

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1297

Session of
1995

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DERMODY AND SERAFINI, MARCH 22, 1995

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 23, 1995

AN ACT

1 Authorizing a video programming municipal tax.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Video
6 Programming Municipal Tax Authorization Act.

7 Section 2. Definitions.

8 The following words and phrases when used in this act shall
9 have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Cable television operator." Any person or group of persons
12 who provides cable service over a cable system and directly or
13 through one or more affiliates owns an interest in such cable
14 system or who otherwise controls or is responsible for, through

1 any arrangement, the management and operation of a cable system.
2 The term does not include a provider of wireless or direct-to-
3 home satellite transmission service.

4 "Direct-to-home satellite transmission." The transmission,
5 distribution or broadcasting of video programming or services by
6 satellite directly to subscribers' premises without the use of
7 ground receiving or distribution equipment, except at the site
8 of the subscribers or in the uplink process to the satellite.

9 "Gross receipts." The amount charged for or received by
10 video programmers from sales of video programming, and related
11 charges for bad check and late payment charges, installation,
12 connection, additional outlets, repair services, digital audio
13 services, radio services, programming guides and equipment
14 rental services UPON WHICH THE LOCAL CABLE TELEVISION OPERATOR <—
15 PAYS A FRANCHISE FEE, THE AMOUNT CHARGED FOR OR RECEIVED BY
16 COMMON CARRIERS FROM SALES OF ACCESS TO VIDEO PROGRAMMING, AND
17 RELATED CHARGES FOR BAD CHECK AND LATE PAYMENT CHARGES,
18 INSTALLATION, CONNECTION, ADDITIONAL OUTLETS, REPAIR SERVICES,
19 DIGITAL AUDIO SERVICES, RADIO SERVICES, PROGRAMMING GUIDES AND
20 EQUIPMENT RENTAL SERVICES UPON WHICH THE LOCAL CABLE TELEVISION
21 OPERATOR PAYS A FRANCHISE FEE, and the amount charged for or
22 received by persons from sales of access to video programming by
23 any means of transmission, other than wireless or direct-to-home
24 satellite transmission, directly to subscribers with service
25 addresses in the municipality. Gross receipts shall not include:

26 (1) amounts charged for or received by persons from
27 sales of telephone access or service that entitles the
28 subscriber to the privilege of interactive telephonic quality
29 telecommunications with substantially all persons having
30 telephone or radio telephone stations constituting a part of

1 a particular system or in a specified area;

2 (2) any revenues received by ~~a common carrier~~ PERSONS <—
3 PROVIDING ACCESS TO VIDEO PROGRAMMING from video programmers
4 for the transport of video programming to a subscriber's
5 premises or access to the video dial tone network;

6 (3) the tax imposed under this act if the tax is shown
7 as a separate line charge to subscribers;

8 (4) any other taxes, fees or surcharges on services
9 furnished by persons providing access to video programming or
10 video programmers which are imposed on subscribers by the
11 Commonwealth, cities, incorporated towns, townships,
12 boroughs, counties or home rule municipalities pursuant to
13 statute, ordinance, resolution or regulation and which are
14 collected on behalf of the governmental unit by the provider
15 of the services;

16 (5) any portion of a debt related to the sale of video
17 programming or the sale of access to a video network, the
18 gross charges for which are not otherwise deductible or
19 excludable, that have become worthless or uncollectible, as
20 determined under applicable Federal Income Tax standards. If
21 the portion of the debt deemed to be bad is subsequently
22 paid, the video programmer or person shall report and pay the
23 excise tax on that portion during the reporting period in
24 which the payment is made;

25 (6) amounts received from retail sales of tangible
26 personal property that provides access to video programming;

27 ~~or~~ <—

28 (7) amounts charged for or received by persons from
29 sales of video programming which is delivered to subscribers
30 through a Satellite Master Antenna Television (SMATV) System; <—

1 OR

2 (8) AMOUNTS RECEIVED BY A COMMON CARRIER FROM PERSONS
3 FOR RELATED CHARGES FOR BAD CHECK AND LATE PAYMENT CHARGES,
4 INSTALLATION, CONNECTION, ADDITIONAL OUTLETS, REPAIR
5 SERVICES, DIGITAL AUDIO SERVICES, RADIO SERVICES, PROGRAMMING
6 GUIDES AND EQUIPMENT RENTAL SERVICES THAT ARE RESOLD BY SUCH
7 PERSONS TO THE ULTIMATE CONSUMER.

