

**NEIL ABERCROMBIE**  
GOVERNOR

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LT. GOVERNOR



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## **LATE TESTIMONY**

To: The Honorable Angus L. K. McKelvey, Chair  
and Members of the House Committee on Economic Revitalization and Business

Date: Tuesday, January 31, 2012  
Time: 8:30 a.m.  
Place: Conference Room 312, State Capitol

From: Frederick D. Pablo, Director  
Department of Taxation

Re: H.B. No. 1694 Relating to High Technology

The Department of Taxation (Department) appreciates the intent of this measure, and provides the following information for your consideration.

Unless preempted by federal law, this measure provides a mechanism for internet and catalog sellers to collect the use tax owed by Hawaii purchasers, provided that the seller both sells more than \$1 million per year to Hawaii purchasers, and more than \$10,000 per year of such sales occurred where the purchasers were referred to the seller by persons in this State, and such persons are paid a commission based upon the sales generated by the referral.

Because this measure goes to the core tax policy of the state of Hawaii concerning the general excise tax and use tax, the Department suggests that the recommendation of the Tax Review Commission be received before action is taken on this issue. This will allow the Legislature to make a fully informed decision based on a thorough analysis by the body appointed to examine fundamental tax policy. There are numerous ways to address the loss of State tax revenue to internet and catalog sales where the seller does not have a physical nexus in Hawaii. Economic nexus as contained in this measure is but only one method of dealing with the issue, and other options such as the streamlined sales tax project or affiliate nexus should also be examined by the Tax Review Commission.

Thank you for the opportunity to provide comments.

HB 1964



**LATE TESTIMONY**

January 31, 2012

Honorable Angus L.K. McKelvey, Chair  
House Economic Revitalization and Business Committee  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Re: Amazon Opposition to HB 1694

Dear Chairman McKelvey:

I am writing on behalf of Amazon.com to ask respectfully that you oppose the new tax collection scheme proposed in HB 1694, which is unconstitutional and would not be an effective source of revenue.

The U.S. Supreme Court's *Quill* decision prohibits a state from requiring sales tax collection by sellers that lack physical presence in the state. HB 1694 is unconstitutional because it ultimately would require sellers with no physical presence in Hawaii to collect general excise tax merely on the basis of contracts with Hawaiian advertisers.

If HB 1694 were enacted, Amazon would have little choice but to end its advertising relationships with Hawaii-based participants in the Amazon "Associates Program." Participants in the Associates Program place Amazon advertisements on their websites, and then are compensated by Amazon for purchases made by visitors whom they refer to Amazon's website. An example is the website of the World History Association at the University of Hawaii at Mānoa – <http://www.thewha.org/>.

HB 1694 would provide no new tax revenue collected by Amazon or others who sever their relationships with Hawaii-based advertisers, and any revenue estimates should take this into account. In reviewing a similar bill, Vermont's Joint Fiscal Office issued a fiscal note explaining that this bill would bring in little revenue:

The experience in other, smaller, states suggests that it is unlikely that the major online retailers would comply with the provisions of the bill and begin to collect sales tax. The enactment of similar legislation in other states (Rhode Island and North Carolina) has prompted large online retailers to end their affiliate programs in those states. If this is the result of this legislation, no additional sales tax revenue will be realized.

The same uncertainty pertains in Hawaii.

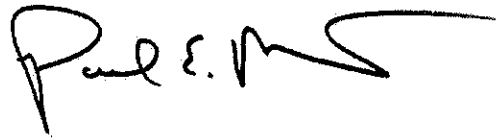
Hawaii should instead support federal legislation that comprehensively resolves the sales tax issue in a way that any single state cannot. Amazon.com strongly supports the federal Marketplace Fairness Act (S. 1832), which would provide Hawaii and other states a Constitutionally-permissible path to receive

Honorable Angus L.K. McKelvey  
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sales tax collections from remote sellers. Counterproductively, HB 1694 would undermine the purposes and viability of Federal legislation.

In sum, Amazon.com respectfully asks that you oppose HB 1694. Please let me know if you have any questions. I can be reached at [pmisener@amazon.com](mailto:pmisener@amazon.com).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul E. Misener". The signature is stylized with a large, sweeping flourish at the end.

Paul Misener  
Vice President for Global Public Policy

cc Members, House Economic Revitalization and Business Committee