

Representative Sylvia Luke, Chair  
Representative Scott Nishihara, Vice Chair  
Representative Aaron Ling Johanson, Vice Chair  
Committee on Finance



HEARING Thursday, February 28, 2013  
2:00 pm  
Conference Room 308  
State Capitol, Honolulu, Hawaii 96813

Agenda #1

**RE: HB 1257, Relating to Taxation**

Chair Luke, Vice Chairs Nishihara and Johanson, and Members of the Committee:

Retail Merchants of Hawaii (RMH) is a not-for-profit trade organization representing 200 members and over 2,000 storefronts, and is committed to support the retail industry and business in general in Hawaii. The retail industry is one of the largest employers in the state, employing 25% of the labor force.

**RMH strongly supports HB1257**, which expands application of the general excise tax to business activities in the State that are significantly associated with a seller's ability to establish or maintain a market in the State. Creates a presumption under the general excise tax law for sellers of tangible personal property where the seller's activities in the State demonstrate a significant business nexus with the State and creates a presumption under the use tax law that a seller is engaged in business in the State if the seller's activities in the State demonstrate a significant business nexus with the State.

We are in an era of omnichannel retailing, with brick and mortar retailers leveraging innovative digital technologies to improve the consumer experience. But unlike our omnichannel counterparts, brick and mortar retailers must comply with 7,600 different state and local sales tax systems.

As electronic commerce continues its dramatic increase, traditional brick and mortar retailers are experiencing continued erosion of their sales base to remote sellers, which, under most circumstances, are not subject to tax mandates. HB1257 will level the playing field. The unfair disadvantage our Hawaii retailers are experiencing results in unrealized sales, lower tax revenue to the state and minimized revenue and resources to expand their operations and create jobs.

Twelve states enacted e-fairness and/or consumer use laws since 2008: New York, Rhode Island, North Carolina, Colorado, Oklahoma, Illinois, South Dakota, Arkansas, Connecticut, Vermont, California and Texas. Ten other states have legislation pending: Arizona, Florida, Georgia, Michigan, Minnesota, Missouri, New Jersey, Virginia, Utah and now Hawaii.

The reality is that the State of Hawaii has considerable liabilities and unfunded mandates that cannot be satisfied without additional revenue or cutting essential services. It is more than reasonable to collect a tax that's already due before instituting new taxes on everyone. Tax revenue generated from online sales can be used to pay down deficits and get Hawaii back on track toward fiscal solvency.

Thank you for your consideration and for the opportunity to comment on this measure.

Carol Pregill, President

**Testimony of  
Mihoko E. Ito  
on behalf of  
Walgreens**

DATE: February 28, 2013

TO: Representative Sylvia Luke  
Chair, Committee on Finance  
*Submitted Via [FINtestimony@capitol.hawaii.gov](mailto:FINtestimony@capitol.hawaii.gov)*

RE: **H.B. 1257 – Relating to Taxation**  
**Hearing Date: Thursday, February 28, 2013 at 2:00 pm**  
**Conference Room 308**

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Dear Chair Luke and Members of the Committee on Finance:

I am Mihoko Ito, testifying on behalf of Walgreen Co. (“Walgreens”).

Walgreens operates more than 8,200 locations in all 50 states, the District of Columbia and Puerto Rico. In Hawai`i, Walgreens now has 11 stores on the islands of Oahu, Maui and Hawai`i.

Walgreens **supports** H.B. 1257, which: 1) expands application of the general excise tax to business activities in the State that are significantly associated with a seller's ability to establish or maintain a market in the State, 2) creates a presumption under the general excise tax law for sellers of tangible personal property where the seller's activities in the State demonstrate a significant business nexus with the State, and 3) creates a presumption under the use tax law that a seller is engaged in business in the State if the seller's activities in the State demonstrate a significant business nexus with the State.

Walgreens supports this measure because it seeks to level the playing field so that local "brick-and-mortar" stores operate under the same rules and online sellers. To date, 24 states have implemented the Streamlined Sales & Use Tax Agreement, and 15 states have passed legislation to require online retailers to pay sales taxes when they have an affiliate or “nexus” presence in the state.

Walgreens believes that both community and online retailers should conduct business in a fair, competitive environment. With the changes in the marketplace, e-commerce has become a

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critical marketplace for both retailers to sell and consumers to buy products 24 hours a day, regardless of geography. However, tax collection laws, including those in Hawaii, have not changed to address the marketplace changes. Walgreens therefore supports legislation which would enable the collection of taxes from internet retail sellers.

