NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

FREDERICK D. PABLO
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DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
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HOUSE COMMITTEE ON FINANCE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING SB 1355, SD 1, HD 1 RELATING TO THE GENERAL EXCISE TAX

TESTIFIER:	**FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR DESIGNEE)**
COMMITTEE:	**FIN**
DATE:	**MARCH 31, 2011**
TIME:	**5:00PM**
POSITION:	**SUPPORT**

This measure clarifies the nexus standard for taxing out-of-state businesses on their business activity in Hawaii. The Department supports efforts to collect tax on transactions with internet sellers. To address the new business model of internet retail, Hawaii needs to change its tax laws to ensure that everyone pays their fair share of tax and that the tax burden is not borne solely by brick-and-mortar businesses.

The revenue impact for this bill would be similar to the revenue impact for SB 1355, the streamlined sales tax, since this bill is designed to address the same problem. For SB 1355, the revenue impact is indeterminate but could provide $25-30 million per year, if federal legislation passes that mandates streamlined sales tax for all vendors.

TO : COMMITTEE ON FINANCE
Senator Marcus Oshiro, Chair

FROM: Eldon L. Wegner, Ph.D.
POLICY ADVISORY BOARD FOR ELDER AFFAIRS (PABEA)

HEARING: 5:00 pm Thursday March 31, 2011
Conference Room 308, Hawaii State Capitol

SUBJECT:SB 1355 SD1 HD1 Relating to Taxation

POSITION: COMMENT. The Policy Advisory Board for Elder Affairs, believes SD1 is inadequate because it subverts the original purpose of HB 1355 and we strongly recommend the restoration of the provision in HD1 that Hawaii join the national Streamlined Sales and Use Tax Agreement.

RATIONALE:

The Policy Board for Elder Affairs has a statutory obligation to advocate on behalf of the senior citizens of Hawaii. While we advise the Executive Office on Aging, we do not speak on behalf of the Executive Office of Aging.

- A significant number of sales are through catalogue and internet purchases. Hawaii currently forgoes a significant revenue source by not collecting the GE tax on these sales. The national Streamlined Sales and Use Tax Agreement provides a mechanism for capturing this revenue, which is much needed to support our essential state services. The original SD 1 calls for joining this system. The HD 1 subverts the intent of the original bill by omitting this important provision.

- PABEA supports the other provisions of the current HD 1 of SB 1355 but believe these provisions do not substitute for capturing the tax from catalogue and internet sales.

- Therefore, we strongly request that SB 1355 HD1 be amended to restore the important provision to join the national Streamlined Sales and Use Tax Agreement which many states already have implemented.

Thank you for the opportunity to testify.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ADMINISTRATION, GENERAL EXCISE, Taxation of out-of-state businesses

BILL NUMBER: SB 1355, HD-1

INTRODUCED BY: House Committee on Economic Revitalization and Business

BRIEF SUMMARY: Adds a new section to HRS chapter 231 to provide that a person or entity conducting business in this state that has its commercial domicile in another state, shall be presumed to be systematically and regularly engaging in business in this state and taxable under Title 14 if during a year: (1) the person or entity engages in or solicits business with persons within this state; and (2) the person or entity earns income, gross proceeds, gross rental, or gross rental proceeds attributable to sources in this state.

If a person or entity is assessed and currently remits tax on a monthly basis under Title 14 and becomes taxable in this state by reason of this section, the person or entity may petition the director of taxation to allow the assessment and remitting of tax on a basis other than monthly for good cause. For purposes of this section, good cause includes compliance with the United States Constitution and the state constitution.

Adds a new section to HRS chapter 237 to require any person or entity conducting business in this state that: (1) has its commercial domicile in another state; (2) is presumed to be systematically and regularly engaging in business in this state under section 231- ; and (3) does not pay or is not otherwise required to pay the tax imposed by this chapter for sales of tangible personal property to residents of this state, to file an annual statement with the department of taxation.

