STATE OF NEW YORK

5900--A

2023-2024 Regular Sessions

IN ASSEMBLY

March 24, 2023

Introduced by M. of A. BENEDETTO, CARROLL, REYES, BURGOS, SEPTIMO, ZACCARO, TAPIA, ZINERMAN, ALVAREZ, JOYNER, RAGA, FORREST, OTIS, CRUZ, JACKSON, SILLITTI, DE LOS SANTOS -- read once and referred to the Committee on Ways and Means -- 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:

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

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

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

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

2. "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.

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

LBD06297-02-3

The term "person", unless expressly provided otherwise, does not include:

(a) a governmental entity or a unit or instrumentality of a governmental entity; or

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

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

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

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

4. "subscriber" or "customer" means any person or member of the general public who receives direct broadcast satellite service or video streaming service from a direct broadcast satellite service provider or video streaming service provider and does not further distribute such service in the ordinary course of business;

5. "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;

6. "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;

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

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

9. "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 television networks and all forms of pay-per-view or on-demand video entertainment; and

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

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

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

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

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

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

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

(g) reimbursements made by programmers to the direct broadcast satellite service provider or video streaming service provider for marketing costs incurred by such service provider for the introduction of new programming;

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

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

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

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

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

(c) Hierarchy of sourcing methods:

(i) the customer's primary use location of the direct broadcast satellite service or video streaming service; and

(ii) the customer's billing address.

3. The tax authorized in this section shall be for each year, or part of each year, that such direct broadcast satellite service provider or video streaming service provider is engaged in the sale of direct broad-

cast satellite or video streaming services to subscribers or customers in the state.

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

(b) 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.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, the commissioner may require any direct broadcast satellite service provider and/or video streaming service provider 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.

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

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

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

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

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

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

(b) Such fund shall consist of the revenue collected pursuant to article fifteen of the tax law and any other revenues collected by or appropriated to the fund pursuant to any other law.

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

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

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

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

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

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

4. The commissioner of taxation and finance shall promulgate regulations by December thirty-first, two thousand twenty-three to establish procedures for identifying, on an annual basis, (a) community media organizations eligible to receive monies distributed pursuant to subparagraph (iii) of paragraph (b) of subdivision three of this section; and (b) in the event that no community media organization has been identified in a given municipality, the organizations serving that municipality identified by the New York state council on the arts, eligible to receive monies distributed pursuant to subparagraph (iii) of paragraph (b) of subdivision three of this section. Notwithstanding any other provisions to the contrary in the New York state administrative procedure act (SAPA), such rules and regulations may be adopted on an emergency basis if necessary to meet such December thirty-first, two thousand twenty-three deadline.

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

§ 4. This act shall take effect immediately and apply to taxable years beginning on and after January 1, 2024.