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Francis Stands By Internet Sales Tax Legislation, Says Bryan's Announcement of Measure Was Premature

Government / **Published On November 19, 2020 05:24 AM /**

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A Walmart fulfillment center. Virgin Islanders purchase a lot of goods from Walmart for multiple reasons, including better prices and variety.

Senator Novelle Francis issued a press release on his bill that will soon be heard in the Senate, which aims to levy a tax on goods Virgin Islanders purchase from online retailers. In his release, Mr. Francis points out that more than 40 states have already levied sales taxes on goods purchased through online retailers. Yet the release makes it appear as if it is the retailer who would get taxed, when it's actually the customers, as those retailers — as is the case with states — simply place a tax on the goods whose cost is then borne by the customer.

The release and the bill term the tax as a gross receipt tax on retailers, which Mr. Francis contends is "needed to provide critical services and programs across the territory." The senator also believes funds collected through the tax would help stabilize the Government Employees' Retirement System.

A portion of the [bill](#) reads, "For purposes of this chapter, an individual, firm, corporation, or other association without a physical presence in the Virgin Islands is considered to be doing business in the Virgin Islands and is subject to the tax imposed by this section with respect to the gross receipts from qualifying transactions that are sourced to the Virgin Islands, if the individual, firm, corporation, or other association actively solicits sales in the Virgin Islands, and the gross receipts from qualifying transactions in the previous calendar year or current calendar year exceeds one hundred and eight thousand dollars.

According to the measure, the qualifying transactions include:

- Sales of tangible personal property;
- Sales of services;
- Sales of any product transferred electronically;
- Sales of any right to access a specified digital good, computer software, or other intangible property from a website owned, used or controlled by the seller, whether or not the digital good, computer software, or other intangible property is downloaded by the customer.

Governor Albert Bryan also supports the legislation, with Government House stating in a release issued Tuesday, "The Remote Sales Tax bill that Senator Francis is proposing is similar to a bill proposed by Governor Bryan and is patterned after an Internet Sales Tax. The Governor and Senators currently are combining the two bills into legislation acceptable to both parties. Revenues from a Remote Sales Tax could be used to pay GERS' unfunded mandate."

During an interview with the Consortium late Wednesday, Mr. Francis expressed frustration with Mr. Bryan relative to the timing of the governor's announcement Tuesday, viewing the mention of the measure and the merging of both legislation as premature. The senator said the bill was not imminent and that a lot of work is needed before it could move forward. Mr. Francis, who is away on a personal matter, was also frustrated that the governor's announcement came while he was not in the territory to defend his bill.

Mr. Francis said the sales tax would be two percent, which he said would translate to \$50 million annually, a figure he said was assessed through mail collection volume to the territory and other data. During the Mapp administration, then-Finance Commissioner Valdamier Collens [said](#) a sales tax of 5 percent on items purchased online would equate to \$3 million to \$5 million annually.

"This bill doesn't simply allow the territory to collect two percent in gross receipt taxes from remote sellers like Amazon and Wayfair, but could give our small businesses a boost as well," Mr. Francis said. He also stated that Virgin Islanders have been paying taxes to states when they purchase goods online — taxes he said should be collected by the local government.

"Virgin Islanders have become accustomed to paying stateside taxes for orders that are being shipped here. These taxes help these states maintain their roads, schools and hospitals and manage solid waste. Why shouldn't the territory attempt to capture these taxes, and apply these gains in ways that benefit Virgin Islanders?" he said.

During the Wednesday interview, Mr. Francis told the Consortium that he was referring to Virgin Islanders who buy items online that are then shipped to family members on the U.S. mainland because some items cannot be shipped to the territory directly. When those items are sent to relatives living in various states, the online sales taxes from laws passed in those states are taken from the purchase. Relatives then collect the items and ship them via FedEx, USPS and UPS to the territory.

Mr. Francis said he believes the territory should collect taxes already levied on items Virgin Islanders ship to other states before they are then reshipped to the territory. To backup his stance, the senator pointed to a 2018 Supreme Court ruling (*South Dakota v. Wayfair*), which said states can mandate that businesses without a physical presence in a state with more than 200 transactions or \$100,000 in-state sales, collect and remit sales taxes on transactions in the state.

"There's an opportunity for us to recoup those funds but in order for us to do that we have to have a local" online sales tax law, Mr. Francis said.

To Mr. Francis, this means, for example, the Virgin Islands government could collect taxes on items Virgin Islanders purchase through online retailers that are shipped to any of the mainland U.S. states. These taxes, already levied on the items, should be remitted to the Virgin Islands government, Mr. Francis understood *South Dakota v. Wayfair* to mean. However, how it works is the tax is levied based on the state where the items are being shipped. For example, items being shipped to Georgia would activate Georgia's sales tax law; items being shipped to California would activate California's sales tax law, and so on. Therefore, the only clear path to online sales taxation for the local government is for items Virgin Islanders purchase online that are being shipped directly to the territory.

Below, a Lavalier Wireless Camera Microphone System, which costs \$399, totals \$410.73 after shipping and handling. This item is being shipped directly to the USVI where there is currently no sales tax.

Place your order

By placing your order, you agree to Amazon's [privacy notice](#) and [conditions of use](#).

You also agree to AmazonGlobal's [terms and conditions](#).

Order Summary

Items:	\$399.00
Shipping & handling:	\$11.73
Total before tax:	\$410.73
Estimated tax to be collected:	\$0.00

Order total: \$410.73

But the same item costs \$431.70 when being shipped to Georgia because of the state's internet sales tax law.

Place your order

By placing your order, you agree to Amazon's [privacy notice](#) and [conditions of use](#).

Order Summary

Items:	\$399.00
Shipping & handling:	\$8.26
Total before tax:	\$407.26
Estimated tax to be collected:	\$24.44

Order total: \$431.70

[How are shipping costs calculated?](#)

Virgin Islanders are forced to ship their items to mainland states before those items are sent by relatives and friends from those states to the territory because many businesses in the U.S. view the U.S. Virgin Islands as an international destination and therefore do not ship directly to the territory. Mr. Francis did not say whether he had embarked on an effort to have the USVI be recognized as a U.S. jurisdiction that should be treated as other U.S. jurisdictions relative to the shipping of goods.

Mr. Francis said he was "eager" for the measure, Bill No. [33-0330](#), to go through the legislative process, and that he was awaiting amendments to the bill to create a Virgin Islands Beautification Tax Credit. The senator was also awaiting amendments from the Bryan administration that seeks to clarify technical language regarding the sales tax collection.

Virgin Islanders responded swiftly to the news of the online sales tax on Wednesday, with virtually every commenter — over 440 of them at last count on the Consortium's [Facebook platform](#) and [38 on the website](#) — criticizing the bill and calling for it to be withdrawn.

"Taxing the people of the Virgin Islands during a pandemic. The government should be lowering taxes to alleviate the burden on our citizens," [said Jevon O. Williams](#), National Committeeman in the VI Republican Party. "Are these Senators truly servants of the people? Their actions truly give cause for concern."

"This is the worst idea since the "Sin Tax", get your own house in order and stop asking your constituents to fund your poor choices, nepotism and overall ineptitude!" [said](#) Jacquie Sudek-Exton.

Tiarra Kappel [said](#), "What kind of nonsense! As a family that has two small businesses here we try to buy anything we can here often overlooking the inflated prices, but there are so many things we can't get on island. Maybe we should save the government money by getting rid of some of the senate positions!"

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