S T A T E O F N E W Y O R K

3827

2013-2014 Regular Sessions

I N S E N A T E

February 21, 2013

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to enacting the multichannel video programming distributor competition act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The tax law is amended by adding a new section 186-g to read as follows:

S 186-G. EXCISE TAX ON DIRECT BROADCAST SATELLITE SERVICES. 1. DEFINITIONS. AS USED IN THIS SECTION, WHERE NOT OTHERWISE SPECIFICALLY DEFINED AND UNLESS A DIFFERENT MEANING IS CLEARLY REQUIRED:

(A) "COMMISSIONER", MEANS THE COMMISSIONER OF TAXATION AND FINANCE.

(B) "DIRECT BROADCAST SATELLITE SERVICE", MEANS THE DISTRIBUTION OR BROADCASTING BY SATELLITE OF VIDEO PROGRAMMING OR SERVICES DIRECTLY TO RECEIVING EQUIPMENT LOCATED AT AN END USER SUBSCRIBER'S OR AN END USER CUSTOMER'S PREMISES, INCLUDING, BUT NOT LIMITED TO, THE PROVISION OF PREMIUM CHANNELS, THE PROVISION OF MUSIC OR OTHER AUDIO SERVICES OR CHANNELS, AND ANY OTHER SERVICE RECEIVED IN CONNECTION WITH THE PROVISION OF DIRECT BROADCAST SATELLITE SERVICE.

(C) "DIRECT BROADCAST SATELLITE SERVICE PROVIDER", MEANS A PERSON WHO TRANSMITS, BROADCASTS OR OTHERWISE PROVIDES DIRECT BROADCAST SATELLITE SERVICE TO SUBSCRIBERS OR CUSTOMERS IN THE STATE.

(D) "GROSS RECEIPTS", MEANS ALL CONSIDERATION OF ANY KIND OR NATURE RECEIVED BY A DIRECT BROADCAST SATELLITE SERVICE PROVIDER, OR AN AFFILIATE OF SUCH PERSON, IN CONNECTION WITH THE PROVISION OF DIRECT BROADCAST SATELLITE SERVICE TO SUBSCRIBERS OR CUSTOMERS, INCLUDING RECURRING MONTHLY CHARGES FOR DIRECT BROADCAST SATELLITE SERVICE AND PAY-PER-VIEW, VIDEO-ON-DEMAND AND OTHER EVENT-BASED CHARGES FOR DIRECT BROADCAST SATELLITE SERVICE; PROVIDED, HOWEVER, THAT GROSS RECEIPTS SHALL NOT INCLUDE:

(1) CHARGES FOR THE RENTAL OF EQUIPMENT RELATED TO THE PROVISION OF DIRECT BROADCAST SATELLITE SERVICE;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(2) ACTIVATION, INSTALLATION, REPAIR AND MAINTENANCE CHARGES OR SIMILAR SERVICE CHARGES RELATED TO THE PROVISION OF DIRECT BROADCAST SATELLITE SERVICE;

(3) SERVICE ORDER CHARGES, SERVICE TERMINATION CHARGES OR ANY OTHER ADMINISTRATIVE CHARGES RELATED TO THE PROVISION OF DIRECT BROADCAST SATELLITE SERVICE;

(4) REVENUE NOT ACTUALLY RECEIVED, REGARDLESS OF WHETHER IT IS BILLED, INCLUDING, BUT NOT LIMITED TO, BAD DEBTS;

(5) REVENUE RECEIVED BY AN AFFILIATE OR OTHER PERSON IN EXCHANGE FOR SUPPLYING GOODS AND SERVICES USED BY A DIRECT BROADCAST SATELLITE SERVICE PROVIDER;

(6) REFUNDS, REBATES OR DISCOUNTS MADE TO SUBSCRIBERS OR CUSTOMERS, TO ADVERTISERS OR TO OTHER PERSONS;

(7) REVENUE FROM TELECOMMUNICATIONS SERVICE AS DEFINED IN 47 U.S.C. SECTION 153(46);

(8) REVENUE FROM INFORMATION SERVICES AS DEFINED IN 47 U.S.C. SECTION 153(20);

(9) REVENUE FROM ANY SERVICE THAT IS SUBJECT TO TAX UNDER ARTICLE TWENTY-EIGHT OF THIS CHAPTER;

(10) REVENUE FROM THE SALE OF CAPITAL ASSETS OR SURPLUS EQUIPMENT NOT USED BY THE PURCHASER TO RECEIVE DIRECT BROADCAST SATELLITE SERVICE FROM THE DIRECT BROADCAST SATELLITE SERVICE PROVIDER;

