



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 2890, RELATING TO TAXATION.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY, AND ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Wednesday, February 7, 2018 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Kathryn-Jean T. Kanemori, Deputy Attorney General

Chairs Taniguchi and Baker and Members of the Committees:

The Department of the Attorney General has concerns about this bill because it may be challenged as violating the Commerce Clause of the United States Constitution.

The purpose of this bill is to amend the definitions in chapter 237, Hawaii Revised Statutes (HRS), relating to general excise tax by (1) adding the term "marketplace provider", and (2) amending the definition of "business". "Marketplace provider" is defined as "any person who sells or assists in the sale of tangible personal property on behalf of another seller and who provides customer service, processes payments, and controls the fulfillment process." Under the proposed amendment to the term "business", a taxpayer would be engaging in "business", and subject to the general excise tax regardless of whether it has a physical presence in Hawaii. A person without physical presence in Hawaii is deemed to be engaging in "business" in the State if the person has gross receipts attributable to transactions in Hawaii totaling \$100,000 or more. Gross receipts attributable to sales in the State include sales by a person without physical presence in the State and that are facilitated by a marketplace provider.

The amendments proposed in this bill may withstand a challenge in the State court under the current Hawaii Supreme Court jurisprudence; however, the amendments may still be subject to federal constitutional challenge.

The Commerce Clause of United States Constitution explicitly grants power to Congress to regulate interstate commerce, and in doing so, also implicitly restricts

states from enacting laws that unduly burden interstate commerce. The United States Supreme Court stated that a state tax will survive a Commerce Clause challenge if the tax “is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State.” Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977). Furthermore, the United States Supreme Court in Quill Corp. v. North Dakota, 504 U.S. 298 (1992), appeared to affirm the need for some type of physical presence, as originally established in National Bellas Hess, Inc. v. Department of Revenue of Illinois, 386 U.S. 753 (1967), in order to meet the substantial nexus requirement.

Today’s proliferation of online commerce reveals that the physical presence requirement affirmed by Quill 25 years ago may be inadequate in today’s market. For example, New York’s highest court recently said that “[t]he world has changed dramatically in the last two decades, and it may be that the physical presence test is outdated.” Overstock.com, Inc. v. New York Department of Taxation and Finance, 20 N.Y.3d 586, 595 (2013). Despite this statement, the New York court maintained that the taxpayer must have some type of physical presence in the state.

It may be important to note that many of the authoritative cases, including Quill, interpret the substantial nexus requirement to involve a state sales and use tax, not a general excise tax, which is at issue here in Hawaii. It is unknown whether the tests under Quill will be applied to a general excise tax and whether the imposition of such a tax without a requirement of a physical presence in the state would ultimately be sustained under a Commerce Clause challenge. Furthermore, it may be important to note that the United States Supreme Court will be reevaluating the physical presence requirement under Quill when it reviews the arguments from South Dakota v. Wayfair Inc., 901 N.W.2d 754 (S.D. 2017), cert. granted, 2018 WL 386568 (U.S. Jan. 12, 2018) (No. 17-494), later this year.

Because the main purpose of this bill is to apply the state general excise tax to the activity of certain taxpayers with no physical presence in Hawaii, if this bill becomes law, a taxpayer may cite to the United States Supreme Court decisions of Quill and

Bellas Hess to challenge the State that the application of the general excise tax to a taxpayer with no physical presence in Hawaii violates the Commerce Clause of the United States Constitution.

Thank you for the opportunity to provide comments.



**STATE OF HAWAII
DEPARTMENT OF TAXATION**

830 PUNCHBOWL STREET, ROOM 221

HONOLULU, HAWAII 96813

<http://tax.hawaii.gov/>

Phone: (808) 587-1540 / Fax: (808) 587-1560

Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Rosalyn H. Baker, Chair
and Members of the Senate Committee on Commerce, Consumer Protection and Health

The Honorable Brian T. Taniguchi, Chair
and Members of the Senate Committee on Judiciary

Date: Wednesday, February 7, 2018
Time: 8:30 A.M.
Place: Conference Room 229, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2890, Relating to Taxation

The Department of Taxation (Department) supports the intent of S.B. 2890 and offers the following comments for the Committees' consideration.

