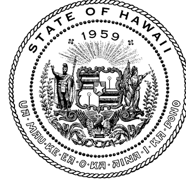
DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Tuesday, April 4, 2017
Time: 3:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 620, S.D. 2, H.D. 1, Proposed H.D.2, Relating to Taxation

The Department of Taxation (Department) appreciates the intent of S.B. 620, S.D. 2, H.D. 1, Proposed H.D. 2, and provides the following comments for your consideration.

Part I of S.B. 620. S.D. 2, H.D. 1, Proposed H.D. 2, requires retailers not required to pay general excise tax (GET), who have sales into the State of $100,000 per year or more, to report the amounts of purchases made from them for use in the State of Hawaii both to their purchasers and to the Department. Part I of the bill is similar to a Colorado law which was recently upheld in court.

Part II of S.B. 620. S.D. 2, H.D. 1, Proposed H.D. 2, amends the definition of business in the GET to state that doing "business," for purposes of the GET, does not require a physical presence as long as the taxpayer has $100,000 or more of gross receipts attributable to Hawaii and has a computer server in the state. The bill has a defective effective date of July 1, 2112.

The H.D. 1 version of the bill only includes the amendment to the definition of business for purposes of the GET and has a defective effective date of July 1, 2059.

Part I:

First, the Department notes that this measure focuses on informational use tax reporting. The information is important to use tax collection; however, the information itself does not answer the question about how these taxes can be collected from the purchasers in the State of Hawaii. The use tax, codified at Chapter 238, Hawaii Revised Statutes, is imposed on a Hawaii purchaser when goods, services, etc. are purchased from a seller that does not have nexus with Hawaii. The use tax may be imposed on any taxpayer, whether an individual or an entity.

Since the use tax is imposed per purchaser, the efficient enforcement and collection of this use tax revenue remains difficult. For example, if an individual purchases $2,000 of

products from a retailer, and thus owes $80 in use tax, the Department must bill and collect from an individual taxpayer to realize the $80. This effort would be required for each potential taxpayer, which could be hundreds of thousands of individual taxpayers.

To address this, the Department recommended adding a provision to a similar bill to provide relief from the reporting requirements to retailers who voluntarily collect and pay use tax on their Hawaii sales. Such a provision has been added to this bill. The Department appreciates this addition. Voluntary collection would alleviate the heavy compliance burden on the Department and seems to be the most efficient method of collecting the use tax revenue. If a measure like Part I were passed the Department will require an appropriation as well as additional staff positions to use the information to collect the use tax.

Second, the Department notes that as written, the trigger for reporting is simply that the sale is made “for use in the State.” The Department suggests that this sourcing provision be clarified so that there is no confusion as to which transactions are subject to reporting under this measure. For example, the bill should specify how the sale of tangible personal property should be sourced.

Part II:

First, the Department notes that this measure addresses the State law issue of whether a seller without physical presence in Hawaii is engaged in business, and therefore, subject to GET. A bright line test like Hawaii sales of $100,000 or more will clarify the State’s position. However, amending Hawaii’s law, as this bill proposes, would only remove the main challenge based on State law; this measure would not prevent a Commerce Clause (nexus) challenge under the United States Constitution.

The Hawaii Supreme Court has applied the nexus test from *Tyler Pipe Indus., Inc. v. Washington Dept. of Revenue*, 483 U.S. 232 (1987) when determining whether application of the GET statute violates the Commerce Clause. See *Tax Appeal of Baker & Taylor*, 82 P.3d 804 (2004). The *Tyler Pipe* test does not depend on physical presence, but instead turns on “whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer’s ability to establish and maintain a market in the state.” Thus, under current Hawaii Supreme Court jurisprudence, the proposed $100,000 sales threshold coupled with the requirement that the taxpayer have a computer server in the State will likely withstand a Commerce Clause (nexus) challenge despite the explicit exclusion of a physical presence requirement.

However, any taxpayer challenging the statute would attempt to apply *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). In this case, the United States Supreme Court held that a seller must have a physical presence in a State to be subject to that State’s sales and use tax collection requirements. This requirement of physical presence is rooted in the Commerce Clause of the United States Constitution and will not be affected by the amendment to State law proposed by this bill. If the rule from *Quill* is applied, any application of the GET to a taxpayer without a physical presence in the State will be in violation of the Commerce Clause.

