



# AMERICANS for TAX REFORM

May 21, 2009

The Honorable Linda Lingle  
Governor, State of Hawaii  
Executive Chambers, State Capitol  
Honolulu, Hawaii 96813

RE: Veto of House Bill 1405

Dear Governor Lingle,

**I write to urge your veto of House Bill 1405, which will require out-of-state retailers to collect and remit the state's sales tax on products purchased by Hawaiians.** Not only does this effort violate federal interstate commerce law and the U.S. Constitution, but it would put Hawaiian businesses at a competitive disadvantage, encourage online black-markets, and - worst of all - raise taxes.

Current law, under *Quill v. North Dakota*, requires a business to have a physical presence or "nexus" in a state in order for the state to compel that business to collect and remit sales taxes. However, the legislature has passed an Affiliate Nexus Tax (HB 1405), commonly referred to as an "Amazon Tax," that attempts to circumvent this federal law by presuming that a company has a physical nexus if business is solicited through a third-party advertiser based in Hawaii.

**Even worse, HB 1405 contains a provision that would require businesses to collect the tax if sales are made to a mere twenty Hawaiians. Not only is this in clear violation of the federal "physical nexus" rule, but it will bring an unnecessary lawsuit to the state at a time when the affiliate nexus tax is already undergoing significant legal challenge in New York.**

**The affiliate nexus tax is also a net tax increase on Hawaiian residents and consumers.** As a signer of the Taxpayer Protection Pledge, you have committed to oppose and veto any and all tax increases. You have rightly vetoed many tax hikes passed by the legislature this year and I urge you to maintain your Pledge by vetoing HB 1405.

**Additionally, this effort puts Hawaii at a competitive disadvantage by inadvertently punishing in-state advertisers and other businesses.** This tax expands the definition of doing business to include a retailer that, while based out of state, advertises on a Hawaii-based website using a banner ad or other link. If advertising with Hawaii-based websites were to create a nexus for out-of-state retailers, these retailers will simply chose to terminate advertising agreements with Hawaiian websites.

Finally, **taxing consumers that download products such as music and movies from out-of-state retailers will encourage illegal downloading** at a time when legitimate providers of these digital goods are working hard to establish an online market. The bill would essentially incentivize online piracy, reversing a hard fought trend toward legal downloads.

**For these reasons, I urge you to veto House Bill 1405.** If you have any questions, please contact Kelly Cobb, state affairs manager, at (202) 785-0266.

Onward,

Grover Norquist

722 12<sup>th</sup> Street N.W.

Fourth Floor

Washington, D.C.

20005

T: (202) 785-0266

F: (202) 785-0261

[www.atr.org](http://www.atr.org)