S.B. 2890 amends the definition of "business" in Hawaii Revised Statutes section 237-2 by clarifying that a person with no physical presence in the State is engaged in business if the person has gross receipts attributable to transactions in this State totaling \$100,000 or more in any year. The bill is effective on July 1, 2018.

First, the Department notes that the bill would subject a taxpayer to the general excise tax (GET) if the taxpayer lacks physical presence, but had gross receipts of \$100,000 or more "in any year," which could be 10 or more years prior. The Department suggests amending this provision as follows:

A person with no physical presence in the State is engaged in business in this State if, in [~~any year,~~] the current or immediately preceding calendar year, the person has receipts attributable to transactions in this State totaling \$100,000 or more.

Second, the Department notes that the last sentence in the definition of "business"—which reads, "[g]ross receipts attributable to transactions in this State include gross receipts from

sales that, but for the seller's lack of physical presence, would be taxable under this chapter and are facilitated by a marketplace provider that is engaged in business in this State"—is ambiguous. It is unclear whether the sentence is attempting to define the gross receipts of a marketplace provider or a third-party seller.

If the intent of this provision is to impose GET on third-party sales made through a marketplace provider, the Department suggests adopting the language in Sections 1 and 2 of H.B. 1655, which deems the marketplace provider the seller of tangible personal property (TPP) and therefore subjects the marketplace provider to GET at the four-percent rate.

Section 1 of H.B. 1655 amends the definitions of "person" and "representative" in HRS section 237-1 as follows:

"Person" or "company" includes every individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, trustee in bankruptcy, or other entity, whether such persons are doing business for themselves or in a fiduciary capacity, and whether the individuals are residents or nonresidents of the State, and whether the corporation or other association is created or organized under the laws of the State or of another jurisdiction. Any person who ~~[has in the person's possession, for sale in the State, the property of a nonresident owner, other than as an employee of such owner,]~~ sells or assists in the sale of tangible personal property on behalf of another seller by providing customer service, processing payments, and controlling the fulfillment process shall be deemed the seller of the property, when sold[-], and the seller on whose behalf the sale is made shall be deemed to have made a sale at wholesale pursuant to section 237-4.

"Representative" means any salesperson, commission agent, manufacturer's representative, broker or other person who is authorized or employed by ~~[an unlicensed]~~ a seller to assist such seller in selling property for use in the State, by procuring orders for such sales or otherwise, and who carries on such activities in the State, it being immaterial whether such activities are regular or intermittent~~[- but the]~~. The term "representative" does not include [a]:

- (1) A manufacturer's representative whose functions are wholly promotional and to act as liaison between an unlicensed seller and a seller or sellers, and which do not include the procuring, soliciting or accepting of orders for property or the making of deliveries of property, or the collecting of payment for deliveries of property, or the keeping of books of account concerning property orders, deliveries or collections transpiring between an unlicensed seller and a seller or sellers[~~- Any unlicensed seller who in person carries on any such activity in the State shall also be classed as a representative.~~]; and
- (2) A person who sells or assists in the sale of tangible personal property on behalf of another seller and who provides customer service, processes payments, and controls the fulfillment process.

Section 2 of H.B. 1655 amends the definition of "import" in HRS section 238-1 as follows:

- "Import" (or any nounal, verbal, adverbial, adjective, or other equivalent of the term) includes:
- (1) The importation into the State of tangible property, services, or contracting owned, purchased from an unlicensed seller, or however acquired, from any other part of the United States or its possessions or from any foreign country, whether in interstate or foreign commerce, or both; [~~and~~]
 - (2) The sale and delivery of tangible personal property owned, purchased from an unlicensed seller, or however acquired, by a seller who is or should be licensed under the general excise tax law from an out-of-state location to an in-state purchaser, regardless of the free on board point or the place where title to the property transfers to the purchaser[~~-~~]; and
 - (3) The sale of tangible personal property by, or assisted by, a licensed seller who provides customer service, processes payments, and controls the fulfillment

process on behalf of an unlicensed seller
for delivery to a purchaser in the State.

