

STAND. COM. REP. NO. 870

Honolulu, Hawaii

March 8, 2011

RE: H.B. No. 1183

H.D. 2

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1183, 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 minimize the loss of revenues of local businesses due to sales by out-of-state online retailers by:

- (1) Creating a nexus standard for taxing out-of-state businesses on their business activities in Hawaii;
- (2) Amending the definition of "engaging in business" with regard to the general excise tax to include persons who enter into an agreement with residents of the State, where the person pays a commission for referral of potential customers; and
- (3) Allowing out-of-state businesses to file information regarding sales to residents of the State, instead of collecting and remitting general excise taxes to the department of taxation.

The Department of Taxation (DOTAX), Direct Marketing Association, and Tax Foundation of Hawaii provided comments.

HB1183 HD2 HSCR FIN HMS 2011-2580-A1

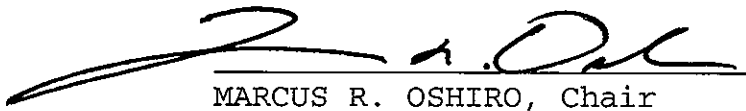


Your Committee has amended this bill by:

- (1) Deleting the purpose section;
- (2) Clarifying that the general excise tax annual statement requirements for businesses domiciled out-of-state do not apply to a person or entity that has a physical presence in the State and specifies what qualifies as a physical presence;
- (3) Inserting language to require a business domiciled in the State to file an annual statement regarding general excise taxes to address concerns raised by Civil Case No. 10-CV-01546-REB-CBS *The Direct Marketing Association v. Roxy Huber* which alleges that any requirement placed upon an out-of-state business which is not also placed upon an in-state business is discriminatory; and
- (4) 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. 1183, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1183, H.D. 2.

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



MARCUS R. OSHIRO, Chair