The annual statement shall be filed on forms provided or approved by the department of taxation on or before the fourth month following the close of the taxable year and include: (1) names of residents of this state to whom the out-of-state business sold tangible personal property during the taxable year; (2) dates of each sale; (3) zip code of the shipping address of each sale; and (4) dollar amount of each sale. Stipulates that except for the dollar amount required under paragraph (4), no information describing the tangible personal property sold shall be provided in the annual statement. Any person or entity that files an annual report pursuant to this section shall be relieved of any duty to collect the tax imposed by this chapter for sales of tangible personal property to residents of this state for the taxable year for which the annual statement is filed.

A person or entity shall have a physical presence in the state if the person or entity's business activities during a taxable year include: (1) being an individual physically present in the state, or assigning one or more employees to be in the state; (2) using the services of an agent, excluding any employee, to establish or maintain the person or entity's business activities in the state if the agent does not perform business services in the state for any other person or entity during the taxable year; or (3) the leasing or owning of tangible personal property or real property in the state.

Adds a new section to HRS chapter 237 to require any person or entity conducting business in this state that is presumed to be systematically and regularly engaging in business in this state, unless otherwise required to pay the tax imposed by this chapter for sales of tangible personal property to residents of this state, to file an annual statement with the department of taxation. This section shall not be applicable to a person or entity that has a physical presence in the state.

Amends HRS section 237-2 to provide that the definition of "engaging" in business shall include the sale of tangible personal property by a person soliciting business through an independent contractor or other representative if the person enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an Internet website or otherwise, to the person. This 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 the taxable year in question.

Repeals HRS section 235-9.5 which provides an income tax exclusion for income derived from stock options from a qualified high technology business.

EFFECTIVE DATE: July 1, 2112 for tax years beginning after December 31, 2010

STAFF COMMENTS: The proposed measure would establish nexus in this state for companies located out of state if the business: (1) engages in or solicits business; and (2) earns income, gross proceeds, gross rental, or gross rental proceeds from sources in the state. Once nexus has been established, then it appears that these businesses would be subject to the general excise tax.

The proposed measure would also require an out-of-state business conducting business in the state that does not collect the general excise tax, to file an annual statement with the department of taxation with the names of residents of this state who were sold tangible personal property, date of the sale, zip code and dollar amount of the sale. The filing of this annual statement would relieve the business of the duty to collect any general excise tax on such purchases. It would appear that if the amendment to HRS chapter 231, as noted above, is adopted this provision would be unnecessary since the chapter 231 amendment would establish nexus for these out-of-state businesses who would then be subject to the general excise tax and whose transactions conducted in this state would presumably be taxed under the general excise tax.

This measure also proposes that the definition of engaging in business shall include the sale of tangible personal property by a person who solicits business through an independent contractor or other representative, if the person enters into an agreement with a resident of this state who refers potential customers, whether by a link on an Internet website or otherwise, for which the resident receives a commission or other consideration. If this provision is adopted, it would appear that the out-of-state business would be considered to be "engaging" in business in this state and would then become subject to the general excise tax.

While these provisions proposed in this measure would attempt to impose the general excise tax on out-of-state businesses who sell tangible personal property to residents of the state, it is questionable why services are not included.

While this approach to collecting the general excise tax on out-of-state purchases deserves serious consideration as an alternative to the proposed "streamlined sales tax" project that places the onus of burden on the seller to collect the tax from the consumer, it is a work in progress and serious consideration should be given to refining the provisions of this proposal. For example, if the amendment to HRS chapter 231 is sufficient to establish nexus and, therefore, subject the out-of-state vendor to the general excise tax, then the second amendment requiring the filing of information may not be necessary. Conversely, if the requirement for filing sales information is deemed adequate in capturing the information on these sales, then the amendment to HRS chapter 231 may not be necessary.

The legislature by Act 178, SLH 1999, established high technology tax credits to encourage the development of high technology businesses in the state. These acts provided investment and research credits, as well as income exclusions such as this one for stock options, providing tax incentives to encourage high tech businesses and individuals associated with high tech businesses to locate in the state. Due to the financial crisis that the state government is experiencing, this measure proposes to alleviate the drain on state revenue due to this income tax exclusion.