The above-mentioned language in H.B. 1655, combined with the \$100,000 threshold in this bill, would result in the following:

- (1) A marketplace provider who lacks physical presence in the State will be subject to GET if a combination of its own sales and its marketplace sales (*i.e.*, sales for which it assisted or facilitated on behalf of another seller) for TPP delivered in the State total \$100,000 or more;
- (2) A marketplace provider 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 third-party sellers for TPP delivered in the State;
- (3) A third-party 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 provider for delivery in the State; and
- (4) If a third-party seller who is not doing business in the State makes a sale of TPP through a marketplace provider for delivery in the State, the marketplace provider 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 provider because instead of having to collect the retail rate of GET from numerous individual third-party sellers, the Department would only need to collect from one seller—the marketplace provider.

Finally, the Department notes that it will be able to administer the changes in this bill with the current effective date.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Define Doing Business Without Physical Presence;
Attribution from Marketplace Provider

BILL NUMBER: SB 2890

INTRODUCED BY: DELA CRUZ, S. Chang, Inouye, Kidani, Galuteria

EXECUTIVE SUMMARY: This is an attempt to adopt a form of “factor presence nexus,” namely a statement that substantial sales in a state give rise to a sufficient connection between the state and the seller to enable that state to impose sales tax or use tax collection obligations. While the measure may be subject to constitutional challenge, it is in line with other states’ measures increasing pressure on remote sellers to collect and remit sales and use taxes owed on purchases by customers in the state. It also provides for attribution of nexus from a “marketplace provider,” which is on firmer constitutional footing.

SYNOPSIS: Adds a definition of “marketplace provider” in HRS section 237-1 as “any person who sells or assists in the sale of tangible personal property on behalf of another seller and who provides customer service, processes payments, and controls the fulfillment process.”

Amends the definition of “business” or “engaging” in business in HRS section 237-2 to provide that a person with no physical presence in the State is engaged in “business” in this State if the person has gross receipts attributable to this State of \$100,000 or more. Also provides that gross receipts attributable to this State include gross receipts from sales that would be taxable under chapter 237 but for the physical presence of the seller, and are facilitated by a marketplace provider that is engaged in business in this State.

EFFECTIVE DATE: July 1, 2018.

STAFF COMMENTS: The United States Constitution has been interpreted as providing two limits on the states’ powers to tax. These limits come from at least two places: first, the Due Process Clause, requiring a person to have “minimum contacts” with a state before that state is allowed to exercise police powers, including the power to tax, against that person; and second, the Commerce Clause, where the Supreme Court held in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), that if the Congress does not otherwise define the threshold for taxability, state tax may not be imposed upon a person unless there is “substantial nexus” with that person. Substantial nexus is more than minimum contacts, and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), appears to stand for the proposition that some physical presence is needed to establish substantial nexus.

In Hawaii, section 237-22(a) HRS, states that there shall be excepted or deducted from the values, gross proceeds of sales, or gross income so much thereof as, under the Constitution and laws of the United States, the state is prohibited from taxing, but only so long as and only to the extent that the state is so prohibited. *In re Grayco Land Escrow, Ltd.*, 57 Haw. 436, 559 P.2d

264, *cert. denied*, 433 U.S. 910 (1977), established that Hawaii already extends its general excise and use taxes to reach the limit of the Constitution (“Thus, in plain and unmistakable language, the statute evidences the intention of the legislature to tax every form of business, subject to the taxing jurisdiction, not specifically exempted from its provisions.”).

This bill is trying to solve the problem, faced by all states that have enacted sales and use taxes, about collecting sales and use taxes on remote sellers. A seller with no physical presence in a customer’s state might see no obligation to collect and remit tax in the customer’s state. The customer would be liable for use tax, but tax departments throughout the country have met with little success in motivating such customers, especially those with small purchases, to pay use tax.

Nothing the legislature enacts will change the U.S. Constitution, and the bill may face constitutional challenge if enacted. Even so, the Multistate Tax Commission has recommended, and many states have enacted, “factor presence nexus” standards saying that nexus should be found when a taxpayer has a significant dollar amount of sales activity in the state, and these standards have motivated some of the larger remote sellers to agree to collect and remit sales and use taxes on that activity.

