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Booking.com B.V.

IN THE TAX APPEAL COURT OF THE
STATE OF HAWAII

In the Matter of the Tax Appeal)	CASE NO. 1CTX-21-0001613
)	
of)	
)	TAXPAYER-APPELLANT
Booking.com B.V.)	BOOKING.COM B.V.'S FINDINGS OF
)	FACT AND CONCLUSIONS OF LAW
Taxpayer-Appellant.)	AND ORDER
)	
)	
)	<u>Hearing:</u>
)	Date: February 10, 2025
)	Time: 1:30 p.m.
)	Judge: The Honorable Kevin T. Morikone
)	
)	Trial Date: June 15, 2026
)	
)	

**TAXPAYER-APPELLANT BOOKING.COM B.V.’S
FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER**

On February 10, 2025, Movant Public First Law Center’s Motion to Unseal Court Records filed September 18, 2024 [Dkt. 252] (the “**Motion to Unseal**”) and Taxpayer-Appellant Booking.com B.V.’s Motion to Seal filed November 22, 2024 [Dkt. 265] (the “**Motion to Seal**”) came on for hearing before the Honorable Kevin T. Morikone.

Taxpayer-Appellant Booking.com B.V. (“**Taxpayer**”) was represented by Nathaniel A. Higa, Esq. of Chun Kerr LLP. Movant Public First Law Center (“**Public First**”) was represented by Robert Brian Black, Esq. Defendant-Appellee Director of Taxation, State of Hawai‘i (“**Director**”) was represented by Mary B. Yokota, Esq.

The Court, having considered the arguments of counsel and the submissions of the parties, including the Declaration of Karine Halimi-Guez (attached to the Motion to Seal), and having reviewed the records and files herein, hereby ORDERS that Taxpayer’s Motion to Seal is GRANTED and Public First’s Motion to Unseal is DENIED IN PART pursuant to the Findings of Fact and Conclusions of Law set forth below.

All findings of fact stated herein are deemed to be conclusions of law to the extent they should be construed as conclusions of law, and all conclusions of law stated herein are deemed to be findings of fact to the extent they should be construed as findings of fact.

FINDINGS OF FACT

1. The Court has jurisdiction over the subject matter of this action and over the parties hereto.
2. On December 28, 2022, Taxpayer and the Director filed a proposed stipulated protective order (“**SPO**”) in this Court. [Dkt. 86].

3. On January 04, 2023, Honorable Gary W.B. Chang (Ret.) entered the SPO. [Dkt. 88].

4. Over the course of the proceedings in this case, various filings were made under seal by Taxpayer and the Director pursuant to the SPO.

5. On September 18, 2024, Public First filed its Motion to Unseal. [Dkt. 252].

6. In its Motion to Unseal, Public First asked the Court to unseal the following documents previously filed under seal by either the Taxpayer or the Director pursuant to the SPO:

- (a) The Director's Second Supplemental Memorandum in Opposition to Taxpayer's Motion for Partial Summary Judgment [Dkt. 108], including Exhibits A [Dkt. 109] and B [Dkt. 110, 111] thereto, filed on March 28, 2023;
- (b) Taxpayer's Memorandum in Opposition to the Director's Cross Motion for Partial Summary Judgment [Dkt. 166], including Exhibit 2 [Dkt. 167], filed March 8, 2024;
- (c) The Director's Reply in Support of The Director's Cross Motion for Partial Summary Judgment [Dkt. 183], including the declaration of Deputy Attorney General Mary Bahng Yokota [Dkt. 186] and Exhibits 12 [Dkt. 187] and 13 [Dkt. 188], filed on March 13, 2024;
- (d) The Director's Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment and (2) Memorandum in Opposition to Taxpayer's Motion for Summary Judgment [Dkt. 202], including Exhibits 18 to 29 [Dkt. 203-208, 210-215], filed on April 5, 2024;
- (e) Taxpayer's Supplemental Memorandum in Response to the Director's Supplemental Memorandum [Dkt. 223-225], filed on April 17, 2024; and
- (f) The Director's Supplemental Reply Memorandum in Response to Taxpayer's Supplemental Memorandum [Dkt. 228], filed on April 26, 2024.

7. On September 26, 2024, Taxpayer filed its Application for Oral Hearing on Public First's Motion to Unseal. [Dkt. 254].

8. This Court granted Taxpayer’s Order Granting Application for Oral Hearing on Public First’s Motion to Unseal. [Dkt. 256]. A hearing on Public First’s Motion to Unseal was set for November 25, 2024. [Dkts. 256, 258].

