

**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

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STATEMENT OF

RICHARD C. LIM, DIRECTOR
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

BEFORE THE

SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY

Monday, January 30, 2012
1:15 P.M.
State Capitol, Conference Room 016
In consideration of

SB 2884
RELATING TO TAXATION

Chair Fukunaga, Vice Chair Wakai and members of the committee.

DBEDT believes additional dialogue with industry stakeholders is necessary to assess the overall impacts of this measure.

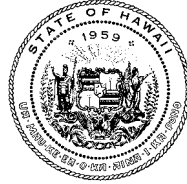
DBEDT's Creative Industries Division is charge with the development of Hawaii's creative sectors, which have grown in size from 44,000 in 2009 to 46,000 in 2011. The department appreciates that advances in technology present a global opportunity to export creative content and to enhance Hawaii's tax base.

We defer to the Department of Taxation's position on this bill.

Thank you for the opportunity to provide comments on this measure.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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HONOLULU, HAWAII 96809
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FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

LATE

To: The Honorable Carol Fukunaga, Chair,
and Members of the Senate Committee on Economic Development & Technology

Date: Monday, January 30, 2012
Time: 1:15 P.M.
Place: Conference Room 016, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2884, Relating to Technology

The Department of Taxation (Department) appreciates the intent of S.B. 2884 and provides the following information and comments for your consideration.

S.B. 2882 specifies that the source of sales of digital goods that do not take place at the vendor's place of business to have taken place at the customer's shipping or billing address. It also specifies that wholesale sales of digital goods are subject to the general excise tax wholesale rate.

This measure attempts to address just one part of the ongoing debate over the taxation of internet-based sales of tangible personal property. Because this measure addresses 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 (TRC) be received before action is taken on this issue.

Deferral will allow the Legislature to make a better informed decision, based on a thorough analysis by the TRC whose duty is examine fundamental tax policy. There are many ways to address the problem of loss of state tax revenue to sales that occur over the internet. While this measure addresses one method of dealing with the issue, other options will likely be explored by the Tax Review Commission as well, such as affiliate nexus and information reporting requirements.

Thank you for the opportunity to provide comments.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 9:36 AM
To: EDTTestimony
Cc: cattoche@earthlink.net
Subject: Testimony for SB2884 on 1/30/2012 1:15:00 PM

Testimony for EDT 1/30/2012 1:15:00 PM SB2884

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Robert Cattoche
Organization: Individual
E-mail: cattoche@earthlink.net
Submitted on: 1/28/2012

Comments:

I support this legislation for the following reasons:

It Allows State to recapture existing revenue streams being lost to technology and puts an end to outflow that is only increasing in size and scope as more products and services are available through the internet.

It updates the Tax Code to meet technological changes of 21st Century.

It protects citizens from fraudulent sales.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 9:05 AM
To: EDTTestimony
Cc: teresa.chien@yahoo.com
Subject: Testimony for SB2884 on 1/30/2012 1:15:00 PM
Attachments: SB2884 SUPPORT.doc

Testimony for EDT 1/30/2012 1:15:00 PM SB2884

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Teresa Chien
Organization: Individual
E-mail: teresa.chien@yahoo.com
Submitted on: 1/28/2012

Comments:

In SUPPORT of the passage of SB 2884:

- ⤴ It is not a new tax.
- ⤴ Updates Tax Code to meet technological changes of 21st Century.
- ⤴ 24 States have already passed legislation for the taxation of digital goods. 5 States do not charge taxation on sales/use/excise. It is under consideration in additional states as well.
- ⤴ It puts local business at a disadvantage over an online retailer, a local business has to charge tax. This would equalize the playing field.
- ⤴ Allows existing businesses to recapture revenue streams as technology has diminished their roles in the business cycle; allows for industries (Music, Newspaper etc.) to return to previous profitability levels.
- ⤴ Allows State to recapture existing revenue streams being lost to technology and puts an end to outflow that is only increasing in size and scope as more products and services are available through the internet.
- ⤴ Social Injustice of having those who can not afford technology pay the tax burden on sales while exempting those that can afford technology from taxes.
- ⤴ It is not censorship. It protects citizens from fraudulent sales.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 12:22 PM
To: EDTTestimony
Cc: jaggibson@earthlink.net
Subject: Testimony for SB2884 on 1/30/2012 1:15:00 PM

