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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Wednesday, February 19, 2014
Time: 2:00 p.m.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 2507, Relating to Marketplace Fairness

The Department of Taxation (Department) appreciates the intent of H.B. 2507 and provides the following comments for your consideration.

H.B. 2507 proactively authorizes the changes to Hawaii tax administration that can be expected as part of a final Marketplace Fairness Act passed by Congress. The Marketplace Fairness Act (MFA) is a piece of federal legislation proposing to authorize the states to require businesses that have no nexus with the state to collect and remit sales and use taxes to the state.

The U.S. Senate passed Senate Bill 743 (S. 743) in May of 2013; S. 743 is a version of the MFA whose requirements are reflected in the text of H.B. 2507. After its passage S. 743 was transmitted to the U.S. House of Representatives and referred to the House Judiciary Committee where it has remained since.

The House Judiciary Committee has long signaled its intention to develop an amended draft of the Marketplace Fairness Act, but to date none has been released. It was recently reported that in early March the House Judiciary Committee will hold a hearing on the topic of Marketplace Fairness, but only as a general issue hearing. There will be no draft bill and the hearing will not specifically address S. 743.

For the foregoing reasons the Department wishes to note that any final Marketplace Fairness Act emerging from Congress and becoming law may differ from the current version of S. 743. As one example, the House Judiciary has seemed receptive to including federal court jurisdiction over disputes arising under the MFA. This would result in federal court interpretation of state tax law in nearly all enforcement efforts against online retailers. The



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potential differences between a final MFA and S. 743, which H.B. 2507 is based on, may mean additional legislation may be necessary even if this measure is enacted.

The Department suggests amending H.B. 2507 to include the imposition of the requirement of remote sellers to collect and remit use tax on remote sales if Congress authorizes states to require such collection. The Department suggests that on page 1, a new Section 1 of the bill, be added to read as follows:

SECTION 1. Chapter 238, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

§238- Collection by remote sellers. (a) Upon the effective date of an Act of Congress that authorizes the states to require certain businesses to pay, collect, or remit state or local sales or use taxes, and upon this state's satisfaction of the requirements imposed by such Act of Congress, every remote seller, as defined in chapter 255D-A, shall collect and remit the use tax imposed by sections 238-2, 238-2.3, and 238-2.6.

(b) The provisions of this section shall not be deemed to have any effect on any taxpayer nexus analysis with this state.

This proposed amendment will clarify that remote sellers must collect use tax upon the passage of the Marketplace Fairness Act and the State's satisfaction of its requirements.

The Department further suggests the bill be amended to provide that nothing in this bill be deemed to have any effect on nexus. This is to ensure there is no interference with the Department's existing efforts to assess online retailers under the general excise tax law. The Department suggests that on page 6 of the bill a new section 255D-C be added to the proposed new part to chapter 255 to read as follows:

§255D-C No effect on nexus. Nothing in this part shall be deemed to have any effect on any taxpayer nexus analysis with this state.

This proposed amendment will operate to preserve current assessment strategies being explored by the Department.

Thank you for the opportunity to provide comments.



TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

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SUBJECT: MISCELLANEOUS, Alternative to Streamlined Sales and Use Tax Agreement

BILL NUMBER: HB 2507

INTRODUCED BY: Luke, Belatti, Brower, Cabanilla, Choy, Cullen, Evans, Hanohano, Lowen, McKelvey, Mizuno, Onishi, Takayama, Takumi and 2 Democrats

BRIEF SUMMARY: Adds a new part to HRS chapter 255D to establish an alternative to the Streamlined Sales and Use Tax Agreement. If the state seeks to require sellers to collect and remit sales and use taxes with respect to remote sales sourced to the state, but the state is not a member state under the Streamlined Sales and Use Tax Agreement, the department of taxation shall establish rules to implement minimum simplification requirements. Delineates provisions that should be included in the rules.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: The Streamlined Sales Tax Project's Model Agreement and Act is a project undertaken with other states that is intended to simplify sales and use tax administration as it relates to multiple sales and use tax rates, definitions, and taxing jurisdictions. Goals of the project include the establishment of a single sales tax rate, uniform definitions of sales and use tax terms, requiring states to administer any sales and use taxes, and a central electronic registration system to allow a seller to register to collect and remit sales and use taxes for all states. At the national level, there appears to be a number of difficulties in the negotiations and unanimous agreement is far from reality.

In order for the streamlined sales tax project to become a reality in the state, it should be remembered that Hawaii's general excise tax is not a retail sales tax and to comply with the Streamlined Sales and Use Tax Agreement, the general excise tax must be radically changed. Due to the comprehensive nature of the general excise tax as it is imposed on each wholesale and retail transaction and on services as well as products, the change to a sales tax scheme may result in a tax rate higher than the 4% (4.5% in Honolulu). Before Hawaii can be a member state of the streamlined sales tax project, our tax system must meet the approval of the streamlined sales tax governing board. While it appears that this measure would require the department of taxation to adopt rules to implement similar provisions, it is questionable whether those provisions will be able to dovetail with Hawaii's general excise tax, not to mention the cost of compliance, enforcement and collection of taxes on remote sellers. In addition, it is questionable whether the department of taxation alone has the expertise and resources to undertake such a project.

Digested 2/18/14



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Finance
Wednesday, February 19, 2014 at 2:00 P.M.
Conference Room 308, State Capitol**

RE: HOUSE BILL 2507 RELATING TO MARKETPLACE FAIRNESS

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

The Chamber of Commerce of Hawaii ("The Chamber") **supports** HB 2507 Relating to Marketplace Fairness.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Currently, many internet-based sellers unfairly benefit from the State's inability to enforce the Use Tax against individual purchasers. The result is often lost revenue by the State, and lost sales by conventional and "brick and mortar" retailers, many of which provide employment opportunities for our residents. The bill would help eliminate this tax gap. We believe that measures such as these provide fairness and equity for all businesses.

Thank you for the opportunity to testify.



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

DATE: February 18, 2014

TO: Representative Sylvia Luke
Chair, Committee on Finance
Submitted Via FINTestimony@capitol.hawaii.gov

RE: **H.B. 2507 – Relating to Marketplace Fairness**
Hearing Date: Wednesday, February 19, 2014 at 2:00pm
Conference Room: 308

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 the intent** of H.B. 2507 which provides an alternative to Hawaii becoming a member state under the Streamline Sales and Use Tax Agreement, and directs DOTAX to establish rules to meet minimum simplification requirements. Overall, however, Walgreens prefers the approach proposed in H.B. 1651 because the Use Tax model provides flexibility to both tax payers and the State.

Walgreens believes that all retailers can conduct their business in a fair, competitive environment. Walgreens supports this measure to the extent that it seeks to level the playing field so that local "brick-and-mortar" stores operate under the same rules and online sellers.

Thank you very much for the opportunity to submit comments regarding this measure.

Gary M. Slovin
Mihoko E. Ito
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