What this measure does underscore is that the unbridled offering of tax incentives amounts to nothing more than the expenditure of public funds out the back door. Even as similar measures that restrict tax credits are being introduced and discussed, other lawmakers continue to introduce measures proposing tax credits and exemptions for all kinds of activities, none of which have anything to do with relieving an excessive tax burden. Instead of perpetuating the anticipation of special interests that they can get a "tax break with a tax credit," lawmakers need to go back to the old-fashioned way of supporting specific programs and projects by appropriating public funds. The appropriation process allows for the careful scrutiny and evaluation of proposals to determine the worthiness of the investment of public dollars.

Finally, one has to ask what lawmakers were thinking when they adopted these "tax breaks." Were they caught up in the emotional fervor that favored this darling of economic development and were otherwise blinded to the fact that the overall business climate in Hawaii is poor. Those sponsors of these incentives should be held accountable for the waste of taxpayer dollars at the expense of all other taxpayers who are now being asked to pick up the tab by having their pensions taxed, losing the ability to deduct their state income taxes, and are being asked to pay additional taxes on alcoholic beverages and sugary beverages. All of these latter proposals would not have been necessary had lawmakers been more judicious about handing out these high tech "goodies."

Digested 3/30/11

Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair
Committee on Finance
State Capitol, Honolulu, Hawaii 96813

HEARING Thursday, March 31, 2011
5:00 pm
Conference Room 308

RE: SB1355, SD1, HD1, Relating to Taxation

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing about 200 members and over 2,000 storefronts, and is committed to supporting the retail industry and business in general in Hawaii.

RMH supports the intent of SB1355, SD1, HD1, with a requested amendment. This bill creates a nexus standard for taxing out-of-state businesses on their business activities in Hawaii; includes local affiliate agreements under the GET; allows out-of-state and in-state businesses to file information regarding sales to residents of the State instead of collecting GET. Repeals the income tax exemption for income derived from stock options or stock from a qualified high technology business.

Our comments are **specific to Part I,** we have no position on Part II.

RMH supports Part 1, Section 1: As electronic commerce continues its dramatic increase, traditional brick and mortar retailers, which are required by law to collect taxes for government, experienced further erosion of their sales base to remote sellers, which, under most circumstances, are not subject to tax mandates. The nexus standard that requires collection and payment of taxes that are due the State of Hawaii will correct this unfair disadvantage our local small businesses are experiencing and create a level playing field.

RMH opposes Part 1, Section II, which allows information filing in lieu of collection and remittance of taxes due. This provision is problematic because of privacy concerns, has been challenged in other jurisdictions, and should be deleted from this bill. Requiring remote sellers to abide by the same rules as all other retailers will achieve optimum and more equitable results.

Through our affiliation with the National Retail Federation, the world's largest retail trade association, RMH has participated in the development of the Streamlined Sales and Use Tax Agreement and has supported Hawaii's initiatives to participate in the multi-state discussions. Full implementation, however, hinges on Congressional action. We believe that the Nexus Standard (with requested amendments) and the Streamlined Sales and Use Tax Agreement are viable mechanisms and should move forward in this session

We respectfully request that you amend SB1355, SD1, HD1 by deleting Section 2. Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill

Carol Pregill, President

RETAIL MERCHANTS OF HAWAII
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DMA
Direct Marketing Association

The Power of Direct
Relevance. Responsibility. Results.

TESTIMONY BY ALICIA MALUAFITI
ON BEHALF OF THE DIRECT MARKETING ASSOCIATION
BEFORE THE
HOUSE FINANCE COMMITTEE
HAWAII HOUSE OF REPRESENTATIVES
MARCH 31, 2011 – 5 P.M., ROOM 308

Aloha Chair Oshiro, Vice Chair Lee, and members of the committee,

Mahalo for the opportunity to testify on SB 1355. I am here today representing the more than 2,400 members of the Direct Marketing Association (DMA), the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing.

