## IN THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

MICHAEL LABELL, JARED LABELL, NATALIE BEZEK, EMILY ROSE, BRYANT JACKSON- GREEN, ZACK UREVIG, and FORREST JEHLIK	<ul> <li>) Appeal from the Circuit Court of</li> <li>) Cook County, Illinois, County</li> <li>) Department, Chancery Division</li> <li>)</li> </ul>
Plaintiffs-Appellants	<ul> <li>No. 2015-CH-013399</li> <li>Hon. Judge Carl Anthony Walker,</li> <li>Judge Presiding</li> </ul>
v.  THE CITY OF CHICAGO, and ERIN KEANE, in her official capacity as Comptroller of the City of Chicago,  Defendants-Appellees.	E-FILED Transaction ID: 1-18-1379 File Date: 12/5/2018 3:49 PM Thomas D. Palella Clerk of the Appellate Court APPELLATE COURT 1ST DISTRICT  APPELLATE COURT
Defendants-Appellees.	)

### APPELLANTS' BRIEF

Jeffrey M. Schwab James J. McQuaid LIBERTY JUSTICE CENTER 190 S. LaSalle St., Ste. 1500 Chicago, Illinois 60603 (312) 263-7668 jschwab@libertyjusticecenter.org jmcquaid@libertyjusticecenter.org

 $Attorneys\ for\ Appellants$ 

ORAL ARGUMENT REQUESTED

## POINTS AND AUTHORITIES

STA	STANDARD OF REVIEW 1	
	Fogt v. 1-800-Pack-Rat, LLC, 2017 IL App (1st) 150383	12
	Millennium Park Joint Venture, LLC v. Houlihan, 241 Ill. 2d 281 (2010)	12
	735 ILCS 5/2-1005.	12
	Mt. Hawley Insurance Co. v. Robinette Demolition, Inc., 2013 IL App (1st) 112847.	12
AR	GUMENT	12
I.	The City's application of the amusement tax to streaming services exceeds its authority to tax under Article VII, § 6 of the Illinois Constitution.	13
	Ill. Const. 1970, art. VII, § 6	4, 15
	South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (2018)	13
	Quill Corp. v. North Dakota, 504 U.S. 298 (1992)	13
	Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431 (2006)	14
	Hertz Corp. v. City of Chi., 2017 IL 119945	14
	A. The City applies the amusement tax differently to streaming services than it does other amusements, which inevitably leads to taxing amusements that take place outside of the City.	15
	Ill. Const. 1970, art. VII, § 6	16
	Hertz Corp. v. City of Chi., 2017 IL 119945 1	7, 18
	Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431 (2006)	18

	B. The Mobile Sourcing Act does not give the City the authority to tax customers of streaming services based on their billing addresses.	. 18
	Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1	
	Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431 (2006) 19	, 20
	47 C.F.R. § 20.3	, 22
	Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116	. 20
II.	The amusement tax applies to streaming services differently than it applies to in-person amusements in violation of the Uniformity Clause of the Illinois Constitution.	. 24
	Ill. Const. 1970, art. IX, § 2.	. 24
	Allegro Servs. v. Metro. Pier & Exposition Auth., 172 Ill. 2d 243 (1996).	24
	Geja's Cafe v. Metro. Pier & Exposition Auth., 153 Ill. 2d 239 (1992)	, 25
	Searle Pharmaceuticals, Inc. v. Dep't of Revenue, 117 Ill. 2d 454 (1987).	24
	Empress Casino Joliet Corp. v. Giannoulias, 231 Ill. 2d 62 (2008).	25
	A. The amusement tax violates the Uniformity Clause because it applies to streaming services differently than it applies it other amusements.	. 25
	Chi. Mun. Code 4-156-020.	. 25
	Searle Pharmaceuticals, Inc. v. Dep't of Revenue, 117 Ill. 2d 454 (1987)	, 29
	Federated Distribs., Inc. v. Johnson, 125 Ill. 2d 1 (1988)	. 26
	U.S.G. Italian Marketcaffe v. City of Chi	

		332 Ill. App. 3d 1008 (1st Dist. 2002)	29
	В.	The streaming service tax violates the Uniformity Clause because it subjects streaming services to greater taxation than automatic amusement devices that deliver the same types of entertainment.	30
	Chi.	Mun. Code § 4-156-150.	30
	Chi.	Mun. Code § 4-156-160.	30
	Nat'	l Pride of Chicago, Inc. v. Chicago, 206 Ill. App. 3d 1090 (1st Dist. 1990)	32
	Sear	rle Pharmaceuticals, Inc. v. Dep't of Revenue, 117 Ill. 2d 454 (1987)	33
	Vals	tad v. Cipriano, 357 Ill. App. 3d 905 (4th Dist. 2005)	33
	DeW	Voskin v. Lowe's Chi. Cinema, 306 Ill. App. 3d 504 (1st Dist. 1999)	33
	C.	The streaming service tax violates the Uniformity Clause because it taxes certain performances delivered through streaming services at a higher rate than it taxes in-person live performances	34
	Chi.	Mun. Code § 4-156-020.	34
III.		amusement tax discriminates against electronic merce in violation of the Internet Tax Freedom Act	36
	Inte	rnet Tax Freedom Act 47 U.S.C. § 151 (note) 36, 3	7, 38
	S. Re	ep. No. 105-184 (1998)	36
	H.R.	Rep. No. 105-808, pt. 1 (1998).	36
	Trad	le Facilitation and Trade Enforcement Act of 2015, 114 Pub. L. No. 125, § 922, 130 Stat. 122 (2016)	37
	Perf	ormance Mktg. Ass'n v. Hamer, 2013 IL 114496 38, 3	9, 40

### NATURE OF THE CASE

The City of Chicago applies its amusement tax – a 9% tax on charges paid for the privilege to enter, witness, view, or participate in amusements that take place within the City of Chicago – to charges paid for Internet-based streaming video, audio, and gaming services ("streaming services"), such as Netflix, Spotify, and Xbox Live, by taxing only customers of such streaming services who provide a Chicago billing address, regardless of whether those customer actually use those streaming services within the City of Chicago. Plaintiffs, streaming service customers who are subject to and have paid the tax, challenge the tax on streaming services as exceeding the City's authority under Article VII, Section 6 of the Illinois Constitution, the Uniformity Clause of the Illinois Constitution, and the federal Internet Tax Freedom Act.

### ISSUES PRESENTED FOR APPEAL

- (1) Does the City's application of its amusement tax to customers of streaming services based entirely on their billing address, not where such customers actually use streaming services, which inevitably taxes activity that takes place outside of Chicago, exceed the City's authority to tax under Article VII, Section 6 of the Illinois Constitution?
- (2) Does the City's application of the amusement tax on streaming services violate the Illinois Constitution's Uniformity Clause because it applies the amusement tax differently than it does for equivalent in-person amusements?

(3) Does the City's application of the amusement tax to streaming services discriminate against electronic commerce in violation of the Internet Tax Freedom Act?

### JURISDICTION

This is an appeal under Illinois Supreme Court Rules 301 and 303 from the trial court's final order, entered May 24, 2018, which granted Defendants' motion for summary judgment and denied Plaintiffs' motion for summary judgment. C. 1093-1105. Plaintiffs filed their notice of appeal on June 21, 2018. C. 1106-1120.

### ORDINANCE AND REGULATION INVOLVED

This case involves Chicago Municipal Code § 4-156-020(G)(1) and the City of Chicago Department of Finance Amusement Tax Ruling #5. Amusement Tax Ruling #5 can be found in the appendix. Chi. Mun. Code § 4-156-020(G)(1) provides:

G.1. In the case of amusements that are delivered electronically to mobile devices, as in the case of video streaming, audio streaming and on-line 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. If those rules indicate that the tax applies, it shall be presumed that the tax does apply unless the contrary is established by books, records or other documentary evidence.

### STATEMENT OF FACTS

There are no material facts in dispute. On cross motions for summary judgment, the parties admitted to each other's respective statements of fact.<sup>1</sup> C. 1006. Thus, the following facts are taken as true.

# I. The Chicago Municipal Code provides for a tax on amusements within the City of Chicago.

The City of Chicago imposes a 9% tax on charges paid for the privilege to enter, witness, view, or participate in certain activities within the City of Chicago that the Chicago Municipal Code ("Code") defines as amusements (the "amusement tax"). Chi. Mun. Code § 4-156-020; C. 427. The Code defines an "amusement" subject to the amusement tax to include three categories of activities:

(1) any exhibition, performance, presentation or show for entertainment purposes, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition such as boxing, wrestling, skating, dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling or billiard or pool games;

¹ In the City's reply brief, it asserted that it was an undisputed fact that "[t]here are obvious and significant differences among the Products, automatic devices ("AADs") and live cultural events that justify treating them differently, for purposes of both the Uniformity Clause and the Internet Tax Freedom Act ("ITFA")." C. 1032-1033. It is not true that this is an undisputed fact. First, this assertion is not a factual one, but a legal one – it asserts that there are differences between these taxed items that justify taxing them differently. Moreover, Plaintiffs absolutely disputed this assertion. See C. 406-415; 1016-1026.

- (2) any entertainment or recreational activity offered for public participation or on a membership or other basis including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, bodybuilding or similar activities; or
- (3) any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means.

Chi. Mun. Code § 4-156-010; C. 425.

The Code requires that every owner, manager, or operator of an amusement or a place where an amusement is being held, and every reseller, collect the amusement tax from every customer of an amusement in Chicago, and remit the tax to the Chicago Department of Finance by the 15th of each calendar month. Chi. Mun. Code § 4-156-030(A); C. 429.

