

STATE OF NEW YORK

9254

IN SENATE

May 12, 2022

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 establishing a tax on direct broadcast satellite services and video streaming services; and to amend the state finance law, in relation to establishing the community media reinvestment fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "community
2 media reinvestment act".

3 § 2. The tax law is amended by adding a new article 15 to read as
4 follows:

ARTICLE 15

COMMUNITY MEDIA REINVESTMENT ACT

Section 330. Definitions.

331. Imposition and collection of an assessment on direct broadcast satellite services and video streaming services.

10 § 330. Definitions. For the purposes of this article, the following
11 terms shall have the following meanings:

12 1. "municipality" means any village, town, city, or county not wholly
13 contained within a city in the state of New York;

14 2. "person" means an individual, partnership, limited liability compa-
15 ny, trust or association, with or without transferable shares, joint-
16 stock company, corporation, society, club, organization, institution,
17 estate, receiver, trustee, assignee or referee and any other person
18 acting in a fiduciary or representative capacity, whether appointed by a
19 court or otherwise, and any combination of individuals acting as a unit.
20 The term "person", unless expressly provided otherwise, does not
21 include:

22 (a) a governmental entity or a unit or instrumentality of a govern-
23 mental entity; or

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

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1 (b) any entity exempt from sales and compensating use taxes pursuant
2 to paragraph four of subdivision (a) of section eleven hundred sixteen
3 of this chapter;

4 3. "community media organization" means an entity that is responsible
5 for:

6 (a) operating and administering a public access channel, as defined in
7 16 NYCRR 895.4; and/or

8 (b) operating and administering educational and/or governmental access
9 channels, as defined in 16 NYCRR 895.4;

10 4. "subscriber" or "customer" means any person or member of the gener-
11 al public who receives direct broadcast satellite service or video
12 streaming service from a direct broadcast satellite service provider or
13 video streaming service provider and does not further distribute such
14 service in the ordinary course of business;

15 5. "direct broadcast satellite service" means the distribution or
16 broadcasting by satellite of video programming or services directly to
17 receiving equipment located at an end user subscriber's or an end user
18 customer's premises, including, but not limited to, the provision of
19 premium channels, the provision of music or other audio services or
20 channels, and any other service received in connection with the
21 provision of direct broadcast satellite service;

22 6. "direct broadcast satellite service provider" means a person who
23 transmits, broadcasts or otherwise provides direct broadcast satellite
24 service to subscribers or customers in the state;

25 7. "video streaming service" means the distribution or broadcasting of
26 video programming displayed by the viewer for a fee on a subscription
27 basis. The term video streaming service, unless expressly provided
28 otherwise, does not include cable service as defined by 47 U.S.C. §
29 522(6);

30 8. "video streaming service provider" means a person who transmits,
31 broadcasts or otherwise provides video streaming service to subscribers
32 or customers in the state;

33 9. "video programming" means programming provided by, or comparable to
34 programming provided by, a television broadcast station including, but
35 not limited to, video programming provided by local networks, national
36 broadcast networks, cable television networks and all forms of pay-per-
37 view or on-demand video entertainment; and

38 10. "gross receipts" means all consideration of any kind or nature
39 received by a direct broadcast satellite service provider or video
40 streaming service provider, or an affiliate of such person, in
41 connection with the provision, delivery, or furnishing of direct broad-
42 cast satellite service or video streaming service to subscribers or
43 customers within the state, determined according to the hierarchy
44 described in section three hundred thirty-one of this article. "Gross
45 receipts" shall not include:

46 (a) revenue not actually received, regardless of whether it is billed,
47 including, but not limited to, bad debts;

48 (b) revenue received by an affiliate or other person in exchange for
49 supplying goods and services to an affiliated direct broadcast satellite
50 service provider or affiliated video streaming service provider;

51 (c) refunds, rebates or discounts made to subscribers or customers, to
52 advertisers or to other persons;