DMA asks you respectfully not to advance this bill in its current draft. The bill might seem simple enough in redefining nexus for the purposes of sales tax collection and requiring a notice to the Department of Taxation in lieu of collecting sales tax. However, the bill treads into an area of settled and recently reaffirmed law with regards to sales taxes and the burdens states can, or in this case, cannot, place on businesses with no physical nexus in a state.

By way of background, in 1992 the United States Supreme Court held in *Quill Corp. v. North Dakota* that a state cannot impose sales/use tax collection obligations on out-of-state vendors unless those retailers have a "physical presence" in the taxing state. The decision in *Quill* applied the holding of an even earlier decision in a 1967 case, *National Bellas Hess v. Dep't of Revenue*. So, the notion that states cannot force sales tax collection on remote sellers has been around for more than 40 years. The bill's attempt to define nexus in such as way as to corral remote sellers contravenes the *Quill* decision.

Just one month ago Federal District Court Judge Robert Blackburn in Colorado issued a preliminary injunction enjoining the Colorado Department of Revenue from enforcement of a similar law. In February 2010, the Colorado legislature enacted and the governor signed legislation that required remote sellers to notify customers of their obligation to pay use tax, required annual summaries of customers' purchases to be sent by the seller to the customer each January and required the seller to report to the Department in March how much each Colorado customer purchased from them in the previous calendar year.

Judge Blackburn determined that the entire law, including the annual notice to the Department of Revenue, "imposed a notice and reporting burden on [these] out-of-state retailers and that burden is not imposed on in-state retailers." The concept of this disparate treatment between in-state and out-of-state companies is the basis of this bill and puts it on questionable legal ground. Moreover, Judge Blackburn also concluded that "these requirements likely impose on out-of-state retailers use tax-related responsibilities that trigger the safe-harbor provisions of *Quill*." The committee should carefully consider the Judge's determination when deciding what course of action to take with regards to SB 1355.

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Judge Blackburn found that the obligations being placed on remote sellers under the Colorado law are tantamount to enhancing the state's collection of use taxes and are therefore impermissible. Section three of the bill gives a false choice to remote sellers by suggesting that they can either collect sales tax or file the annual report. By requiring out-of-state marketers to report customers' purchase histories to the Department of Revenue, SB 1355 imposes upon out-of-state retailers the very burden the Federal District Court found objectionable. So, under current federal law, neither collecting sales tax nor filing a report can actually be required of remote sellers. While use taxes are owed by Hawaii residents, that tax relationship is between the taxpayer and the state; remote sellers should not be conscripted into the process.

Before passing the House version of this bill out of committee in February, the bill was amended with a new section -- "Businesses domiciled in the state; annual statement" -- in an attempt to address the bill's disparate treatment of in-state and out-of-state businesses in violation of the Commerce Clause of the U.S. Constitution. Merely declaring that the annual reporting provisions also potentially apply to in-state businesses does not overcome the Commerce Clause threshold. As Judge Blackburn explained in the preliminary injunction, unless in-state businesses defy current sales tax collection laws they would not be subject to the annual reporting notice requirement to which, by definition, all out-of-state businesses would be subject. Therefore, the annual reporting requirement would by default not apply to any in-state business or at least any business which Hawaii could not otherwise sanction for noncompliance.

Notwithstanding Judge Blackburn's decisions regarding nexus, there are privacy considerations that continue to make the bill troubling. Requiring, or for that matter even asking, businesses to report the buying histories and habits of customers, information can be highly sensitive and assumed to be private, to the state of Hawaii -- the government -- is an unprecedented invasion of privacy and one not imposed on in state sellers. No consideration seems either to have been given to specific federal privacy laws such as those covering video or health.

While the bill declares that no "information describing the tangible personal property sold" should be provided in the report, this underestimates the extent to which the type of product or expressive content sought by a purchaser can be gleaned from the vendor alone. Purchases from hypothetical catalogs like "The Communist Literature Store," "The Cancer Patient's Resource Center" or "The Sexy Lingerie Shop," or from hypothetical websites such as www.leninisgreat.com, www.stopyourcancer.org, or www.tinybikiniphotos.com all would reveal to the government considerable private and sensitive information about the purchaser, even if the specific items purchased are not disclosed. Additionally, why should a marketer be required to report to the state where a purchase from "The Sexy Lingerie Shop" was shipped? Consider how valuable or enticing this information, particularly about well-known Hawaii residents, would be to prying eyes or computer hackers. Even if leaks could be avoided, the state simply should not be privy to this information nor should it require that it be reported.