Testimony for EDT 1/30/2012 1:15:00 PM SB2884

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: John Gibson
Organization: Individual
E-mail: jaggibson@earthlink.net
Submitted on: 1/28/2012

Comments:

I am in full support of SB 2884.

This is not a new form of taxation, it brings existing tax code up to date with where technology is and where it is going.

24 States (Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming) allow for the taxation of digital goods with additional States now considering similar legislation.

As sales of what have been traditionally physical goods (like a cd, or a dvd of a movie, or a book, or software or video games, or a magazine) become digital goods there is a decline in taxable purchases, this legislation closes that loophole.

It addresses an issue of unfairness in that those who can not afford technology or understand technology are forced to pay the tax as they have to purchase the physical good; if you understand technology and can afford it you get a free pass on paying the tax.

It is not SOPA or PIPA or any other intrusion on a person that can be deemed as censorship. It is only about taxation of goods.

It is not the "Amazon" bill which addresses issues relating to the sale of physical goods from retailers which may or may not be based within the State.

It does help local retailers by a leveling of the playing field.

By requiring online retailers to comply and be registered with the State it provides protection of consumers from fraudulent retailers or those posing as retailers.

It brings in much needed revenues to the State which can be used to restore cuts to vital programs in health or education.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, January 28, 2012 8:56 AM
To: EDTTestimony
Cc: Steve@SteveCrest.com
Subject: Testimony for SB2884 on 1/30/2012 1:15:00 PM

Testimony for EDT 1/30/2012 1:15:00 PM SB2884

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Lawrence Guynes
Organization: Individual
E-mail: Steve@SteveCrest.com
Submitted on: 1/28/2012

Comments:

I think this is an excellent Bill. Local economies are only strong if they have a level playing field with those on the internet. Local businesses will have more reason to expand or maintain their businesses, vs. face down-scaling and or closing. I FULLY SUPPORT THIS BILL!

To: Committee on Economic Development and Technology
From: David Raatz (resident of Wailuku, Maui, HI)
Re: Support for SB2884

I support SB2884. This bill provides a fair and effective means of generating revenue and modernizing Hawai'i's tax system. Thank you.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, January 29, 2012 5:38 PM
To: EDTTestimony
Cc: jjrutherford@yahoo.com
Subject: Testimony for SB2884 on 1/30/2012 1:15:00 PM

LATE

Testimony for EDT 1/30/2012 1:15:00 PM SB2884

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: John Rutherford
Organization: Individual
E-mail: jjrutherford@yahoo.com
Submitted on: 1/29/2012

Comments:

I submit this statement in support of the proposed legislation. I feel strongly that all business entities should be treated equally by state tax law. This legislation would level the playing field for businesses that are not primarily digital. It seems unfair that certain businesses should be able to sell the same product as another under different state taxation requirements. This is not a question of imposing a new tax, but of evenly and fairly enforcing an existing one. Further, the impact on consumers will be minimal while the upside for the state will be substantial. Thank you for your consideration.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 1:09 AM
To: EDTTestimony
Cc: groffm@hawaii.edu
Subject: Testimony for SB2884 on 1/30/2012 1:15:00 PM

LATE

Testimony for EDT 1/30/2012 1:15:00 PM SB2884

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Mark Groff
Organization: Individual
E-mail: groffm@hawaii.edu
Submitted on: 1/30/2012

Comments:
Aloha.

I am in full support of SB 2884.

