

STATE OF NEW YORK

2581--B

2023-2024 Regular Sessions

IN SENATE

January 23, 2023

Introduced by Sens. PARKER, BAILEY, BORRELLO, CLEARE, COMRIE, FERNANDEZ, GOUNARDES, JACKSON, LIU, MAYER, MYRIE, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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;

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,

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

LBD06297-05-4

1 estate, receiver, trustee, assignee or referee and any other person
2 acting in a fiduciary or representative capacity, whether appointed by a
3 court or otherwise, and any combination of individuals acting as a unit.
4 The term "person", unless expressly provided otherwise, does not
5 include:

6 (a) a governmental entity or a unit or instrumentality of a govern-
7 mental entity; or

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

11 3. "community media organization" means an entity that is responsible
12 for:

13 (a) operating and administering a public access channel, as defined in
14 16 NYCRR 895.4; and/or

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

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

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

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

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

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

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

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

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

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

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

6 (d) revenue from telecommunications service as defined in 47 U.S.C. §
7 153(53). Under no circumstances shall direct broadcast satellite provid-
8 ers or video streaming service providers subject to the tax imposed
9 pursuant to this article include the amount of such tax on bills as a
10 pass-through to customers. It shall be the responsibility of each direct
11 broadcast satellite service provider and each video streaming service
12 provider subject to the tax imposed pursuant to this article to pay its
13 required taxes to the state and providers shall not mislead the customer
14 to think otherwise;

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

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

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

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

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

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

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

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

55 (c) Hierarchy of sourcing methods:

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

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

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

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

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

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

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

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

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

52 § 99-m. Community media reinvestment fund. 1. There is hereby estab-
53 lished in the joint custody of the comptroller and the commissioner of
54 taxation and finance a special fund to be known as the "community media
55 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 priated 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.