8 "Municipality." Cities of the first class, cities of the
9 second class, cities of the second class A, cities of the third
10 class, boroughs, incorporated towns, townships of the first
11 class, townships of the second class and home rule
12 municipalities.

13 "Person." An individual, partnership, association, joint
14 stock company, trust, corporation, government entity, limited
15 liability company or any other entity.

16 "Subscriber." The ultimate consumer of the video programming
17 provided by video programmers over any means of transmission,
18 other than wireless or direct-to-home satellite transmission.
19 The term does not include a video programmer that purchases a <—
20 ~~common carrier's~~ video dial tone transport service to provide
21 video programming over ~~the common carrier's~~ A video dial tone <—
22 system.

23 "Video dial tone service." A common carrier service for the
24 transport of video programming to subscribers.

25 "Video programmer." An individual, partnership, association,
26 joint stock company, trust, corporation, governmental entity,
27 limited liability company or any other entity that provides
28 video programming to subscribers.

29 "Video programming." Video or information programming,
30 whether in digital or analog format, that is provided by a cable

1 operator or generally considered comparable to programming
2 provided by a cable television operator and upon which such
3 cable television operator pays a franchise fee. Video
4 programming does not include on-line, interactive information
5 services to the extent that access to such services is
6 accomplished via a dial-up or private telephone line or via
7 wireless or direct-to-home satellite transmission.

8 "Wireless transmission." The distribution of video
9 programming using radio communications, including, but not
10 limited to, terrestrial-based radio systems.

11 Section 3. Imposition of tax on gross receipts of video
12 programming providers.

13 (a) Authority.--The General Assembly authorizes the duly
14 constituted authorities of each municipality of the Commonwealth
15 to impose and collect a video programming tax on and from,
16 respectively, any person who sells video programming to
17 subscribers who are located within this Commonwealth by any
18 means of transmission, other than wireless or direct-to-home
19 satellite transmission, or who provides such subscribers with
20 access to video programming by any means of transmission, other
21 than wireless or direct-to-home satellite transmission, and who
22 is not otherwise subject to Federally authorized or permitted
23 local fees or taxes on the gross receipts received from the
24 provision of cable television service or video programming
25 services to customers in the municipality. This tax shall be
26 imposed on persons engaging in any commercial activity in this
27 Commonwealth, or employing capital in this Commonwealth, or
28 owning, leasing or utilizing property in this Commonwealth, or
29 maintaining an office in this Commonwealth, or having employees
30 in this Commonwealth for all or any part of any calendar year,

1 to the full extent permitted by the Constitution of the United
2 States. The tax imposed by any municipality may be imposed only
3 on the gross receipts of such persons from sales of video
4 programming or sales of access to video programming directly to
5 subscribers who are located within the particular municipality.

6 (b) Tax rate.--The tax rate under this act shall be the
7 franchise fee rate lawfully imposed by the local cable ordinance
8 of the municipality or, if no local cable ordinance exists, the
9 rate set in the agreement between the local cable television
10 operator and the municipality. In no event shall the rate
11 imposed under this act exceed 5%.

12 (c) Calculation of tax.--The tax authorized in this act
13 shall be determined by multiplying the tax rate as set forth in
14 either subsection (b) or (g), as applicable, by the gross
15 receipts of video programmers from sales of video programming or
16 of persons from sales of access to video programming, OF COMMON <—
17 CARRIERS FROM SALES OF ACCESS TO VIDEO PROGRAMMING, by any means
18 of transmission, other than wireless or direct-to-home satellite
19 transmission, directly to subscribers who are located in that
20 municipality.

21 (d) Election.--Any person subject to tax under this act may
22 elect at any time to pass through to subscribers as a separate
23 itemized line charge on the subscriber's bill the tax imposed
24 under this act.

25 (e) Ordinance.--Any municipality imposing a tax under this
26 act may do so by adopting an ordinance stating its purpose and
27 making reference to this act and providing that the ordinance
28 shall be effective on the first day of a month at least 60 days
29 after its adoption.