The Department notes that the requirement to have a computer server physically located in the state may be considered a physical presence in the state for purposes of meeting the *Quill* physical presence standard. Given this, the Department recommends that the references to no physical presence in the state be removed, and that the bill simply state that a person is engaged in business in the state if their sales are $100,000 or more and they have a computer server physically located in the state. As written, the bill's language implies that a computer server physically located in the state is *not* physical presence. This means that if a court did apply *Quill* to the GET as amended by this bill, this bill's own terms would cause it to fail, notwithstanding the inclusion of the computer server requirement. If the computer server requirement is kept, the Department recommends the following language:

> "Business" as used in this chapter, includes all activities (personal, professional, or corporate), engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect, ~~without regard to physical presence in the State,~~ but does not include casual sales[~~.~~]; provided 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 and has a computer server physically present in this State that is used for gain or economic benefit.

Thus, if passed and enforced, this measure will likely lead to litigation, and may not lead to additional revenue for the State, because affected taxpayers may still obtain relief under the Commerce Clause of the U.S. Constitution.

Thank you for the opportunity to provide comments.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: GENERAL EXCISE, Define Doing Business Without Physical Presence; Reporting Requirement for Direct Sellers

BILL NUMBER: SB 620, Proposed HD-2

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Part I is based on a Colorado statute upheld in federal court. 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 has the potential to aid significantly in the enforcement and collection of GET and use taxes imposed under current law.

Part II adopts 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.

SYNOPSIS: Part I adds a new section to HRS chapter 231 requiring that each retailer or vendor making sales of tangible personal property from a place of business outside the State for use in the State that is not required to pay or collect general excise or use tax shall send notifications to all purchasers in the State by January 31 of each year to the effect that the State requires a use tax return to be filed and use tax paid.

Provides that the notification shall be sent separately to all purchasers by first class mail and shall not be included with any other shipments. The notification is to include "Important Tax Document Enclosed" on the exterior of the mailing.

Requires each retailer or vendor subject to this requirement to file an annual statement showing the total amount paid for purchases during the preceding calendar year. The statement is to be filed with the department on or before March 1 of each year.

Provides that the penalty for failing to comply is $10 for each purchaser not notified, or $10 for each purchaser that should have been included in a non-filed annual report. A reasonable cause exception is provided.

Provides that the department shall not fine, charge interest on, or penalize in any other way, an individual who receives notification from a retailer or vendor about the individual's responsibility to pay the use tax as provided for in this section and shall only require payment of the use tax by the individual.

Part II 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.

EFFECTIVE DATE: July 1, 2112.

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, of course, 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.

Colorado came up with an interesting solution to its problem. They figured they couldn't make all retailers collect and pay the tax over. However, they did pass a law saying that if a retailer selling to a Colorado consumer doesn't pay the tax, it must do three things. First, the retailer must advise the consumer that Colorado use tax is due on the purchase. Second, the retailer must send a summary of all purchases made during the year to the consumer if those purchases total $500 or more. Third, the retailer must send a summary to the Colorado Department of Revenue similar to IRS Form 1099 reporting requirements. Penalties are imposed against noncompliant retailers. The penalty amount is $10 per purchaser for failing to send the purchaser statement, and $10 per purchaser that should have been included in a report for failure to file the statement.

The Direct Marketing Association, or the DMA, whose members include many online retailers, sued in federal court asking for an injunction against enforcing these requirements, which they contended were discriminatory and unconstitutional. The U.S. District Court found them to be an undue burden on interstate commerce and granted a permanent injunction. The Department of Revenue appealed to the Tenth Circuit. After a trip to the U.S. Supreme Court, the Tenth Circuit

reached the merits and upheld the statute. *Direct Marketing Association v. Brohl,* No. 12-1175 (10th Cir. Feb. 22, 2016). The Supreme Court denied review on December 12, 2016.

Nothing the legislature enacts will change the U.S. Constitution, and the bill may face constitutional challenge if enacted. However, Part I appears to be patterned after the Colorado statute upheld by the Tenth Circuit.