9. On November 14, 2024, the Director filed its Response to Public First’s Motion to Unseal. [Dkt. 259].

10. On November 15, 2024, Taxpayer filed its Memorandum in Opposition to Public First’s Motion to Unseal. [Dkt. 261].

11. On November 20, 2024, Public First filed its Reply Memorandum of Law in Support of its Motion to Unseal. [Dkt. 263].

12. Taxpayer filed its Motion to Seal on November 22, 2024. [Dkt. 265].

13. The documents Taxpayer sought to either seal or redact in its Motion to Seal (the “**Sealed Records**” and the “**Redacted Records**”), including certain of those Public First sought to unseal in its Motion to Unseal, contain confidential material, either in whole or in part. [Dkt. 265 at Declaration of Karine Halimi-Guez, dated November 19, 2024 (“**Halimi-Guez Decl.**”), at ¶ 5].

14. In its Motion to Seal, Taxpayer agreed to unseal the following dockets, either in their entirety or partially, due to inadvertent prior sealing by Taxpayer or not warranting sealing: Dkt. 108 (only the declaration of Joshua Michaels), Dkt. 186 (in its entirety), Dkt. 203 (only those documents Bates labeled A0001-A0005), Dkt. 204 (only those documents Bates labeled A0001-A0003), Dkt. 205 (only that document Bates labeled A0001), Dkt. 206 (in its entirety), Dkt. 223 (in its entirety), and Dkt. 225 (only Exhibit 16).

15. On November 22, 2024, the Court issued a Minute Order scheduling the hearing on both the Motion to Unseal and the Motion to Seal for January 6, 2025. In addition, counsel for

Taxpayer and Public Law were to meet and confer to discuss both motions and file a joint status report with the Court by December 30, 2024. [Dkt. 267].

16. A stipulation to continue the hearing on the Motion to Unseal and the Motion to Seal and to extend related deadlines set forth in the Court's November 22, 2024 Minute Order was entered on December 12, 2024. [Dkt. 278]. Pursuant to the stipulation, the hearing on both motions was continued to February 10, 2025, and the Court extended the filing of the joint status report to February 3, 2025.

17. On January 31, 2025, the Director filed its Response to Taxpayer's Motion to Seal. [Dkt. 286].

18. Additionally, on January 31, 2025, Public First filed its Memorandum of Law in Opposition to Taxpayer's Motion to Seal. [Dkt. 288].

19. Following the parties' meet and confer, the Joint Report of the Parties was filed on February 3, 2025. [Dkt. 290].

20. On February 5, 2025, Taxpayer filed its Reply Memorandum in Support of its Motion to Seal. [Dkt. 292].

21. In its Reply Memorandum in Support of its Motion to Seal, Taxpayer agreed that the following documents already in the public record should remain so, thereby withdrawing its request to redact portions of such documents: Dkt. 44, 45, 49, 50, 54, 70, 155, 156 and 168. [Id. at p. 10].

22. The hearing on the Motion to Unseal and the Motion to Seal was held on February 10, 2025.

23. On February 18, 2025, the Court issued a Minute Order (1) granting Taxpayer's Motion to Seal, and (2) denying in part Public First's Motion to Unseal. [Dkt. 294].

24. The Sealed Records that remain at issue are comprised of Taxpayer's general terms and conditions, contracts with its accommodation providers, accommodation provider contact lists, documents provided to the Director during the Taxpayer's audit, and summary judgment hearing transcripts – either verbatim or in summary form. [Dkt. 265, at Halimi-Guez Decl. at ¶ 6].

25. The information contained in these categories of Sealed Records that remain at issue involve Taxpayer's:

- (1) agency and business model information related to its specific method and process for organizing and structuring its business (Dkt. 265 at Halimi-Guez Decl. at ¶ 11);
- (2) commission and payment information that involve formulas and algorithms describing how Taxpayer calculates its commissions and payments (Id., at Halimi-Guez Decl. at ¶ 12);
- (3) gross income and commission income information that outlines Taxpayer's earnings and rates calculated from the contracts entered into with companies that agree to use its services (Id., at Halimi-Guez Decl. at ¶ 13);
- (4) platform operations and information that involve the website(s), apps, tools, platforms and/or other devices Taxpayer and its affiliated companies and business partners use or facilitate to conduct its proprietary business operations (Id., at Halimi-Guez Decl. at ¶ 14);
- (5) marketing information that involve Taxpayer's confidential business strategies and practices in advising its clients on how it will market, advertise or promote its business (Id., at Halimi-Guez Decl. at ¶ 15);
- (6) parties' business relationship information and terms that include customer data, transaction volume, and obligations and duties of both Taxpayer and its clients that were written based on the agreed upon business relationship (Id., at Halimi-Guez Decl. at ¶ 16);
- (7) licensing terms that outline Taxpayer's and its clients' contractual obligations and duties, and specific terms and rights related to the collaboration with affiliated companies and/or third parties (Id., at Halimi-Guez Decl. at ¶ 17); and

(8) accommodation provider contact information that includes the name, address, state, contract date and specific contract person for each individual Taxpayer’s contracts in the State of Hawaii (Id., at Halimi-Guez Decl. at ¶ 18).

