

5/05/2020

8/27/2020

55-O-20

AN ORDINANCE

Amending City Code 3-2-17, "Amusement Tax," to Include Online Streaming Services and to Increase the Amusement Tax on Venues with Capacity Over 1500 Audience Members

WHEREAS, the City of Evanston, Cook County, Illinois, ("City") is a home rule unit of government and, pursuant to the provisions of Article VII, Section 6(a) of the Illinois Constitution, may exercise any power and perform any function pertaining to its government and affairs, including, but not limited to, the power to tax and to incur debt; and

WHEREAS, pursuant to Article VII, Section 6(a) and Section 6(i) of the Illinois Constitution in conjunction with 65 ILCS 5/11-42-5 of the Illinois Municipal Code, the City is authorized to impose a tax upon amusements; and

WHEREAS, the City now desires to impose a tax upon the amusement of video streaming, audio streaming and online games delivered within the City ("Streaming Tax"); and

WHEREAS, the Illinois Mobile Telecommunications Sourcing Conformity Act ("MTSCA"), 35 ILCS 638/1 et seq., regulates the taxation of mobile telecommunication services; and

WHEREAS, the City in accordance with the MTSCA regulates the taxation of mobile telecommunications services within the City; and

WHEREAS, the City's Streaming Tax will provide much needed revenue to promote the general health, safety, and welfare of the City and its residents within the City; and

WHEREAS, the Mayor and City Council of the City hereby believe that it is in the best interest of the City and its residents to impose said Streaming Tax.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: Title 3, Chapter 2, Section 17, "Amusement Tax," of the Evanston City Code of 2012, as amended, is hereby amended to read as follows:

3-2-17-1. - TAX IMPOSED.

(A)___A tax of five percent (5%) on the admission fee or charge is imposed upon every amusement patron for the privilege of admission to any amusement in the City, however, that the amusement tax shall not apply to the following.

(A) Governmental agencies;

(B) Religious societies or organizations;

(C) Live performances conducted or sponsored by not-for-profit institutions, organizations, groups or societies where no part of the net earnings inure to the benefit of any private shareholder or person;

(D) Venues with a capacity under one hundred (100) audience members.

(B) A tax of seven percent (7%) on the admission fee or charge is imposed upon every amusement patron for the privilege of admission to any amusement in the City with a capacity over one thousand five hundred and one (1501) audience members.

(C) In the case of amusements that are delivered electronically to mobile devices, as in the case of video streaming, audio streaming and online games, the rules set forth in the Illinois Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638, as amended, may be utilized for the purpose of determining which customers and charges are subject to the tax imposed by this Chapter.

3-2-17-2. - DEFINITIONS.

For purposes of this Section 3-2-17, the following terms, phrases, and words shall have the meanings given to them in this Section:

<p><i>ADMISSION FEE or CHARGE.</i></p>	<p>Any fee or charge made or received for admission to any <u>Amusement, including amounts paid for the right to access an Amusement</u>, whether or not represented by a ticket or admission stub or receipt of any kind. An admission fee or charge includes, but is not limited to, all fees or charges for seats, chairs, tables, benches, space to stand or sit, special seating area, tent, structure, booth, or similar accommodations made as aforescribed for which there is a fee or charge.</p>
<p><i>AMUSEMENT.</i></p>	<p>Any event, exhibition, performance, presentation, or show for amusement purposes which is exhibited or staged in the City, including, but not limited to, the following:</p>
	<p>(A) Any comedic, theatrical, dramatic, musical, opera, or spectator performance (except athletic contests) or production, or similar live or recorded amusement;</p>
	<p>(B) Any show, motion picture show, antique or flower show, speech or lecture;</p>
	<p>(C) Any exhibition of art or handicrafts or products;</p>

