

# STATE OF NEW YORK

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2023-2024 Regular Sessions

## IN ASSEMBLY

March 24, 2023

Introduced by M. of A. BENEDETTO, CARROLL, REYES, BURGOS, SEPTIMO, ZACCARO, TAPIA, ZINERMAN, ALVAREZ, RAGA, FORREST, OTIS, CRUZ, JACKSON, SILLITTI, DE LOS SANTOS, CUNNINGHAM, RIVERA, ARDILA, ROZIC, GONZALEZ-ROJAS, WEPRIN, WALKER, KIM, THIELE, BICHOTTE HERMELYN, DINOWITZ, SEAWRIGHT, MEEKS, LUCAS, KELLES, SIMON, EPSTEIN, JEAN-PIERRE, CHANDLER-WATERMAN, CHANG, SHIMSKY, DARLING, GALLAGHER -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Short title. This act shall be known and may be cited as  
2 the "community 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;

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

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

9 (a) a governmental entity or a unit or instrumentality of a govern-  
10 mental entity; or

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

14 3. "community media organization" means an entity that is responsible  
15 for:

16 (a) operating and administering a public access channel, as defined in  
17 16 NYCRR 895.4; and/or

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

20 4. "subscriber" or "customer" means any person or member of the gener-  
21 al public who receives direct broadcast satellite service or video  
22 streaming service from a direct broadcast satellite service provider or  
23 video streaming service provider and does not further distribute such  
24 service in the ordinary course of business;

25 5. "direct broadcast satellite service" means the distribution or  
26 broadcasting by satellite of video programming or services directly to  
27 receiving equipment located at an end user subscriber's or an end user  
28 customer's premises, including, but not limited to, the provision of  
29 premium channels, the provision of music or other audio services or  
30 channels, and any other service received in connection with the  
31 provision of direct broadcast satellite service;

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

35 7. "video streaming service" means the distribution or broadcasting of  
36 video programming displayed by the viewer for a fee on a subscription  
37 basis. The term video streaming service, unless expressly provided  
38 otherwise, does not include cable service as defined by 47 U.S.C. §  
39 522(6);

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

43 9. "video programming" means programming provided by, or comparable to  
44 programming provided by, a television broadcast station including, but  
45 not limited to, video programming provided by local networks, national  
46 broadcast networks, cable television networks and all forms of pay-per-  
47 view or on-demand video entertainment; and

48 10. "gross receipts" means all consideration of any kind or nature  
49 received by a direct broadcast satellite service provider or video  
50 streaming service provider, or an affiliate of such person, in  
51 connection with the provision, delivery, or furnishing of direct broad-  
52 cast satellite service or video streaming service to subscribers or  
53 customers within the state, determined according to the hierarchy  
54 described in section three hundred thirty-one of this article. "Gross  
55 receipts" shall not include:

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

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

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

8 (d) revenue from telecommunications service as defined in 47 U.S.C. §  
9 153(53). Under no circumstances shall direct broadcast satellite provid-  
10 ers or video streaming service providers subject to the tax imposed  
11 pursuant to this article include the amount of such tax on bills as a  
12 pass-through to customers. It shall be the responsibility of each direct  
13 broadcast satellite service provider and each video streaming service  
14 provider subject to the tax imposed pursuant to this article to pay its  
15 required taxes to the state and providers shall not mislead the customer  
16 to think otherwise;

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

19 (f) revenue from the sale of capital assets or surplus equipment not  
20 used by the purchaser to receive direct broadcast satellite service or  
21 video streaming service from the direct broadcast satellite service  
22 provider or video streaming service provider;

23 (g) reimbursements made by programmers to the direct broadcast satel-  
24 lite service provider or video streaming service provider for marketing  
25 costs incurred by such service provider for the introduction of new  
26 programming;

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

28 (i) charges, other than charges for direct broadcast satellite  
29 services or video streaming services, that are aggregated or bundled  
30 with direct broadcast satellite services or video streaming services on  
31 a subscriber's or customer's bill, if the direct broadcast satellite  
32 service provider or video streaming service provider can reasonably and  
33 separately identify the charges in its books and records kept in the  
34 regular course of business.

35 § 331. Imposition and collection of an assessment on direct broadcast  
36 satellite services and video streaming services. 1. There is hereby  
37 imposed an excise tax on the provision, delivery, or furnishing of  
38 direct broadcast satellite services or video streaming services by  
39 direct broadcast satellite service providers or video streaming service  
40 providers to subscribers or customers in the state.