One provision in proposed Part I is troubling. It states that the department "shall not fine, charge interest on, or penalize in any other way, an individual who receives notification from a retailer or vendor about the individual's responsibility to pay the use tax as provided for in this section and shall only require payment of the use tax by the individual." That provision seems to reward people who receive notification from a retailer or vendor and then disregard it. Not only is there no penalty, but a tax scofflaw could hold on to the tax money for a long time and only would be required to pay the principal amount if and/or when the person got caught, giving the scofflaw the benefit of the time value of that money. As such, it is sending entirely the wrong message to those of us who are law-abiding and who would act in response to a notification after receiving it.

Regarding Part II, 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.

Specifically, it was recently announced that Amazon, the online retailer, will be collecting and remitting Hawaii tax on online purchases effective April 1, 2017. If proposed legislation such as this is motivating online sellers to come to the table, the legislation may well be having its desired effect.

Digested 4/1/2017

•
3610 Waialae Ave
Honolulu, HI 96816
P: (808) 592-4200
E: tyamaki@rmhawaii.org

TESTIMONY OF TINA YAMAKI
PRESIDENT
RETAIL MERCHANTS OF HAWAII
April 4, 2017

Re: SB 620 SD 2 HD1 Relating to Taxation

Good afternoon Chair Luke and members of the Committee on Finance. 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 representing 200 members and over 2,000 storefronts, and 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 **supports SB 620 SD2 PROPOSED HD2** 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 stores physically located in the state of Hawaii. However, if they 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.

In 2012, the National Conference of State Legislators did a study on E-Fairness conducted by the University of Tennessee. The study indicated that Hawaii's uncollected use tax from remote sales equaled to $60,000,000 in Electronic Business to Business and Business to Customer. Every year since then online business has been increasing substantially.

With Amazon charging tax on Hawaii purchases is a step in the right direction. However there are so many more online retailers like Overstock, Kohls, QVC, Wayfair, HSN to name a few that are not collecting taxes.

We urge you to support SB 620 SD2 PROPOSED HD2 and have the state of Hawaii join the 40+ other states that have enacted similar e-fairness legislation.

Again mahalo for this opportunity to testify.

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Finance
Tuesday, April 4, 2017 at 3:00 P.M.
Conference Room 308, State Capitol

RE: SENATE BILL 620 SD2 PROPOSED HD2 RELATING TO TAXATION

Chair Luke, Vice Chair Cullen, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 620 SD2 HD1, which requires retailers or vendors that are not located in the State and not required to pay or collect general excise or use tax for sales to send certain information to purchasers in the State; requires retailers or vendors to submit an annual report to the department of taxation; exempts retailers or vendors who voluntarily collect and pay use tax to the department of taxation to be exempt from this requirement; prohibits the department of taxation from assessing fines, charging interest, or penalizing in any way an individual who receives notification and does not pay the use tax; amends the definition of business under Hawaii's general excise tax law.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,600+ 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.

Currently, many internet-based retailers and vendors unfairly benefit from the State's inability to enforce the Use Tax against individual purchasers. The result is often lost revenue by the State and lost sales by conventional and "brick and mortar" retailers, many of which provide employment opportunities for our residents. This bill amends the definition of "business" in the State's general excise tax law and could help eliminate this tax gap. We believe that measures such as these provide fairness and equity for all businesses.

Thank you for the opportunity to testify.

1132 Bishop Street, Suite 2105 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

PETER L. FRITZ
TELEPHONE (SPRINT RELAY): (808) 568-0077
E-MAIL: PLFLEGIS@FRITZHQ.COM

HOUSE OF REPRESENTATIVES
THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

COMMITTEE ON FINANCE
Testimony on S.B. 620 SD2 HD1 Proposed HD2
Hearing: April 4, 2017
Relating To Taxation

Chair Luke, Vice Chair Cullen and members of the Committee. My name is Peter Fritz. I am a former Rules Specialist with the Department of Taxation, and attorney that has been involved in drafting bills relating to taxation of Internet purchases for this and previous legislative sessions. I am testifying in **strong support** of S.B. 620 SD2, HD1, HD2 proposed.

The estimate for lost taxes for Internet purchases for companies that do not pay Hawaii's General Excise Tax ("GET") is $15 million. It has been reported that Amazon will voluntarily begin paying GET on goods shipped to Hawaii customers beginning in April; however, because Amazon is responsible for approximately 50% of all Internet sales Amazon's agreement may result in additional revenues of approximately $7.5 million, not $15 million.