26. Specifically, each of the Sealed Records that remain at issue contain the following confidential information:

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Sealed Record</u>
110	Sealed [Exhibit “B” (Part 1 of 2) to Director’s Second Supplemental Memorandum in Opposition to Taxpayer’s Motion for Partial Summary Judgment, Filed on July 7, 2022]	Contract Documents and Client Contact Lists	Contains trade secrets and/or confidential business information involving (1) ¹ agency and business model information, (2) commission and payment information, (4) platform operations and information, (5) marketing information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information.
111	Sealed [Exhibit “B” (Part 2 of 2) to Director’s Second Supplemental Memorandum in Opposition to Taxpayer’s Motion for Partial Summary Judgment, Filed July 7, 2022]	Client Contact Lists	Contains confidential business information involving (8) accommodation provider contact information.
167	Sealed [Exhibit 2 to Taxpayer’s Memorandum in Opposition to the Director’s Cross Motion for Partial Summary Judgment]	Contract Documents	Contains trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, and (8) accommodation provider contact information.

¹ Number references align with the order of compelling interests outlined in Section III.A.1.a-b of Taxpayer’s Motion to Seal. [Dkt. 265 at pp. 4-11].

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Sealed Record</u>
189	EXHIBIT “14” [to the Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed on February 29, 2024]	Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, and (2) commission and payment information.
190	EXHIBIT “15” [to the Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed February 29, 2024]	Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, and (2) commission and payment information.
191	EXHIBIT “16” [to the Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed February 29, 2024]	Summary Judgment Hearing Transcript	Contains trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (5) marketing information, and (6) parties’ business relationship information and terms.
207	Sealed [Exhibit “22” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information.
208	Sealed [Exhibit “23” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary	Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Sealed Record</u>
	Judgment, Filed on December 1, 2023]		business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information.
210	Sealed [Exhibit “24” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information.
211	Sealed [Exhibit “25” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information.
212	Sealed [Exhibit “26” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information.

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Sealed Record</u>
213	Sealed [Exhibit “27” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information.
215	Sealed [Exhibit “29” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Audit documents	Contains trade secrets and confidential business information involving: (1) agency and business model information, (2) commission and payment information, and (3) gross income and commission income information.
224	Sealed [Exhibits 9-13 (Part 1 of 2) to Taxpayer’s Supplemental Memorandum in Response to the Director’s Supplemental Memorandum, Filed April 5, 2024]	Audit Documents and Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (5) marketing information, (6) parties’ business relationship information and terms, and (7) licensing terms.
225	Sealed [Exhibits 14-17 (Part 2 of 2) to Taxpayer’s Supplemental Memorandum in Response to the Director’s Supplemental Memorandum, Filed April 5, 2024]	Audit Documents and Contract Documents	Contains trade secrets and/or confidential business information involving: (1) agency and business model information, (2) commission and payment information, (3) gross income and commission income information, (4) platform operations and

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Sealed Record</u>
			information, (5) marketing information, (6) parties' business relationship information and terms, and (7) licensing terms.

[Dkt. 265 at pp. 4-11, Exhibit A at pp. 1-7, and Halimi-Guez Decl. at ¶¶ 6, 8-18].

27. Additionally, the Redacted Records that remain at issue include briefing and Taxpayer's discovery responses that summarizes, describes or quotes directly from the Sealed Records. [Id., at Halimi-Guez Decl. at ¶ 7].

28. The information contained in these categories of Redacted Records that remain at issue involve Taxpayer's:

- (1) agency and business model information related to its specific method and process for organizing and structuring its business (Dkt. 265 at Halimi-Guez Decl. at ¶ 11);
- (2) commission and payment information that involve formulas and algorithms describing how Taxpayer calculates its commissions and payments (Id., at Halimi-Guez Decl. at ¶ 12);
- (3) gross income and commission income information that outlines Taxpayer's earnings and rates calculated from the contracts entered into with companies that agree to use its services (Id., at Halimi-Guez Decl. at ¶ 13);
- (4) platform operations and information that involve the website(s), apps, tools, platforms and/or other devices Taxpayer and its affiliated companies and business partners use or facilitate to conduct its proprietary business operations (Id., at Halimi-Guez Decl. at ¶ 14);
- (5) marketing information that involve Taxpayer's confidential business strategies and practices in advising its clients on how it will market, advertise or promote its business (Id., at Halimi-Guez Decl. at ¶ 15);
- (6) parties' business relationship information and terms that include customer data, transaction volume, and obligations and duties of

both Taxpayer and its clients that were written based on the agreed upon business relationship (Id., at Halimi-Guez Decl. at ¶ 16); and