The committee should carefully weigh the implications of the invasive annual report collection requirement, the consequences on consumer trust, the potential harm to Hawaii businesses if other states follow this errant path and the serious, strong, and legitimate privacy concerns its own citizens will have. The bill itself neither raises nor guarantees any new tax revenue to the state, but it is virtually certain to raise concerns as more citizens learn about their government's attempt to collect and stockpile their buying histories.

DMA is neither arguing against use taxes nor suggesting that customers should not meet their obligations under state law to remit that tax, much as they do with property taxes or licensing fees or any number of other monies owed by citizens to the state. Where we diverge is in the attempt to export Hawaii-specific requirements to companies in the 49 other states. This taxing arms race will ultimately cause problems for all businesses, and there is no way to insulate those companies in Hawaii who would have to comply with other states' laws, should the Colorado example be further copied.

Thank you again for the opportunity to testify and I would be happy to answer any questions.

Tammy Cota, Executive Director
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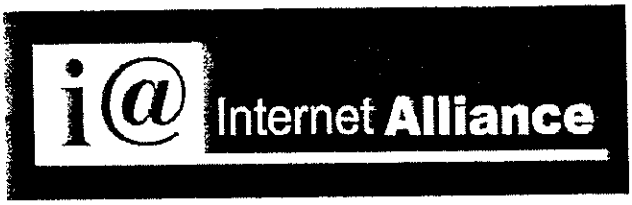

March 30, 2011

Honorable David Ige, Chair
Senate Ways and Means Committee
Hawaii State Capitol, Room 215
Honolulu, HI 96813

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

Dear Senator Ige and Representative Oshiro:

I am the executive director of the Internet Alliance (IA), a national organization of consumer companies that provide goods and services via the Internet. The IA's mission is to build consumer confidence and trust in the Internet so that it may become the leading global marketing medium of this century.

The IA is writing to express support for HB1183 SD1. This bill proposes that Hawaii implement the Streamlined Sales and Use Tax Agreement (SSUTA). The IA believes this is a more practical, and legal, approach than SB1355 HD1 (nexus).

The IA opposes the creation of a nexus standard for taxing out-of-state businesses based on their local affiliate agreements or require an out-of-state business to file information with the state about Hawaii customers' purchases. This bill will not raise any revenue for the state and in fact in-state businesses will suffer. Faced with an obligation to collect the tax, out-of-state businesses will simply cut off ties with in-state affiliates and eliminate any debate about the nexus standard. There will be no additional revenue for Hawaii. In fact, such a tax could reduce state revenue, eliminate in-state jobs and drive business and consumer dollars out of state.

Also, the Direct Marketing Association (DMA) just won a landmark preliminary injunction in federal court through a lawsuit it filed against a similar tax notice law that passed in Colorado, which is explained in more detail in the attachment.

Instead of passing an affiliate nexus tax, Hawaii should take the advice of organizations such as the National Conference of State Legislatures (NCSL) Task Force on State and Local Taxation of Telecommunications and Electronic Commerce who sent the attached letter to every legislature advising against enacting nexus taxes. The task force letter also urges states to consider adopting SSUTA. For more information about NCSL's position,

please feel free to call Neal Osten at 202-624-8660 or email him at neal.osten@ncsl.org. He would be happy to discuss the issue with you in more detail.

In summary, the IA believes creating a new affiliate nexus tax is unconstitutional and bad policy that would harm the state's economy and in-state local affiliates, and creating an annual notice to the state violates the Commerce Clause of the United States Constitution. Therefore, the IA urges you to reject the nexus tax and instead adopt the SSUTA.

