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To: The Honorable Mark M. Nakashima, Chair  
and Members of the House Committee on Economic Development and Business

Date: Friday, February 3, 2017  
Time: 9:15 A.M.  
Place: Conference Room 309, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 1413, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of H.B. 1413 and provides the following comments for your consideration.

H.B. 1413 creates a simplified seller's use tax remittance program. The program would allow sellers without a physical presence in Hawaii and that are not required to remit general excise tax to voluntarily collect use tax from their customers on sales of tangible personal property to be delivered into Hawaii for payment to the State. The bill also allows a discount to any seller that participates in the program equal to two percent of the amounts collected and remitted. The bill has an effective date of July 1, 2017.

First, the Department notes that the program proposed by this bill focuses on collection of the use tax directly from online sellers. In general, the Department supports the concept of collection of tax revenue from fewer sources rather than many. Administratively, tax collection from a handful of online retailers is more efficient than collecting from hundreds of thousands of individual residents. This is the logic behind withholding for individual income tax as well.

Second, collection in this way is particularly appropriate for the use tax. The use tax is imposed on purchasers of goods or services from a seller that does not have nexus with Hawaii. Thus, the use tax is imposed on each Hawaii resident that shops online. Billing and collecting from hundreds of thousands of individuals for use tax is administratively burdensome and inefficient. The proposed program would alleviate some of this burden by allowing eligible sellers to collect and pay the tax themselves.

Finally, the Department found various technical deficiencies in the bill and recommends the following technical amendments:

The Department recommends that the definition of "eligible seller" be amended to read

as follows:

“Eligible seller” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or other legal entity that sells tangible personal property [~~or a service,~~] but does not have a physical presence in the State or is not otherwise [~~required to be~~] subject to requirements for [~~collecting and~~] remitting [~~state~~] general excise or use tax for sales delivered into the State.”

The Department recommends that the definitions of “remote seller” and “remote use tax” be deleted from the bill that all references to “remote use tax” be replaced with “simplified sellers use tax.”

The Department recommends section -3(b) of the bill be amended to read as follows:

“(b) The program shall be administered by the department of Taxation, which shall develop and make available to the eligible seller an easily accessible, online system by which to [~~collect,~~] report[~~,~~] and remit the simplified sellers use tax. Participants in the program shall be required to collect, report, and remit the simplified sellers use tax for all sales delivered into the State as long as they remain participants in the program. Eligible sellers may continue in the program as long as they remain eligible sellers and comply with all provisions of this chapter and rules adopted by the department for participation in the program.”

The Department recommends that section -4(a) of the bill be amended to read as follows:

“(a) The simplified sellers use tax due under the program is four per cent of the sales price on any tangible personal property sold [~~or delivered~~] and sent for delivery into Hawaii by an eligible seller participating in the program. The collection of simplified sellers use tax from the purchaser relieves the purchaser of any additional general excise tax and use tax liability on the transaction. The collection and remittance of simplified sellers use tax relieves the eligible seller [~~and the purchaser from~~] of any additional [~~state~~] general excise and use [~~taxes~~] tax liability on the transaction.”

The above amendments will clarify sourcing and measurement of the tax, and will also clarify the relief provision.

The Department recommends that section -4(b) of the bill be amended to read as follows:

"(b) The simplified sellers use tax collected by the eligible seller, at the rate of four per cent, shall be electronically reported and remitted in the manner prescribed by the department on or before the twentieth day of the month next succeeding the month in which the tax accrues. The eligible seller shall remit the tax at the required rate or the amount of the tax collected, whichever is greater. The required monthly reporting from the eligible seller shall only include statewide totals of the simplified sellers use taxes collected and remitted, and shall not require information related to the location of purchasers or amount of sales into a specific county. The department shall not require an eligible seller to report and remit the simplified sellers use tax more frequently than is required for other sellers."

The Department recommends that a new Section 2 be added to the bill to insert a savings clause to read as follows:

SECTION 2. If any provision of this Act, or the application there of to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable."

Lastly, the implementation date will depend on the complexity of the reporting requirements of this measure. In most cases, the Department believes this measure can be implemented for taxable years beginning January 1, 2018.

Thank you for the opportunity to provide comments.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

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SUBJECT: GENERAL EXCISE, USE, Simplified Seller Use Tax Remittance Act,

BILL NUMBER: HB 1413

INTRODUCED BY: LUKE

**EXECUTIVE SUMMARY:** Establishes a program, patterned after one in Alabama, giving remote sellers an incentive to register and pay over use taxes, which are due from their customers but have traditionally been difficult to collect. A “stick” such as a factor presence nexus law or regulation may be needed to raise the stakes for remote sellers who otherwise might stay in the shadows.

**BRIEF SUMMARY:** Adds a new chapter to the Hawaii Revised Statutes. The Simplified Seller Use Tax Remittance Act, would establish a program designed to allow eligible remote sellers to voluntarily collect, report, and remit a simplified sellers’ use tax, instead of the general excise or use taxes otherwise due. Collection and remittance of the simplified sellers use tax would relieve the seller and purchaser of liability for any additional general excise or use taxes due on the transaction.

