income tax purposes, allows certain disclosures in judicial or administrative proceeding pertaining to tax administration:

**(h) Disclosure to certain Federal officers and employees for purposes of tax administration, etc.— ...**

- (4) Disclosure in judicial and administrative tax proceedings.**--A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only--
- (A)** if the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;
  - (B)** if the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding;
  - (C)** if such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding; or
  - (D)** to the extent required by order of a court pursuant to section 3500 of title 18, United States Code, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

However, such return or return information shall not be disclosed as provided in subparagraph (A), (B), or (C) if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

(tax return or return information) is “open to public inspection[.]” Further, in this case, *Taxpayer* filed a notice of appeal in tax appeal court appealing a tax assessment and has made Taxpayer’s tax return and return information at issue. HRS § 232-16(c) requires the notice of appeal to the tax appeal court to be “accompanied by a copy of the taxpayer’s return, if any has been filed; provided that an individual taxpayer is authorized to redact all but the last four digits of the taxpayer’s social security number from any accompanying tax return” (emphases added). Similarly, HRS § 232-18 requires the tax assessor to send the tax appeal court a certificate of appeal “accompanied by the taxpayer’s return, if any has been filed; provided that the department of taxation may redact all but the last four digits of an individual taxpayer’s social security number from an accompanying tax return, a copy of the notice of appeal to the state taxation board of review, or an equivalent administrative body established by county ordinance, and any amendments thereto, and the decision or action, if any, of the state taxation board of review or equivalent administrative body” (emphasis added). Thus, under these statutes, only the social security number can be redacted – and only partially.<sup>4</sup> Consistently, the Rules of the Tax Appeal Court Rule 2(c) and (d) require the “party filing the notice of appeal shall attach thereto a copy of the taxpayer’s return, if any has been filed” and the assessor to submit to the Court a certificate which shall include the notice of assessment and a copy of the taxpayer’s return, if any (emphases added). In other words, these statutes and rule specifically provide for the taxpayer’s returns at issue in tax appeals and related return information (the assessment) to be filed and/or submitted to the Court.

As a practical matter, when a taxpayer appeals the Director’s tax assessment to this Court, the Director must be able to defend the assessment with tax return and return information

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<sup>4</sup> There may be other bases for redaction of part of social security numbers and/or other personal information (e.g., under HRS chapter 487J, Hawaii Court Records Rules 9.1).

(provided by the taxpayer prior to the assessment) relevant to the issues disputed in the tax appeal. To interpret the law otherwise would be absurd.

As to whether such information should be filed under seal, “the right of access to judicial proceedings and records is embedded in our common law policy of judicial openness[.]” In re Estate of Campbell, 106 Hawaii 453, 463, 106 P.3d 1096, 1106 (2005). Indeed, there are published Hawaii caselaw containing tax return or return information in tax cases. Even OIP Op. Ltr. No. F21-01 attached to Taxpayer’s Motion as Exhibit B recognizes that “[t]he records filed in a tax appeal court are public unless the court has sealed them.” OIP Op. Ltr. No. F21-01 at 4.

Thus, the fact that information is “tax return and return information” in a tax appeal, by itself, does not *automatically* require the filing of that information under seal as Taxpayer seems to argue. To the extent Taxpayer has additional/other bases for seeking to seal the information it has identified, the Director leaves Taxpayer to show why such records should be sealed or remain under seal.

## **II. STIPULATED PROTECTIVE ORDER**

In Taxpayer’s opposition to PFLC’s Motion, Taxpayer argued that the Director did not challenge Taxpayer’s “Confidential” designations pursuant to the STIPULATED PROTECTIVE ORDER [Dkt. 88] (“Stipulated Protective Order”). For the record, there is no set time limitation for the Director to challenge the designation under the Stipulated Protective Order. And, the Director reserves any and all rights to challenge any “Confidential” designation under the Stipulated Protective Order.

Further, to the extent this Court may enter an order granting Taxpayer’s Motion, in part or whole, the Director respectfully requests guidance as to how such an order affects the Stipulated Protective Order going forward, if at all.

DATED: Honolulu, Hawaii January 31, 2025.

/s/ Mary Bahng Yokota

Nathan S.C. Chee

Mary Bahng Yokota

Deputy Attorneys General

Attorneys for Appellee

DIRECTOR OF TAXATION,

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CERTIFICATE OF SERVICE

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I hereby certify that, on the date set forth below, a copy of the foregoing was duly served  
on the following via the Hawaii State Judiciary Electronic Filing and Service System:

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DATED: Honolulu, Hawaii, January 31, 2025.

/s/ Mary Bahng Yokota

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