The Code exempts "automatic amusement devices" from the amusement tax and instead subjects their operators to a \$150 tax per year per device.

Chi. Mun. Code § 4-156-160; C. 433. The Code defines an "automatic amusement device" as:

any machine, which, upon . . . any . . . payment method, may be operated by the public generally for use as a game, entertainment or amusement . . . and includes but is not limited to such devices as jukeboxes, marble machines, pinball machines, movie and video booths or stands and all [similar] games, operations or transactions . . . .

Chi. Mun. Code § 4-156-150; C. 433.

The Code exempts from the amusement tax charges for "in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons," Chi. Mun. Code § 4-156-020(D)(1); C. 428, and taxes such performances in a space with a capacity of greater than 750 persons at a reduced rate of 5%, Chi. Mun. Code § 4-156-020(E); C. 428. "Live theatrical, live musical or other live cultural performance" means a live performance in any of the disciplines which are commonly regarded as part of the fine arts, such as live theater, music, opera, drama, comedy, ballet, modern or traditional dance, and book or poetry readings. The term does not include such amusements as athletic events, races or performances conducted at adult entertainment cabarets. Chi. Mun. Code § 4-156-010; C. 425-426.

# II. The City applies the amusement tax to streaming services.

On June 9, 2015, then-Comptroller of the City of Chicago, Dan Widawksy, issued Amusement Tax Ruling #5 (the "Ruling"), declaring that the term "amusement" as defined by the Code includes "charges paid for the privilege to witness, view or participate in amusements that are *delivered* electronically" (emphasis in original). C. 438-441. According to the Ruling, amusements delivered electronically include: (1) "charges paid for the privilege of watching electronically delivered television shows, movies or videos . . . delivered to a patron (i.e., customer) in the City"; (2) "charges paid for the privilege of listening to electronically delivered music . . . delivered to a customer in the City"; and (3) "charges paid for the privilege of

participating in games, on-line or otherwise . . . delivered to a customer in the City." C. 440.

The Ruling states that providers who receive charges for electronically delivered amusements are considered owners or operators and therefore are required to collect the City's amusement tax from their Chicago customers. C. 440. According the Ruling, "[t]he amusement tax does not apply to sales of shows, movies, videos, music or games (normally accomplished by a 'permanent' download). It applies only to rentals (normally accomplished by streaming or a 'temporary' download). The charges paid for such rentals may be subscription fees, per-event fees or otherwise." C. 440.

The Ruling states that the amusement tax applies to any customer of an amusement delivered electronically whose residential street address or primary business street address is in Chicago, as reflected by his or her credit card billing address, zip code, or other reliable information. This "sourcing" determination is based on rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq. C. 441.

The Ruling states that "[b]ecause the amusement tax is imposed on the patron, and applies only to activity (i.e., the amusement) that takes place within Chicago, there is no question that the tax applies whenever the amusement takes place in Chicago." C. 441. The Ruling states that the question of whether a given provider has an obligation to collect the tax from its customer is beyond the Ruling's scope and that a provider may request a

private letter ruling from the Chicago Department of Finance, pursuant to Uniform Revenue Procedures Ordinance Ruling #3 (June 1, 2004). C. 441.

The Ruling states that where a charge is "bundled" by including both taxable and non-taxable elements, the Department of Finance applies the rules set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004). C. 440. Thus, the amount of amusement tax is based on the amount paid for any amusement, but excludes any separately-stated charges not for amusements. However, if an operator fails to separate the amusement portion of the price from the non-amusement portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for amusements. C. 440-441.

The effective date of the Ruling was July 1, 2015, but the Ruling states that the effect of the Ruling would be limited to periods on and after September 1, 2015." C. 441.

In November 2015, the City Council, as part of the City's Revenue

Ordinance for 2016, amended the Code as it relates to the amusement tax.

That amendment states:

In the case of amusements that are delivered electronically to mobile devices, as in the case of video streaming, audio streaming and on-line 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. If those rules indicate that the tax applies, it shall be presumed that the tax does apply unless the contrary is established by books, records or other documentary evidence.

Chi. Mun. Code § 4-156-020(G)(1); C. 447-517.

# III. Plaintiffs are Chicago resident who use streaming services and pay the amusement tax on streaming services.

Plaintiff Michael Labell has lived in Chicago, during which time he paid for subscriptions to Netflix, Spotify, and Amazon Prime. Netflix and Spotify have collected the City's amusement tax from him. C. 531-532.

Plaintiff Jared Labell has lived in Chicago, during which time he paid for a subscription to Amazon Prime. C. 569-570.

Plaintiff Forrest Jehlik has lived in Chicago, Illinois, during which time he paid for a subscription to Netflix, for which he paid the City's amusement tax. C. 573-574.

Plaintiff Zack Urevig has lived in Chicago, during which time he paid for subscriptions to Netflix, Amazon Prime, and Spotify, for which he paid the City's amusement tax. Netflix and Spotify have collected the City's amusement tax from him. C. 588-589, 614, 622, 624, 630.

Plaintiff Bryant Jackson-Green has lived in Chicago, during which time he paid for subscriptions to Netflix, Hulu, Spotify, and Amazon Prime.

Netflix, Hulu, and Spotify have collected the City's amusement tax from him.

C. 648-650, 677-679, 682, 683.

Plaintiff Natalie Bezek has lived in Chicago, during which time she paid for a subscription to Spotify. Spotify collected the City's amusement tax from her, even during months when she was not living in Chicago. C. 695-696.

Plaintiff Emily Rose has lived in Chicago, during which time she paid for subscriptions to Netflix, Hulu, and Amazon Prime. Netflix collected the amusement tax from her, even after she moved out of Chicago. Hulu and Amazon Prime never collected the Chicago amusement tax from her, even when she lived in Chicago. C. 708-709.

### IV. Description of various streaming service providers.

Netflix is a provider of an on-demand Internet streaming media service, which allows subscribers to watch video content online and offers a flat-rate video-by-mail service, which allows subscribers to borrow DVD and Blu-ray video discs and return them in prepaid mailers. C. 522.

Hulu is a provider of an on-demand Internet streaming media service, which allows subscribers to watch video content online. C. 522.

Spotify is a music streaming service, which allows consumers access to a large library of recorded music without commercial interruptions for a subscription fee. C. 522. Similar streaming music services are offered by Pandora, Apple Music, and Google Play. C. 399.

Xbox Live Gold is an online multiplayer gaming and digital media delivery service created and operated by Microsoft, which for a fee, allows users to play games with others on an online network. Xbox Live Gold also provides paid members with the following features:

matchmaking/smartmatch, private chat, party chat and in-game voice communication, game recording, media sharing, broadcasting one's gameplay

via the Twitch live streaming application, access to free-to-play titles, "cloud" storage for gaming files, and early or exclusive access to betas, special offers, Games with Gold, and Video Kinect. C. 522.

Amazon Prime is a membership service that provides members with certain benefits provided by Amazon.com, including free two-day shipping and discounts on certain items sold on its website, but also provides access to streaming movies, and music, cloud photo storage, and the ability to borrow e-books. C. 522.

### V. Procedural history.

Plaintiffs filed this lawsuit against the City of Chicago and its

Comptroller, ("Defendants"), challenging the City's application of the
amusement tax on streaming services on September 9, 2015. C. 22-38.

Plaintiffs filed their six-count First Amended Complaint on December 17,
2015. C. 136-159. Counts I to III alleged that in adopting Amusement Tax

Ruling #5 the City Comptroller exceeded his authority by extending the

Amusement Tax to streaming video (Count I), audio (Count II), and gaming
(Count III) services. C. 143-150. Count IV alleged that the City's application
of the amusement tax on streaming services violated the federal Internet Tax

Freedom Act, 47 U.S.C. § 151 note (2015). C. 151-154. Count V alleged that
the tax violated the Uniformity Clause of the Illinois Constitution, art. IX, §
2. C. 154-156. And Count VI alleged that the tax violated the Commerce
Clause of the United States Constitution, Article I, Section 8, Clause 3. C.

156-159. The City filed a motion to dismiss the First Amended Complaint, C. 167-221, and the Court entered an order dismissing Counts I, II and III, but denying the motion to dismiss as to Counts IV, V and VI. C. 283-288. The Court dismissed Counts I, II and III because it found that, while Plaintiffs contended that the Comptroller exceed his authority by adopting Amusement Tax Ruling #5, which imposed a new tax not authorized by the City Council, that, in fact, the City Council had in November 2015, amended the Code as it relates to the amusement tax as part of the City's Revenue Ordinance for 2016. C. 284-285.

On October 12, 2016, Plaintiffs filed their Second Amended Complaint, adding Count VII, alleging that the City's tax on streaming services exceeded its authority under the Illinois Constitution, art. VII, § 6. C. 325-356.

Defendants answered the Second Amended Complaint on November 17, 2016.
C. 364-384.

After conducting discovery, the parties filed cross motions for summary judgment: Plaintiffs filed their motion on September 27, 2017. C. 389-420. Defendants filed a combined motion for summary judgment and response to Plaintiffs' motion on November 15, 2017. C. 747-1000. Plaintiffs filed a combined response and reply on December 21, 2017. C. 1001-1031. And Defendants filed a reply in support of their motion on January 12, 2018. C. 1032-1085. The Court held oral arguments on the cross motions for summary judgment on January 25, 2018. R. 19-104. On May 24, 2018, the circuit court

entered an opinion and order granting the City's motion for summary judgment and denying Plaintiffs' motion for summary judgment. C. 1093-1105. Plaintiffs filed a timely notice of appeal on June 21, 2018. C. 1121-1122.