(7) licensing terms that outline Taxpayer’s and its clients’ contractual obligations and duties, and specific terms and rights related to the collaboration with affiliated companies and/or third parties (Id., at Halimi-Guez Decl. at ¶ 17).

[Dkt. 265 at p. 18, Section III.A.1].

29. Specifically, each of the Redacted Records that remain at issue contain the following confidential information:

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Redacted Record</u>
108	Sealed [Director’s Second Supplemental Memorandum in Opposition to Taxpayer’s Motion for Partial Summary Judgment, Filed July 7, 2022]	Case Briefing	Contains on portions of pages 4-10 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (3) gross income and commission income information, (4) platform operations and information, (5) marketing information, (6) parties’ business relationship information and terms, and (7) licensing terms.
109	Sealed [Exhibit “A” to the Director’s Second Supplemental Memorandum in Opposition to Taxpayer’s Motion for Partial Summary Judgment, Filed July 7, 2022]	Discovery Responses	Contains on portions of pages 7 and 10-13 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (3) gross income and commission income information, and (6)

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Redacted Record</u>
			parties business relationship information and terms.
166	Sealed [Booking’s Memorandum in Opposition to the Director’s Cross Motion for Partial Summary Judgment]	Case Briefing	Contains on portions of pages 7-10, 16, 19 and 21 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, and (6) parties’ business relationship information and terms.
183	Sealed [The Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed February 29, 2024]	Case Briefing	Contains on portions of pages 3-5 and 7-9 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, and (6) parties’ business relationship information and terms.
187	Sealed [Exhibit “12” to the Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed February 29, 2024]	Discovery Responses	Contains on portions of pages 7-8 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (4) platform operations and information, and (6) parties’ business relationship information and terms.
188	Sealed [Exhibit “13” to the Director’s Reply in Support of His Cross Motion for Partial Summary	Discovery Responses	Contains on portions of page 7 of this document, as outlined on Exhibit A of Dkt. 265, trade

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Redacted Record</u>
	Judgment, Filed February 29, 2024]		secrets and/or confidential business information involving (1) agency and business model information, (4) platform operations and information, and (6) parties' business relationship information and terms.
202	Sealed [the Director's Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024, and (2) Memorandum in Opposition to Taxpayer's Motion for Summary Judgment, Filed December 1, 2023]	Case Briefing	Contains on portions of pages 4-10, 12-14 and 17-18 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (4) platform operations and information, and (6) parties' business relationship information and terms.
203	Sealed [Exhibit "18" to the Director's Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024, and (2) Memorandum in Opposition to Taxpayer's Motion for Summary Judgment, Filed December 1, 2023]	Discovery Responses	Contains on portions of pages 7-8 and 14 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (4) platform operations and information, and (6) parties' business relationship information and terms.
204	Sealed [Exhibit "19" to the Director's Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024, and (2) Memorandum in Opposition to Taxpayer's Motion for Summary Judgment, Filed December 1, 2023]	Discovery Responses	Contains on portions of pages 7-8 and 14 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (4) platform operations and information, and (6) parties' business

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Redacted Record</u>
			relationship information and terms.
205	Sealed [Exhibit “20” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024, and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed December 1, 2023]	Discovery Responses	Contains on portions of page 7 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving: (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, and (6) parties’ business relationship information and terms.
224	Sealed [Taxpayer’s Supplemental Memorandum in Response to the Director’s Supplemental Memorandum, Filed April 5, 2024]	Case Briefing	Contains on portions of pages 2-7, 9 and 11-12 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, and (6) parties’ business relationship information and terms.

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Confidential Information Contained in Redacted Record</u>
225	Sealed [Exhibits 14-17 (Part 2 of 2) to Taxpayer’s Supplemental Memorandum in Response to the Director’s Supplemental Memorandum, Filed April 5, 2024]	Case Briefing	Contains on portions of Exhibit 17 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (3) gross income and commission income information, (4) platform operations and information, (6) parties’ business relationship information and terms, and (7) licensing terms.
228	Sealed [the Director’s Supplemental Reply Memorandum in Response to Taxpayer’s Supplemental Memorandum]	Case Briefing	Contains on portions of pages 3-6 of this document, as outlined on Exhibit A of Dkt. 265, trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, and (6) parties’ business relationship information and terms.