Thank you for taking the time to consider our position. Attached you will find more detailed reasons for advancing SSUTA and rejecting the nexus tax. Please contact me if you would like to discuss this issue further or have questions.

Sincerely,

Tammy Cota

Tammy Cota

cc: Senate Ways and Means Committee members
House Finance Committee members

Reject SB 1355 (Nexus)

Affiliate Nexus Bad for Hawaii

SB 1355 proposes to expand "engaging" in business to include the sale of tangible personal property by a person soliciting business through an independent contractor or other representative if the person enters into an agreement with a resident of Hawaii, under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the person.

This language is modeled after a flawed New York law that passed in 2008. The fact that the New York nexus tax generated revenue is an anomaly. In New York, one large retailer chose not to cut off affiliate relationships but only did so to have standing to challenge the law. Most experts believe the law will ultimately be struck down. The basis of the suit is that physical presence, or nexus, is necessary for states to compel companies to serve as tax collectors as the U.S. Supreme Court ruled in 1992 (see Quill Corp. v. North Dakota, 504 US 298 (1992)).

Evidence from two other states that passed similar laws - Rhode Island and North Carolina - shows that the laws actually reduced revenue, eliminated jobs and drove business and consumer dollars out of state.

Former General Treasurer Frank T. Caprio said "the affiliate tax has hurt Rhode Island businesses and stifled their growth, as they've been shut out of some of the world's largest marketplaces, and [it] should be repealed immediately." In fact, the Rhode Island legislature is currently considering a repeal of this law (see R.I.HB 5115).

In the past two years, at least 14 states looked at this very issue and **rejected it**. Those states are California, Connecticut, Hawaii, Iowa, Kentucky, Maryland, Mississippi, Nevada, New Mexico, Oklahoma, Tennessee, South Carolina, Vermont and Virginia.

Annual Notice Bad for Hawaii

The annual notice section is just as legally problematic as the affiliate nexus tax. This section would require an out-of-state business not collecting and remitting the excise tax to provide an annual statement to the Department of Taxation, which must include the names of residents located in Hawaii, the date of the sale, the zip code of the shipping address of each sale and the dollar amount of each sale.

The Direct Marketing Association (DMA) just won a landmark preliminary injunction in federal court through a lawsuit it filed against a similar notice law that passed in Colorado. The ruling prohibits the State of Colorado from enforcing its controversial new law, H.B. 10-1193, that would have required out-of-state companies to report to the state the names, addresses, and purchase amounts of their customers.

The IA agrees with the DMA who rightly argued that the law violates the Commerce Clause of the United States Constitution by (a) imposing discriminatory obligations upon out-of-state retailers that do not apply to in-state Colorado retailers, and (b) unduly burdening interstate commerce under principles set forth by the Supreme Court in Quill Corp. v. North Dakota, 504 U.S. 298 (1992).

The Court accepted these arguments in finding that the DMA had a likelihood of success on both Commerce Clause counts, and concluded that out-of-state retailers subject to the new law would suffer irreparable harm if enforcement of the statute were not barred.

The preliminary injunction effectively suspends the law while the litigation continues and until the Court makes a final ruling regarding the law's constitutionality. The notice requirement contained in the Hawaii nexus bill would likely face similar litigation.

NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

Don Balfour
Senator
Georgia Senate
President, NCSL

Nancy Cyr
Senior Legal Counsel
Nebraska Legislative Research Office
Staff Chair, NCSL

William Pound
Executive Director

February 2, 2010

Dear Legislative Leader:

We are writing in our capacity as Co-Chairs of the National Conference of State Legislatures Executive Committee Task Force on State and Local Taxation of Communications and Electronic Commerce to bring to your attention an effort by some to collect sales taxes on online transactions by the adoption of "affiliate nexus" legislation. NCSL has led the effort over the past ten years to simplify the collection of sales and use taxes through the Streamlined Sales and Use Tax Agreement and we believe that compliance with the Agreement will provide the states the best opportunity to require collection of all out-of-state sales taxes.