### STANDARD OF REVIEW

On an appeal reviewing the disposition of a motion for summary judgment, the court applies the de novo standard of review. Fogt v. 1-800-Pack-Rat, LLC, 2017 IL App (1st) 150383, ¶ 53 (citing Millennium Park Joint Venture, LLC v. Houlihan, 241 Ill. 2d 281, 309 (2010)). Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c). "Where the parties have filed cross-motions for summary judgment, they invite the court to determine the issues as a matter of law and enter judgment in favor of one of the parties." Fogt, 2017 IL App (1st) 150383, ¶ 53 (citing Mt. Hawley Insurance Co. v. Robinette Demolition, Inc., 2013 IL App (1st) 112847, ¶ 14).

#### ARGUMENT

The City of Chicago's application of its amusement tax on streaming services exceeds the City's constitutional and statutory authority in three ways. *First*, it exceeds the City's authority to tax under the Illinois Constitution, art. VII, § 6, because the City imposes the tax based on a customer's billing address, not whether the customer is using the amusement

within Chicago, which inevitably means that the City is taxing activity that takes place outside of Chicago. *Second*, it applies to streaming services differently than it applies in-person amusements in violation of the Illinois Constitution's Uniformity Clause. And, *third*, it discriminates against electronic commerce in violation of the federal Internet Tax Freedom Act.<sup>2</sup>

Because the City's tax on streaming services exceeds the City's statutory and constitutional authority, as explained below, this Court should reverse the circuit court's order denying Plaintiffs' motion for summary judgment and granting Defendants' motion for summary judgment.

I. The City's application of the amusement tax to streaming services exceeds its authority to tax under Article VII, § 6 of the Illinois Constitution.

Article VII, § 6(a) of the Illinois Constitution allows home rule units to exercise "any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Home rule units may exercise concurrently with the State

<sup>2</sup> Since Count VII of the Second Amended Complaint challenges the City's

Constitution. That is because of the U.S. Supreme Court's decision in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018), which overturned *Quill Corp.* 

v. North Dakota, 504 U.S. 298 (1992), on which Count VI relied.

constitutional authority to impose the amusement tax on streaming services, Plaintiffs are not appealing the dismissal of Counts I, II, and III, which challenge the authority of Amusement Tax Ruling #5 to impose a new tax on streaming video, audio, and gaming services without action by the City Council. In addition, Plaintiffs do not address Count VI in this appeal, which alleged that the tax violated the Commerce Clause of the United States

"any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." Ill. Const. 1970, art. VII, § 6(i). It is axiomatic that home rule units have no jurisdiction beyond their corporate limits except what is expressly granted by the legislature. Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431, 434 (2006). "Thus, home rule units may not extend their home rule powers, such as the taxing power, beyond their borders unless expressly authorized by the General Assembly." Hertz Corp. v. City of Chi., 2017 IL 119945, ¶ 14.

The City – through Amusement Tax Ruling #5 and/or § 4-156-020(G)(1) of the Code – imposes a 9% tax on any customer of a streaming service who provides a Chicago billing address to the service provider regardless of whether those customers ever actually consume those streaming services in Chicago. This method for determining who must pay the tax has a fatal flaw: It will inevitably impose the tax on people whose use of streaming services occurs entirely outside Chicago, whom the City has no authority to tax.

Because the amusement tax on streaming services (the "streaming service tax") applies beyond Chicago's corporate limits, and the Illinois General Assembly has not expressly authorized the City to tax streaming services beyond its borders, the City's application of the amusement tax to customers of streaming services with Chicago billing addresses – irrespective of whether

they use the services within Chicago – exceeds the City's authority under Article VII, § 6 of the Illinois Constitution.

A. The City applies the amusement tax differently to streaming services than it does other amusements, which inevitably leads to taxing amusements that take place outside of the City.

Apart from the tax on streaming services, the amusement tax applies to certain "amusement" activities in Chicago regardless of whether the patron of such amusement lives in or outside of the City. For example, a person who purchases tickets to see the Chicago Blackhawks play ice hockey at the United Center in Chicago must pay the 9% amusement tax on the price of those tickets regardless of whether he or she lives in Chicago. But Chicago does not, and cannot, impose the amusement tax on patrons – even those who live in Chicago – of activities that do not take place in Chicago. Thus, a person who purchases tickets to see the Chicago Wolves play ice hockey at Allstate Arena, in Rosemont, just outside of Chicago, pays no amusement tax to the City – even if the purchaser lives in Chicago.

That only makes sense – but that is not how the City applies the amusement tax to streaming services. Under the streaming service tax, the 9% amusement tax is applied to charges for streaming services for any customer who provides a Chicago billing address, regardless of whether that customer uses those services in Chicago or somewhere else.<sup>3</sup> Thus, the

<sup>&</sup>lt;sup>3</sup> And as the experiences of Plaintiffs Bezek and Rose show, C. 695-696; 708-709, providing a Chicago billing address does not necessarily mean that a

amusement tax applies to streaming services without regard to whether the consumption of those services takes place within Chicago: Everyone providing a Chicago billing address pays the tax even if they only use a service outside Chicago, and everyone without a Chicago billing address does not pay the tax, even if they only use those services within Chicago.

If the City applied the amusement tax to amusements generally in the same way it applies the tax to streaming services, it would charge persons with a billing address in Chicago when they purchase tickets for any amusement anywhere – such as an ice hockey game in Rosemont – but would not tax persons who do not have a billing address in Chicago when they purchase tickets for any amusements that physically take place in Chicago – like an ice hockey game at the United Center. And that would obviously exceed the City's constitutional taxing authority under Article VII, Section 6

streaming service customer actually lives in Chicago. When a customer moves out of Chicago, as the experiences of Plaintiffs Bezek and Rose show, they do not necessarily think to change the billing address or zip code provided to their streaming services accounts. After all, other than for collecting the City's amusement tax, streaming services like Netflix and Spotify have no reason to know or care where a customer lives. And if it's true that a person living outside of Chicago could pay the tax because he or she retains a Chicago address or zip code with their streaming services account, the opposite scenario is likely as well: when a person moves Chicago and does not update his or her billing address or zip code to the current Chicago one, he or she will not be charged the tax. The result is that the City's application of the amusement tax to streaming services inevitably taxes some use of streaming services outside of Chicago as well as fails to tax some use of streaming services in Chicago.

of the Illinois Constitution, since the City would be taxing activity that takes place entirely outside of Chicago.

Indeed, the Illinois Supreme Court has recently held that Chicago has no authority to tax activities outside its borders except where the Illinois General Assembly has explicitly authorized it to do so. See Hertz Corp., 2017 IL 119945, ¶ 14. In *Hertz*, the City of Chicago attempted to impose its lease tax on all Chicago residents who leased vehicles from suburban vehicle rental agencies located within three miles of Chicago's borders – based on the assumption that all Chicago residents would use the rental vehicles rented from such agencies primarily in the City – in the absence of written proof that a Chicago resident customer would use the vehicle primarily outside of Chicago. Id. at  $\P$  5. In contrast, the City did not impose the lease tax on persons who were not Chicago residents who leased vehicles from such suburban vehicle rental agencies. Id. The Illinois Supreme Court found that the City had improperly extended its home rule power to tax beyond its borders because it imposed the lease tax "not on actual use within the City's borders but on the lessee's stated intent to use the property in Chicago or, failing any statement of intent, on presumed use based upon the lessee's residence address." Id. at ¶ 29.

The City's application of the amusement tax to streaming services is analogous to the City's application of the lease tax that the Court struck down in *Hertz*. The streaming services tax is not based on actual use within

the City's borders but on "the conclusive presumption of taxability based on residency" – or in this case a Chicago billing address. Those that provide a Chicago billing address are presumed to use streaming services in Chicago, while those without a Chicago billing address are presumed to not use streaming services in Chicago. And unlike the lease tax ruling in *Hertz*, the streaming service tax does not provide any way for a customer with a Chicago billing address to overcome the presumption that he or she will use streaming services exclusively in Chicago. That means that the City will always impose the amusement tax on streaming services used outside of Chicago by customers with a Chicago billing address.

Like the lease tax in *Hertz*, the amusement tax on streaming services is a tax on activities that take place outside of Chicago's borders. And, like the City's extraterritorial application of the lease tax, the City's application of the amusement tax to streaming services outside its borders has not been expressly authorized by the General Assembly. *See Seigles, Inc.*, 365 Ill. App. 3d at 434. Therefore, the streaming service tax, like the City's application of the lease tax, exceeds the City's constitutional authority and is therefore invalid.

B. The Mobile Sourcing Act does not give the City the authority to tax customers of streaming services based on their billing addresses.

The Ruling's text – and the text of § 4-156-020(G)(1) of the Code – attempts to justify its taxation of extraterritorial activities by citing the

state's Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq. ("Mobile Sourcing Act"). C. 441, 447-517; Chi. Mun. Code § 4-156-020(G)(1). But a statutory authorization for a municipality's extraterritorial exercise of power must be express, not implied. *Seigles, Inc.*, 365 Ill. App. 3d at 435. And the Mobile Sourcing Act does not expressly authorize the City to impose the amusement tax on customers of streaming services with Chicago billing addresses when they use those services outside of Chicago.