[Dkt. 265 at pp. 4-11, 18-19, Exhibit A at pp. 7-16, and Halimi-Guez Decl. at ¶¶ 6, 8-18].

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Court hereby reaches the following Conclusions of Law:

1. The Hawai’i Supreme Court states that the public has a right to access judicial proceedings and records, including records filed in civil cases. Grube v. Trader, 142 Haw. 412,

422, 420 P.3d 343, 353 (2018); In re Estate of Campbell, 106 Haw. 453, 462, 106 P.3d 1096, 1105 (2005).

2. The right to access judicial proceedings and records is “not absolute”, and in certain circumstances, “court proceedings may be closed to protect an interest that outweighs the value of openness.” Roy v. Gov’t Emples. Ins. Co. (Roy), 152 Haw. 225, 233, 524 P.3d 1249, 1257 (App. 2023).

3. A party may overcome the public’s presumed right of access if it satisfies both procedural and substantive requirements. Grube, 142 Haw. at 423, 420 P.3d at 354. A court will balance whether this “presumed right can be overcome only by an overriding right or interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.” Oregonian Publ’g Co. v. U.S. Dist. Ct., 920 F.2d 1462, 1465 (9th Cir. 1990) (internal quotations omitted).

4. The procedural requirements to seal documents or information contained in documents involve: (1) a reasonable opportunity to state objections; and (2) reasons supporting closure articulated by findings. Oahu Publs., Inc. v. Ahn, 133 Haw. 482, 498, 331 P.3d 460, 476 (2014).

5. The Court finds that Taxpayer’s filing of its Motion to Seal fulfills the procedural requirements by providing a reasonable opportunity to state objections and reasons supporting the closure of the Sealed Records and the redactions in the Redacted Records.

6. The substantive requirements to seal documents or information contained in documents focus on whether “(1) the closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there

are no alternatives to closure that would adequately protect the compelling interest.” Ahn, 133 Haw. at 497-98, 331 P.3d at 475-76.

7. Under the first prong of the substantive requirement to seal documents or information contained in documents, the inclusion of trade secrets and/or confidential business information in documents is a compelling interest justifying sealing documents or information contained in documents. Kamakana v. City & Cnty. of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006); Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1097 (9th Cir. 2016) (sealing documents containing “sources of business information that might harm a litigant’s competitive standing” is a compelling interest).

8. A trade secret is

Information, including a formula, pattern, compilation, program device, method, technique, or process that: (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain secrecy.

Haw. Rev. Stat. § 482B-2.

9. Information falls within the definition of a trade secret where disclosure of such information would give competitors an advantage over the moving party. Apple Inc. v. Samsung Elecs. Co., 727 F.3d 1214, 1221-22 (Fed. Cir. 2013) (applying Ninth Circuit law regarding “sealing documents when the release of the documents will cause competitive harm to a business,” and defining “trade secret” for purposes of a motion to seal as “information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.”).

10. The information in the documents sought to be sealed or redacted must be confidential, not publicly available, and would reasonably result in injury if disclosed. Primus Grp., Inc. v. Inst. for Env'tl. Health, Inc., 395 F.Supp. 3d 1243, 1269 (N.D. Cal. 2019) (“revealing the identity of customers and the specific services provided to them would harm its competitive standing because competitors would more effectively be able to target their marketing efforts ... disclosure would provide its competitors and its customers’ competitors with valuable insights ...”).

11. Additionally, confidential business information contained in a party’s commercial contracts is sufficient to meet the compelling reasons standard. See, e.g., In re Elec. Arts., Inc., 298 F. App’x 568, 569 (9th Cir. 2008) (disclosure of “pricing terms, royalty rates and guaranteed minimum payment terms” in a licensing agreement satisfied the “compelling reasons” standard necessary to seal records); see also, Aya Healthcare Servs. v. Amn Healthcare, Inc., 2020 U.S. Dist. LEXIS 68855, *17 (S.D. Cal. Apr. 20, 2020) (the court granted the defendant’s request to seal a report and depositions that contained “references to information detailing Defendants’ sensitive financial terms, proprietary business strategies, and confidential negotiations and agreements with third parties), and Stout v. Hartford Life & Accident Ins. Co., 2012 U.S. Dist. LEXIS 172088, *7 (N.D. Cal. Dec. 4, 2012) (“litigants may file under seal their contracts with third parties that contain proprietary and confidential information”).

