

**BILL NO. 33-0330**

**Thirty-Third Legislature of the Virgin Islands**

**June 26, 2020**

An Act amending title 33 of the Virgin Islands Code, chapter 3 relating to gross receipts taxes and remote sellers doing business in the Virgin Islands

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**PROPOSED BY:** Senator Novelle E Francis, Jr.

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1 *Be it enacted by the Legislature of the Virgin Islands*

2 **SECTION 1.** The Legislature finds that:

3 (a) The gross receipts from sales into the Virgin Islands from sellers without a physical  
4 presence in the Virgin Islands are growing, substantial, and not subject to the existing gross receipt  
5 taxes; and

6 (b) The omission of remote sellers from the gross receipt tax is eroding the tax base of  
7 the Virgin Islands, causing harm to the Virgin Islands through the loss of critical funding for  
8 services; and

9 (c) The structural advantages of remote sellers, along with the general growth of online  
10 retail sales, make clear that further erosion of Virgin Islands tax base is likely soon; and

1 (d) Remote sellers who derive substantial gross receipts from sales into the Virgin  
2 Islands benefit extensively from the Virgin Islands’ market, including its economy and  
3 infrastructure; and

4 (e) The cost of tracking, sourcing, and collecting taxes on gross receipts have fallen,  
5 such that it is neither unduly difficult nor burdensome for remote sellers to comply with a gross  
6 receipts tax.

7 **SECTION 2.** Title 33, chapter 3, section 43 of the Virgin Islands Code is amended by  
8 designating subsection (a) as subsection (a), paragraph (1) and by adding subsections paragraphs  
9 (2)-(6) to read:

10 “(2) For purposes of this chapter, an individual, firm, corporation, or other association  
11 without a physical presence in the Virgin Islands is considered to be doing business in the Virgin  
12 Islands and is subject to the tax imposed by this section with respect to the gross receipts from  
13 qualifying transactions that are sourced to the Virgin Islands, if the individual, firm, corporation,  
14 or other association actively solicits sales in the Virgin Islands, and the gross receipts from  
15 qualifying transactions in the previous calendar year or current calendar year exceeds one hundred  
16 and eight thousand dollars. Qualifying transactions are transactions that are sourced to the Virgin  
17 Islands pursuant to paragraph (a)(4) of this section and include, but not be limited to:

18 (A) Sales of tangible personal property;

19 (B) Sales of services;

20 (C) Sales of any product transferred electronically;

21 (D) Sales of any right to access a specified digital good, computer software, or  
22 other intangible property from a website owned, used or controlled by the seller, whether  
23 or not the digital good, computer software, or other intangible property is downloaded by  
24 the customer.

1 (3) for purposes of this section, “actively solicits” means substantial solicitation of  
2 persons within the Virgin Islands. Solicitation means speech or conduct that explicitly or  
3 implicitly invites an order and activities that neither explicitly nor implicitly invite an order but  
4 are entirely ancillary to requests for an order. Solicitation includes, but is not limited to,  
5 solicitation through the use of mail, telephone, and e-mail; advertising, including print, radio,  
6 internet, television, and other media; and maintenance of an internet site over or through which  
7 sales transactions occur with persons within the Virgin Islands.

8 (4) For the purposes of this section, gross receipts are sourced to the Virgin Islands as  
9 follows:

10 (A) Gross receipts from the sale of tangible personal property are sourced to the  
11 Virgin Islands if the property is received in the Virgin Islands by the purchaser. In the case  
12 of tangible, personal property delivered by motor carrier or by other means of  
13 transportation, the place at which such property is ultimately received after all  
14 transportation has been completed is considered the place where the purchaser receives the  
15 property. The phrase "delivery of tangible personal property by motor carrier or by other  
16 means of transportation" excludes the situation in which a purchaser accepts the property  
17 in the Virgin Islands and then transports the property directly to a location outside the  
18 Virgin Islands. Direct delivery in the Virgin Islands, other than for purposes of  
19 transportation, to a person or firm designated by a purchaser constitutes delivery to the  
20 purchaser in the Virgin Islands, and direct delivery outside the Virgin Islands to a person  
21 or firm designated by a purchaser does not constitute delivery to the purchaser in the Virgin  
22 Islands, regardless of where title passes or other conditions of sale.