The Mobile Sourcing Act allows a municipality to tax charges paid by customers of "mobile telecommunications services" provided by a "home service provider" if the customer's place of primary use is within the territorial limits of that municipality. 35 ILCS 638/20(b). And the Mobile Sourcing Act allows a municipality to tax a cell phone customer if his or her a) residential street address or primary business street address and b) the cell phone service provider's licensed service area are in the municipality's boundaries. 35 ILCS 638/10.

But that has nothing to do with streaming services. Streaming services are not "mobile telecommunications services," which the law defines as radio communication services carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, 47 C.F.R. § 20.3; 35 ILCS 638/10, and which are essentially cellular services that provide telephone and Internet access. And the providers of streaming services are not "home service providers," which the law defines as a

facilities-based carriers or resellers with a customer contract for the provision of mobile telecommunications services, 35 ILCS 638/10 – in other words, cellular service providers like Verizon and Sprint. Therefore, the Mobile Sourcing Act does not provide the City with any *express* authority to tax streaming services that are used outside of its borders. *See Seigles, Inc.*, 365 Ill. App. 3d at 434.

In its brief before the circuit court, Defendants argued that the Mobile Sourcing Act's definition of "mobile telecommunications services" encompasses streaming services because they are "charges for, or associated with, the provision of commercial mobile radio service" and/or "charges for, or associated with, a service provided as an adjunct to a commercial mobile radio service." C. 754. And, according to Defendants, because some mobile service providers, such as AT&T, provide streaming services, "[a]t a minimum, the Mobile Sourcing Act applies to streaming services provided by telecommunications companies. C. 755. But the Mobile Sourcing Act is about allowing municipalities to tax cell phone services – and cannot be stretched so broadly. The Mobile Sourcing Act does not expressly authorize the City to impose a tax on streaming services based on a customer's billing address.

The Mobile Sourcing Act exists as a result of the federal Mobile

Telecommunications Sourcing Act, 4 U.S.C. § 116 et seq., which Congress

passed to establish sourcing requirements for state and local taxation of

mobile telecommunication services. To implement the federal statute, Illinois

adopted its own Mobile Sourcing Act, which authorizes a local jurisdiction to tax a customer's purchases of mobile communications services only if the jurisdiction is the "customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through." 35 ILCS 638/20(b). In essence, this allows a municipality to tax a cell phone customer if his or her residential street address or primary business street address and the cell phone service provider's licensed service area are in the municipality's boundaries. 35 ILCS 638/10.

The "mobile telecommunications services" that the Mobile Sourcing Act authorizes local jurisdictions to tax do not include the streaming services at issue in this case. The Mobile Sourcing Act defines "mobile telecommunications service" to include:

any charge for, or associated with, the provision of *commercial mobile radio service*, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations . . . , or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

35 ILCS 638/10 (emphasis added).

The Code of Federal Regulations, in turn, defines "commercial mobile radio service" as:

A *mobile service* that is: (a) (1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional

equivalent of such a mobile service described in paragraph (a) of this section.

47 C.F.R. § 20.3 (emphasis added). And the Code of Federal Regulations defines "mobile service" as:

A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, [including]:

- (a) Both one-way and two-way radio communications services;
- (b) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and
- (c) Any service for which a license is required in a personal communications service under part 24 of this chapter.

47 C.F.R. § 20.3 (emphasis added).

The federal regulation's definition of "mobile services" does not encompass streaming services, which means that the regulation's definition of "commercial mobile radio services" likewise does not encompass streaming services. Therefore, streaming services also are not "mobile telecommunications services" – the only things the Mobile Sourcing Act authorizes municipalities to tax.

Streaming services also are not services "associated with" or "adjunct to" commercial mobile radio services. Such "associated" and "adjunct" services include a mobile telecommunications service provider's charges for wireless data access or charges for the transmission or receipt of text or picture

messages; they do not include any charge for any transaction conducted over the Internet. And streaming services don't become "associated with" mobile telecommunications services simply because a mobile service provider happens to offer streaming services that can be accessed on the Internet on any electronic device, including a cell phone. That broad reading would transform any service that a large "home service provider" like Verizon or AT&T provides in addition to "mobile telecommunications services" into a "mobile telecommunication service" itself. AT&T, for example, in addition to providing cell phone service, provides landline telephone services. That does not mean that AT&T's landline telephone service is a "mobile telecommunications service" or "associated with" a "mobile telecommunications service."

Further, the requirement under the Mobile Sourcing Act that only allows a municipality to tax "mobile telecommunications services" if the home service provider's licensed service area are in the municipality's boundaries, 35 ILCS 638/10, makes no sense if providers of streaming services are considered "home service providers." Netflix and Spotify, and other providers of streaming services do not have licensed areas. They provide a service that can be accessed on the Internet anywhere. And even if streaming services offered by "home service providers" could be considered charges "associated with" mobile telecommunications services — which they cannot — that would not explain how the City justifies taxing streaming services, such as the ones

used by Plaintiffs here, like Netflix and Spotify, which are not provided by companies that are also "home service providers.

Thus, the application of the amusement tax to streaming services exceeds the City's constitutional authority, and this Court should reverse the Circuit Court's order denying Plaintiffs' motion for summary judgment.

II. The amusement tax applies to streaming services differently than it applies to in-person amusements in violation of the Uniformity Clause of the Illinois Constitution.

The Uniformity Clause (art. IX, § 2) of the Illinois Constitution provides:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

This clause "imposes more stringent limitations than the equal protection clause on the legislature's authority to classify the subjects and objects of taxation." Allegro Servs. v. Metro. Pier & Exposition Auth., 172 Ill. 2d 243, 249 (1996). The test that courts apply in Uniformity Clause cases (the Searle test) is "well-established": "a non-property tax must be based on a real and substantial difference between the people taxed and not taxed, and must bear some reasonable relationship to the object of the legislation or to public policy." Geja's Cafe v. Metro. Pier & Exposition Auth., 153 Ill. 2d 239, 247 (1992) (citing Searle Pharmaceuticals, Inc. v. Dep't of Revenue, 117 Ill. 2d 454, 468 (1987)).

A plaintiff is not required to come forward with any and all conceivable explanations for the tax and then prove each one unreasonable; upon a goodfaith uniformity challenge, a taxing body must produce a justification for its classifications. *Geja's Cafe*, 153 Ill. 2d at 248. It then becomes the plaintiff's burden to persuade the court that the purported justification is insufficient, either as a matter of law or as unsupported by the facts. *Id.* at 248-49; *see also Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 72 (2008).

# A. The amusement tax violates the Uniformity Clause because it applies to streaming services differently than it applies it other amusements.

The amusement tax, by its terms, applies to amusements within the City of Chicago. Chi. Mun. Code 4-156-020. But the way that the City imposes the amusement tax on streaming services treats customers of streaming services differently based on the billing addresses of those customers, not based on whether such customers use streaming services in Chicago.

While the purported purpose of the amusement tax is to tax customers for the privilege of using streaming services and other amusements that take place in Chicago, the streaming service tax *only* applies the tax to customers of streaming services with Chicago billing addresses regardless of whether they use those services in Chicago, and *never* applies to customers of streaming services that do not have Chicago billing addresses, even if those customers use those streaming services in Chicago. In contrast, the amusement tax otherwise applies *only* to customers of all other amusements

who incur charges for amusements that take place in Chicago, and *never* applies to customers of amusements who incur charges for amusements that take place outside of Chicago, even if those customers are Chicago residents, or have Chicago billing addresses.

In Searle, the Illinois Supreme Court found that there was no real and substantial difference between a corporation that was a member of an affiliated corporate group and elected to file a federal consolidated income tax return and a corporation that was a member of an affiliated corporate group and did not elect to file a consolidated corporate federal income tax return, where the state permitted the latter to "carry back" an operating loss over the three previous years, but prohibited the former from doing so. 117 Ill. 2d at 469. The Illinois Supreme Court has also found that where two alcoholic products were virtually identical save for the method of production of their alcoholic content, there was no real and substantial difference between them, and the state could not tax one at a rate nearly eight times higher. Federated Distribs., Inc. v. Johnson, 125 Ill. 2d 1, 21 (1988). The Court found that taxing these virtually identical low-alcohol products at different rates bore no reasonable relationship to the object of the legislation – to promote temperance in the consumption of alcohol – and in fact, it would actually frustrate that purpose. *Id*.

The City's inconsistent application of the amusement tax is similarly irrational. The City applies the amusement tax on streaming services based

on whether a customer provides a billing address that is in Chicago to the streaming service provider, not whether the customer actually uses the streaming service in Chicago. For all amusements other than streaming services, the City applies the amusement tax differently: all customers of non-streaming services amusements are taxed if they engage in the amusement in Chicago, regardless of their billing address, and no customers of non-streaming services amusements outside of Chicago are taxed, even if those customers have a Chicago billing address.

There is no "real and substantial difference" between customers of streaming services who provide a Chicago billing address but use streaming services outside of Chicago – who are taxed – and customers of other amusements that take place outside of Chicago and live in Chicago – who are not taxed. Similarly, there is no "real and substantial difference" between customers of streaming services who do not provide a Chicago billing address but use those services in Chicago – who are not taxed – and customers of other amusements that take place in Chicago and do not live in Chicago – who are taxed.

Defendants' purported justifications for this difference are insufficient.

