

STAND. COM. REP. NO.

779

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1405
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1405, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE GENERAL EXCISE TAX,"

begs leave to report as follows:

The purpose of this bill is to ease the fiscal crisis currently facing the State and maximize the State's ability to capture taxes owed by out-of-state businesses by specifying the business activities that would constitute a sufficient connection with Hawaii to allow the State to impose the general excise tax on those activities.

The Department of Taxation and a concerned individual testified in support of this bill. The Council on State Taxation testified in opposition to this measure. The Tax Foundation of Hawaii submitted comments on this bill.

Your Committee has amended this bill by:

- (1) Further clarifying the definition of "engaging in business";
- (2) Stipulating that "engaging" includes the sale of tangible personal property by a person soliciting business through an independent contractor or other representative if the cumulative gross receipts from sales by the person to customers in the state who are

HB1405 HD2 HSCR FIN HMS 2009-2531

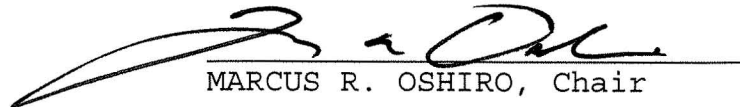


referred to the person is at least \$10,000 in the 12-month period ending on the last day of the most recent calendar quarter before the calendar quarter in which the sale is made, rather than in excess of \$10,000 during the preceding four quarterly periods ending on the last day of February, May, August, and November;

- (3) Specifying that the presumption may be rebutted by proof that the resident with whom the person has an agreement did not engage in any solicitation in the state on behalf of the person that would satisfy the nexus requirement of the United States Constitution during 12-month period in question;
- (4) Stipulating that nothing in this section shall be construed to narrow the scope of the terms, "person," "purchasing agent," or "representative" as defined in section 237-1, Hawaii Revised Statutes; and
- (5) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1405, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1405, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Finance,


MARCUS R. OSHIRO, Chair



