

Honolulu, Hawaii

MAY 01 2009 , 2009

RE: S.B. No. 1678  
S.D. 3  
H.D. 1  
C.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam and Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1678, S.D. 3, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to improve the State's ability to capture taxes owed by out-of-state businesses by specifying the business activities that would constitute a sufficient connection with Hawaii to enable the State to impose a general excise tax on these activities.

Specifically, this measure clarifies the definition of "engaging" in business under the general excise tax law by:

- (1) Including the sale of tangible personal property by a person soliciting business, through an independent



contractor, with a resident in Hawaii who is paid to refer potential customers to the person;

- (2) Exempting sales so solicited if the cumulative gross receipts for a twelve-month period are less than \$10,000; and
- (3) Allowing a rebuttal of the presumption of engaging in business through such solicitation if the independent contractor did not engage in any solicitation in Hawaii on behalf of the person that would satisfy the nexus requirement of the United States Constitution.

Upon further consideration, your Committee on Conference finds that Act 173, Session Laws of Hawaii 2003, the Hawaii Simplified Sales and Use Tax Administration Act allowed the State to become a participating member of the National Streamlined Sales Tax Project. The Project was intended to prepare member states to participate in the Streamlined Sales and Use Tax Agreement (Agreement). Participation in the Agreement would allow the State to level the playing field with respect to assisting local businesses to better compete with mail order and internet sellers who may not necessarily be paying their fair share of state taxes. Your Committee finds that participation in the Agreement is of particular importance at this time, as it would assist the State in the collection of additional revenue to address a projected budgetary shortfall and reduced projected tax collections.

Your Committee on Conference also finds that as a final step to the State's participation in the Agreement, necessary legislation to conform certain state tax laws to the requirements of the Streamlined Sales and Use Tax Agreement is required.

Accordingly, your Committee on Conference has amended this measure by deleting sections 1 through 4 and inserting provisions that would enable the State to participate in the Streamlined Sales and Use Tax Agreement. As amended, this measure, among other things:

- (1) Moves the one-half of one per cent tax rate for wholesale transactions to a new chapter;
- (2) Adds a new chapter on the taxation of imports of property, services, and contracting;



- (3) Moves the 0.15 per cent tax on insurance producers to a new chapter;
- (4) Eliminates the tax on businesses owned by disabled persons;
- (5) Provides destination-based sourcing and amnesty;
- (6) Requires that all tax revenues generated by this measure are to be deposited into the state treasury rather than being directed towards specific purposes;
- (7) Deletes the Department of Taxation's exemption from chapter 103D, Hawaii Revised Statutes, when securing outside services to support this measure; and
- (8) Makes technical, nonsubstantive amendments for the purpose of clarity.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1678, S.D. 3, H.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as S.B. No. 1678, S.D. 3, H.D. 1, C.D. 1.

Respectfully submitted on behalf  
of the managers:

ON THE PART OF THE HOUSE


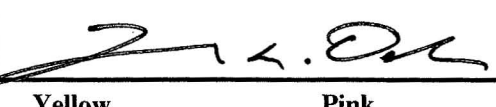
ON THE PART OF THE SENATE

  
MARCUS R. OSHIRO, Chair  
CAROL FUKUNAGA, Chair  
SHAN S. TSUTSUI, Co-Chair

## Hawaii State Legislature

Record of Votes of a  
Conference Committee

CER 169

|   |   |                            |   |   |   |   |                               |   |                              |
|---|---|----------------------------|---|---|---|---|-------------------------------|---|------------------------------|
| Bill / Concurrent Resolution No.:<br><b>SB 1678, SD 3, HD 1</b>   |   |                            |   |   | Date/Time:<br><b>MAY 1, 2009 3:45 PM</b>  |   |                               |   |                              |
| <input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).            |   |                            |   |   |   |   |                               |   |                              |
| <input type="checkbox"/> The Committee is reconsidering its previous decision.  |   |                            |   |   |   |   |                               |   |                              |
| <input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure |   |                            |   |   | <input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure. |   |                               |   |                              |
| Senate Managers   | A | WR                         | N | E | House Managers  | A | WR                            | N | E                            |
| <b>FUKUNAGA, Carol, chr.</b>  | ✓ |                            |   |   | <b>OSHIRO, Marcus, Chr.</b>   | ✓ |                               |   |                              |
| <b>TSUTSUI, Shan, co-Chr.</b>   | ✓ |                            |   |   | <b>CHONG, Pono</b>  | ✓ |                               |   |                              |
| <b>IGE, David</b>   |   |                            |   | ✓ | <b>CHOY, Isaac</b>  | ✓ |                               |   |                              |
|   |   |                            |   |   | <b>LEE, Marilyn</b>   | ✓ |                               |   |                              |
|   |   |                            |   |   | <b>WARD, Gene</b>   |   |                               |   | ✓                            |
|   |   |                            |   |   |   |   |                               |   |                              |
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| TOTAL   | 2 | 0                          | 0 | 1 | TOTAL   | 4 | 0                             | 0 | 1                            |
| A = Aye   |   | WR = Aye with Reservations |   |   | N = Nay   |   | E = Excused                   |   |                              |
| Senate Recommendation is:   |   |                            |   |   | House Recommendation is:  |   |                               |   |                              |
| <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted  |   |                            |   |   | <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted  |   |                               |   |                              |
| Senate Lead Chair's or Designee's Signature:  |   |                            |   |   | House Lead Chair's or Designee's Signature:   |   |                               |   |                              |
|    |   |                            |   |   |   |   |                               |   |                              |
| Distribution:   |   |                            |   |   | Distribution:   |   |                               |   |                              |
| Original<br>File with Conference Committee Report   |   |                            |   |   | Yellow<br>House Clerk's Office  |   | Pink<br>Senate Clerk's Office |   | Goldenrod<br>Drafting Agency |