For Hawaii to possibly collect the $7.5 million that may be owed by other companies, Hawaii needs to enact a law establishing a basis for taxing these companies. Without such a law, companies may take the position that they can refuse to pay taxes on the sale to Hawaii consumers. Part I, Section 1 and Part II Section 2 of this bill, provide a basis for collecting information to enable tax collection or collection of the GET.

Part I, Section 1 of S.B. 620 SD2 HD1 proposed HD2 imposes a reporting requirement on remote sellers <u>who are not subject</u> to Hawaii's GET. Remote sellers would be required to report the amount of sales to Hawaii to the state. This section of the proposed bill was drafted to follow a Colorado law that the United States Supreme Court ("USSC") let stand that imposed reporting requirements for online sellers to notify customers and the state of how much a customer purchased so that the customer can pay the use tax on imported into Hawaii for consumption. The Colorado decision was from the Federal Appeals Court for the 10th Circuit. Decisions of the 10th circuit are not binding on the 9th Circuit which hears appeals from Hawaii. However, because the USSC allowed the Colorado law to stand, it is likely that the USSC would not overturn the Hawaii reporting law that is similar to the Colorado law.

The Finance committee may want to consider deleting Section 1(h) which provides that the Department of Taxation ("Department" or "DOTAX") will not fine, charge interest on, or penalize in any other way, an individual who receives notification from a retailer or vendor about the individual's responsibility to pay the use tax. The Department may only require that the individual pay the tax due. In my opinion, this "amnesty provision" will only encourage people not to pay the tax because there are no consequences for failure to pay the tax. People and companies could purchase items and willfully and knowingly refuse to pay the use tax reflected on a statement form a vendor knowing that there are no consequences and only pay use tax

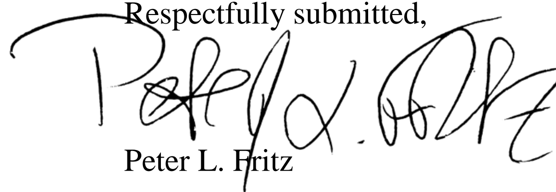
when the DOTAX sends a notice asking for payment. DOTAX could always decide to open an amnesty program at a later date.

Part II, Section 2 of S.B. 620 SD2 HD1 proposed HD2 states that a company is obligated to collect tax on in-state sales based solely on the volume of sales in the state without regard to any physical presence in the state. The threshold is $100,000 of sales a year. This bill would require large online companies to collet tax on sales to Hawaii because the companies have "economic nexus" for GET purposes. This may be unconstitutional in light of Quill Corp v. North Dakota, 504 U.S. 298 (1992) (Quill) because Quill requires a physical presence before being subject to a state's sales tax because collecting sales tax could burden interstate commerce. However, Justice Kennedy of the United States Supreme Court wrote in his concurring opinion in Direct Marketing. v. Brohl: "The legal system should find an appropriate case for this Court to reexamine Quill . . ." Direct Mktg. v. Brohl, 135 S. Ct. 1124, 1134 (2015) (J., Kennedy concurring). "Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court's holding in Quill. A case questionable even when decided, Quill now harms States to a degree far greater than could have been anticipated earlier." Id. at 1135. It is possible that the United States Supreme Court could find that requiring remote sellers to collect sales or GET is not a burden on interstate commerce and overrule Quill.

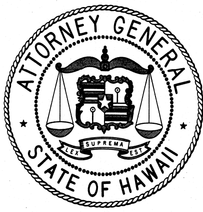
In addition, as the Attorney General noted in earlier testimony, Quill involved a state sales tax and Hawaii's GET is not a sales tax. The GET is a tax on gross receipts. Multiplying an entity's Hawaii gross receipts by 4.0% (and .05% for the county surcharge) is hardly the same burden imposed by calculating the tax on each individual sale. If an entity wants to pass on the tax, it is the entity's choice to accept the burden of a visible pass on of the tax. A visible pass on is not required. The Attorney General's also notes in its testimony that the Hawaii Supreme Court stated "our case law does not support the contention that the taxpayer must have a physical presence in the state." Travelocity.com, L.P. v. Director of Taxation, 135 Hawaii 88 (2015). In the current environment, a company may voluntarily agree to collect GET instead of litigating because of the uncertainty of the outcome of the litigation.