12. As for the first prong of the substantive requirement, the Court finds that there are compelling interests to support sealing the Sealed Records that remain at issue in their entirety and to redact certain portions of the Redacted Records that remain at issue based on Taxpayer’s trade secrets and/or confidential business information contained therein.

13. The Court finds and concludes that one compelling interest supporting sealing the Sealed Records that remain at issue and redacting the Redacted Records that remain at issue is that both contain trade secrets. See, Kamakana, 447 F.3d at 1179.

14. The Court finds and concludes that another compelling interest supporting sealing the Sealed Records that remain at issue and redacting the Redacted Records that remain at issue is that both contain confidential business information. See, Ctr. for Auto Safety, 809 F.3d at 1097.

15. Under the second prong of the substantive requirement to seal documents or information contained in documents, the movant must demonstrate with specificity that the compelling reasons exist and pose significant danger or harm if not properly sealed. See, Grube, 142 Haw. at 426, 420 P.3d at 357.

16. The Court finds and concludes that any disclosure of the Sealed Records that remain at issue or the Redacted Records that remain at issue would result in a substantial probability of substantial and irreparable harm to Taxpayer as disclosure would provide Taxpayer's competitors and clients with insight into Taxpayer's trade secrets and confidential business information that they would not otherwise have or be able to obtain. [Dkt. 265 at Halimi-Guez Decl. at ¶¶ 20-27].

17. As for the third prong of the substantive requirement to seal documents or information contained in documents, the movant must show that there are no reasonable alternatives other than the complete sealing of the documents. See, Ahn, 133 Haw. at 497-98, 331 P.3d at 475-76.

18. Redaction is inadequate where the "secret and non-secret information cannot be separated" or "the record is sufficiently voluminous, the consequences of disclosure sufficiently grave, or the risks of accidental disclosure sufficiently great." U.S. v. Index Newspapers LLC, 766 F.3d 1072, 1095 (9th Cir. 2014).

19. The Court finds and concludes that redaction of the Sealed Records that remain at issue is not a reasonable alternative to sealing because the trade secrets and/or confidential business information contained therein are heavily intertwined with any potential non-trade secret and non-confidential business information throughout each sentence and/or paragraph of the document and cannot be feasibly separated. [Dkt. 265 at Halimi-Guez Decl. at ¶ 28].

20. The Court further finds and concludes that redaction of the Sealed Records that remain at issue would make such records unintelligible and exhaust an unnecessary amount of administrative time, burden and cost. [Id. at ¶ 29].

21. The Court finds and concludes that Taxpayer has overcome the public’s presumed right of access in its Motion to Seal because Taxpayer has satisfied both the procedural and substantive requirements to seal the Sealed Records that remain at issue and redact portions of the Redacted Records that remain at issue. See, Grube, 142 Haw. at 423, 420 P.3d at 354.

22. The Court finds and concludes that Taxpayer is entitled to the sealing, in their entirety, of the following Sealed Records for the following reasons:

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing</u>
110	Sealed [Exhibit “B” (Part 1 of 2) to Director’s Second Supplemental Memorandum in Opposition to Taxpayer’s Motion for Partial Summary Judgment, Filed on July 7, 2022]	Contract Documents and Client Contact Lists	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (5) marketing information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing</u>
			contact information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
111	Sealed [Exhibit “B” (Part 2 of 2) to Director’s Second Supplemental Memorandum in Opposition to Taxpayer’s Motion for Partial Summary Judgment, Filed July 7, 2022]	Client Contact Lists	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (8) accommodation provider contact information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
167	Sealed [Exhibit 2 to Taxpayer’s Memorandum in Opposition to the Director’s Cross Motion for Partial Summary Judgment]	Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, and (8) accommodation provider contact information; (b) there

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing</u>
			is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
189	EXHIBIT “14” [to the Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed on February 29, 2024]	Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information and (2) commission and payment information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
190	EXHIBIT “15” [to the Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed February 29, 2024]	Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information and (2) commission and payment information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing</u>
			protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
191	EXHIBIT “16” [to the Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed February 29, 2024]	Summary Judgment Hearing Transcript	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (5) marketing information, and (6) parties’ business relationship information and terms; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
207	Sealed [Exhibit “22” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing</u>
			contact information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
208	Sealed [Exhibit “23” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
210	Sealed [Exhibit “24” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to	Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing</u>
	Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]		information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
211	Sealed [Exhibit “25” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing</u>
			closure that would adequately protect this compelling interest.
212	Sealed [Exhibit “26” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
213	Sealed [Exhibit “27” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed on December 1, 2023]	Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (6) parties’ business relationship information and terms, (7) licensing terms, and (8) accommodation provider contact information; (b) there