Amazon, the online retailer, registered for a Hawaii general excise tax license and started collecting and remitting Hawaii tax on online purchases effective April 1, 2017. We understand, however, that it is collecting and remitting tax on its own sales but is not doing so on “Amazon Marketplace” sales, where the company acts as a sales agent and a fulfillment agent for other, unrelated companies.

For marketplace sales, *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960), and *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue*, 483 U.S. 232 (1987), hold that substantial nexus can be established through an independently contracted sales agent who acts in a state on behalf of another. Thus, whether or not “economic nexus” is ultimately found to be constitutional, nexus can be attributed from a marketplace provider as stated in this bill.

Digested 1/31/2018

PETER L. FRITZ

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THE SENATE THE TWENTY-NINTH LEGISLATURE REGULAR SESSION OF 2018

COMMITTEE ON CONSUMER PROTECTION AND HEALTH and COMMITTEE ON JUDICIARY

Testimony on S.B. 2890
Hearing: February 7, 2018

Relating To Taxation

Chairs Baker and Tanaguchi, Vice Chairs Tokuda and Rhodes and members of the Committees. My name is Peter Fritz. I am a former Rules Specialist and a tax attorney. I am testifying today **in support** of S.B. 2890, however, I suggest the Committees consider S.B. 2871 because it also includes language that allows marketplace facilitators to elect to report sales to Hawaii. Requiring marketplace providers to report sales was upheld by the United States court of appeals for the tenth circuit 10th Circuit.

This bill would expand tax collection responsibilities to online marketplace providers and is essential to protect sales tax revenues and to level the playing field for “Main Street” retailers:

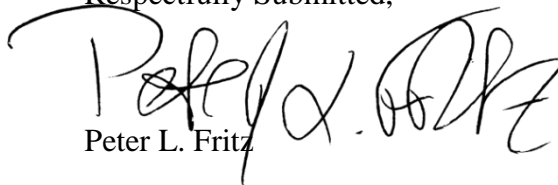
- This proposal does not increase taxes.
 - The taxes that would be collected by the online marketplace are legally owed by the purchasers. The proposal is a necessary, proactive response to the rapidly changing retail Internet economy.
- Amazon Marketplace, eBay, Etsy and other online marketplaces such as, represent a large and growing share of online retail sales.
 - 2016, ecommerce sales totaled \$5.71 trillion¹.
 - Retail sales on marketplaces grew in at nearly a 20% annual pace.
 - Over 2 million third party sellers operate on Amazon’s marketplace. eBay hosts 25 million sellers, and Etsy 1.6 million.
- Under the typical online marketplace business model, the marketplace provider 1) provides a forum in which third-party sellers are able to display their products and transact sales; and 2) facilitates the collection and processing of payments for these third-party sellers. As a general rule, however, online marketplaces do not collect tax as part of their service.
 - Amazon does not collect tax on sales for third-party sellers. It only remits tax on items “sold by Amazon.”
 - In the third quarter of 2017, Amazon reported that approximately 50% of its sales were on behalf of third-party sellers for which Amazon does not collect any tax

¹ William F. Fox “Inability to Collect Sales Tax on Remote Sales Still Harms the Economy” State Tax Notes, Nov. 6, 2017, p. 576.

- This dichotomy between the payment collector and the actual seller undermines a central feature of tax administration – collection of the tax by the seller from the purchaser on behalf of the state at the time of sale. In the online marketplace model, sellers receive their money from the online marketplace sometime after the sales transaction has occurred. By this time, the opportunity for the seller to collect the tax simultaneously with the sale has passed. Given this major breakdown in the tax collection structure, there is reason to believe noncompliance by third-party sellers is widespread.
- Under this bill, tax would be collected and remitted by the marketplace provider on sales to Hawaii by all third-party sellers, including those that do not have a presence (nexus) in the State. This helps to level the playing field for Hawaii’s “Main Street” stores.
- Hawaii is not the only state to pursue this type of legislation. Washington has enacted marketplace legislation that went into effect on January 1, 2018. Amazon announced that it would collect taxes on sales sourced to Washington by third-party marketplace sellers. Several other states have enacted marketplace legislation. A chart of states that have enacted different types of legislation to tax online sales is attached.
- The Committee should consider adding provisions that require remote sellers who meet a specified threshold of gross receipts from sales into Hawaii to have the option to collect general excise or use tax on taxable sales into the Hawaii or comply with certain general excise and use tax notice and reporting provisions. Colorado adopted a law requiring out-of-state retailers that do not collect Colorado's state sales tax to report tax-related information to their Colorado customers and the Colorado department of revenue. In 2016, the United States court of appeals for the tenth circuit upheld that law.
- The Committee should consider adding provisions to require the Department of Taxation to write rules to address sourcing, allowing the marketplace provider to rely on descriptions by the third-party seller and recovery of mistaken payments.

