The Virgin Islands Consortium

High Stakes: With Millions On The Line, VI Tax Office Has 'No Back-Up Plan' For A Loss In Excise Tax Litigation

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V.I. Bureau of Internal Revenue Director Joel A. Lee told Senate lawmakers Tuesday that he remained optimistic that long-running litigation will soon end, and the territory can resume the collection of millions of dollars in lost excise taxes "in the near future."

The head of the territory's major revenue collection agency also said there is no "Plan B" in case a federal court's pending decision on a ban on collecting excise taxes goes against the bureau.

The local government has already lost out on excise tax revenue of $20 million-and-counting so far this year. Another $45 million loss is projected for FY2020, if District Court Judge Curtis V. Gomez hands down a particularly harsh decision.

Mr. Lee and top B.I.R. staff appeared before the Senate Committee on Finance to defend its $13.1 million budget request for FY2020.

During the course of the hearing, Finance Committee Chairman Kurt Vialet offered up a simple question: “What is your back-up plan if the decision is not favorable?” he asked B.I.R. officials.

The simple answer: There is none. “We don’t have a back-up plan,” Mr. Lee said. “We are hoping this goes through … goes our way.”

The excise tax is a sweeping tax paid by all “persons, firms and corporations doing business in the Virgin Islands, except those that are specifically exempt … on all goods, merchandise, or commodities manufactured in or brought into the Virgin Islands for sale or disposition in the course of a trade or business, for processing or manufacturing, or for any other business purpose.”

Collections were put on hold by a November 2018 federal injunction in place until the District Court of the Virgin Islands is satisfied the excise tax is consistent with the U.S. Constitution. That ruling, handed down by Judge Gomez, was originally delivered two months earlier, in September 2018. The territory asked for a stay of the ruling until an appeal to the Third Circuit Court of Appeals was heard. That motion was denied, and excise tax collections have been on hold since.

Mr. Vialet suggested the administration’s “hope” for a successful outcome is not an acceptable contingency when millions of taxpayer dollars annually are on the line. “This is a $45 million loss to the government if (the decision is) unfavorable,” Mr. Vialet said.

Meanwhile, companies and individuals that do business in the VI – from big corporations to local artisans who import raw materials from the states – remain in limbo and uncertain of the court decision’s impact on their businesses.

The excise tax is a substantial stream of revenue for the territory. In FY 2018, excise tax collections were approximately $40 million; in 2017, roughly $34 million was collected. In 2016, the tax exceeded $24 million, according to the B.I.R.