



**STATE OF HAWAII
DEPARTMENT OF TAXATION**

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To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

Date: Tuesday, March 13, 2018

Time: 10:00 A.M.

Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 1655, Relating to Tax on Sales of Tangible Personal Property

The Department of Taxation (Department) supports H.B. 1655 and offers the following comments for the Committee's consideration.

H.B. 1655, which is effective upon approval, deems a marketplace facilitator the seller of tangible personal property (TPP) for purposes of the general excise tax (GET) if the marketplace facilitator provides customer service, processes payments, and controls the fulfillment process for sales made by a marketplace seller. The bill also subjects marketplace facilitators to the use tax at the wholesale rate for TPP sold on behalf of a marketplace seller to a purchaser in the State. Specifically, the bill amends the definitions of "person" and "representative" in Hawaii Revised Statutes (HRS) section 237-1 and amends the definition of "import" in HRS section 238-1.

The following is a summary of GET and use tax implications of this bill:

- (1) A marketplace facilitator doing business in the State will be subject to GET at the rate of four percent for its own sales as well as sales made on behalf of marketplace sellers for TPP delivered in the State;
- (2) A marketplace seller who is doing business in the State will be subject to GET at the half-percent rate if it sells TPP through a marketplace facilitator for delivery in the State; and
- (3) If a marketplace seller who is not doing business in the State makes a sale of TPP through a marketplace facilitator for delivery in the State, the marketplace facilitator will be subject to use tax at the rate of half a percent for the import of the TPP, in addition to being subject to GET at the rate of four percent for the sale of the TPP.

This proposal is the most efficient method of imposing and collecting GET on third-party sales made through a marketplace facilitator because instead of having to collect the retail rate of GET from numerous individual marketplace sellers, the Department would only need to collect from one seller—the marketplace facilitator. Additionally, even if a marketplace seller does not have nexus with the State, all sales by the marketplace seller made through a marketplace facilitator who is engaged in business in the State will be subject to GET, as the marketplace facilitator will be deemed the seller of the TPP and will therefore be the taxpayer for those transactions.

Thank you for the opportunity to provide testimony.



March 12, 2018

Members, Senate Committee on Ways and Means
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

Members, House Committee on Finance
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

**RE: HB 1655 and SB 2890
OPPOSE**

Dear Committee Members,

On behalf of the Internet Association (IA), I submit this letter expressing our **OPPOSITION to HB 1655 and SB 2890**, which would impose the state's general excise tax ("GET") on marketplaces for sellers' sales facilitated by the marketplace.

IA represents more than 40 of the world's leading internet companies, and advances public policy solutions that foster innovation, promote economic growth, and empower people through the free and open internet.

The marketplace bills being considered by the Hawaii legislature are flawed in numerous ways. These bills transfer the GET liability for sales being made through marketplaces to the marketplace provider. This will not raise revenue for the state nor will it operate to level the playing field between local brick and mortar stores and online retailers. Hawaii does not need to take any legislative action to address the remote seller issue because in *South Dakota v. Wayfair* the U.S. Supreme Court will be reviewing the validity of the physical presence standard set forth in *Quill Corp v. North Dakota*. The U.S. Supreme Court will issue its decision this year, possibly as early as June, at which time Hawaii and other states will have an answer on their authority to impose tax on remote sellers. Any state action is premature with respect to imposing GET liability on marketplaces before the U.S. Supreme Court issues its decision in *Wayfair*.

Additionally, these marketplace bills are constitutionally suspect and may violate other federal laws. By requiring marketplaces to pay GET for sellers' sales regardless of whether those sellers have a physical presence in the state, these marketplace proposals may violate the Commerce Clause of the U.S. Constitution. As a result, these bills may be subject to protracted litigation for years and will not raise any revenue during the litigation.



For these reasons, we urge your **OPPOSITION to HB 1655 and SB 2890**. Should you have any questions regarding our position, please feel free to contact me at callahan@internetassociation.org or (916) 836-8983. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Callahan', written in a cursive style.

Robert Callahan
Vice President, State Government Affairs



46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Executive Director

**TESTIMONY FOR HOUSE BILL 1655, RELATING TO TAX ON SALES OF
TANGIBLE PERSONAL PROPERTY**

**Senate Committee on Ways and Means
Hon. Donovan M. Dela Cruz, Chair
Hon. Gilbert S.C. Keith-Agaran, Vice Chair**

**Tuesday, March 13, 2018, 10:00 AM
State Capitol, Conference Room 211**

Honorable Chair Dela Cruz and committee members:

I am Kris Coffield, representing IMU Alliance, a nonpartisan political advocacy organization that currently boasts over 400 members. On behalf of our members, we offer this testimony in strong support of House Bill 1655, relating to tax on sales of tangible personal property.

According to the financial plan submitted to the State Legislature by Governor David Ige on February 28th, our state is currently projected to enjoy a \$956 million surplus at the end of the 2017-2018 fiscal year. Taxes rolling into the state's general fund are up 7 percent from the previous year, which, if continued through the final quarter of the current fiscal year, would add approximately \$150 million more revenue to Gov. Ige's February projection.

Yet, we must always be fiscally prudent and economically vigilant. As our state's ERS and EUTF—pension and healthcare—costs escalate, so, too, should our efforts to raise new sources of revenue. Moreover, we are currently pitting our keiki against our kupuna. In comparison to school districts of similar size and demographic composition, Hawai'i, ranks 227th in per-pupil funding *before* adjusting for cost of living, at \$12,855 per child. Washington D.C., New York City, Boston, Pittsburgh, and Cincinnati school districts, for example, spend nearly twice as much as Hawai'i per pupil, at well over \$22,000 to over \$26,000 per student. Similarly, local private schools, discounting Catholic institutions, spend nearly \$19,173 dollars per student, with Punahou President Jim Scott revealing, in 2014, "The real cost of our education per student is \$26,000," owing to the school's then-total endowment of \$235 million and fundraising operations of \$12-\$15 million annually. Our children's learning should not suffer because our need to address the so-called "silver tsunami" of retiring baby boomers.

Accordingly, we urge you to pass this measure requiring out-of state online retailers that make sales in the islands to collect Hawai'i's general excise tax and remit the revenue to our state's coffers. According to the Department of Taxation, this measure is "the most efficient method of imposing and collecting the GET on third-party sales made through a marketplace facilitator because instead of having to collect the retail rate of GET from numerous individual marketplace sellers, the Department would only need to collect from one seller—the marketplace facilitator," **with potential revenue generated amounting to an estimated \$6 million per year.**

We must ensure that all of our state's employee obligations are met, our most vulnerable and aging residents are cared for, and our children receive a quality education. Mahalo for the opportunity to testify in strong support of this bill.

Sincerely,
Kris Coffield
Executive Director
IMUAlliance