Thank you for the opportunity to testify.

Respectfully Submitted,



Peter L. Fritz

Remote Seller Nexus Chart

This chart lists the states that have passed one or more of the following types of legislation, along with the effective date for that type of legislation: Click-Through Nexus, Affiliate Nexus, Economic Nexus, Marketplace Nexus, and Use Tax Notice and Reporting Requirements.

Click-Through Nexus: If a retailer or service provider contracts with an individual or company located in-state who directly or indirectly refers potential customers to the retailer through a web link for a commission/other consideration upon sale, the retailer is considered to maintain a place of business in that state. Thresholds apply and vary by state. Pay-per-click, banner and other advertising do not qualify if payment is not contingent upon a sale.

Affiliate Nexus: If an affiliated person of the retailer with a physical presence, or employees or agents in state, has sufficient nexus in state to require the retailer to collect and remit sales and use taxes on taxable retail sales of tangible personal property or services. Some states have expanded these provisions to include activities by unrelated parties performed on the seller's behalf.

Economic Nexus: Generally, correlates with a set level of sales or gross receipts activity within the state. No physical presence is required.

Marketplace Nexus: If an online marketplace operates its business in a state and provides e-commerce infrastructure as well as customer service, payment processing services and marketing, the marketplace facilitator is required to register and collect tax as the retailer rather than the individual sellers. This could also impose reporting requirements on the marketplace facilitator.

Reporting Requirements: Retailer must notify buyers that they must pay and report state use tax on their purchases. Retailer may be required to send purchasers an annual statement of all of their purchases from the retailer.

State	Click-Through Nexus	Affiliate Nexus	Reporting Requirements	Economic Nexus	Marketplace Nexus
Alabama		8/24/2012	7/1/2017	1/1/2016	
Arizona					Ruling issued 9/20/2016
Arkansas	10/27/2011	10/27/2011			
California	9/15/2012	9/15/2012			
Colorado	7/1/2014	7/1/2014	7/1/2017		
Connecticut	5/4/2011				
Georgia	7/18/2012	10/1/2012			
Illinois	1/1/2015	7/1/2011			
Indiana				7/1/2017 - Challenged	
Iowa		6/11/2013			

Kansas	10/1/2013	7/1/2013			
Kentucky			7/1/2013		
Louisiana	4/1/2016	4/1/2016	7/1/2017		
Maine	10/9/2013	10/9/2013		10/1/17	
Massachusetts				Pending 10/1/17	
Michigan	10/1/2015	10/1/2015			
Minnesota	7/1/2013	Delayed			Delayed
Missouri	8/28/2013	8/28/2013			
Nevada	10/1/2015	7/1/2015			
New Jersey	7/1/2014				
New York	5/8/2008	6/1/2009			
North Carolina	8/7/2009				
North Dakota				Delayed	
Ohio	7/1/2015	7/1/2015		1/1/2018	
Oklahoma		6/9/2010 and 11/1/2016	6/9/2010 and 11/1/2016		
Pennsylvania	12/1/2011	12/1/2011			
Rhode Island	7/1/2009 and 8/17/2017	8/17/2017	8/17/2017	8/17/2017	8/17/2017
South Dakota		7/1/2011	7/1/2011	Appealed	
Tennessee	7/1/2015	1/1/2014	3/26/2012	Delayed	
Texas		1/1/2012			
Utah		7/1/2012			
Vermont	12/1/2015		5/24/2011 and July 1, 2017	Effective date pending SD legislation	
Virginia		9/1/2013			
Washington	9/1/2015		1/1/2018	B&O Tax only 9/1/2015 and expanded 7/1/2017	1/1/2018
West Virginia		1/1/2014			
Wyoming				Delayed	