Defendants assert that the "City provides protection and other benefits to its residents and their property on a regular and ongoing basis, whereas non-residents are here only on occasion as visitors." C. 761. But residents and non-residents both receive the same protection and benefits from the City

when using streaming services in Chicago. And when the City applies the amusement tax to customers of other amusements, like sporting events, theatrical performances, and concerts, it taxes both resident and non-resident customers of such amusements that take place in Chicago. This is presumably because both categories of customers receive protection and benefits from the City while they are engaged in those amusements in Chicago. Yet, the City's justification for taxing customers of streaming services with Chicago billing address (not necessarily Chicago residents), and not such customers with no Chicago billing address – that the City provides protection and other benefits to its residents and their property on a regular and ongoing basis, whereas non-residents are here only on occasion as visitors – applies as much to customers of other amusements that take place in Chicago where the City taxes both residents and non-residents equally. So the City has failed to provide any real or substantial difference between residents and non-residents as it relates to their use of streaming services in Chicago.

Defendants claim it would not be practical or feasible to tax non-residents who use streaming services in Chicago and that "administrative convenience is a legitimate uniformity justification." C. 761. But the Illinois Supreme Court does not accept administrative convenience as a legitimate uniformity justification where the government achieves its "convenience" arbitrarily. Searle Pharm., Inc., 117 Ill. 2d at 474 (finding a Uniformity Clause violation

where a statute prevented certain corporations that elected to file a federal consolidated return from carrying back their losses to reduce state income taxes but allowed certain corporations that did not elect to file a consolidated federal return to do so); see also, U.S.G. Italian Marketcaffe v. City of Chi., 332 Ill. App. 3d 1008, 1017 (1st Dist. 2002) (rejecting City's administrative convenience argument where City imposed a litter tax on food sold for onpremises consumption but not carry-out-only businesses). And here the City attempts to achieve its administrative convenience objective arbitrarily: There is no real and substantial difference between customers of streaming services with Chicago billing addresses and those with no Chicago billing address that is related to the objective of taxing the use of streaming services in Chicago. See Searle Pharm., Inc., 117 Ill. 2d at 474. Indeed, customers with Chicago billing addresses are not even necessarily Chicago residents and many Chicago residents provide a non-Chicago billing address to their streaming services providers. (See, e.g., Pls.' Exs. M, N) (explaining that Plaintiffs Emily Rose and Natalie Bezek continued to pay the amusement tax even after they were no longer Chicago residents.)

Further, there is no rational relationship between the different applications of the amusement tax to streaming services and other amusements and the object of the amusement tax. The purpose of the amusement tax is to tax charges paid on amusements that take place in Chicago, and the amusement tax does, in general, only tax amusements that

take place within Chicago – but not with respect to streaming services, which the City taxes not based on whether they are used in Chicago but based on a customer's billing address, which has no necessary relationship to where the customer uses the service. Thus, the City's application of the amusement tax to streaming services violates the Uniformity Clause.

B. The streaming service tax violates the Uniformity Clause because it subjects streaming services to greater taxation than automatic amusement devices that deliver the same types of entertainment.

The amusement tax also violates the Uniformity Clause for a second reason: because it does not apply to "automatic amusement devices" – devices that provide video, music, and gaming entertainment, such as video machines, jukeboxes, and pinball machines Chi. Mun. Code § 4-156-150; C. 433 – but does impose the tax on customers of streaming services – which provide similar video, music, and gaming entertainment over the Internet – with Chicago billing addresses. The Code exempts use of automatic amusement devices from the amusement tax and instead subjects their operators to a \$150 tax per year per device. Chi. Mun. Code § 4-156-160; C. 433.

There is no "real and substantial difference" between customers of automatic amusement devices and customers of streaming services that justifies exempting the former from taxation and taxing the latter. Both services provide on-demand video, music, or gaming entertainment. For example, Spotify, an Internet music service, allows consumers to access recorded music from a library of music for a fee – just as a jukebox does.<sup>4</sup> Xbox Live Gold allows one to play videogames just as a coin-operated video game machine does, and Netflix allows one to watch videos, just as a video booth does. Yet customers of streaming services are taxed at 9%, while customers of automatic amusement devices are not taxed at all.

And the City failed to explain how any differences between customers of automatic amusement devices and customers of streaming services in regards to how the customer accesses the video, audio, or gaming entertainment justify a difference in taxation between the two. For example, the City asserts that automatic amusement devices are owned by a business whereas streaming services are used on devices owned by the customers themselves.

C. 761. Customers cannot take automatic amusement devices away from the establishments where they use them, while customers of streaming services can access such services anywhere, an automatic amusement device is shared among all of an establishment's customers, whereas streaming services can be used exclusively by one customer, automatic amusement devices are "operated with coins on a per-use basis, whereas streaming services are generally paid for by credit card on a subscription basis, including unlimited use." C. 761. Automatic amusement devices generally provide a more limited

<sup>-</sup>

<sup>&</sup>lt;sup>4</sup> Modern jukeboxes, incidentally, can operate by allowing one to choose a song from a library on the Internet. C. 409.

selection of amusements than streaming services. But the City provides no argument as to why these differences are real and substantial that justify taxing them differently.

When Chicago imposed its transaction tax on coin-operated self-serve car washes, while exempting automatic car washes, this Court found no real and substantial difference between self-serve car washes and automatic car washes, calling it an "artificial distinction . . . based solely on the customer's hands-on participation in [the self-serve] wash process." *Nat'l Pride of Chicago, Inc. v. Chicago*, 206 Ill. App. 3d 1090, 1104-05 (1st Dist. 1990). The distinction between streaming services and automatic amusement devices is similarly arbitrary.

Defendants also argue that, even if automatic amusement devices and streaming services are similar, the City can tax them differently for administrative convenience. C. 762. Defendants state that requiring owners of automatic amusement devices to collect a 9% tax from patrons who pay money to use those devices would be administratively inconvenient because it would be difficult to collect a 9% tax on the small amount of money that patrons of automatic amusement devices pay. C. 762. But collecting the tax from owners of automatic amusement devices based on use would not cause the City any administrative inconvenience; as with all amusements, including streaming services, the City would require owners of automatic amusement devices to collect the tax and remit it to the City on a monthly

basis. The City argues that it would be inconvenient for the owners or customers of automatic amusement devices to pay the amusement tax; but the "administrative convenience" justification that the courts have recognized applies to governmental entities' administrative and collection capacities, not the convenience to customers or providers of amusements. See, e.g., Searle Pharm., Inc., 117 Ill. 2d at 474 (administrative convenience to state of processing tax returns); Valstad v. Cipriano, 357 Ill. App. 3d 905, 917 (4th Dist. 2005) (administrative convenience to Illinois EPA of identifying and imposing a fee); DeWoskin v. Lowe's Chi. Cinema, 306 Ill. App. 3d 504, 521 (1st Dist. 1999) (administrative convenience to County of collecting a tax). Besides, collecting the amusement tax is more inconvenient for providers of streaming services than it is for owners of automatic amusement devices: The owner of an automatic amusement device in Chicago would simply have to remit a percentage of all money collected from a given device, but a streaming-service provider that serves customers around the world must make special arrangements to collect and remit taxes only from those customers who have Chicago billing addresses. Accordingly, Defendants provide no reason that justifies treating customers of streaming services differently than customers of automatic amusement devices.

Defendants assert that a 9% tax on streaming services might not always be higher than a flat tax of \$150 per year on automatic amusements devices.

C. 762. But the 9% tax applies to customers of streaming services, and the

\$150 tax on automatic amusement devices applies to owners of such devices, not to the customers who use them – so customers of streaming services always pay more tax than customers of automatic amusement devices.

In addition, the tax on customers of streaming services, but not customers of automatic amusement devices does not bear a reasonable relationship to the object of the legislation or to public policy. The purported purpose of the amusement tax is to tax customers of amusements that take place in Chicago. But exempting customers of automatic amusement devices in Chicago does not serve that purpose.

C. The streaming service tax violates the Uniformity Clause because it taxes certain performances delivered through streaming services at a higher rate than it taxes in-person live performances.

The streaming service tax also violates the Uniformity Clause for a third reason: because it taxes certain performances at a higher rate than the Code taxes those same performances when they are consumed in person. The Code exempts from the amusement tax "admission fees to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons," and taxes such performances in a space with a capacity of greater than 750 persons at a reduced rate of 5%. Chi. Mun. Code § 4-156-020; C. 428. The City asserts that the purpose of the exemption is to "foster the production of live

performances that offer theatrical, musical or cultural enrichment to the city's residents and visitors." C. 738.

There is no real and substantial difference between live theatrical, musical, or cultural performances and streaming services providing similar or identical performances. The only difference is that live performances take place at a specific venue in Chicago, whereas such customers of streaming services can view similar performances from anywhere. This is not a difference in substance; it is a difference in form. The substance – the performances – are the same; it is only the form – whether one is watching at a specific venue or on the Internet – that is different.

In addition, exempting (or applying a reduced rate to) live theatrical, musical, or cultural performances from the amusement tax while applying the tax to streaming services that provide similar or identical performances bears no reasonable relationship to the object of the legislation or to public policy. The City's purpose is to foster the production of live performances that offer theatrical, musical, or cultural enrichment to the City's residents and visitors, and viewing such performances over the Internet furthers that purpose. City residents who view such performances on the Internet can be just as enriched as persons who view them in person, and those who produce such performances can profit from having them sold through streaming services. The reality is that the City is simply using the amusement tax to

benefit certain amusements that it likes at the expense of other amusements.

That's exactly what the Uniformity Clause prohibits.