53 (d) revenue from telecommunications service as defined in 47 U.S.C. §
54 153(53);

55 (e) revenue from any service that is subject to tax under article
56 twenty-eight of this chapter;

1 (f) revenue from the sale of capital assets or surplus equipment not
2 used by the purchaser to receive direct broadcast satellite service or
3 video streaming service from the direct broadcast satellite service
4 provider or video streaming service provider;

5 (g) reimbursements made by programmers to the direct broadcast satel-
6 lite service provider or video streaming service provider for marketing
7 costs incurred by such service provider for the introduction of new
8 programming;

9 (h) late payment fees collected from subscribers or customers; or

10 (i) charges, other than charges for direct broadcast satellite
11 services or video streaming services, that are aggregated or bundled
12 with direct broadcast satellite services or video streaming services on
13 a subscriber's or customer's bill, if the direct broadcast satellite
14 service provider or video streaming service provider can reasonably and
15 separately identify the charges in its books and records kept in the
16 regular course of business.

17 § 331. Imposition and collection of an assessment on direct broadcast
18 satellite services and video streaming services. 1. There is hereby
19 imposed an excise tax on the provision, delivery, or furnishing of
20 direct broadcast satellite services or video streaming services by
21 direct broadcast satellite service providers or video streaming service
22 providers to subscribers or customers in the state.

23 2.(a) Direct broadcast satellite service providers and video streaming
24 service providers shall pay an assessment equal to five percent of such
25 provider's gross receipts derived in or from the provision, delivery, or
26 furnishing of direct broadcast satellite service or video streaming
27 service to subscribers or customers in the state.

28 (b) Gross receipts derived in or from the provision, delivery, or
29 furnishing of direct broadcast satellite service or video streaming
30 service by direct broadcast satellite service providers or video stream-
31 ing service providers to subscribers or customers in the state shall be
32 determined by the hierarchy of sourcing methods set forth in paragraph
33 (c) of this subdivision. The direct broadcast satellite service provider
34 or video streaming service provider shall exercise due diligence under
35 each method described in paragraph (c) of this subdivision before
36 rejecting it and proceeding to the next method in the hierarchy, and
37 shall base its determination on information known to it or information
38 that would be known to it upon reasonable inquiry.

39 (c) Hierarchy of sourcing methods:

40 (i) the customer's primary use location of the direct broadcast satel-
41 lite service or video streaming service; and

42 (ii) the customer's billing address.

43 3. The tax authorized in this section shall be for each year, or part
44 of each year, that such direct broadcast satellite service provider or
45 video streaming service provider is engaged in the sale of direct broad-
46 cast satellite or video streaming services to subscribers or customers
47 in the state.

48 4. (a) Every direct broadcast satellite service provider and/or video
49 streaming service provider subject to tax under this section shall (i)
50 file, on or before April fifteenth of each year, for taxable years
51 beginning on or after January first, two thousand twenty-three, a return
52 for the year ended on the preceding December thirty-first, and (ii) pay
53 the tax due, which return shall state the gross receipts for the period
54 covered by each such return.

55 (b) Returns shall be filed with the commissioner on a form to be
56 furnished by the commissioner for such purpose and shall contain such

1 other data, information or matter as the commissioner may require to be
2 included therein.

3 (c) Notwithstanding paragraphs (a) and (b) of this subdivision, the
4 commissioner may require any direct broadcast satellite service provider
5 and/or video streaming service provider to file an annual return, which
6 shall contain any data specified by the commissioner, regardless of
7 whether such provider is subject to tax under this section.

8 5. (a) A direct broadcast satellite service provider or video stream-
9 ing service provider who fails to file a return or to pay any tax within
10 thirty days of the time required pursuant to this article (determined
11 with regard to any extension of time for filing or paying) shall be
12 subject to a penalty of ten percent of the amount of the tax determined
13 to be due, plus five percent of such amount for each subsequent month or
14 fraction thereof during which such failure continues, not to exceed
15 thirty percent in the aggregate.

