

STAND. COM. REP. NO.

707

Honolulu, Hawaii

February 17, 2017

RE: H.B. No. 398  
H.D. 2

Honorable Joseph M. Souki  
Speaker, House of Representatives  
Twenty-Ninth State Legislature  
Regular Session of 2017  
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred H.B. No. 398, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose of this measure is to assist the State in collecting revenues and improve the fairness of Hawaii's use tax law by requiring retailers and vendors that are located outside of the State and do not pay or collect general excise tax or use tax to:

- (1) Send a notice to a purchaser informing them that they may be subject to Hawaii's use tax;
- (2) Include the date, category, and amount of the purchase if available, on the notice; and
- (3) File an annual statement showing the total amount paid for purchases during the preceding calendar year or any portion thereof for each purchaser to the Department of Taxation by March 1 of each year.

The Chamber of Commerce Hawaii, Retail Merchants of Hawaii, Hawaii Association of Public Accountants, and a concerned individual testified in support of this measure. Ho'omana Pono, LLC. and two individuals testified in opposition to this measure.

HB398 HD2 HSCR CPC HMS 2017-2234-2



The Department of Taxation and Tax Foundation of Hawaii provided comments.

Your Committee finds that in addition to use taxes imposed on individuals purchasing items for use in the State, a general excise tax (GET) is levied on Hawaii businesses. A GET is a tax levied on a business's gross receipts for the privilege of doing business in Hawaii. Under current law, businesses without a physical presence in Hawaii that conduct operations online are not subject to the GET, providing an unfair advantage to internet-based retailers and vendors. As such, your Committee finds that application of the GET to all businesses operating in the State, regardless of physical presence is fair and reasonable.

Your Committee has amended this measure by:

- (1) Subjecting only retailers or vendors with sales equal to or in excess of \$100,000 to the notification and reporting requirements;
- (2) Stipulating that the required notification only be provided to individuals with purchases of \$500 or more annually, only contain information regarding the date and amount of each purchase;
- (3) Exempting retailers and vendors who voluntarily collect and pay the use tax to the Department of Taxation from the notification and reporting requirements;
- (4) Prohibiting the Department of Taxation from assessing a fine, charging interest, or in any other way penalizing an individual who has received a notification of responsibility to pay the tax from a retailer or vendor. Such an individual shall be required to pay only the amount of use tax owed;
- (5) Including language stipulating that, regardless of physical presence, a person is engaged in business in this State if gross receipts of \$100,000 or more are attributable to this State and the person has a computer server physically present in this State that is used for gain or economic benefit;
- (6) Changing its effective date to July 1, 2112, to facilitate further discussion; and



- (7) Making technical, nonsubstantive amendments for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 398, H.D. 1, as amended herein, and recommends that it be referred to your Committee on Finance in the form attached hereto as H.B. No. 398, H.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committee on Consumer  
Protection & Commerce,



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ANGUS L.K. MCKELVEY, Chair