For these reasons, the City's favorable treatment of live theater, musical, or cultural performances by eliminating or reducing the amusement tax on those performance, while imposing the amusement tax on similar streaming services violates the Uniformity Clause.

## III. The amusement tax discriminates against electronic commerce in violation of the Internet Tax Freedom Act.

The Internet Tax Freedom Act ("ITFA"), which is set forth in a note to 47 U.S.C. § 151, provides that no state or political subdivision of a state may impose multiple or discriminatory taxes on electronic commerce. ITFA § 1101(a). Congress enacted ITFA to "foster the growth of electronic commerce and the Internet by facilitating the development of a fair and consistent Internet tax policy." S. Rep. No. 105-184, at 1 (1998). One of ITFA's primary purposes is to prevent state and local taxing authorities from imposing discriminatory taxes on electronic commerce that would stifle its development. See, e.g., H.R. Rep. No. 105-808, pt. 1, at 8-9 (1998) (explaining that discriminatory state taxation could prevent electronic commerce from becoming ubiquitous); S. Rep. No. 105-184, at 2, 11 (1998) (stating that ITFA was intended to encourage "policies on taxation that eliminate any disproportionate burden on interstate commerce conducted electronically and establish a level playing field between electronic commerce using the new media of the Internet and traditional means of commerce").

ITFA accordingly imposes a moratorium on "discriminatory taxes on electronic commerce." ITFA § 1101(a)(2). Further, Congress recently enacted a permanent moratorium on discriminatory taxes on electronic commerce with the Trade Facilitation and Trade Enforcement Act of 2015, 114 Pub. L. No. 125, § 922, 130 Stat. 122 (2016). "Electronic commerce" is "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access." ITFA § 1105(3). The term "tax" under the ITFA includes those that a seller is required to collect and remit. ITFA § 1105(8). A tax on electronic commerce tax is deemed to be a "discriminatory tax" if it:

- (i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means; [or]
- (ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means . . .; [or]
- (iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means . . . .
- Id. § 1105(2)(A)(i)-(iii). ITFA does not prohibit the taxation of electronic commerce transactions per se but does prohibit jurisdictions from imposing greater tax burdens on electronic transactions when such burdens are not imposed on traditional commerce. Moreover, in determining the existence of

discrimination, ITFA compares transactions that are "similar"; they need not be identical.

ITFA prohibits the City from imposing a tax at a different rate on services provided over the Internet, such as streaming services, than on transactions involving similar services provided through other means, ITFA, § 1105(2)(A)(ii), and from imposing an obligation to pay the tax on a different person or entity on services provided by the Internet, than on transactions involving similar services provided through other means, ITFA § 1105(2)(A)(iii).

In this case, the amusement tax imposes an unlawful discriminatory tax on electronic commerce by taxing streaming services but not similar amusements that take place in Chicago in two ways. First, the Code requires customers of streaming services to pay the amusement tax, even as the Code entirely exempts users of "automatic amusement devices" from taxation. Second, the Code fully or partially exempts live theatrical, musical, and cultural performances at theaters and other venues from the amusement tax while taxing streaming services that provide access to similar or identical theatrical, musical, or cultural performances over the Internet.

The Illinois Supreme Court recently addressed whether a state statute violated ITFA by requiring out-of-state retailers to collect use taxes on performance marking sales exceeding \$10,000. *Performance Mktg. Ass'n v. Hamer*, 2013 IL 114496, ¶ 23. "Performance marketing" refers to marketing

or advertising programs in which a person or organization that publishes or displays an advertisement is paid by a retailer when a specific action, such as a sale, is completed. Id. at  $\P$  8. The statute imposed the use tax obligation on out-of-state retailers that made sales through performance marketing over the Internet, but did not impose the obligation on out-of-state retailers conducting performance marketing activities through print media or on overthe-air broadcasting in Illinois. Id. at  $\P$  23. The Court held that the statute violated ITFA because it only applied to online performance marketing and therefore imposed a discriminatory tax on electronic commerce.

Similarly, the streaming service tax imposes an unlawful discriminatory tax on electronic commerce by taxing streaming services but not similar amusements that take place in person in Chicago.

The City's imposition of the amusement tax on streaming services violates ITFA because, as explained in Section II.B, above, it requires customers of streaming services to pay the amusement tax, even as the Code entirely exempts users of "automatic amusement devices," – which also allow users to watch videos, listen to music, and play games – from taxation. Rather, the City imposes a \$150 tax per year per device on the operator of the automatic amusement device. Thus, the City taxes entertainment that is delivered through the Internet at a higher rate than it taxes identical entertainment that is not delivered through the Internet – precisely what ITFA prohibits.

In addition, the application of the amusement tax on streaming services violates ITFA because, as explained in Section II.C, above, live theatrical, musical, and cultural performances at theaters and other venues are either exempt from the amusement tax or are taxed at a lower rate, depending on the size of the venue. Streaming services that provide access to similar or identical theatrical, musical, or cultural performance over the Internet are subject to the 9% amusement tax, and thus are tax at a higher rate than similar live in-person theatrical, musical, and cultural performances.

Defendants cannot distinguish between live performances in a theater or other venue and those delivered through the Internet by asserting, as they do, that the two are different because the experience of watching an in-person performance is different from the experience of watching a performance on the Internet. C. 765, 767. That is the exact distinction that ITFA prohibits: treating a product delivered online as though it is different simply because it is delivered online. No doubt the "experience" of participating in performance marketing delivered over the Internet is much different from the experience of participating in performance marketing delivered in print or on an overthe-air broadcast – but the Illinois Supreme Court nonetheless held that the state could not impose a use-tax obligation on one but not the other. Performance Mktg., 2013 IL at ¶ 23. Likewise, in this case, streaming services provide theatrical, musical, and cultural performances as those performed live and in person. The fact that the latter provide a different

experience that are similar (and sometimes identical) in content to those

performed live and in person. The fact that the latter may provide a different

experience because they are in person and not on the Internet, is not an

appropriate distinction to make under ITFA; it is the very distinction that

ITFA prohibits. Therefore, the City's application of the amusement tax to

streaming services violates ITFA.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court

reverse the ruling of the circuit court and hold that the City's application of

the amusement tax to streaming services exceeds the City's authority to tax

under art. VII, § 6 of the Illinois Constitution, violates the Illinois

Constitution's Uniformity Clause, and discriminates against electronic

commerce in violation of the Internet Tax Freedom Act.

Dated: December 5, 2018

Jeffrey M. Schwab (#6290710)

James J. McQuaid (#6321108)

Attorneys for Petitioner David W. Cooke

LIBERTY JUSTICE CENTER

190 S. LaSalle St., Ste. 1500

Chicago, Illinois 60603

(312) 263-7668

jschwab@libertyjusticecenter.org

jmcquaid@libertyjusticecenter.org

41

#### CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 41 pages.

#### CERTIFICATE OF SERVICE

I, Jeffrey M. Schwab, an attorney, certify that on December 5, 2018, I caused the foregoing Appellant's Brief to be served via electronic mail on all attorneys on the attached service list.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

#### SERVICE LIST

Justin Houppert
Assistant Corporation Counsel
Appeals Division
City of Chicago Department of Law
30 North LaSalle Street
Suite 800
Chicago, IL 60602
312-744-0468
Justin.Houppert@cityofchicago.org.

#### IN THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

MICHAEL LABELL, JARED	)
LABELL, NATALIE BEZEK,	) Appeal from the Circuit Court of
EMILY ROSE, BRYANT JACKSON-	) Cook County, Illinois, County
GREEN, ZACK UREVIG, and	) Department, Chancery Division
FORREST JEHLIK	)
	No. 2015-CH-013399
	) Hon. Judge Carl Anthony Walker
Plaintiffs-Appellants	) Judge Presiding
11	)
V.	)
	, )
THE CITY OF CHICAGO, and	)
ERIN KEANE, in her official	, )
capacity as Comptroller of the City	, )
of Chicago,	, )
<i>0-7</i>	,
Defendants-Appellees.	, )

#### APPENDIX TO APPELLANTS' BRIEF

#### TABLE OF CONTENTS TO THE APPENDIX

City of Chicago Department of Finance Amusement Tax Ruling #5	A3
Opinion and Order, May 24, 2018	A7
Second Amended Complaint, October 12, 2016	A20
Answer to Second Amended Complaint, November 17, 2016	. A52
Plaintiffs' Motion for Summary Judgment, September 27, 2017	. A73
Defendants' Cross-Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment, November 15, 2017	A431
Plaintiffs' Combined Response in Opposition to Defendants' Motion for Summary Judgment and Reply in Support of Their Motion for Summary Judgment, December 20, 2017	A459
Defendants' Reply Memorandum in Support of Their Cross-Motion for Summary Judgment, January 12, 2018	A490
Notice of Appeal, June 21, 2018	A544
Common Law Record Table of Contents, August 23, 2018	A561
Report of Proceedings Table of Contents, August 23, 2018	A564

#### CITY OF CHICAGO DEPARTMENT OF FINANCE AMUSEMENT TAX RULING

Pursuant to Sections 2-32-080, 2-32-096, 3-4-030, 3-4-150 and 4-156-034 of the Municipal Code of Chicago, the City of Chicago hereby adopts and promulgates Amusement Tax Ruling #5, effective July 1, 2015.

Dated: June 9, 2015

Dan Widawsky Comptroller

Amusement Tax Ruling #5

Subject: Electronically Delivered Amusements

Effective Date: July 1, 2015

#### **Ordinance Provisions**

1. Section 4-156-020(A) of the Municipal Code of Chicago ("Code") states, in pertinent part:

Except as otherwise provided by this article, an amusement tax is imposed upon the patrons of every amusement within the city.

