

**Electronically Filed
Supreme Court
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NO. SCPW-12-0000551

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

ZEPHYR INSURANCE COMPANY, INC., Petitioner,

vs.

THE HONORABLE KARL K. SAKAMOTO, JUDGE OF THE CIRCUIT
COURT OF THE FIRST CIRCUIT, STATE OF HAWAI'I;
INSURANCE COMMISSIONER; and DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS OF THE STATE OF HAWAI'I,
INSURANCE DIVISION, Respondents.

ORIGINAL PROCEEDING
(CIVIL No. 10-1-2078-09)

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

(By: Recktenwald, C.J., Nakayama, Acoba, and McKenna, JJ.
and Circuit Judge Ahn, assigned by reason of vacancy)

Upon consideration of petitioner Zephyr Insurance Company, Inc.'s petition for a writ of mandamus and the papers in support, it appears that HRS § 235-114(a) (Supp. 2011) authorizes an appeal to the tax appeal court from any assessment of income tax or liability imposed by HRS Chapter 235. HRS § 235-114(c) (Supp. 2011) requires the notice of appeal to be filed in the tax appeal court "within thirty days subsequent to the date when the notice of assessment was mailed." The DCCA insurance division's November 15, 2010 letter on petitioner's tax credit claim -- if appealable by petitioner pursuant to HRS § 235-114(a), as the

respondent judge determined -- was appealable by notice of appeal filed within thirty days after the letter was mailed. The November 15, 2010 letter was presumably mailed when it was written, the time for filing an appeal under HRS § 235-114 expired in 2010, and an appeal to the tax appeal court is now precluded. The respondent judge's rulings to the contrary were incorrect. Therefore,

IT IS HEREBY ORDERED that the answer provision of HRAP 21(c) is suspended pursuant to HRAP 2.

IT IS FURTHER ORDERED that the petition for a writ of mandamus is granted. The respondent judge shall set aside the stay of Civil No. 10-1-2078-09 and shall proceed to hear and dispose of petitioner's agency appeal.

DATED: Honolulu, Hawai'i, June 22, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ Sabrina S. McKenna

/s/ Karen S.S. Ahn

