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Statement of

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concerning

Senate Concurrent Resolution 234

Ways and Means Committee

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The Interactive Travel Services Association[1] wishes to express its serious concern about, and opposition to, Senate Concurrent Resolution 234. This Resolution would direct Hawaii's Attorney General to review whether online travel companies (OTCs) "assess, collect and remit" Transient Accommodations Taxes (TAT) and General Excise Taxes (GET). We believe that such a review is not only unnecessary, but also counterproductive because it will create uncertainty in the travel industry that will adversely affect tourism in Hawaii. It is particularly troubling that this Resolution targets OTCs, which make such a substantial contribution to Hawaii's tourism industry.

ITSA would like to make clear at the outset that all applicable taxes on rooms booked through the OTC's websites are indeed being assessed, collected and remitted.

OTCs do not rent rooms to guests. Instead, OTCs provide booking services to guests, and pay over to the hotels – from the amounts OTCs charge the guests – the funds necessary to pay for the hotel rooms and for all taxes applicable to hotel rooms. As the taxpayers, the hotels have the responsibility for remitting these taxes to the appropriate taxing authority.

An underlying premise of the review called for in the Resolution seems to be that TAT and GET apply to the compensation OTCs receive for their services. ITSA respectfully points out that that premise is wrong.

The amounts collected by OTCs include both (1) amounts paid to the hotels for room charges and taxes on the room charges and (2) fees charged by OTCs for the services of facilitating the

[1] Founded in 1998, ITSA is the trade association for online travel companies (OTCs), as well as global distribution systems, and is their voice on public policy. Through innovative technology and superior customer service, ITSA member companies provide consumers and suppliers with unprecedented travel and tourism options.

booking of hotel rooms. These fees for services are not for the hotel room and are not subject to the taxes. And these services are performed outside of Hawaii and consumed by prospective travelers at their home computers or other site of booking.

As found by numerous courts, including the Fourth and Sixth Circuit Federal Courts of Appeals, OTCs are not owners or operators of hotels, and are not subject to hotel occupancy taxes. That reasoning applies to Hawaii's TAT.

Moreover, were this review to lead to an attempt to expand these taxes to reach the compensation that OTCs earn for their services, it would undoubtedly trigger litigation to resolve significant federal constitutional issues and would also cause several adverse policy and economic effects. Among them are:

(1) it would impose new taxes on services, which would make Hawaii one of the most aggressive states in the nation in the taxation of services;

(2) it would establish new taxes that focus exclusively on companies that utilize the Internet, thereby violating the federal Internet Tax Freedom Act,

(3) it would impose new taxes on travel and tourism;

(4) it would violate the Commerce Clause of the United States Constitution;

(5) it would increase the cost of doing business in Hawaii for OTCs, potentially leading to diversion of some travelers to competing destinations;

(6) it would have an adverse impact on many Hawaiian businesses, primarily small ones, and the jobs they support;

(7) it could increase costs to potential tourists interested in visiting Hawaii, thereby further dampening demand for the state's tourism services in an already recession-damaged travel industry; and

(8) it could result in an overall loss of tax revenue to Hawaii's treasury.

To underscore the above, studies have shown that increasing the cost of travel and tourism by raising taxes leads to diminished room sales and associated visitor spending. Under one econometric analysis, with a 2.0% increase in hotel occupancy tax, there would be a corresponding 2.4% decrease in consumer expenditures. So, not only would it be self-defeating for the collection of additional tax revenue, it would be counterproductive to the interests of consumers.

The successful "merchant model" of handling hotel rooms enables consumers to book their own rooms online, and allows hotels to fill rooms that often would otherwise go empty and would not be producing any tax revenue for Hawaii. At the click of a mouse, consumers see multiple hotels in Hawaii that they can compare on price, location, amenities and more. On the other side of the coin, Hawaii hoteliers and resort owners – especially small to mid-sized ones with limited name recognition outside the islands -- obtain instant access to literally millions of consumers who otherwise might not know they even exist.

When a consumer shops various hotel accommodations offerings and reserves a room, he or she is using the service for which the online site charges. This huge audience comes to these sites only because of the many millions of dollars invested by the OTCs in versatility and ease of use, technology, advertising and other services to attract such a huge number of potential new customers. That investment is ongoing to maintain these sites at a level that is state-of-the-art.

The hotel bills the OTC for the negotiated room rate and all applicable taxes on that room rate, which the OTC sends back to the hotel – and the hotel is responsible for remitting the taxes to the appropriate taxing jurisdictions.

The bottom line of imposing these new taxes would be higher hotel prices, fewer rooms sold as a result in the jurisdictions adding the tax, and negative impacts on the hotels, OTCs or other intermediaries, taxing authorities and, especially, consumers. Importantly, it would cause OTCs to dispassionately evaluate the cost of doing business in Hawaii, including the burden of administering the tax, and whether promoting competing destinations in some instances would be necessary.

In addition, the "multiplier effects" that benefit the Hawaiian economy – for restaurants, movie theaters, swim, scuba or other recreational equipment and clothing stores, etc. -- from the incremental travelers and tourists brought by the OTCs would be seriously jeopardized.

What's more, these taxes would be imposed on companies that exist solely because of the Internet. At a time when the federal government has placed a moratorium on multiple and discriminatory Internet taxes through 2014, such an approach would fly in the face of the policy embodied in the Internet Tax Freedom Act -- encouraging the Internet to be an engine of economic growth -- and perhaps even the bans themselves.

And, the impact would be felt not only by large, national companies, but by many small travel agencies and others in Hawaii. These agencies also offer online booking of travel and serve as intermediaries. The effect on their relatively low revenues and comparatively thin margins could be substantial.

Plus, there would be an impact on jobs. Fewer rented rooms will mean reduced revenues for hotels, and reduced need and affordability for workers. The heavy majority of hotel workers are blue collar, and they are likely to be the first to suffer job losses.

ITSA urges you to reconsider proceeding with this Resolution, and the potential problems it would precipitate for OTCs and other travel intermediaries, Hawaii's coffers and jobs and, most importantly, consumers. ITSA members look forward to working with you to continue our strong record of stimulating Hawaii tourism.