Thank you very much for the opportunity to testify.



Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice Chair  
Representative Aaron Ling Johanson, Vice Chair  
Committee on Finance  
State Capitol, Room 308

**RE: HB1257 Relating to Taxation**

Dear Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson and Members of the Committee:

We support updating the Hawaii tax system to level the playing field and fairly apply the tax laws to out-of-state businesses. Currently out-of-state online businesses exploit a massive loophole in state law that gives them a significant advantage over Hawaii businesses. This disadvantage to our businesses risks Hawaii jobs making it more difficult for Hawaii businesses to grow.

We support the Legislature to level the playing field and close the loophole that disadvantages Hawaii businesses – the backbone of our state’s economy. Hawaii must start to update its antiquated systems that harm businesses in this state.

We ask the Legislature to:

- Support state legislation (HB1257 Relating to Taxation) that will require online out-of-state businesses that exploit the state’s loophole to collect sales tax rather than placing the burden of compliance to be on the consumer.

Thank you for the opportunity to submit written comments.



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## E-FAIRNESS IS NOT A NEW TAX

There's a lot of misinformation being spread about e-fairness legislation, including that it would amount to a new tax or a tax increase. This is simply not the case.

- **Neither the Marketplace Fairness Act (MFA) nor the Marketplace Equity Act (MEA) would introduce a single new tax or raise existing ones.** Under current law, consumers are already required to pay sales and use taxes for online purchases, so these taxes already exist; however, they usually go unpaid.
- **The MEA or MFA would simply shift the responsibility for sales tax collection.** Right now, it's up to consumers to track and remit taxes on their online purchases. E-fairness legislation would shift this responsibility back to the vendor, where it belongs.
- **E-fairness is about closing a tax loophole, not creating a new tax.** The online sales tax loophole is hurting small businesses across America. E-fairness legislation would give states the ability to enforce their existing state and local sales and use tax laws on online-only retailers in a manner that does not infringe on or overly burden e-commerce.
- **E-fairness legislation could actually help lower taxes.** Many conservative governors have spoken out recently about their states' own budget shortfalls. They have mentioned e-fairness legislation as an effective way to enforce existing tax laws rather than raising taxes in other areas.
- **E-fairness is not a tax on businesses.** Businesses don't pay sales tax; consumers do. The MFA or MEA doesn't create a tax for online-only businesses; it simply allows states to require them to follow the same rules as their brick-and-mortar counterparts.

### CONSERVATIVE LEADERS AGREE

**Indiana Governor Mitch Daniels:** *"We're not talking about an additional or new tax here—we're talking about the collection of a tax that's existed a long time."* ("Indiana Makes A Deal With Amazon On Sales Taxes," Marketplace Business, 1/12/12)

**American Conservative Union Chairman Al Cardenas:** *"When it comes to sales tax, it is time to address the area where prejudice is most egregious – our policy towards Internet sales... It is an outdated set of policies in today's super information age, when families every day make decisions to purchase goods and services online or in person. Moreover, it's unfair, punitive to some small businesses and corporations and a boon for others."* ("The Chief Threat To American Competitiveness: Our Tax Code," National Review Online, 11/8/11)

### IN THE NEWS



*"For the record, you're supposed to pay sales tax for online purchases when you file your state tax return, but most people don't... It's also important to remember that this wouldn't be a new tax. You're already on the hook for these taxes whether or not you're actually paying them. Any new legislation would just produce a concrete mechanism for collection."* ("Internet Sales tax Coming Soon," Fox Business, 8/6/2012)

### NATIONAL REVIEW ONLINE

*"[I]f the retailer doesn't collect the sales tax at the time of purchase, the purchaser is legally required to pay a 'use tax' to the state. Many consumers don't realize this or choose to ignore it, and, as a result, no taxes are paid on most online purchases. And as any brick-and-mortar retailer will tell you, the price advantage of 'tax free' shopping distorts the free market, providing online retailers an unfair 5 to 10 percent pricing advantage over the local storefront. This advantage is no more than a subsidy, allowing the federal government to pick winners and losers, something most conservatives traditionally abhor."* ("Support the Marketplace Fairness Act," National Review Online, 8/23/2012)