NCSL believes that the effort for states to consider compliance with the Streamlined Sales and Use Tax Agreement is critical in preserving states' ability to raise revenues independent of the federal government. Failure to address structural problems with our sales and use taxes invites Congress to impose its own consumption tax, either in the form of a national sales tax or a value added tax.

There is some confusion among state policymakers that has been fueled by national press reports that the streamlined sales effort and the "affiliate nexus" issues are one and the same. This is not the case. The streamlined sales tax effort will lead to a level playing field where all remote sellers – on line, catalog, or otherwise – are required to collect and remit taxes to the customer's state just as your in state sellers. The "affiliate nexus" issue targets only a small subset of remote sellers that pay commissions to in-state "affiliates" that advertise the seller through the affiliate's web sites. As a result, the "affiliate nexus" bills target only one marketing channel and would not solve the larger problem that the streamlined sales tax effort is trying to address.

Twenty-three states have already enacted legislation to participate in the streamlined sales tax effort and over 1100 out of state sellers have started to collect previously uncollected sales taxes for these states. As of December 31, 2009, these states have received over $500 million in previously uncollected sales tax revenue. NCSL has been working with Congress and the Administration to enact legislation that would give states that comply with the Streamlined Sales and Use Tax Agreement the authority to require all out-of-state sellers to collect those states' sales taxes. When the federal legislation is enacted, states will finally have the ability to close the sales tax collection loophole which is estimated to cost states $23 billion.

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We are very concerned that effort by some to bypass the streamlined sales tax process with these online affiliate nexus laws will distract from the goal of solving the nexus issue once and for all through the Agreement and federal legislation. Furthermore, pending litigation over the constitutionality of the affiliate nexus approach threatens to make it only more difficult for the coalition of Main Street retailers, NCSL, and other groups to convince Congress to pass federal legislation endorsing the Agreement.

Thank you for your consideration of our request. If you have questions or would like additional information about the streamlined sales tax effort, please contact us or Neal Osten, in NCSL's Washington office at neal.osten@ncsl.org.

Sincerely,

Representative Christopher Rants, Iowa — Delegate Shelia Hixson, Maryland
Co-Chairs, NCSL Executive Committee Task Force on State and Local Taxation
of Communications & Electronic Commerce

Honorable Representatives,

My name is Dean Takamine, I am the President of Synertech Media LLC a Internet Marketing company based in Honolulu, Hawaii.Â I have been in the Internet Marketing business for over 8 years.Â I am providing a testimonial to HB1183 also known as the "Amazon Tax Bill". Â In particular, I would like to clarify some common misconceptions about this bill and it's impact on Hawaii.

I recently heard about the results of a previous hearing on SB1355.Â I understand that you have replaced the contents of HB1183 into SB1355.Â I would like to ask for your precious time and please understand how ineffective and damaging this bill would be.

I would like to inform you on 3 very important issues about SB1355.

1. Â The consequences of SB1355.
2. Â How much tax revenue would SB1355 generate.
3. Â Who would benefit from this bill.

1. Â The consequences of SB1355.

SB1355 will hurt Hawaii's Online Media Industry as it will handicap them by limiting their revenue options. Â I also believe it will hurt our rapidly growing markets like social marketing, blogging, online videos (Youtube), photographers and even the software industry (Apple iPhone Apps generate revenue with advertising). Â

Competing mainland and international companies will have a competitive advantage in generating revenue.Â Â This will cause a "brain drain" as these companies will have no choice but to take their business to another state or internationally. Â Millions of dollars in advertising revenue would be lost, most of this revenue comes from out-of-state.

2. Â How much tax revenue would SB1355 generate.

This bill will not generate the income most people believe. Â This is because all of the large online retailers will just terminate their relationships with Hawaii advertising affiliates, thereby not needing to collect any taxes from Hawaii residents. Â What this means is we would not be able to collect even one penny from Amazon.com.Â Â I can't overstate this enough,Â we would not be able to collect one penny from every major online retailer that does not have a physical storefront in Hawaii (i.e. Amazon.com).Â

What we will end up doing is losing millions of dollars in affiliate advertising revenue (Virtually all this revenue comes from out-of-state). Â This bill will end up costing Hawaii more money than it generates. Â We will have to spend money to regulate this tax. Â On top of that, we will need even more money set aside for litigation.

