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Statement of Marjorie Rawls Roberts, Esq.

Bill No. 33-0087

Presented to the Committee on Finance

Of the 33rd Legislature of the U.S. Virgin Islands

Monday, July 29, 2019

Good morning, the Honorable Kurt A. Vialet, Chair; The Honorable Marvin A. Blyden, Vice Chair; and other Honorable Members of the Committee on Finance of the 33rd Legislature of the U.S. Virgin Islands, other Honorable Members of the 33rd Legislature in attendance, employees of the 33rd Legislature, and others reviewing the critical legislation before the Committee on Finance being heard today:

My name is Marjorie Rawls Roberts, and I am a tax attorney practicing in St. Thomas and the sole shareholder of the law firm of Marjorie Rawls Roberts, P.C. I have lived here for 31 years and before opening my firm 20 years ago, which specializes in tax and business law, I served as Technical Advisor and Chief Counsel to the Virgin Islands Bureau of Internal Revenue for seven and a half years and as General Counsel and Vice President of Globalvest Management Company, a fund management company that operated under the Economic Development Program, for three and a half years. Before moving to the U.S. Virgin Islands, I served as an attorney-advisor in the U.S. Treasury Department's Office of Tax Policy for three and a half years. In addition, I am a board member of the St. Thomas-St. John Chamber of Commerce. I am delivering my testimony today on behalf of the Chamber as well as myself.

I am very appreciative of the opportunity to be able to place on the record my position and that of the Chamber of Commerce relative to Bill No. 33-0087, "an Act amending title 33, subtitle 1, part 1, chapter 3, section 45 of the Virgin Islands Code by prohibiting the Virgin Islands Bureau of Internal Revenue from assessing penalties and fees for unpaid gross receipts taxes during the time when a business' gross receipts has not yet exceeded \$225,000".

Statutory Background

By way of background, Section 43 of Chapter 3, Title 33 of the Virgin Islands Code sets out the rules for the gross receipts tax, and Section 43, Subsection (f) provides in pertinent part that "[e]very individual and every firm, corporation, and other association subject to the provisions of this section and whose annual gross receipts are less than \$225,000 is exempted from the payment of gross receipts tax on the first \$9,000 of gross receipts each month. For the purposes of this subsection, an individual, business, or association shall be presumed to have annual gross receipts

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of less than \$225,000 if the actual gross receipts for the preceding tax year of such individual, business, or association was less than \$225,000. The presumption shall continue each month until the actual gross receipts are \$225,000 or more for the taxable year, in which case the gross receipts tax is due and payable on the entire gross receipts for such tax year. Any individual, business, or association which paid gross receipts taxes on the entire gross receipts for a tax year and qualifies for the exemption provided by this subsection shall be refunded the amount which should have been exempt under this subsection”.

Section 45, which is the section specifically amended by this legislation, provides in Subsection (a) that every person, partnership, firm, corporation or other business association failing to file reports or pay the total amount of tax within the time required by this chapter is subject to the payment of a penalty at the rate of five percent per month or any fraction thereof, but not exceeding 25 percent in the aggregate. Further, Section 1231, Subsection (a), Chapter 33, Title 33, provides that if any amount of tax imposed by the internal revenue laws of the Virgin Islands is not paid on or before the last date prescribed for payment then interest on such amount at the rate of 12 percent per annum shall be paid for the period from such last date to the date paid.

Finally, Section 45, Subsection (d) provides that the Director of the Virgin Islands Bureau of Internal Revenue, upon satisfactory proof by a taxpayer that failure to file a return or pay any tax or penalty required under the provisions of this chapter was due to reasonable cause and not due to wilful neglect, may waive any and all penalties.

Statement of Support and Requested Clarifications and Changes

Although Section 43, Subsection (f) indicates that gross receipts taxes are due once an individual, business, or association has actual gross receipts of \$225,000 or more in a taxable year, the statute is silent as to whether penalties and/or interest are due in that case. I understand that penalties are generated when the payments are made although I also understand that upon request penalties are often waived due to reasonable cause. However, the taxpayers are required to request the waiver, sometimes incurring accounting or legal fees in doing so, and the waiver may not always be provided. This amendment would make it clear that if a business anticipates gross receipts of under \$225,000 in accordance with the statutory presumption that a business base its determination on the prior year’s receipts and then has gross receipts of \$225,000 or more during the year, the requirement would be to pay the tax due on the full amount within 30 days but not to pay penalties. I, speaking as a tax attorney and as the Chamber’s representative, support this position subject to the following points and clarifications.