16 (b) In the event of an underpayment of the tax owed, the commissioner
17 shall set the underpayment rate of interest to be paid, but the under-
18 payment rate shall not be less than seven and one-half percent per
19 annum, compounded daily. If no such rate of interest is set, such under-
20 payment rate shall be deemed to be set at seven and one-half percent per
21 annum, compounded daily. Any such rate set by the commissioner shall
22 apply to taxes, or any portion thereof, which remain or become due or
23 underpaid on or after the date on which such rates become effective and
24 shall apply only with respect to interest computed or computable for
25 periods or portions of periods occurring in the period during which such
26 rates are in effect.

27 6. Every direct broadcast satellite service provider and/or video
28 streaming service provider subject to tax under this section shall keep
29 such records of its business and in such form as the commissioner may
30 require, and such records shall be preserved for a period of three
31 years, except that the commissioner may consent to their destruction
32 within that period or may require that they be kept longer.

33 § 3. The state finance law is amended by adding a new section 99-m to
34 read as follows:

35 § 99-m. Community media reinvestment fund. 1. There is hereby estab-
36 lished in the joint custody of the comptroller and the commissioner of
37 taxation and finance a special fund to be known as the "community media
38 reinvestment fund".

39 2.(a) All monies received by the comptroller or the commissioner of
40 taxation and finance for the purpose of this fund shall be deposited
41 therein. No monies may be transferred from this account to any other
42 account except by authority of the commissioner of taxation and finance.

43 (b) Such fund shall consist of the revenue collected pursuant to arti-
44 cle fifteen of the tax law and any other revenues collected by or appro-
45 riated to the fund pursuant to any other law.

46 3.(a) The commissioner of taxation and finance is authorized to
47 utilize the monies in the community media reinvestment fund, for
48 distribution to the state, municipalities, and community media organiza-
49 tions in proportions as provided in paragraph (b) of this subdivision,
50 provided however, that the commissioner may retain up to ten percent of
51 the monies in the fund annually for operational expenditures.

52 (b) The commissioner of taxation and finance shall annually distrib-
53 ute, with no remainder left, all monies then held in the community media
54 reinvestment fund according to the following formula:

1 (i) one-fifth of the monies in the fund, less the monies retained by
2 the commissioner for operational expenditures, shall be distributed to
3 the state general fund;

4 (ii) two-fifths of the monies in the fund shall be distributed direct-
5 ly to municipalities in the state, and further allocated proportionally
6 based upon the population of such municipalities;

7 (iii) two-fifths of the monies in the fund shall be distributed
8 directly to identified community media organizations in the state, or,
9 if no community media organization has been identified in a given muni-
10 cipality, to the organization or organizations serving that municipality
11 identified by the New York state council on the arts to receive distrib-
12 utions from the fund, and further allocated proportionally based on the
13 population of the municipality or municipalities served by each such
14 identified organization.

15 4. The commissioner of taxation and finance shall promulgate regu-
16 lations by December thirty-first, two thousand twenty-two to establish
17 procedures for identifying, on an annual basis, (a) community media
18 organizations eligible to receive monies distributed pursuant to subpar-
19 agraph (iii) of paragraph (b) of subdivision three of this section; and
20 (b) in the event that no community media organization has been identi-
21 fied in a given municipality, the organizations serving that muni-ci-
22 pality identified by the New York state council on the arts, eligible to
23 receive monies distributed pursuant to subparagraph (iii) of paragraph
24 (b) of subdivision three of this section. Notwithstanding any other
25 provisions to the contrary in the New York state administrative proce-
26 dure act (SAPA), such rules and regulations may be adopted on an emer-
27 gency basis if necessary to meet such December thirty-first, two thou-
28 sand twenty-two deadline.

29 5. All payments of monies from the fund shall be made on the audit and
30 warrant of the comptroller.

31 § 4. This act shall take effect immediately and apply to taxable years
32 beginning on and after January 1, 2023.