3. Â Who would benefit from this Bill?

The real benefit of this bill is the Big Box Retailers like Best Buy, Walmart, etc. Â They are spending millions of dollars to lobby across the nation and to fool the public that they are "pro small business". Â They are making a case for a Internet tax help small businesses. Â Since when is Walmart pro small business? Â Will Hawaii fall for this trap? Â

The state of Illinois recently passed a similar bill and here are some recent quotes by the media. Â

"Wal-Mart welcomes Amazon and Overstock Illinois Affiliatesl"
"Sears Holdings Applauds"
"Walgreens Congratulates Illinois"
"Maybe Gov. Quinn of Illinois should have figured something was up when Walmart put their full support behind it."

Illinois effectively eliminated jobs and lost millions of dollars in state revenue. Â For what reason? Â They will not collect one penny from online retailers like Amazon.com.

Please connect the dots

Once you are able to see the true consequences of SB1355 you will realized just how damaging this bill is. Â SB1355 does nothing to generate revenues while killing off millions of dollars flowing into the State. Â

I would like to conclude, that we all agree that Hawaii needs to diversify it's economy. Â Hawaii's Online Media and Software Industry is a rapidly growing and clean industry. It is low impact and a vast majority of its revenues come from out-of-state.Â We should be promoting this industry not creating a bill like HB1183 and destroying it.Â

I urge you to "connect the dots" and vote for the people of Hawaii not the Big Box retailers. Â Please vote "No" on SB1355

Mahalo for your precious time.

Aloha,
Dean Takamine
President, Synertech Media LLC

Natalie J. Iwasa, CPA, Inc.
1331 Lunalilo Home Road
Honolulu, HI 96825
808-395-3233

TO: Committee on Finance

HEARING
DATE: 5 p.m. March 31, 2011

RE: SB1355, SD1, HD1 Relating to Taxation - **OPPOSE Information Reporting**

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee,

This bill creates a nexus standard for taxing out-of-state businesses and allows certain taxpayers to file an annual report with the state in lieu of paying the general excise tax (GET).

This bill would allow a person or business to report names of residents who purchased goods from out of state, as well as dates and amounts of sales instead of paying GET on the sales (page 3, lines 3 - 8). **This bill simply goes too far in its attempt at gathering information about consumers presumably in the name of enforcing the use tax laws.**

Please remove this reporting requirement from the bill.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 29, 2011 11:24 AM
To: FINTestimony
Cc: web@cartoonistforchrist.org
Subject: Testimony for SB1355 on 3/31/2011 5:00:00 PM

Testimony for FIN 3/31/2011 5:00:00 PM SB1355

Conference room: 308
Testifier position: oppose
Testifier will be present: No
Submitted by: Lee McIntosh
Organization: Individual
Address:
Phone:
E-mail: web@cartoonistforchrist.org
Submitted on: 3/29/2011

Comments:
Mr. Chair and Members of the Committee on Finance:
Aloha, my name is Lee McIntosh. I live in Kau on the Big Island. I am not in favor of SB 1355, which taxes out-of-state businesses. First, I would like to clearly point out that I do not purchase items online to escape paying the GET, but because the item is significantly cheaper than if I bought it locally (even when shipping is included). If this bill is passed and adopted nationally, I will still continue to purchase the cheaper item. Now, let us take a different approach to SB 1355: SB 1355 allows other states to dictate tax law on local businesses in Hawaii. SSTP strips Hawaii of its sovereignty in administering taxes, giving Hawaii an equal number of votes as any other member on the Governing Board. Unelected members on the Governing Board will be creating policies that directly affect local businesses in Hawaii with only their state's interests in mind. Such a group lends itself to mischief, especially with how easy it is to withdraw from the Governing Board. Businesses located in Hawaii should only be taxed by Hawaii, not other states. The SSTP should not be considered by the Legislature as a viable solution for additional revenue. Thank you for the opportunity to testify on SB 1355.