(11) REIMBURSEMENTS MADE BY PROGRAMMERS TO THE DIRECT BROADCAST SATELLITE SERVICE PROVIDER FOR MARKETING COSTS INCURRED BY THE DIRECT BROADCAST SATELLITE SERVICE PROVIDER FOR THE INTRODUCTION OF NEW PROGRAMMING THAT EXCEED THE ACTUAL COSTS INCURRED BY THE DIRECT BROADCAST SATELLITE SERVICE PROVIDER;

(12) LATE PAYMENT FEES COLLECTED FROM SUBSCRIBERS OR CUSTOMERS; OR

(13) CHARGES, OTHER THAN THOSE CHARGES SPECIFICALLY DESCRIBED HEREIN, THAT ARE AGGREGATED OR BUNDLED WITH SUCH SPECIFICALLY-DESCRIBED CHARGES ON A SUBSCRIBER OR CUSTOMER'S BILL, IF THE DIRECT BROADCAST SATELLITE SERVICE PROVIDER CAN REASONABLY IDENTIFY THE CHARGES IN ITS BOOKS AND RECORDS KEPT IN THE REGULAR COURSE OF BUSINESS.

(E) "PERSON", MEANS AN INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, TRUST OR ASSOCIATION, WITH OR WITHOUT TRANSFERABLE SHARES, JOINT-STOCK COMPANY, CORPORATION, SOCIETY, CLUB, ORGANIZATION, INSTITUTION, ESTATE, RECEIVER, TRUSTEE, ASSIGNEE OR REFEREE AND ANY OTHER PERSON ACTING IN A FIDUCIARY OR REPRESENTATIVE CAPACITY, WHETHER APPOINTED BY A COURT OR OTHERWISE, AND ANY COMBINATION OF INDIVIDUALS ACTING AS A UNIT.

(F) "SUBSCRIBER OR CUSTOMER", MEANS ANY PERSON OR MEMBER OF THE GENERAL PUBLIC WHO RECEIVES DIRECT BROADCAST SATELLITE SERVICE FROM A DIRECT BROADCAST SATELLITE SERVICE PROVIDER AND DOES NOT FURTHER DISTRIBUTE SUCH SERVICE IN THE ORDINARY COURSE OF BUSINESS.

(G) "VIDEO PROGRAMMING", MEANS PROGRAMMING PROVIDED BY, OR COMPARABLE TO PROGRAMMING PROVIDED BY, A TELEVISION BROADCAST STATION INCLUDING, BUT NOT LIMITED TO, VIDEO PROGRAMMING PROVIDED BY LOCAL NETWORKS, NATIONAL BROADCAST NETWORKS, CABLE NETWORKS AND ALL FORMS OF PAY-PER-VIEW VIDEO ENTERTAINMENT.

2. EXCISE IMPOSED. AN EXCISE IS HEREBY IMPOSED UPON THE PROVISION OF DIRECT BROADCAST SATELLITE SERVICE TO A SUBSCRIBER OR CUSTOMER BY ANY DIRECT BROADCAST SATELLITE SERVICE PROVIDER IN AN AMOUNT EQUAL TO 5 PER CENT OF THE DIRECT BROADCAST SATELLITE SERVICE PROVIDER'S GROSS REVENUES DERIVED FROM OR ATTRIBUTABLE TO SUCH CUSTOMER OR SUBSCRIBER.

3. REIMBURSEMENT. REIMBURSEMENT FOR THE EXCISE IMPOSED IN THIS SECTION SHALL BE PAID BY THE SUBSCRIBER OR CUSTOMER TO THE DIRECT BROADCAST

SATELLITE SERVICE PROVIDER AND EACH DIRECT BROADCAST SATELLITE SERVICE PROVIDER PROVIDING DIRECT BROADCAST SATELLITE SERVICE TO SUBSCRIBERS OR CUSTOMERS SHALL COLLECT FROM SUCH SUBSCRIBER OR CUSTOMER THE FULL AMOUNT OF THE EXCISE IMPOSED WITH RESPECT TO GROSS REVENUES DERIVED FROM OR ATTRIBUTABLE TO SUCH CUSTOMER OR SUBSCRIBER AND SUCH EXCISE SHALL BE A DEBT FROM THE SUBSCRIBER OR CUSTOMER TO THE DIRECT BROADCAST SATELLITE SERVICE PROVIDER WHEN ADDED TO THE SUBSCRIBER OR CUSTOMER'S INVOICE FOR VIDEO PROGRAMMING SERVICE AND SHALL BE RECOVERABLE AT LAW IN THE SAME MANNER AS OTHER DEBTS.

