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Francis Withdraws Internet Sales Tax Bill

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Senator Novelle Francis **By. THE VIRGIN ISLANDS LEGISLATURE**

Senator Novelle Francis has withdrawn his online sales tax measure following swift backlash from the community, along with a stinging rebuke from the St. Croix Chamber of Commerce on Thursday, which called the bill a "job killer."

The Consortium brought the measure to light Wednesday after it was mentioned by Governor Albert Bryan in a press release promoting potential funding opportunities for the Government Employees' Retirement System. In that release, Government House said, "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 pays GERS’ unfunded mandate."

Mr. Francis said Friday afternoon that the good bits of the bill were being overshadowed by what he said was inaccurate information on social media. “I have heard and respect the concerns of the community regarding the proposed legislation,” Mr. Francis said. “Unfortunately, the merits of the bill have been drowned out by the inaccurate information on social media."

He added, "While the wishes of the people take precedence in this matter, what has not changed is my commitment to identify revenue generating measures that can bring much needed stability to the Government Employees Retirement System. There is a significant amount of revenue that is going to benefit other communities while we are on the eve of GERS insolvency on our home front.”

In its release Thursday, the chamber expressed strong opposition to the measure, and called on all senators to vote against it. "Because the bill would drastically raise the cost of doing business in the territory and disincentivize out-of-territory businesses shipping to the islands, all senators should vote against the bill. If the bill passes, the governor should veto it," said the chamber in its statement.

As the chamber pointed out, if the now-withdrawn measure was enacted, it would have also raised the cost on services such as Netflix and Amazon Prime Video, as the bill sought to not only tax tangible products, but also internet services. And services like Amazon Prime Video and Netflix easily fall in the $108,000 sales threshold set by the bill, meaning a company would have needed sales of, or exceeding $108,000 in the USVI to be taxed under the measure.

The bill had included the following as qualified transactions to be taxed:

- 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.

"The online tax bill would significantly raise the cost of doing business in the territory by further hiking the cost of all shipped goods, including food, clothing, and auto parts. The bill would also raise the cost associated with everyday online service providers like Netflix, Amazon, and the Wall Street Journal. This discourages investment and relocation to the territory," the chamber said.

Chamber Board Chairman, Ryan Nelthropp, said, "Given our size and population, the territory simply does not have all the goods and supplies that consumers and businesses need in order to avoid utilizing online retailers."

The chamber said its board of directors and membership believe the bill is fiscally short-sighted and would cause undue stress to consumers and business owners in an already economically challenged territory.

"Imposition of this tax and the subsequent requirements to register licenses would effectively cut off Virgin Islands consumers and local businesses from necessary goods and services not available in the territory," the chamber said. "At best, it would dramatically increase costs to Virgin Islands consumers as businesses affected by this tax would either pass these increased costs on to the consumer in the U.S. Virgin Islands or cease to do business in the territory altogether. Either way, it is the consumers and local businesses here in the islands who lose."

A portion of the bill read, "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."

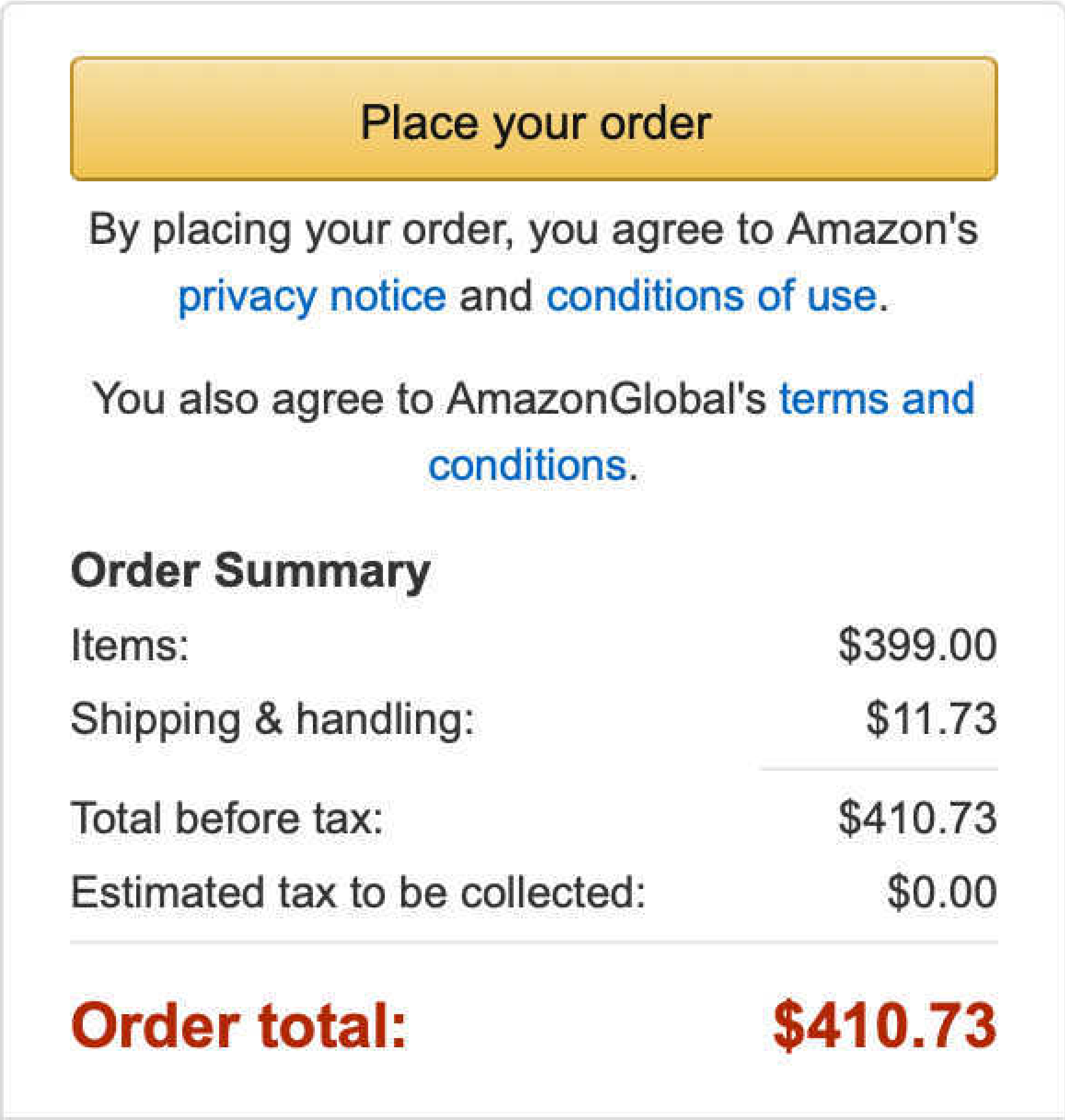
Mr. Francis was interviewed by the Consortium Wednesday, during which he tried to explain his intention. Mr. Francis said he believes the territory should collect taxes already levied on items Virgin Islanders ship to other states before those items are then reshipped to the territory. To backup his 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.