30 (f) Penalty.--A penalty of an amount equal to 10% of the

1 taxes due, including all delinquent taxes due under this act,
2 shall be added to the tax levied under this act for failure to
3 pay the tax by the quarterly due dates set forth in this
4 section.

5 (g) Alternate rate.--If no cable television operator
6 provides cable service within the limits of a particular
7 municipality, the tax to be collected from persons subject to
8 tax under this act shall be an amount not to exceed 5%. In the
9 event that a cable operator shall thereafter provide cable
10 service within the limits of the municipality, the tax rate set
11 under this act shall be adjusted under subsection (b).

12 (h) Due dates.--The tax imposed under this act shall be paid
13 to the taxing municipality by each person quarterly on or before
14 April 30, July 31, October 31 and January 31 and shall be
15 calculated based on the gross receipts of each person during the
16 three months prior to the month of payment. Any payment of tax
17 shall be considered as timely made if the payment received by
18 the municipality is postmarked by the United States Postal
19 Service on or prior to the final day on which payment is to be
20 received.

21 Section 4. Exemption from certain taxes.

22 Gross receipts as defined in this act and subject to the tax
23 imposed by this act, as well as any revenues received by a
24 ~~common-carrier~~ PERSON PROVIDING ACCESS TO VIDEO PROGRAMMING from <—
25 video programmers for the transport of video programming to a
26 subscriber's premises or from video programmers for access to
27 the video dial tone network, shall not be subject to any tax
28 under:

29 (1) Article XI of the act of March 4, 1971 (P.L.6,
30 No.2), known as the Tax Reform Code of 1971.

(2) The act of December 31, 1965 (P.L.1257, No.511), known as The Local Tax Enabling Act, or any other local tax or fee imposed on the receipts of persons providing video programming or access to video programming to subscribers who are located within the municipality, except that the gross receipts of video programmers shall be subject to tax under the local business privilege tax in any municipality where the local cable television operator pays a local business privilege tax pursuant to The Local Tax Enabling Act.

Section 5. Tax credits.

(a) Credit for interstate transactions.--Any person subject to the tax imposed under this act shall be entitled to a credit against the tax imposed by this act equal in amount to any similar tax on gross receipts, other than a generally applicable sales or use tax or corporate income tax, that the person has paid to another state or government entity thereof under a lawful requirement of such state or government entity on sales by the person of the same video programming or sales of access to such video programming to subscribers located within the particular municipality.

(b) Credit for taxes paid under any franchise or similar fees.--Any person subject to the tax imposed under this act shall be entitled to a credit against the tax imposed by this act equal in amount to any fees on gross receipts that the person has paid under any franchise fee or similar fee authorized or permitted by Federal, State or local law or imposed by ordinance in any municipality or agreed to pursuant to a written franchise agreement between the person and the municipality, with respect to any revenues received by a person or video programmer from subscribers for access to the person's

1 video network or for video programming or from video programmers
2 for the transport of video programming to a subscriber's
3 premises or for access to a video network.

4 Section 6. Procedures and regulations.

5 (a) Procedures.--A person may be audited by a municipality,
6 provided, however, that any dispute or controversy that results
7 from such audit or imposition of tax under this act shall be
8 contested and resolved in accordance with a uniform set of
9 procedures, rules and regulations, applicable to all
10 municipalities, that shall be promulgated by the Department of
11 Revenue. The Department of Revenue shall prepare, promulgate and
12 distribute a form to be used by all municipalities in collecting
13 the video programming tax under this act. Each municipality
14 shall provide the video programmers and persons providing access
15 to video programming with:

16 (1) The rate that is lawfully imposed by such
17 municipality under this act.

18 (2) A list of the "zip plus 4's" or a comparable list of
19 addresses located in that municipality which will enable
20 persons to identify the subscribers located in that
21 municipality.

22 (3) A copy of the ordinance and any amendments thereto
23 within 30 days after enactment.

24 (b) Enforcement.--Each municipality may enforce ordinances
25 in accordance with this act.

26 (c) Regulations.--The Department of Revenue shall in the
27 manner provided by law promulgate rules and regulations not
28 inconsistent with this act, as may be necessary for the
29 effective enforcement of this act.

30 Section 7. Exemption for industrial satellite services.

1 Nothing in this act applies to industrial satellite services
2 of any kind.

3 Section 8. Effective date.

4 This act shall take effect in 60 days.