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing</u>
			is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer's trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
215	Sealed [Exhibit "29" to the Director's Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024 and (2) Memorandum in Opposition to Taxpayer's Motion for Summary Judgment, Filed on December 1, 2023]	Audit documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer's trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, and (3) gross income and commission income information; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer's trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
224	Sealed [Exhibits 9-13 (Part 1 of 2) to Taxpayer's Supplemental Memorandum in Response to the Director's Supplemental Memorandum, Filed April 5, 2024]	Audit Documents and Contract Documents	Closure of this document serves a compelling interest because: (a) the document contains Taxpayer's trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, (5) marketing information, (6) parties'

<u>Dkt. No.</u>	<u>Name of Sealed Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing</u>
			business relationship information and terms, and (7) licensing terms; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer's trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.
225	Sealed [Exhibits 14-17 (Part 2 of 2) to Taxpayer's Supplemental Memorandum in Response to the Director's Supplemental Memorandum, Filed April 5, 2024]	Audit Documents and Contract Documents	Closure of Exhibits 14 and 15 in this document serves a compelling interest because: (a) the document contains Taxpayer's trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (3) gross income and commission income information, (4) platform operations and information, (5) marketing information, (6) parties' business relationship information and terms, and (7) licensing terms; (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer's trade secrets and/or confidential business information; and (c) there are no alternatives to closure that would adequately protect this compelling interest.

23. The Court further finds and concludes that redaction of the Redacted Records that remain at issue is a reasonable alternative because the trade secrets and/or confidential business information contained therein are not heavily intertwined with non-trade secret and non-confidential business information throughout each sentence and/or paragraph of the document and thus, can be feasibly separated.

24. The Court finds and concludes that Taxpayer can redact portions of the following Redacted Records for the following reasons:

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing Portions</u>
108	Sealed [Director’s Second Supplemental Memorandum in Opposition to Taxpayer’s Motion for Partial Summary Judgment, Filed July 7, 2022]	Case Briefing	Closure of portions of pages 4-10 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (3) gross income and commission income information, (4) platform operations and information, (5) marketing information, (6) parties’ business relationship information and terms, and (7) licensing terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information.
109	Sealed [Exhibit “A” to the Director’s Second Supplemental Memorandum in Opposition to	Discovery Responses	Closure of portions of pages 7 and 10-13 of this document, as outlined in Exhibit A to Dkt.

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing Portions</u>
	Taxpayer's Motion for Partial Summary Judgment, Filed July 7, 2022]		265, serves a compelling interest because: (a) the document contains Taxpayer's trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (3) gross income and commission income information, and (6) parties business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer's trade secrets and/or confidential business information.
166	Sealed [Booking's Memorandum in Opposition to the Director's Cross Motion for Partial Summary Judgment]	Case Briefing	Closure of portions of pages 7-10, 16, 19 and 21 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer's trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, and (6) parties' business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer's trade

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing Portions</u>
			secrets and/or confidential business information.
183	Sealed [The Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed February 29, 2024]	Case Briefing	Closure of portions of pages 3-5 and 7-8 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, and (6) parties’ business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information.
187	Sealed [Exhibit “12” to the Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed February 29, 2024]	Discovery Responses	Closure of portions of pages 7-8 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (4) platform operations and information, and (6) parties’ business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing Portions</u>
			protecting Taxpayer’s trade secrets and/or confidential business information.
188	Sealed [Exhibit “13” to the Director’s Reply in Support of His Cross Motion for Partial Summary Judgment, Filed February 29, 2024]	Discovery Responses	Closure of portions of pages 7 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (4) platform operations and information, and (6) parties’ business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information.
202	Sealed [the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024, and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed December 1, 2023]	Case Briefing	Closure of portions of pages 4-6, 8, 12-14 and 17-18 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, and (6) parties’ business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing Portions</u>
			secrets and/or confidential business information.
203	Sealed [Exhibit “18” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024, and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed December 1, 2023]	Discovery Responses	Closure of portions of pages 7-8 and 14 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (4) platform operations and information, and (6) parties’ business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information.
204	Sealed [Exhibit “19” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024, and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed December 1, 2023]	Discovery Responses	Closure of portions of pages 7-8 and 14 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (4) platform operations and information, and (6) parties’ business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing Portions</u>
			secrets and/or confidential business information.
205	Sealed [Exhibit “20” to the Director’s Supplemental Memorandum in Support of His (1) Cross Motion for Partial Summary Judgment, Filed February 29, 2024, and (2) Memorandum in Opposition to Taxpayer’s Motion for Summary Judgment, Filed December 1, 2023]	Discovery Responses	Closure of portions of pages 7 and 9 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, and (6) parties’ business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer’s trade secrets and/or confidential business information.
224	Sealed [Taxpayer’s Supplemental Memorandum in Response to the Director’s Supplemental Memorandum, Filed April 5, 2024]	Case Briefing	Closure of portions of pages 2-6, 9 and 11-12 this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer’s trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and information, and (6) parties’ business relationship information and terms; and (b) there is a substantial probability that disclosure of