First, the statute indicates that an individual, business, or association shall be presumed to have annual gross receipts of less than \$225,000 if the actual gross receipts for the preceding tax year of such individual, business, or association was less than \$225,000 and that rule should clearly apply to any business that receives penalty relief under Bill No. 33-0087. If someone anticipates having gross receipts of under \$225,000 for a year but had gross receipts of \$225,000 or more in

the prior year, then the ban on assessing penalties and fees clearly should not apply. In fact, in connection with this amendment it might be worth considering a revision to Section 43, Subsection (f) to provide that an individual, a business, or an association shall be presumed to have annual gross receipts of less than \$225,000 if the actual gross receipts for the preceding tax year of such individual, business, or association was less than \$225,000 and the individual, business, or association has not had annual gross receipts of \$225,000 or greater in any of the preceding three years. This would ensure that if a business has one year below \$225,000 in gross receipts but otherwise equals or exceeds \$225,000 each year, that the business will remain a monthly gross receipts taxpayer.

Second, the statute is not clear on the handling of interest, which as indicated above is legally assessed at a rate of 12 percent under Section 1231, Subsection (a), Chapter 33, Title 33. It is also not clear what is meant by the reference to “fees” since interest is not a fee. Our position is that interest should not be waived since the taxpayer did have the use of the funds during the period before the taxpayer equalled or exceeded \$225,000 in gross receipts for the year. However, we would also propose that the Legislature reduce the statutory interest rate for delinquent gross receipts tax payments to six percent or have it mirror the Federal interest rate on any unpaid tax, which is determined quarterly and is the federal short-term rate plus three percent with interest compounding daily. The statutory interest rate of 12 percent for gross receipts tax was added by Act No. 4417 on March 7, 1980 at a time when the Federal funds effective rate was 13.35 percent and the prime rate charged by banks was 15.26 percent. As stated in IR-2019-103, the interest rate for underpayments of income tax for the calendar quarter beginning July 1, 2019 is five percent for underpayments and seven percent for large corporate underpayments (i.e. underpayments of more than \$100,000).

Third, the statute clearly indicates in Section 43, Subsection (f) that “[a]ny individual, business, or association which paid gross receipts taxes on the entire gross receipts for a tax year and qualifies for exemption provided by this subsection shall be refunded the amount which should have been exempt under this section.” The statutory language is silent as to the grant of credits against future taxes as an alternative to a refund. In our experience the Virgin Islands Bureau of Internal Revenue’s practice when gross receipts taxes are overpaid is to provide a letter of credit, but not a refund. In cases where clients require refunds because they are no longer in business, the refunds can take many months to receive. Moreover, a letter of credit has no value for a taxpayer that is out of business due to damage sustained from hurricanes or other reasons unless it is transferrable to another business, which has not been the case to date. I do not know specifically how quickly the Virgin Islands Bureau of Internal Revenue grants refunds under Section 43, Subsection (f) as compared to other situations involving overpayments of gross receipts taxes, but it might be worth requiring that refunds be paid within a specific period of time if the taxpayer requests a refund rather than a letter of credit and possibly providing that a certain amount be specifically allocated by the Virgin Islands Bureau of Internal Revenue to pay refunds under this section each year.

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Finally, the existing statute is inconsistent for businesses that receive exactly \$225,000 in gross receipts in a year. Bill No. 33-0087 references that the penalty ban will apply when gross receipts have exceeded \$225,000 in a year. However, Section 43, Subsection (f), referencing the monthly exemption, provides that every individual and every firm, corporation, and other association ... whose annual gross receipts are less than \$225,000 is exempt from the payment of gross receipts tax on the first \$9,000 of gross receipts each month. [Underscoring added]. I would recommend that taxpayers earning exactly \$225,000 be clearly included in the “monthly filers” category and thus that Bill No. 33-0087 be amended to provide that “[t]he Director of the Virgin Islands Bureau of Internal Revenue is prohibited from retroactively assessing penalties and fees on any taxpayer who equals or exceeds annual gross receipts of \$225,000” and also that the last phrase indicate “in the months prior to equalling or exceeding the \$225,000 threshold”.

Mr. Chairman, I again want to thank you for the opportunity to comment on Bill No. 33-0087 and I am delighted to respond to any questions.