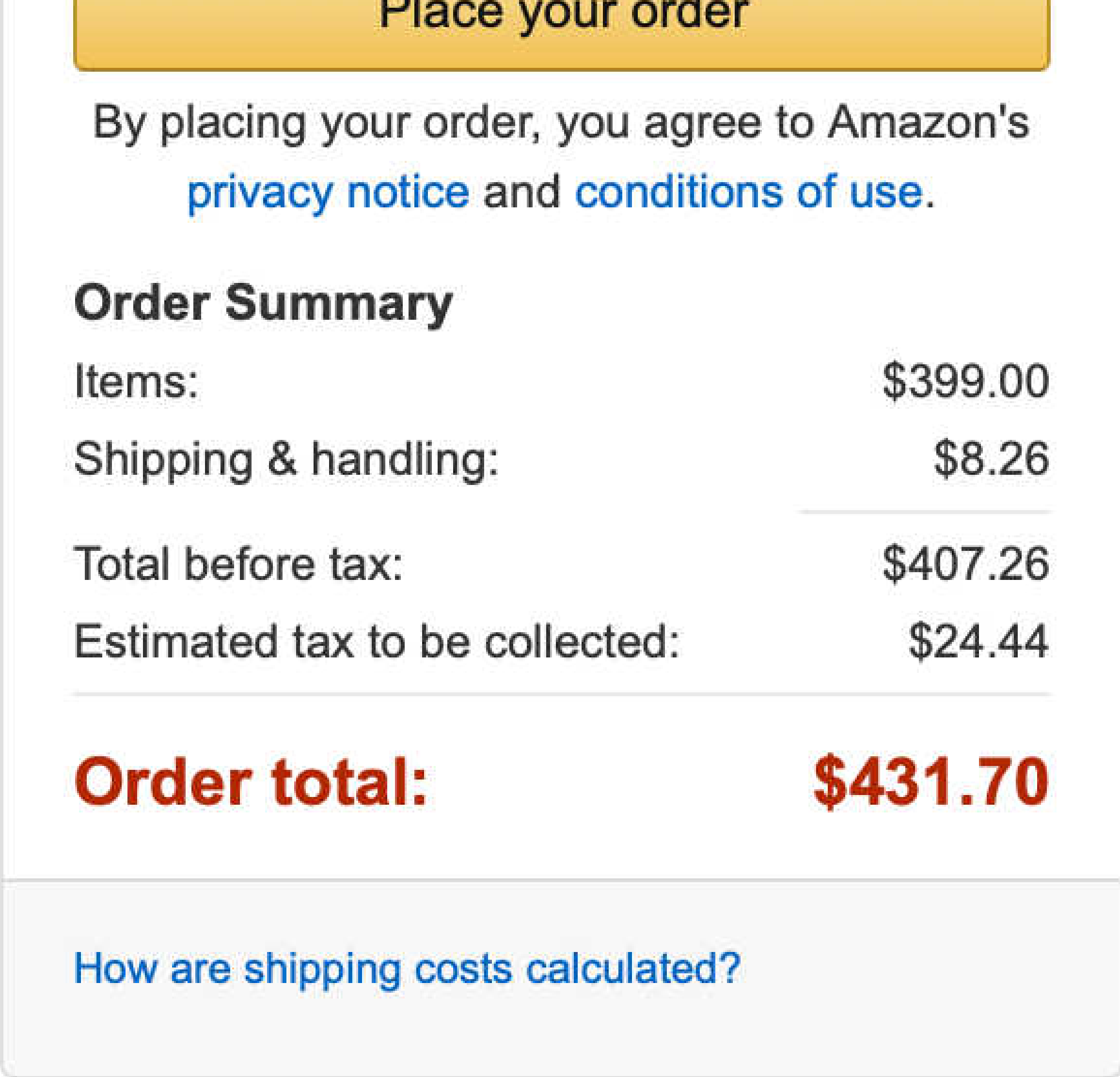
To Mr. Francis, this means, for example, the Virgin Islands government could collect taxes on items Virgin Islanders purchase through online retailers that are shipped to any of the mainland U.S. states. These taxes, already levied on the items, should be remitted to the Virgin Islands government, Mr. 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.

On Thursday Mr. Francis said on Facebook that he would not rush the measure. "Let's be clear-I'm not rushing this bill. I hear your questions and valid concerns, which I plan to address at an upcoming town hall."

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.



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



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.