**Testimony to the Senate Committee on Consumer Protection & Health
and Committee on Judiciary
Wednesday, February 7, 2018 at 8:30 A.M.
Conference Room 229, State Capitol**

RE: SENATE BILL 2890 RELATING TO TAXATION

Chairs Baker and Taniguchi, Vice Chairs Tokuda and Rhoads, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports the intent of SB 2890**, which amends the general excise tax law by adding a definition for “marketplace provider.” Provides that a person with no physical presence in the State shall be considered to be engaged in business in the State if, in a year, the person has gross receipts attributable to transactions in the State totaling \$100,000 or more.

The Chamber is Hawaii’s leading statewide business advocacy organization, representing about 2,000+ 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.

We support the intent of this bill to help ensure that local stores with bricks-and-mortar locations in Hawaii will be on a level playing field with internet sellers as internet sellers would be subject to the same taxes as the in-state businesses.

From a legal standpoint, it is our understanding that this bill may be premature as technically, this statute would violate existing US Supreme Court precedent, which continues to state that a physical presence is necessary in a state before you can be taxed. The case that makes this statement, the “Quill” decision, is currently being challenged at the US Supreme Court. If enacted before the Supreme Court decision is announced, it could potentially be contrary to existing law.

Thank you for the opportunity to testify.



LATE

**TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
February 7, 2018**

SB 2890 Relating to Taxation

Good morning Chair Baker and Chair Taniguchi and members of the Senate Committee on Commerce, Consumer Protection and Health and the Senate Committee on Judiciary. I am Tina Yamaki, President of the Retail Merchants of Hawaii and I appreciate this opportunity to testify.

The Retail Merchants of Hawaii (RMH) is a statewide not-for-profit trade organization 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.

The Retail Merchants of Hawaii strongly supports SB 2890 Relating to Taxation. Our local brick and mortar stores are the economic backbones of our communities that provide employment and tax revenue to fund vital services throughout the State. Many of our retailers statewide are already operating on a thin margin, especially mom and pop stores. This measure would provide e-fairness by leveling the playing field for businesses in our community.

Currently under the existing state law, consumers are required to pay the General Excise Tax on the goods they purchase in the brick and mortar stores physically located in the state of Hawaii. However, if local consumers shop on line, sellers are not required to collect a tax in the same way our local businesses do. This puts our local retailers at a disadvantage as this effectively makes products purchased at brick-and-mortar stores more expensive than products purchased online.

Although news last year that Amazon will begin charging tax on Hawaii purchases was a step in the right direction, they are only a 1% tax and NOT the 4% on neighbor islands and 4.5% for Oahu customers that our local brick and mortar stores have to charge. Furthermore, third party sellers on Amazon do not charge the tax. There are so many more online retailers like QVC, Wayfair, Overstock, Ebay, Vista Print, Etsy and Shoe Dazzle to name a few that are also not collecting taxes. Because of this, Hawaii is missing out on millions of dollars on uncollected use tax from remote sales. And every year online sales has been increasing substantially.

We urge you to support SB 2890.

Again mahalo for this opportunity to testify.

January 31, 2018

Senator Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

IN SUPPORT OF
S.B. NO 2890

LATE

RE: Relating to Taxation (S.B. NO 2890)

Dear Senator Dela Cruz:

I am a local business owner located in Hawaii, and I am writing to urge your support of S.B. No. 2890, regarding taxation of online marketplace providers, such as Amazon and eBay. This bill will ensure Hawaii and its citizens receive all the retail taxes it is entitled to, by closing the online "marketplace" loophole.