	(D) Any poultry or animal show, animal act, circus, or rodeo;
	(E) Any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means;
	(F) Any video streaming, audio streaming or <u>remotely-accessed online games made available to patrons on a rental or subscription basis, but not transactions where the Amusement Patron pays for the rights of permanent use;</u>
<i>AMUSEMENT PATRON.</i>	(A) Any person admitted to any amusement in the City for which an admission fee or charge is imposed;
	(B) Any person who purchases or otherwise acquires a ticket or pass of any kind from a place other than the location where such ticket or pass is purchased or acquired for admission to any amusement within the City;
	<u>(C) Any person with a billing address in the city of Evanston who purchases the right to access an Amusement as defined in section (F) of the definition of Amusement in this Code.</u>

<p>OWNER.</p>	<p>(A) With respect to the owner of a place where amusement is being held, any person with an ownership or leasehold interest in a building, structure, vehicle, boat, area or other place who presents, conducts or operates an amusement in such place or who allows, by agreement or otherwise, another person to present, conduct or operate amusement in such place;</p>
	<p>(B) With respect to the owner of an amusement, any person which has an ownership or lease-hold interest in such amusement or any person who has a proprietary interest in the amusement so as to <u>entitle</u> such person to all or a portion of the proceeds from the operation, conduct or presentation of such amusement, excluding proceeds from nonamusement services and from sales of tangible personal property.</p>
	<p>(C) With respect to the owner of an amusement, any person operating a community antenna television system or wireless cable television system, or any person receiving consideration from the patron for furnishing, transmitting or otherwise providing access to paid television programming.</p>
<p>PAID TELEVISION.</p>	<p>Programming that can be viewed on a television or other screen, and is transmitted by cable, fiber optics, laser, microwave, radio, satellite or similar means to members of the public for consideration.</p>

<i>PERSON.</i>	Any natural individual, firm, society, foundation, institution, partnership, limited liability company, association, joint stock company, joint venture, public or private corporation, receiver, executor, trustee or other representative appointed by the order of any court, or any other entity recognized by law.
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3-2-17-3. - COMPUTATION OF TAX.

For the purpose of determining the amount of the amusement tax due under this Section 3-2-17, admission fees or charges shall be computed exclusive of the amusement tax, any Federal or State taxes imposed upon the amusement patron and any separately stated charges for nonamusement services or for sales of tangible personal property.

3-2-17-4. - COLLECTION, PAYMENT AND ACCOUNTING.

(A) Every owner, manager or operator of amusement or of a place where an amusement is being held must collect from each patron the tax imposed by this Section 3-2-17. The monthly verified return for each completed calendar month shall be due within twenty (20) days of the completion of the previous calendar month. A verified statement of admission or charges in a form prescribed by the Finance Director must accompany each remittance. Acceptance by the City of any amount tendered in payment of the tax must be without prejudice to any claim, demand or right on account of any deficiency.

(B) Canceled admission tickets, stubs, receipts, and complete and accurate records, books and accounts in detail of all receipts must be kept at the place of amusement or such other place in the City as may be designated in writing by the person liable for collection of the tax, addressed to the Finance Director. All such books, records and accounts will be open to inspection by the Finance Director or his/her designee, at all reasonable times during regular business hours.

(C) For purposes of this Chapter, it shall be presumed that the amount of the Streaming Tax imposed on each Person, unless the taxpayer or tax collector provides otherwise with books, records, or other documentary evidence, has been collected from the Person by the Owner. The ultimate incidence of the Streaming Tax shall remain on the Person and shall never be shifted to the Owner.

(D) Every owner, manager or operator who is required to collect the tax imposed by this Section 3-2-17 will be considered a tax collector for the City. All amusement taxes collected must be held by such tax collector as trustee for and on behalf of the City. The failure of the tax collector to collect the tax will not excuse or release the patron from the obligation to pay the tax.

SECTION 2: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and must be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: This ordinance will be in full force and effect on October 1, 2020, after its passage, approval, and publication in the manner provided by law.

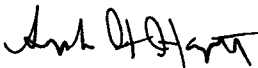
SECTION 5: If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity must not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

Introduced: September 29, 2020

Adopted: October 12, 2020

Approved:

November 5, 2020




Stephen H. Hagerty, Mayor

Attest:



Devon Reid, City Clerk

Approved as to form:



Kelley A. Gandurski, Corporation Counsel