

STAND. COM. REP. NO.

221

Honolulu, Hawaii

FEB 15 2017

RE: S.B. No. 620
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 620 entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose and intent of this measure is to amend the
definition of "business" in the State's general excise tax law.

Your Committee received testimony in support of this measure
from the Chamber of Commerce Hawaii. Your Committee received
comments on this measure from the Department of the Attorney
General, Department of Taxation, and Tax Foundation of Hawaii.

Your Committee finds that this measure amends the definition
of "business" in the general excise tax to clarify that doing
business, for purposes of the general excise tax, does not require
a physical presence as long as the taxpayer has \$100,000 or more
of gross receipts attributable to Hawaii. This measure also adds
two exemptions to the definition of "business".

Your Committee notes the concerns raised in testimony from
the Departments of the Attorney General and Taxation, that this
measure may be subject to a Commerce Clause challenge under the
United States Constitution. A taxpayer challenging the amended
statute, as proposed by this measure, would likely attempt to
apply the Quill Corp v. North Dakota case, 504 U.S. 298 (1992).
In Quill, the United States Supreme Court held that a seller must
have a physical presence in the state to be subject to that



state's sales and use tax collection requirements. This physical presence requirement is rooted in the Commerce Clause and will not be affected by the amendment to the State's general excise tax law as proposed by this measure. The Department of the Attorney General indicated in testimony that many of the authoritative causes, including Quill, interpret the substantial nexus requirement to involve a state sales and use tax, not a general excise tax. However, the Department also indicated that it is unknown whether Quill would be applied to a general excise tax.

The Department of Taxation indicated in testimony that this measure, as written, contains unclear exceptions to the no physical presence rule, as these exceptions seem to exempt from taxation taxpayers with more connection to the State rather than less connection. The exemptions could also be interpreted to exempt even those sellers that have a physical presence in the State. The Department of Taxation suggested language that would more clearly address the state law issue of whether a seller without physical presence in Hawaii is engaged in business and therefore subject to general excise tax. The Department noted that a bright line test of \$100,000 or more of Hawaii sales will also clarify the State's position. Your Committee concludes that amendments to this measure, which incorporate the Department of Taxation's suggested language, are necessary.

Your Committee has amended this measure by:

- (1) Clarifying that physical presence is not required for the State to impose general excise tax on taxpayers with gross receipts attributable to the State of \$100,000 or more;
- (2) Deleting language that would have exempted taxpayers who have a website hosted on a local and nonaffiliated server or who are using a nonaffiliated call center to process orders for primarily out-of-state customers; and
- (3) Inserting an effective date of July 1, 2050.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 620, as amended herein, and recommends that it pass Second Reading in the form attached hereto



as S.B. No. 620, S.D. 1, and be referred to your Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