2. Code Section 4-156-010 states, in pertinent part:

"Amusement" means: (1) any exhibition, performance, presentation or show for entertainment purposes, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition such as boxing, wrestling, skating, dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling or billiard or pool games; (2) any entertainment or recreational activity offered for public participation or on a membership or other basis including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, bodybuilding or similar activities; or (3) any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means. (emphasis added).

#### 3. Code Section 4-156-030(A) states in pertinent part:

It shall be the joint and several duty of every owner, manager or operator of an amusement or of a place where an amusement is being held, and of every reseller to secure from each patron or buyer the tax imposed by Section 4-156-020 of this article and to remit the tax to the department of finance not later than the 15th day of each calendar month for all admission fees or other charges received during the immediately preceding calendar month ... (emphasis added).

#### 4. Code Section 4-156-010 states in pertinent part:

"Owner" means: (1) with respect to the owner of a place where an 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 an amusement in such place; (2) with respect to the owner of an amusement, any person which has an ownership or leasehold interest in such amusement or any person who has a proprietary interest in the amusement so as to entitle such person to all or a portion of the proceeds, after payment of reasonable expenses, from the operation, conduct or presentation of such amusement, excluding proceeds from nonamusement services and from sales of tangible personal property; (3) with 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. (emphasis added).

#### 5. Code Section 4-156-010 states in pertinent part:

"Operator" means any person who sells or resells a ticket or other license to an amusement for consideration or who, directly or indirectly, receives or collects the charges paid for the sale or resale of a ticket or other license to an amusement. The term includes, but is not limited to, persons engaged in the business of selling or reselling tickets or other licenses to amusements, whether on-line, in person or otherwise. The term also includes persons engaged in the business of facilitating the sale or resale of tickets or other licenses to amusements, whether on-line, in person or otherwise. (emphasis added).

#### 6. Code Section 4-156-010 states in pertinent part:

"License" means a ticket or other license granting the privilege to enter, to witness, to view or to participate in an amusement, or the opportunity to obtain the privilege to enter, to witness, to view or to participate in an amusement, and includes but is not limited to a permanent seat license. (emphasis added).

7. Code Section 4-156-010 states in pertinent part:

"Ticket" means the privilege to enter, to witness, to view or to participate in an amusement, whether or not expressed in a tangible form.

#### **Taxability**

- 8. The amusement tax applies to charges paid for the privilege to witness, view or participate in an amusement. This includes not only charges paid for the privilege to witness, view or participate in amusements *in person* but also charges paid for the privilege to witness, view or participate in amusements that are *delivered electronically*. Thus:
  - a. charges paid for the privilege of watching electronically delivered television shows, movies or videos are subject to the amusement tax, if the shows, movies or videos are delivered to a patron (*i.e.*, customer) in the City (*see* paragraph 13 below);
  - b. charges paid for the privilege of listening to electronically delivered music are subject to the amusement tax, if the music is delivered to a customer in the City; and
  - c. charges paid for the privilege of participating in games, on-line or otherwise, are subject to the amusement tax if the games are delivered to a customer in the City.

The customer will normally receive the provider's electronic communications at a television, radio, computer, tablet, cell phone or other device belonging to the customer.

- 9. Providers who receive charges for electronically delivered amusements are owners or operators and are required to collect the City's amusement tax from their Chicago customers. *See* paragraphs 13 and 14 below. As of the date of this ruling, the rate of the tax is 9% of the charges paid.
- 10. The amusement tax does not apply to *sales* of shows, movies, videos, music or games (normally accomplished by a "permanent" download). It applies only to *rentals* (normally accomplished by streaming or a "temporary" download). The charges paid for such rentals may be subscription fees, per-event fees or otherwise.
- 11. Charges that are not subject to the amusement tax may be subject to another tax (such as the City's personal property lease transaction tax, Code Chapter 3-32), but this ruling concerns only the amusement tax.

#### **Bundled Charges**

12. Where a charge is "bundled" by including both taxable and non-taxable elements (either non-taxable in the first instance or exempt), the Department of Finance ("Department") will apply the same rules that are set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004). That ruling states, among other things, that "[i]f the lessor fails to separate the

lease or rental portion of the price from the non-lease or non-rental portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for the use of any personal property." *See also* Code Section 4-156-020(H) (providing that the taxable "admission fees or other charges" do not include charges that are not for amusements, but only if those charges are separately stated and optional). Therefore, if a bundled charge is primarily for the privilege to enter, to witness, to view or to participate in an amusement, then the entire charge is taxable.

#### Sourcing

13. The Department will utilize the rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638, to determine sourcing for the amusement tax. In general, this means that the amusement tax will apply to customers whose residential street address or primary business street address is in Chicago, as reflected by their credit card billing address, zip code or other reliable information.

#### Nexus

14. Because the amusement tax is imposed on the patron, and applies only to activity (*i.e.*, the amusement) that takes place within Chicago, there is no question that the tax applies whenever the amusement takes place in Chicago. The issue of nexus arises, at most, with regard to the question of whether a given provider has an obligation to *collect* the tax from its customer. That issue is beyond the scope of this ruling, and any provider with a question about that topic should consult its attorneys. In addition, a provider may request a private letter ruling from the Department, pursuant to Uniform Revenue Procedures Ordinance Ruling #3 (June 1, 2004).

#### Implementation

15. In order to allow affected businesses sufficient time to make required system changes, the Department will limit the effect of this ruling to periods on and after September 1, 2015. This paragraph does not release or otherwise affect the liability of any business that failed to comply with existing law before the effective date of this ruling.

#### IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION TAX AND MISCELLANEOUS REMEDIES SECTION

MICHAEL LABELL, ET AL.,

Plaintiffs,

v.

THE CITY OF CHICAGO, ET AL.,

Defendants.

Case No. 15 CH 13399

Honorable Carl Anthony Walker Calendar 1

#### **OPINION AND ORDER**

#### I. OPINION

This matter comes before the Court on Plaintiffs', Michael Labell, et al. ("Plaintiffs") and Defendants', The City of Chicago, et al. ("Defendants"), Cross Motions for Summary Judgment. Plaintiffs seek to enjoin the ruling extending Chicago's 9% "amusement tax" to cover Internet-based streaming services: (1) as a violation of the federal Internet Tax Freedom Act; (2) as a violation of the United States Commerce Clause; (3) as a violation of the uniformity clause of the Illinois Constitution; and (4) as an extraterritorial application of Defendants' taxing power. For the reasons below, Plaintiffs' Motion for Summary Judgment is denied, and Defendants' Motion for Summary Judgment is granted.

#### **BACKGROUND**

The City of Chicago imposes a 9% tax on admission fees or other charges paid for the privilege to enter, witness, view, or participate in some activities within the City of Chicago that the Chicago Municipal Code ("Code") defines as "amusements" (the "amusement tax"). Chi. Mun. Code 4-156-020. On June 9, 2015, the City of Chicago, through its Comptroller, issued Amusement Tax Ruling #5 ("Ruling"), which declares the term "amusement" as defined by Chi. Mun. Code 4-156-010, to include "charges paid for the privilege to witness, view or participate in amusements that are delivered electronically." Ruling ¶ 8. According to the Ruling, charges paid for the privilege of "watching electronically delivered television shows, movies or videos, . . . listening to electronically delivered music, . . . and participating in games, on-line or otherwise" are subject to the amusement tax if they are "delivered to a patron (i.e., customer) in the City." Ruling ¶ 8.

The Ruling requires providers of Internet services to collect the amusement tax from their customers and remit the proceeds to the City. The Ruling adopts the sourcing rules from the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq. ("Mobile Sourcing Act").

It imposes the amusement tax on individuals "whose residential street address or primary business street address is in Chicago, as reflected by their credit card billing address, zip code or other reliable information." Ruling ¶ 13. The Ruling further indicates the amusement tax is imposed on the patron and applies only to the activity that takes place within the borders of Chicago. Ruling ¶ 14.

On December 17, 2015, Plaintiffs-customers of Internet services-filed their six count First Amended Complaint. On January 19, 2016, Defendants moved to dismiss the Amended Complaint. On July 21, 2016, this Court granted Defendants' 2-615 Motion to Dismiss on Counts I, II, and III, and denied Defendants' 2-615 Motion to Dismiss on Counts IV, V, and VI. On October 12, 2016, Plaintiffs filed their Second Amended Complaint. Both parties filed Cross Motions for Summary Judgment.

#### LEGAL STANDARD

Summary judgment should be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact" and the "moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2018). The interpretation of a statute is a matter of law and is thus appropriate for summary judgment. Village of Chatham v. County of Sangamon, 216 III. 2d 402, 433 (2005). When parties file cross motions for summary judgment, they agree no factual issues exist and the disposition of the case turns on the court's resolution of purely legal issues. Maryland Casualty Co. v. Dough Management Co., 2015 IL App (1st) 141520, ¶ 45.

#### **DISCUSSION**

As a preliminary matter, the amusement tax is imposed by Section 4-156-020(A) of the Municipal Code of Chicago, which states, "an amusement tax is imposed upon the patrons of every amusement within the City." Section 4-156-020(G.1)<sup>1</sup> provides businesses with a method of collecting the amusement tax.