This is not a new form of taxation, it brings existing tax code up to date with where technology is and where it is going.

24 States (Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming) allow for the taxation of digital goods with additional States now considering similar legislation.

Tangible items and merchandise that have been traditionally physical goods (cds, or a dvd of a movie, or a book, or software or video games, or a magazine) have more and more become digital goods. With that there is a decline in taxable purchases and the state suffers a loss in revenue. This legislation closes that loophole.

It addresses an issue of fairness in that everyone who is buying or selling good and services in the State of Hawaii is paying their fair share.
As more and more items become sold as a digital downloads, the taxation needs to keep up the pace.

It is not SOPA or PIPA or any other intrusion on a person that can be deemed as censorship. It is only about taxation of goods.

It is not the "Amazon" bill which addresses issues relating to the sale of physical goods from retailers which may or may not be based within the State.

It does help local retailers by a leveling of the playing field.

By requiring online retailers to comply and be registered with the State it provides protection of consumers from fraudulent retailers or those posing as retailers.

In closing, It brings in much needed revenues to the State which can be used to restore cuts to vital programs in health or education.

fukunaga2 - Ashley-Jane

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 30, 2012 1:54 PM
To: EDTTestimony
Cc: scattoche@sbcglobal.net
Subject: Testimony for SB2884 on 1/30/2012 1:15:00 PM

Testimony for EDT 1/30/2012 1:15:00 PM SB2884

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Susan Cattoche
Organization: Individual
E-mail: scattoche@sbcglobal.net
Submitted on: 1/30/2012

Comments:

This bill allows the state to recapture existing revenue streams being lost to technology and puts an end to outflow that is only increasing in size and scope as more products and services are available through the internet.

It also allows existing businesses to recapture revenue streams as technology has diminished their roles in the business cycle; allows for industries (Music, Newspaper etc.) to return to previous profitability levels.

There is Social Injustice of having those who can not afford technology pay the tax burden on sales while exempting those that can afford technology from taxes.

I support this bill.

TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Sales of specified digital goods

BILL NUMBER: SB 2884; HB 2677 (Identical)

LATE

INTRODUCED BY: SB by Tsutsui by request; HB by Carroll

BRIEF SUMMARY Adds a new section to HRS chapter 237 to provide that if a sale of a specified digital good does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address; or if there is no item shipped, then it shall be determined to take place at the customer's billing address.

When a person licensed under HRS chapter 237 sells specified digital goods to a licensed retail merchant, jobber, or other licensed seller for purposes of resale, the person shall be taxed as a wholesaler selling tangible personal property. All other sales of specified digital goods shall be taxed as retail sales of tangible personal property.

Defines "specified digital good" as a digital audio work, digital audiovisual work, digital book, additional digital good, or specified prewritten computer software; provided that the sale of, or the storage, use, or other consumption of a digital code shall be treated in the same manner as the sale of, or the storage, use, or other consumption of a specified digital good for which the digital code relates. Further defines "additional digital good," "digital audiovisual work," "digital book," "digital code" and "specified prewritten computer software" for purposes of the measure.

EFFECTIVE DATE: July 1, 2012

STAFF COMMENTS: While it appears that this measure is proposed to clarify how specified digital goods are taxed under Hawaii's general excise tax law by codifying definitions of various digital media and works, under the definition of "gross income" it would appear that gross income received from the sale of such digital goods would already be included and taxable under Hawaii's general excise tax law. As such, the adoption of this measure is unnecessary.

If the purpose of this bill is to define sales of digital media that are virtual, the same principles would seem to apply whether or not there is a physical object exchanging hands. The intellectual material being transferred from a seller to a buyer takes on the same characteristic in that if the intellectual material is sold for resale, then the lesser half percent rate applies while if the sale of the intellectual material is for consumption by the purchaser, it would be considered a retail sale and taxed at the full 4% rate. This measure reflects a lack of understanding of the general excise tax.

Digested 1/30/12