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing Portions</u>
			this document would substantially harm the compelling interest in protecting Taxpayer's trade secrets and/or confidential business information.
225	Sealed [Exhibits 14-17 (Part 2 of 2) to Taxpayer's Supplemental Memorandum in Response to the Director's Supplemental Memorandum, Filed April 5, 2024]	Case Briefing	Closure of portions of Exhibit 17 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer's trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (3) gross income and commission income information, (4) platform operations and information, (6) parties' business relationship information and terms, and (7) licensing terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer's trade secrets and/or confidential business information.
228	Sealed [the Director's Supplemental Reply Memorandum in Response to Taxpayer's Supplemental Memorandum]	Case Briefing	Closure of portions of pages 3-5 of this document, as outlined in Exhibit A to Dkt. 265, serves a compelling interest because: (a) the document contains Taxpayer's trade secrets and/or confidential business information involving (1) agency and business model information, (2) commission and payment information, (4) platform operations and

<u>Dkt. No.</u>	<u>Name of Redacted Record</u>	<u>Type of Document</u>	<u>Reasons Supporting Sealing Portions</u>
			information, and (6) parties' business relationship information and terms; and (b) there is a substantial probability that disclosure of this document would substantially harm the compelling interest in protecting Taxpayer's trade secrets and/or confidential business information.

25. The Court finds and concludes the following documents are to be unsealed because Taxpayer inadvertently sealed them or the documents do not warrant sealing under Oahu Publs., Inc. v. Ahn, 133 Haw. 482, 498, 331 P.3d 460, 476 (2014): Dkt. 108 (only the declaration of Joshua Michaels), Dkt. 186 (in its entirety), Dkt. 203 (only those documents Bates labeled A0001-A0005), Dkt. 204 (only those documents Bates labeled A0001-A0003), Dkt. 205 (only that document Bates labeled A0001), Dkt. 206 (in its entirety), Dkt. 214 (in its entirety), Dkt. 223 (in its entirety), and Dkt. 225 (only Exhibit 16).

26. The Court finds and concludes that the following documents are to remain unsealed by agreement: Dkts. 44, 45, 49, 50, 54, 70, 155, 156, and 168.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby orders, adjudges, and decrees as follows:

1. Taxpayer-Appellant Booking.com B.V's Motion to Seal filed November 22, 2024 [Dkt. 265] is Granted, and
2. Movant Public First Law Center's Motion to Unseal Court Records filed September 18, 2024 [Dkt. 252] is Denied in part.

3. The Clerk is directed to immediately seal Dkt. 189, 190, and 191.
4. The Clerk is directed to immediately unseal Dkt. 186, 206, 214, and 223.
5. Within 30 days of this Order, Taxpayer shall file redacted versions of Dkt. 108, 109, 166, 183, 187, 188, 202, 203, 204, 205, 224, 225, and 228.

Dated: Honolulu, Hawai'i, April 22, 2025.

/s/ Kevin T. Morikone



JUDGE OF THE ABOVE-ENTITLED COURT

In the Matter of the Tax Appeal of Booking.com B.V.

Case No. 1CTX-21-0001613

Taxpayer-Appellant Booking.com B.V.'s Findings of Fact and Conclusions of Law and Order

APPROVED AS TO FORM:

/s/ Mary Bahng Yokota
ANNE E. LOPEZ
NATHAN S. C. CHEE
MARY BAHNG YOKOTA

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DIRECTOR OF TAXATION,
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PUBLIC FIRST LAW CENTER

In the Matter of the Tax Appeal of Booking.com B.V.
Case No. 1CTX-21-0001613
Taxpayer-Appellant Booking.com B.V.'s Findings of Fact and Conclusions of Law and Order

NOTICE OF ELECTRONIC FILING

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Case ID: 1CTX-21-0001613

Title: In the Matter of the Tax Appeal of Booking.com B.V.

Filing Date / Time: TUESDAY, APRIL 22, 2025 02:35:53 PM

Filing Parties:

Case Type: Tax Appeal

Lead Document(s):

Supporting Document(s): 311-Findings/Fact Concl of Law-Ord

Document Name: 311-Findings of Facts, Conclusions of Law, Order

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This notification is being electronically mailed to:

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