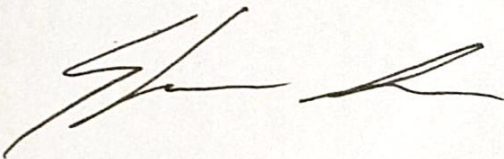
For too long has the supposed "marketplace" loophole allowed online businesses, like Amazon, to thrive by avoiding its obligation to collect or pay retail taxes on approximately half of its sales to Hawaiian residents. For too long has Amazon been claiming the existence of a "marketplace" loophole so it can operate as an unauthorized "duty-free" shop in the state of Hawaii, putting local businesses at a severe economic disadvantage. And for too long, has Amazon's unauthorized "duty-free" status resulted in the closing of local businesses, and the permanent loss of jobs in this state.

Who is responsible for cleaning up the economic mess from Amazon's tax games? Who bears the financial burdens of supporting our fellow citizens, who lost their jobs in the aftermath of Amazon's destructive economic force? It's not Amazon. It's the state Hawaii, and its citizens, who bear that burden. S.B. No. 2890 cannot undo the local economic damage that Amazon's tax games have already done. However, S.B. No. 2890 can help prevent Amazon from doing any further damage.

On January 1st, 2018 the State of Washington was the first state in the nation to have a law like S.B. no. 2890 take effect. Now, Amazon collects retail taxes on 100% of its sales to Washington residents, as opposed to only 50% in Hawaii. We believe it's now Hawaii's turn to act and put an end to Amazon's "duty-free" status, in this state, once and for all.

For these reasons, we urge you to support S.B. NO 2890.

Sincerely,



Shawn Lee

Dripton LLC

1499 Alencastre St

Honolulu, HI 96816

January 31, 2018

Senator Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

IN SUPPORT OF
S.B. NO 2890

LATE

RE: Relating to Taxation (S.B. NO 2890)

Dear Senator Dela Cruz:

I am a local businessowner located in Hawaii, and I am writing to urge your support of S.B. No. 2890, regarding taxation of online marketplace providers, such as Amazon and eBay. This bill will ensure Hawaii and its citizens receive all the retail taxes it is entitled to, by closing the online “marketplace” loophole.

For too long has the supposed “marketplace” loophole allowed online businesses, like Amazon, to thrive by avoiding its obligation to collect or pay retail taxes on approximately half of its sales to Hawaiian residents. For too long has Amazon been claiming the existence of a “marketplace” loophole so it can operate as an unauthorized “duty-free” shop in the state of Hawaii, putting local businesses at a severe economic disadvantage. And for too long, has Amazon’s unauthorized “duty-free” status resulted in the closing of local businesses, and the permanent loss of jobs in this state.

Who is responsible for cleaning up the economic mess from Amazon’s tax games? Who bears the financial burdens of supporting our fellow citizens, who lost their jobs in the aftermath of Amazon’s destructive economic force? It’s not Amazon. It’s the state Hawaii, and its citizens, who bear that burden. S.B. No. 2890 cannot undo the local economic damage that Amazon’s tax games have already done. However, S.B. No. 2890 can help prevent Amazon from doing any further damage.

On January 1st, 2018 the State of Washington was the first state in the nation to have a law like S.B. no. 2890 take effect. Now, Amazon collects retail taxes on 100% of its sales to Washington residents, as opposed to only 50% in Hawaii. We believe it’s now Hawaii’s turn to act and put an end to Amazon’s “duty-free” status, in this state, once and for all.

For these reasons, we urge you to support S.B. NO 2890.

Sincerely,



Viraphanh Sananikone

Hanalei Company

3615 Harding Avenue #409

Honolulu, HI 96816

January 31, 2018

Senator Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

RE: Relating to Taxation (S.B. NO 2890)

Dear Senator Dela Cruz:

IN SUPPORT OF
S.B. NO 2890

LATE

I am a local businessowner located in Hawaii, and I am writing to urge your support of S.B. No. 2890, regarding taxation of online marketplace providers, such as Amazon and eBay. This bill will ensure Hawaii and its citizens receive all the retail taxes it is entitled to, by closing the online "marketplace" loophole.

For too long has the supposed "marketplace" loophole allowed online businesses, like Amazon, to thrive by avoiding its obligation to collect or pay retail taxes on approximately half of its sales to Hawaiian residents. For too long has Amazon been claiming the existence of a "marketplace" loophole so it can operate as an unauthorized "duty-free" shop in the state of Hawaii, putting local businesses at a severe economic disadvantage. And for too long, has Amazon's unauthorized "duty-free" status resulted in the closing of local businesses, and the permanent loss of jobs in this state.