To participate in the program, remote sellers would apply to the Hawaii Department of Taxation and would agree to collect, report, and remit the simplified sellers use tax for all sales delivered into Hawaii for as long as they participate in the program; agree to provide the department with certain information related to sales to Hawaii customers; and agree to comply with all program reporting requirements.

The simplified sellers use tax would be imposed at the rate of 4% of the sales price on any tangible personal property sold or delivered into Hawaii by an eligible seller participating in the program. No eligible seller would be required to collect the tax at a rate greater than 4%, regardless of the combined actual tax rates that may otherwise apply. Furthermore, sales for which the simplified sellers use tax is collected would not be subject to any county surcharge.

Participating eligible sellers would be required to collect the simplified sellers use tax on all purchases delivered into Hawaii unless the purchaser provides the seller with a valid exemption certificate and general excise tax license.

Eligible sellers would be authorized to deduct and retain a collection discount equal to 2% of the simplified sellers use tax properly collected and timely remitted.

With certain restrictions, eligible sellers participating in the program would be granted amnesty for any uncollected remote use tax that may have been due on sales made to purchasers in Hawaii for the 12-month period before the effective date of the seller’s participation in the program.

Other provisions in the proposed legislation include definitions and provisions regarding administration of the simplified sellers use tax, an online reporting and remittance system, refunds, applicability of the Simplified Seller Use Tax Remittance Act provisions in the event federal remote seller legislation is enacted, and removal of a seller from the program for failure to collect and report the tax.

EFFECTIVE DATE: July 1, 2017.

STAFF COMMENTS: Generally, a state cannot compel a business to collect and remit sales and use tax (or, in Hawaii's case, general excise tax) unless the business has a substantial connection, or nexus, with the state. Under *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the connection needs to be physical to be considered substantial. Although a growing number of states have broadened their definitions of substantial nexus to include links on in-state websites that generate a certain amount of business for the remote vendor (click-through nexus), ties to affiliates (affiliate nexus), or even economic ties to the state (economic nexus), it remains difficult for states to compel out-of-state businesses to comply.

The proposed legislation appears to be patterned after an Alabama act that took effect on October 22, 2015. The Alabama Department of Revenue reported that more than 70 companies participate in its program, which is expected to generate \$50 million in tax revenue this year.<sup>1</sup> Grant Thornton reported that the legislation followed closely on the heels of a new regulation published by ADOR<sup>2</sup> which required remote sellers to collect and remit sales tax in the absence of physical presence in the state, as long as they had substantial economic presence, including tangible personal property sales in excess of \$250,000. A stick such as this one may be necessary for remote sellers to consider nibbling at the carrot provided by this bill.

Digested 2/1/2017

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<sup>1</sup> [http://revenue.alabama.gov/documents/revenue\\_review/review\\_q1\\_2017.pdf](http://revenue.alabama.gov/documents/revenue_review/review_q1_2017.pdf).

<sup>2</sup> ALA. ADMIN. CODE §810-6-2-.90.03.

From: mailinglist@capitol.hawaii.gov  
Sent: Friday, February 3, 2017 1:08 AM  
To: edbtestimony  
Cc: blawaiianlvr@icloud.com  
Subject: Submitted testimony for HB1413 on Feb 3, 2017 09:15AM

**HB1413**

Submitted on: 2/3/2017

Testimony for EDB on Feb 3, 2017 09:15AM in Conference Room 309

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
De MONT R. D. CONNER	Ho'omana Pono, LLC.	Oppose	Yes

Comments: We STRONGLY OPPOSE this bill. As it stands right now, those of us in the lower income bracket have been priced out of the market. We can no longer shop at Ala Moana Shopping Center! This Government has made the cost of doing business in Hawaii so high, businesses feel compelled to pass that "cost of doing business" unto the consumer, resulting in a higher cost for the product. The Jones Act itself plays a major role in the high cost of products sold in Hawaii. When it comes to the notion of Hawaii as a Paradise, that's just to allure tourist. The reality is that everything costs too much! So, our alternative is on-line shopping. Now you want to raise our cost to purchase on-line products? `A`ole! My business that I do on-line, is my business, not that of the government. This bill seeks to invade my privacy, obtain information about my shopping habits & how much money I spend on-line, and then force me to pay a tax for my purchase from a company with no physical presence in Hawaii. This bill seeks to give this government powers beyond its sovereign shores & oversteps the bounds of reason. You have no right or authority to tax my on-line purchases. Local retailers may believe that it is unfair competition, yet, from a consumer's prerogative, we could care less about the collective whining by the retail industry. They chose to penalize consumers by passing on the cost of doing business in Hawaii to the consumer. So, consumers look for a better alternative. That alternative is on-line shopping. This is our inalienable right to pursuit life, liberty & happiness & move away from the burden of paying 2-3 times more for product here in Hawaii, than we do on-line. Lastly, while this may appear as another great way for this Government to reach into our pockets for more money to allow this Government to continue to engage in wasteful spending, like the rail, it is not. This effort, if passed will be short lived, as the Courts will be the final arbiter of this matter. Save any further wasting of valuable taxpayer dollars in court fees. Please kill your bill.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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