

February 12, 2009

The Honorable Angus L.K. McKelvey, Chair
House Committee on Economic Revitalization,
Business, & Military Affairs
State Capitol, Room 312
Honolulu, Hawaii 96813

RE: H.B. 1405 Relating to the General Excise Tax

HEARING DATE: Thursday, February 12, 2009 at 7:30 am

Aloha Chair McKelvey and Members of the Committee on Economic Revitalization,
Business, & Military Affairs:

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance of the Government Affairs Committee of the Hawai'i Association of REALTORS® (“HAR”), here to testify on behalf of the HAR and its 9,600 members in Hawai'i. HAR **opposes** H.B. 1405, Relating to the General Excise Tax, which amends the definition of “engaging” in business in Hawaii for purposes of the General Excise Tax (“GET”) under HRS §237-2, to include persons who enter into an agreement with residents of the State where the person pays a commission for referral of potential customers.

HAR believes that most of the operative language in H.B. 1405 was copied from a New York sales tax statute that generally applies to the sale of tangible personal property and not to the sale of services. Furthermore, it is HAR's understanding that the State of Hawaii Department of Taxation often differentiates between income earned from commissions and income earned from services for GET purposes.

Since it is not at all clear how the operative language in H.B. 1405 would apply to the existing sourcing and apportionment rules for commissions earned by real estate brokers and salespersons, HAR respectfully requests that if you are going to pass H.B. 1405, the operative language in H.B. 1405 be limited to sales of tangible personal property by deleting the words “or services” in the first line of proposed item (2) in the amendment to HRS §237-2 set forth in H.B. 1405.

HAR looks forward to working with our state lawmakers in building better communities by supporting quality growth, seeking sustainable economies and housing opportunities, embracing the cultural and environmental qualities we cherish, and protecting the rights of property owners.

Mahalo for the opportunity to testify.