Who is responsible for cleaning up the economic mess from Amazon's tax games? Who bears the financial burdens of supporting our fellow citizens, who lost their jobs in the aftermath of Amazon's destructive economic force? It's not Amazon. It's the state Hawaii, and its citizens, who bear that burden. S.B. No. 2890 cannot undo the local economic damage that Amazon's tax games have already done. However, S.B. No. 2890 can help prevent Amazon from doing any further damage.

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For these reasons, we urge you to support S.B. NO 2890.

Sincerely,

Tchad Henderson

Kiva Health Brands

99 1295 Waiua, PL Unit B1

Aiea, HI 96701

January 31, 2018

Senator Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

IN SUPPORT OF
S.B. NO 2890

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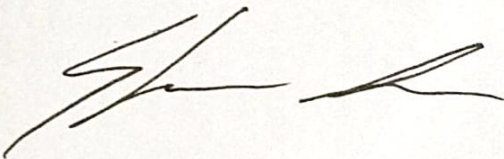
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Sincerely,



Shawn Lee

Dripton LLC

1499 Alencastre St

Honolulu, HI 96816

January 31, 2018

Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

RE: Relating to Taxation (S.B. NO 2890)

Dear Senator Dela Cruz:

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Thus Amazon, the retailer on record, has an unfair tax advantage over local retail businesses. This bill will maintain that Amazon will be held solely responsible for sales tax on ALL sales on their site, and ensure a fair competitive landscape for all retail businesses online and offline.

As the retailer, Amazon should be held responsible for collecting sales tax of all goods sold on their site. Amazon's role is no different from that of Walmart, Best Buy, or a small retailers like ours that sell both inventory purchased at wholesale or on consignment.

By allowing Amazon to avoid its tax liability, we are granting it an unfair price advantage. Brick-and-mortar retailers must always adapt to compete with online pricing, but it is impossible to compete with not paying taxes.

Our small business helps provide for the livelihood of all our employees and their families in Hawaii. Allowing Amazon to avoid collecting and remitting sales tax on 3rd-party supplied product sales will harm many local retail businesses and directly hurt the Hawaiian economy. This bill will deny Amazon that unfair advantage and help support thousands of independent businesses like ours. For these reasons, I strongly request your support for S.B. NO 2890.

Sincerely,



Ted Mays
Gecko Books and Comics
1151 12th Avenue
Honolulu, HI 96816

January 31, 2018

Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

IN SUPPORT OF
S.B. NO 2890

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Sincerely,



Alys Nguyen
Integrative Health
1144 Koko Head Ave Suite 201
Honolulu, HI 96816

January 31, 2018

Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

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Sincerely,



Neil Sananikone
Kaimuki Camera
3622 Waiialae Avenue
Honolulu, HI 96816

January 31, 2018

Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

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Richard Miyasaka

January 31, 2018

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Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

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Sincerely,



Jimmy Miyasaka
WUCO Athletics LLC
3615 Harding Avenue #208
Honolulu, HI 96816

January 31, 2018

Senator Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

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For these reasons, we urge you to support S.B. NO 2890.

Sincerely,



Alice Kim

Elizabeth Mott

3615 Harding Avenue #408

Honolulu, HI 96816

Super Foods, Inc.

P. O. Box 30332 Honolulu, Hawaii 96820, U.S.A.

Phone (808) 834-1541 Fax (808) 839-3636

January 31, 2018

Donovan Dela Cruz
Hawaii State Senate
415 S Beretania St
Honolulu, HI 96813

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RE: Relating to Taxation (S.B. NO 2890)

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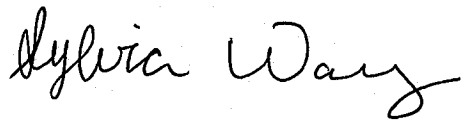
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Sincerely,

A handwritten signature in black ink that reads "Sylvia Wang". The signature is written in a cursive, flowing style.

Sylvia Wang
Super Foods, Inc.