23 (B) Gross receipts from the sale of services into the Virgin Islands are sourced  
24 to the Virgin Islands in proportion to the benefit received by the purchaser in the Virgin  
25 Islands. The physical location where the purchaser ultimately uses or receives the benefit

1 of what was purchased is paramount in determining the proportion of the benefit received  
2 by the purchaser in the Virgin Islands. If a taxpayer's records do not allow the taxpayer to  
3 determine that location, the taxpayer may use an alternative method to source gross receipts  
4 under this section if the alternative method is reasonable, is consistently and uniformly  
5 applied, and is supported by the taxpayer's records as the records exist when the service is  
6 provided or within a reasonable period of time thereafter.

7 (C) Gross receipts from the sale of products transferred electronically into the  
8 Virgin Islands are sourced to the Virgin Islands if the purchaser's address is in the Virgin  
9 Islands, as indicated by the business records of the seller when use of this address does not  
10 constitute bad faith.

11 (D) Gross receipts from the sale of any right to access a specified digital good,  
12 computer software, or other intangible property are sourced to the Virgin Islands if the  
13 property is first accessed from within the Virgin Islands. If the location of first access  
14 cannot reasonably be determined, the gross receipts from the sale are sourced to the Virgin  
15 Islands if the purchaser's address is in the Virgin Islands, as indicated by the business  
16 records of the seller when use of this address does not constitute bad faith.

17 (5) If the sourcing rules of this section do not fairly represent the extent of the  
18 taxpayer's gross receipts from business done in the Virgin Islands, the taxpayer may petition the  
19 Virgin Islands [Bureau of Internal Revenue for the use of alternative sourcing rules. The sourcing  
20 rules of this section are rebuttably presumed to fairly represent the extent of the taxpayer's gross  
21 receipts from business done in the Virgin Islands unless the taxpayer shows that the gross receipts  
22 sourced to the Virgin Islands are grossly disproportionate or would operate unconstitutionally to  
23 tax the extraterritorial receipts of the taxpayer.

24 (6) The term "specified digital goods" means:

1 (A) “Digital Audio-Visual Works”, which means a series of related images  
2 which, when shown in succession, impart an impression of motion, together with  
3 accompanying sounds, if any;

4 (B) “Digital Audio Works”, which means works that result from the fixation of  
5 a series of musical, spoken, or other sounds, including ringtones, and

6 (C) “Digital Books”, which means works that are generally recognized in the  
7 ordinary and usual sense as “books”.

8 (D) For purposes of the definition of “digital audio works”, “ringtones” means  
9 digitized sound files that are downloaded onto a device and that may be used to alert the  
10 customer with respect to a communication.

11 (E) For purposes of the definitions of “specified digital products”, “transferred  
12 electronically” means obtained by the purchaser by means other than tangible storage  
13 media.”

14 **SECTION 3.** Title 33, chapter 3 of the Virgin Islands Code is amended by adding section  
15 44a to read as follows :

16 § 44A. Seventy-five percent of the proceeds from receipts from sales into the Virgin Islands  
17 from sellers without a physical presence in the Virgin Islands under section 43 (a) (2) through (a)  
18 (5) must be directed to the Government Employees Retirement System and 25% to General Fund  
19 of the Treasury of the Virgin Islands

20 **BILL SUMMARY**

21 This bill seeks to amend title 33 of the Virgin Islands Code by creating an avenue to collect  
22 gross receipt taxes from individuals, firms, corporations, or other associations without a physical  
23 presence in the Virgin Islands who are considered to be “doing business” in the Virgin Islands  
24 through digital means. The bill also directs 75 % of the proceeds from receipts from sales into the

- 1 Virgin Islands from sellers without a physical presence in the Virgin Islands to GERS and 25% of
- 2 the proceeds from to General Fund.
- 3 **BR20-1128/ May 29, 2020/YLT**