

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2005

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1224

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1224, entitled "A Bill for an Act Relating to Taxation."

The purpose of House Bill No. 1224 is to require the Department of Taxation ("Department") to recommend legislation in advance of the regular session of 2006 that is intended to bring Hawaii into compliance with the Streamlined Sales and Use Tax Agreement ("SSTP Agreement"), which aims to make the sales and use taxes among complying states more uniform. This bill also adopts provisions to allow an out-of-state seller to register to pay or collect and remit the appropriate sales or use tax by one of three methods described in the bill in accordance with the terms of the SSTP Agreement.

This bill repeals subsections (b) and (c) of section 255D-3, Hawaii Revised Statutes, relating to the Hawaii Simplified Sales and Use Tax Administration Act Advisory Council ("Advisory Council") and the Department of Taxation is directed to work with three designees selected by the President of the Senate and three designees selected by the Speaker of the House of Representatives.

This bill appropriates \$50,000, to be expended by the Legislative Auditor, for technical assistance and briefings. Lastly, the bill authorizes the release of confidential taxpayer return information to private contractors that may be hired by the Legislative Auditor or the Auditor's designees.

This bill is objectionable because it hinders the Executive Branch's responsibility to bring Hawaii in compliance with the SSTP Agreement. On April 29, 2005, the Senate confirmed the Governor's five nominated members to the Advisory Council. These nominated and Senate-confirmed members of the Advisory Council represent preeminent individuals from the tax practitioner and business communities.

The collective knowledge and wisdom of these confirmed Advisory Council members will be required if Hawaii is to develop tax legislation in compliance with the SSTP Agreement so that its system of taxation is more in conformance with the arrangements in other states. Implementation of the SSTP Agreement in Hawaii will involve complex changes to Hawaii's use and general excise taxes because Hawaii is only one of a few states that have a gross receipts type tax that mirrors and complements its use tax. This use tax is imposed upon goods and services imported from out-of-state sellers to ensure that the same taxes are paid from these transactions as would have been paid in general excise taxes had the goods and services been purchased from Hawaii sellers. In contrast, other states' use taxes mirror their sales taxes to level the taxes paid for in-state and out-of-state goods.

Any proposed changes to Hawaii's use tax to comply with the SSTP Agreement will likely require amendments to the general excise tax because the Constitutions of the United States and Hawaii require that the taxes imposed upon goods and services purchased from out-of-state sellers be no greater than the taxes paid on goods and services purchased in the State. This new legislation would require substantial revisions to Hawaii's use and general excise tax laws so that these laws become more similar to the tax laws of the other states that complying with the SSTP Agreement. As such, development of this proposed legislation to conform with the SSTP Agreement will likely have

significant impact upon both Hawaii's business community and tax revenues.

For these reasons, the effective implementation of the SSTP Agreement in Hawaii may only be achieved if the Department and the Advisory Council have the ability to meet and discuss the complex issues of implementation and to seek the input from other member states. Given the complexity of the ongoing efforts to implement the SSTP Agreement, the repeal of the Advisory Council is unwarranted and the deadlines established in the bill for the Department are unrealistic.

Furthermore, the bill allows third parties to access confidential tax return information without any explicit restrictions on re-disclosure to third parties, which undermines the State's strong public policy in state laws that ensure confidentiality of a taxpayer's tax information to promote voluntary and complete disclosure in reporting to taxing authorities. Moreover, federal law generally prohibits the disclosure of federal tax return information, which may be contained in Hawaii state tax returns.

For the foregoing reasons, I am returning House Bill No. 1224 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii