



**LATE**

## **Before the House Committee On Finance**

DATE: March 25, 2009  
TIME: 4:00 p.m.  
PLACE: Conference Room 308

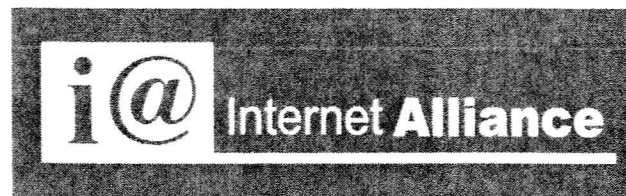
### **Re: SB 1678 SD3 Relating to Taxation Testimony of Melissa Pavlicek for NFIB Hawaii**

Thank you for the opportunity to submit comments regarding SB 1678 SD3 which seeks to adopt amendments to Hawaii tax laws to implement the streamlined sales and use tax agreement.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

The Tax Review Commission believes that the goal of coordinating the collection of taxes on interstate sales, such as via the Internet, is desirable. The Commission also believes that Hawaii should remain involved in discussions on the Streamlined Sales Tax Project but should not make any formal commitments at this time. According to the Streamlined Sales Tax Project website as of March 24, 2009, only twenty-two states have committed to the Project and no new states have been added to this list since January 1, 2008.

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March 25, 2009

Honorable Marcus Oshiro, Chair  
House Finance Committee  
Hawaii State Capitol, Room 306  
415 South Beretania Street  
Honolulu, HI 96813

LATE

Dear Representative Oshiro:

My name is Emily Hackett, executive director of the Internet Alliance, the leading national Internet trade association operating in the states. My members include Amazon.com, AOL, AT&T, eHarmony, Expedia, Experian, Comcast, IAC, Match.com, TRUSTe, United Online, Overstock.com, Yahoo! and others.

The Internet Alliance opposes adding or substituting the approach proposed in HB 1405 HD2 to SB 1678 SD3.

SB 1678 SD3, without modification, is a more practical approach than HB 1405 HD2, the bill that would have subjected Hawaii consumers to a unique tax collection scheme, built a wall around the state and would have inhibited commerce and communications with out of state businesses and consumers. The Internet Alliance and its member companies have worked with state officials across the country to break down artificial, unnecessary, and counterproductive barriers like HB 1405 HD2.

There are several reasons to reject HB 1405 HD2:

**It is unconstitutional.** Not only is this attempt to redefine nexus poor tax policy, but it is clearly unconstitutional. The U.S. Supreme Court (see *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)) has made plain that physical presence is necessary for states to compel companies to serve as tax collectors. This legislation would impermissibly attempt to require remote sellers with no physical presence in the state to collect and remit tax based on advertising dollars spent in Hawaii. A mere advertising relationship or making sales into the state – the basis of these proposals – does not constitute physical presence.

**It will harm local businesses.** This proposal strikes at the very heart of e-commerce. While it may not be intended, the nexus provisions contained in this bill will only discourage remote sellers from compensating a range of organizations, businesses and individuals for hosting advertisements in Hawaii. Inevitably it will be these entities that lose out as remote sellers move their marketing dollars elsewhere leaving the State without any additional revenue. Additionally, the technology sector in Hawaii would be negatively affected as remote sellers would reconsider using websites hosting services in Hawaii.

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**The bill is costly for the state.** Hawaii will inevitably incur the cost of defending this unconstitutional law. Determining whether a remote seller “directly or indirectly” was able to obtain sales through a resident of Hawaii who assists in soliciting such sales is hardly a precise standard and will likely result in protracted litigation. Lastly, resources spent by the Hawaii Department of Taxation in pursuing those subject to tax under these new provisions translates into lost opportunity costs in not having the Department seek the collection of tax from those the state can permissibly tax.

For all these reasons, the Internet Alliance urges you to reject modifications to SB 1678 SD3 that would include the approach of HB 1405 HD2. Please contact me with questions, or if you would like to discuss this issue further.

Sincerely,

Emily Hackett

cc: House Finance Committee members