

No. 1995-37

AN ACT

HB 1297

Authorizing a video programming municipal tax.

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

Section 1. Short title.

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

Section 2. Definitions.

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

“Cable television operator.” Any person or group of persons who provides cable service over a cable system and directly or through one or more affiliates owns an interest in such cable system or who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system. The term does not include a provider of wireless or direct-to-home satellite transmission service.

“Direct-to-home satellite transmission.” The transmission, distribution or broadcasting of video programming or services by satellite directly to subscribers’ premises without the use of ground receiving or distribution equipment, except at the site of the subscribers or in the uplink process to the satellite.

“Gross receipts.” The amount charged for or received by video programmers from sales of video programming, and related charges for bad check and late payment charges, installation, connection, additional outlets, repair services, digital audio services, radio services, programming guides and equipment rental services upon which the local cable television operator pays a franchise fee, the amount charged for or received by common carriers from sales of access to video programming, and related charges for bad check and late payment charges, installation, connection, additional outlets, repair services, digital audio services, radio services, programming guides and equipment rental services upon which the local cable television operator pays a franchise fee, and the amount charged for or received by persons from sales of access to video programming by any means of transmission, other than wireless or direct-to-home satellite transmission, directly to subscribers with service addresses in the municipality. Gross receipts shall not include:

- (1) amounts charged for or received by persons from sales of telephone access or service that entitles the subscriber to the privilege of interactive telephonic quality telecommunications with substantially all persons having telephone or radio telephone stations constituting a part of a particular system or in a specified area;

(2) any revenues received by persons providing access to video programming from video programmers for the transport of video programming to a subscriber's premises or access to the video dial tone network;

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

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

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

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

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

(8) amounts received by a common carrier from persons for related charges for bad check and late payment charges, installation, connection, additional outlets, repair services, digital audio services, radio services, programming guides and equipment rental services that are resold by such persons to the ultimate consumer.

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

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

"Subscriber." The ultimate consumer of the video programming provided by video programmers over any means of transmission, other than wireless or direct-to-home satellite transmission. The term does not include a video programmer that purchases video dial tone transport service to provide video programming over a video dial tone system.

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

"Video programmer." An individual, partnership, association, joint stock company, trust, corporation, governmental entity, limited liability company

or any other entity that provides video programming to subscribers.

“Video programming.” Video or information programming, whether in digital or analog format, that is provided by a cable operator or generally considered comparable to programming provided by a cable television operator and upon which such cable television operator pays a franchise fee. “Video programming” does not include on-line, interactive information services to the extent that access to such services is accomplished via a dial-up or private telephone line or via wireless or direct-to-home satellite transmission.

“Wireless transmission.” The distribution of video programming using radio communications, including, but not limited to, terrestrial-based radio systems.

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

(a) Authority.—The General Assembly authorizes the duly constituted authorities of each municipality of the Commonwealth to impose and collect a video programming tax on and from, respectively, any person who sells video programming to subscribers who are located within this Commonwealth by any means of transmission, other than wireless or direct-to-home satellite transmission, or who provides such subscribers with access to video programming by any means of transmission, other than wireless or direct-to-home satellite transmission, and who is not otherwise subject to federally authorized or permitted local fees or taxes on the gross receipts received from the provision of cable television service or video programming services to customers in the municipality. This tax shall be imposed on persons engaging in any commercial activity in this Commonwealth, or employing capital in this Commonwealth, or owning, leasing or utilizing property in this Commonwealth, or maintaining an office in this Commonwealth, or having employees in this Commonwealth for all or any part of any calendar year, to the full extent permitted by the Constitution of the United States. The tax imposed by any municipality may be imposed only on the gross receipts of such persons from sales of video programming or sales of access to video programming directly to subscribers who are located within the particular municipality.

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

(c) Calculation of tax.—The tax authorized in this act shall be determined by multiplying the tax rate as set forth in either subsection (b) or (g), as applicable, by the gross receipts of video programmers from sales of video programming or of persons from sales of access to video programming, of common carriers from sales of access to video programming, by any means of transmission, other than wireless or direct-to-home satellite transmission,

directly to subscribers who are located in that municipality.

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

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

(f) Penalty.—A penalty of an amount equal to 10% of the taxes due, including all delinquent taxes due under this act, shall be added to the tax levied under this act for failure to pay the tax by the quarterly due dates set forth in this section.

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

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

Section 4. Exemption from certain taxes.

Gross receipts as defined in this act and subject to the tax imposed by this act, as well as any revenues received by a person providing access to video programming from video programmers for the transport of video programming to a subscriber's premises or from video programmers for access to the video dial tone network, shall not be subject to any tax under:

(1) Article XI of the act of March 4, 1971 (P.L.6, 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 video network or for video programming or from video programmers for the transport of video programming to a subscriber's premises or for access to a video network.

Section 6. Procedures and regulations.

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

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

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

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

(b) Enforcement.—Each municipality may enforce ordinances in accordance with this act.

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

Section 7. Exemption for industrial satellite services.

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

Section 8. Effective date.

This act shall take effect in 60 days.

APPROVED—The 6th day of July, A.D. 1995.

THOMAS J. RIDGE