4. CERTIFICATE OF REGISTRATION. EVERY DIRECT BROADCAST SATELLITE SERVICE PROVIDER SUBJECT TO THE TAX IMPOSED BY THIS SECTION SHALL FILE WITH THE COMMISSIONER A CERTIFICATE OF REGISTRATION, IN A FORM PRESCRIBED BY THE COMMISSIONER, AT LEAST TWENTY DAYS PRIOR TO COMMENCING BUSINESS OR OPENING A NEW PLACE OF BUSINESS, SUCH SELLING OR TAKING OF POSSESSION OR PAYMENT DERIVED FROM DIRECT BROADCAST SATELLITE SERVICE, OR THE EFFECTIVE DATE OF THIS SECTION, WHICHEVER COMES FIRST. THE COMMISSIONER SHALL FURNISH TO EACH DIRECT BROADCAST SATELLITE SERVICE PROVIDER GENERAL INFORMATION ABOUT THE TAX IMPOSED UNDER THIS SECTION INCLUDING INFORMATION ON RECORDS TO BE KEPT, RETURNS AND PAYMENTS, NOTIFICATION REQUIREMENTS AND FORMS. SUCH CERTIFICATE OF REGISTRATION MAY BE AMENDED IN ACCORDANCE WITH RULES PROMULGATED BY THE COMMISSIONER.

5. RETURNS. EVERY PROVIDER OF DIRECT BROADCAST SATELLITE SERVICES SUBJECT TO TAX UNDER THIS SECTION SHALL FILE, ON OR BEFORE MARCH FIFTEENTH OF EACH YEAR, A RETURN FOR THE YEAR ENDED ON THE PRECEDING DECEMBER THIRTY-FIRST, AND PAY THE TAX DUE, WHICH RETURN SHALL STATE THE GROSS RECEIPTS FOR THE PERIOD COVERED BY EACH SUCH RETURN AND THE RESALE EXCLUSIONS DURING SUCH PERIOD. RETURNS SHALL BE FILED WITH THE COMMISSIONER ON A FORM TO BE FURNISHED BY THE COMMISSIONER FOR SUCH PURPOSE AND SHALL CONTAIN SUCH OTHER DATA, INFORMATION OR MATTER AS THE COMMISSIONER MAY REQUIRE TO BE INCLUDED THEREIN. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SUBDIVISION, THE COMMISSIONER MAY REQUIRE ANY PROVIDER OF DIRECT BROADCAST SATELLITE SERVICES TO FILE AN ANNUAL RETURN, WHICH SHALL CONTAIN ANY DATA SPECIFIED BY THE COMMISSIONER, REGARDLESS OF WHETHER SUCH PROVIDER IS SUBJECT TO TAX UNDER THIS SECTION. EVERY RETURN SHALL HAVE ANNEXED THERETO A CERTIFICATION BY THE HEAD OF THE PROVIDER OF TELECOMMUNICATION SERVICES MAKING THE SAME, OR OF THE OWNER OR OF A PARTNER OR MEMBER THEREOF, OR OF A PRINCIPAL OFFICER OF THE CORPORATION, IF SUCH BUSINESS BE CONDUCTED BY A CORPORATION, TO THE EFFECT THAT THE STATEMENTS CONTAINED THEREIN ARE TRUE.

6. APPLICABILITY. IF ANY PROVISION OF THIS SECTION CONFLICTS WITH ANY OTHER PROVISION CONTAINED IN THIS ARTICLE, THE PROVISION OF THIS SECTION SHALL CONTROL, BUT THE PROVISIONS OF THIS ARTICLE WHICH DO NOT CONFLICT WITH THE PROVISIONS OF THIS SECTION SHALL APPLY WITH RESPECT TO THE TAXES UNDER THIS SECTION, SO FAR AS THEY ARE, OR MAY BE MADE APPLICABLE.

7. LIABILITY. A DIRECT BROADCAST SATELLITE SERVICE PROVIDER WHO FAILS TO PAY THE COMMISSIONER ANY SUMS REQUIRED TO BE PAID BY THIS SECTION SHALL BE PERSONALLY AND INDIVIDUALLY LIABLE THEREFOR TO THE STATE. THE TERM "DIRECT BROADCAST SATELLITE SERVICE PROVIDER", AS USED IN THIS SECTION, INCLUDES AN OFFICER OR EMPLOYEE OF A CORPORATION OR OTHER BUSINESS ENTITY OR A MEMBER OR EMPLOYEE OF A PARTNERSHIP WHO, AS SUCH OFFICER, EMPLOYEE OR MEMBER, IS UNDER A DUTY TO PAY OVER THE TAXES IMPOSED BY THIS SECTION.

S 2. This act shall take effect immediately and shall apply to all tax years commencing on or after the first of January next succeeding the date on which it shall have become a law.