Thank you for the opportunity to testify.

Respectfully submitted,



Peter L. Fritz



TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017

LATE

ON THE FOLLOWING MEASURE:
S.B. NO. 620, S.D. 2, H.D. 1, PROPOSED H.D. 2, RELATING TO TAXATION.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, April 4, 2017 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Stacie M. Nakamura, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General has concerns about the Proposed House Draft 2 because it might be subject to challenge as violating the Commerce Clause of the United States Constitution.

The purpose of this bill is to require certain retailers and vendors outside of the State to annually report to Hawaii purchasers and to the Department of Taxation the amounts sold to Hawaii purchasers. Retailers or vendors that voluntarily collect and pay the use tax owed to the Department of Taxation would not be subject to the requirement. The bill also amends the definition of "business" in chapter 237, Hawaii Revised Statutes, relating to the general excise tax, to clarify that a person with no physical presence in Hawaii is engaged in "business" in the State if the person's gross receipts attributable to Hawaii is $100,000 or more and if the person has a computer server used for gain or economic benefit in the State.

Section 1 of the bill, which proposes to require certain retailers and vendors outside of the State to annually report related sales to purchasers in the State and to the Department of Taxation, may be subject to challenge as violating the Commerce Clause of the United States Constitution. The requirements in section 1 of the bill are similar to the requirements in a Colorado statute that was challenged by a group of business organizations in both state and federal courts as violating the Commerce Clause. Although the state court enjoined enforcement of the Colorado law and the federal

district court held that the Colorado law violated the Constitution, the United States Tenth Circuit Court of Appeals subsequently ruled that the law did not violate the Constitution. The United States Supreme Court denied review of the case. Direct Mktg. Ass'n v. Brohl, 814 F.3d 1129 (10th Cir. 2016), cert. denied, 137 S. Ct. 591, 196 L. Ed. 2d 473 (2016). Because the Tenth Circuit Court opinion is not binding in the Ninth Circuit, of which Hawaii is a part, those who oppose the requirement under this bill might challenge the law in Hawaii. It is an open question as to whether a Hawaii court will uphold the constitutionality of Hawaii's version of the Colorado law.

Section 2 of the bill retained some of the wording from prior versions of S.B. No. 620, which clarified the definition of business to include certain people who may not have a physical presence in the State. We therefore reiterate the concerns expressed in our previous testimony to the Committee for S.B. No. 620, S.D. 2, H.D. 1.

Thank you for the opportunity to provide comments.

TECHNET
THE VOICE OF THE INNOVATION ECONOMY

1001 K Street, 6th Floor
Sacramento, CA 95814
T: 916.594.7983
www.technet.org | @TechNetUpdate

LATE

April 3, 2017

The Honorable Sylvia Luke
Chair, House Committee on Finance
Hawaii State Capitol, Room 306
Honolulu, HI 96813

RE: SB 620 (Dela Cruz) – OPPOSE

Dear Chairwoman Luke,

We write in **opposition of SB 620** and respectfully ask you to oppose this measure as it comes before the House Committee on Finance.

Our Member companies represent the fields of information technology, high tech manufacturing, networking, clean energy, life sciences, Internet media, e-commerce, education, sharing economy and more.

SB 620 bill aims to broadly expand definitions in terms of how one conducts business in the state of Hawaii for the purposes of collecting sales tax from Hawaii consumers in a way that would stifle innovation and harm businesses. As such, TechNet opposes the sales and use tax provisions proposed in SB 620.

This legislation would require out-of state retailers without a physical presence in the state to collect and remit sales taxes to Hawaii tax authorities if they sell more than $100,000 in the state.

If Internet sales tax is to be regulated, it should be addressed on the federal level in a way that avoids harm to small businesses. State patchwork policy on this issue will greatly impact Hawaii sellers who may be forced to collect, remit and be at risk of audit in and by multiple states in which they have no physical presence as currently required by law.

In short, this bill harms the business-friendly image of the state. It is for the reasons outlined in this letter that TechNet respectfully ask for your no vote for SB 620. If you have any questions, I can be contacted at lbennett@technet.org or by calling my cell at (916) 769-1769 at any time.

Sincerely,

Laura Bennett

Laura Bennett
Executive Director

cc: Senator Donovan Dela Cruz
Members, House Finance Committee