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

46 (b) Gross receipts derived in or from the provision, delivery, or  
47 furnishing of direct broadcast satellite service or video streaming  
48 service by direct broadcast satellite service providers or video stream-  
49 ing service providers to subscribers or customers in the state shall be  
50 determined by the hierarchy of sourcing methods set forth in paragraph  
51 (c) of this subdivision. The direct broadcast satellite service provider  
52 or video streaming service provider shall exercise due diligence under  
53 each method described in paragraph (c) of this subdivision before  
54 rejecting it and proceeding to the next method in the hierarchy, and  
55 shall base its determination on information known to it or information  
56 that would be known to it upon reasonable inquiry.

1 (c) Hierarchy of sourcing methods:

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

4 (ii) the customer's billing address.

5 3. The tax authorized in this section shall be for each year, or part  
6 of each year, that such direct broadcast satellite service provider or  
7 video streaming service provider is engaged in the sale of direct broad-  
8 cast satellite or video streaming services to subscribers or customers  
9 in the state.

10 4. (a) Every direct broadcast satellite service provider and/or video  
11 streaming service provider subject to tax under this section shall (i)  
12 file, on or before April fifteenth of each year, for taxable years  
13 beginning on or after January first, two thousand twenty-five, a return  
14 for the year ended on the preceding December thirty-first, and (ii) pay  
15 the tax due, which return shall state the gross receipts for the period  
16 covered by each such return.

17 (b) Returns shall be filed with the commissioner on a form to be  
18 furnished by the commissioner for such purpose and shall contain such  
19 other data, information or matter as the commissioner may require to be  
20 included therein.

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

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

34 (b) In the event of an underpayment of the tax owed, the commissioner  
35 shall set the underpayment rate of interest to be paid, but the under-  
36 payment rate shall not be less than seven and one-half percent per  
37 annum, compounded daily. If no such rate of interest is set, such under-  
38 payment rate shall be deemed to be set at seven and one-half percent per  
39 annum, compounded daily. Any such rate set by the commissioner shall  
40 apply to taxes, or any portion thereof, which remain or become due or  
41 underpaid on or after the date on which such rates become effective and  
42 shall apply only with respect to interest computed or computable for  
43 periods or portions of periods occurring in the period during which such  
44 rates are in effect.

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

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

53 § 99-m. Community media reinvestment fund. 1. There is hereby estab-  
54 lished in the joint custody of the comptroller and the commissioner of  
55 taxation and finance a special fund to be known as the "community media  
56 reinvestment fund".

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

5 (b) Such fund shall consist of the revenue collected pursuant to arti-  
6 cle fifteen of the tax law and any other revenues collected by or appro-  
7 propriated to the fund pursuant to any other law.

8 3.(a) The commissioner of taxation and finance is authorized to  
9 utilize the monies in the community media reinvestment fund, for  
10 distribution to the state, municipalities, and community media organiza-  
11 tions in proportions as provided in paragraph (b) of this subdivision or  
12 in accordance with paragraph (c) of this subdivision, provided however,  
13 that the commissioner may retain up to ten percent of the monies in the  
14 fund annually for operational expenditures.

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

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

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

24 (iii) two-fifths of the monies in the fund shall be distributed  
25 directly to identified community media organizations in the state, or,  
26 if no community media organization has been identified in a given muni-  
27 cipality, to infrastructure or services overseen by the ConnectALL  
28 office or to organizations identified by ConnectALL.

29 (c) Notwithstanding paragraph (b) of this subdivision, in low popu-  
30 lation density areas where cable is not mandated, such funds may be used  
31 by ConnectALL to build out the infrastructure needed for video or audio  
32 connectivity, which may include broadband, cellular, satellite, or any  
33 other means of connectivity appropriate to facilitate the establishment  
34 of the community media operations desired in each low population density  
35 area.

36 4. The commissioner of taxation and finance shall promulgate regu-  
37 lations by December thirty-first, two thousand twenty-four to establish  
38 procedures for identifying, on an annual basis, (a) community media  
39 organizations eligible to receive monies distributed pursuant to subpar-  
40 agraph (iii) of paragraph (b) of subdivision three of this section; and  
41 (b) in the event that no community media organization has been identi-  
42 fied in a given municipality, the ConnectALL office or organizations  
43 identified by ConnectALL, eligible to receive monies distributed pursu-  
44 ant to subparagraph (iii) of paragraph (b) of subdivision three of this  
45 section. Notwithstanding any other provisions to the contrary in the  
46 state administrative procedure act, such rules and regulations may be  
47 adopted on an emergency basis if necessary to meet such December thir-  
48 ty-first, two thousand twenty-four deadline.

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

51 § 4. This act shall take effect immediately and apply to taxable years  
52 beginning on and after January 1, 2025.