



Internet Association

NetChoice



TECHNET
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INNOVATION ECONOMY

April 20, 2018

Members, Senate & House Conference Committee on Taxation
Hawaii State Capitol
415 South Beretania St.
Honolulu, HI 96813

**RE: HB 1655 – Marketplace Taxation
OPPOSE**

Dear Conference Committee Members,

The undersigned organizations respectfully submit this letter expressing our **OPPOSITION** to **HB 1655**, which would impose the state's general excise tax ("GET") on marketplaces for sellers' sales facilitated by the marketplace.

Our organizations represent hundreds of the country's leading technology companies in high-tech manufacturing, computer networking and information technology, clean energy, life sciences, Internet media, ecommerce, education, and sharing economy sectors. Our member companies are committed to advancing public policies and private sector initiatives that make the U.S. the most innovative country in the world.

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**.

Sincerely,

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