#### A. Internet Tax Freedom Act

Plaintiffs allege the amusement tax is unfairly applied, and it imposes a discriminatory tax on users of streaming services. Plaintiffs contend the amusement tax on streaming services violates the Internet Tax Freedom Act ("ITFA"). Plaintiffs also argue the City requires customers to pay the amusement tax on streaming services but not an equal tax on similar services, such as automatic amusement machines. Automatic amusement machines are machines operated with a coin, slug, token, card or similar object, or upon any other payment method, generally for use as a game, entertainment, or amusement. See Chicago Municipal Code § 4-156-150 (2016).

In addition, Plaintiffs maintain that the City taxes live performances at a lower rate than it taxes streaming services. Defendants contend the amusement tax does not violate the ITFA

<sup>&</sup>lt;sup>1</sup> In the case of amusements that are delivered electronically to mobile devices, as in the case of video streaming, audio streaming and on-line 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. If those rules indicate that the tax applies, it shall be presumed that the tax does apply unless the contrary is established by books, records or other documentary evidence.

because the activities are much different. The City asserts there is a real and substantial difference between streaming and live performances. Therefore, they are not "similar" under the ITFA.

The ITFA prohibits a state or political subdivision of a state, from imposing discriminatory taxes on electronic commerce that:

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period; [or]

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means.

(iv) establishes a classification of Internet access service providers or online service providers for purpose of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means.

ITFA §1105(2)(A). In this instance, Plaintiffs cannot equate live performances to movies and music streamed on-line because they are different amusements. On-line streaming services allow users to stream several movies and shows in any location during any time, while a live performance is enjoyed at a venue in the moment.

For example, the Illinois Supreme Court approved the favoring of "live fine arts performances" over other forms of amusement. Pooh-Bah Enterprises, Inc. v. County of Cook, 232 Ill. 2d 463, 496 (2009). The court noted that the goal of the exemption "is to encourage live fine arts performances in small venues" and that this goal would not be advanced by "movies, television, promotional shows, [or] performances at adult entertainment cabarets ...." Id. This Court finds live performances are not sufficiently similar to performances or movies delivered through on-line streaming services. There is a legitimate justification for the exemption for live performances in small venues because live performances foster tourism and business (hotels, restaurants, and gift shops). As stated during oral arguments, if an individual paid hundreds of dollars for a live performance and arrived at the theatre to learn that the performance must be viewed on a television monitor, the individual would find this not acceptable. This is because watching a performance on a television monitor is not in any way similar to watching a live performance. Thus, the conformity difference does not create a violation of the ITFA.

In addition, the automatic amusement machines cannot be equated to movies and music streamed on-line because there are real and substantial differences. The automatic amusement machines are stationary devices owned by businesses. The customers may not take the devices away from the establishment, the devices are shared among all of the establishment's customers, and they are operated with coins on a per-use basis. However, the on-line streaming products are used on devices owned by a consumer, and the streaming products can be used on a mobile device

at any location the customer chooses. The customer is generally the exclusive user of the on-line streaming product, and rather than paid for on a per use basis, the streaming products are paid for by credit or debit card on a monthly basis pursuant to a subscription.

This Court finds these are real and substantial differences. Plaintiffs do not dispute the differences, but instead Plaintiffs question whether the differences justify the City imposing a tax of \$150 per year on each automatic amusement device versus a 9% amusement tax based on the amount a customer pays to use the device. Defendants counter stating that a 9% tax for each use would be administratively inconvenient. This Court agrees. Requiring owners of bars, restaurants and arcades to collect a percentage-based tax from patrons who pay a small amount of money to play individual songs or games with coins would be administratively inconvenient for the businesses, customers, and the City of Chicago. Administrative convenience and expense in the collection or measurement of the tax alone are a sufficient justification for the difference between the treatments in taxes. See Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 574 (1974). Therefore, there is no violation of the ITFA.

#### B. The United States Commerce Clause

Plaintiffs argue the amusement tax imposed on streaming services used outside Chicago violates the Commerce Clause. Plaintiffs specifically allege there is no substantial nexus between Chicago and streaming services, and the substantial nexus rule requires the City to have a connection with the activity it is taxing and not just the actor who pays the tax. In addition, Plaintiffs assert the tax is not fairly apportioned because it is not externally consistent.

Defendants contend Plaintiffs lack standing to bring an action under the Commerce Clause because the Commerce Clause intended to protect competitors and not consumers, and as such Plaintiffs are the wrong party to bring this action. In addition, Defendants assert the amusement tax has a substantial nexus with the taxing city since it taxes Chicago residents who pay for and receive the privilege of viewing and listening to amusement in Chicago, and the tax is fairly related to services provided since Chicago residents who pay the tax receive the services within Chicago.

#### i. Standing

As a threshold matter, this Court will address the standing issue. To prove standing the Plaintiffs must show: (1) Plaintiffs suffered an injury in fact, (2) have a causal nexus between that injury and the conduct complained of, and (3) it must be likely the injury will be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Here, Plaintiffs have shown an interest because they are the individuals taxed for their streaming activities, and they will suffer an injury if the tax is levied on the streaming services. Plaintiffs thus have standing to bring this action.

#### ii. Commerce Clause Concerns

The Commerce Clause provides that "Congress shall have the power . . . to regulate commerce . . . among the several States." U.S. Const., Art. I § 8, cl.3. "Even where Congress has not acted affirmatively to protect interstate commerce, the Clause prevents States from discriminating against that commerce." D.H. Holmes Co. v. McNamara, 486 U.S. 24, 29 (1998).

A local tax satisfies the Commerce Clause if it: "(1) is applied to the activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the state." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

Under the first prong of the *Complete Auto* test, to find whether a substantial nexus exists, courts examine the level of a taxpayer's "presence" within the taxing state or city. *In re Wash Mutual, Inc.*, 485 B.R. 510, 517 (Bankr. D. Del. 2012). Here, the tax is applied to customers who receive the services in Chicago, and it is a fair assumption that the taxpayers' residence will be their primary places of streaming. Thus, the tax does have a substantial nexus with the City of Chicago because it is fairly related to the services provided by the City to its residents.

The second prong of the *Complete Auto* test requires a local tax to be fairly apportioned. The U.S. Constitution "imposes no single apportionment formula on the States." *Container Corp. of America v. Franchise Tax Bd.* 463 U.S. 159, 164 (1983). The central purpose behind the apportionment requirement is to ensure that each state or city taxes only its fair share of an interstate transaction. *Id.* 

Pursuant to Goldberg v. Sweet, the test to determine whether a tax is fairly apportioned requires an examination of whether the tax is internally and externally consistent. 488 U.S. 252, 261 (1989). To be internally consistent, the tax must be structured so that if every state were to impose an identical tax no multiple taxation would result. Id. On the other hand, external consistency requires the state to tax only the portion of revenues from interstate activity, which reasonably reflects an in-state component of activity. Id. Plaintiffs acknowledge the tax is internally consistent. However, Plaintiffs argue the tax is not externally consistent because the City is taxing the use that occurs outside of the City of Chicago.

The external consistency test asks whether the State or City has taxed that portion of the revenues from the interstate activity which reasonably reflects the in-state or in-city component of the activity being taxed. The Court finds the amusement tax has many of the characteristics of a sales tax. The tax is assessed on individual consumers, collected by the retailer, and accompanies the retail purchase of streaming services. It may not be purely local, but it reasonably reflects the way consumers purchase the new technology (streaming services). See McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33, 58 (1940).

The external consistency test is a practical inquiry. The U.S. Supreme Court has endorsed apportionment formulas based upon the miles a bus, train, or truck traveled within a taxing jurisdiction. See Central Greyhound Lines, Inc. v. Mealey, 334 U.S. 653, 663 (1948). Those cases involved the movement of large physical objects over identifiable routes upon which it was possible to keep track of the travel within each state. This case, on the other hand, deals with intangible movement of electronic streaming services. Therefore, an apportionment formula based on some division of use "would produce insurmountable administrative and technological barriers." Goldberg 488 U.S. at 264. Apportionment does not require the City of Chicago to adopt a tax that poses true administrative burdens. See American Trucking Ass'ns v. Scheiner, 483 U.S. 266, 296 (1987).

Defendants' amusement tax only applies to consumers whose billing address is in the City of Chicago. If another jurisdiction attempted to tax consumers based on usage outside of the City of Chicago, some streaming use could be subject to multiple taxation. However, this limited possibility of multiple taxation is not sufficient to invalidate the ordinance based on external consistency. *Id* at 264. Defendants' method of taxation is a practical solution to the technology of the 21st century. The tax on streaming activity is based on the customer's billing address, which reflects that the in-city activity and the primary use of the streaming services will take place at their residences. Thus, the tax meets the fairly apportioned prong of the *Complete Auto* inquiry.

Under the third prong of the *Complete Auto* test, the taxing jurisdiction is prohibited from imposing a discriminatory tax on interstate commerce. *Goldberg*, 488 U.S. at 265. A tax discriminates against interstate commerce when it imposes a disproportionate share of the tax burden to interstate transactions. *Id.* Plaintiffs agree that the third prong of the *Complete Auto* test is satisfied.

The forth prong of the Complete Auto test examines whether the tax is fairly related to the presence and activities of the taxpayer within the jurisdiction. The purpose of this test is to ensure that a jurisdiction's tax burden is not placed upon persons who do not benefit from services provided by that jurisdiction. See Commonwealth Edison v. Montana, 453 U.S. 609, 627 (1981). The analysis focuses on the wide range of benefits provided to the taxpayer. Goldberg, 488 U.S. at 267. For example, a taxpayer's police and fire protection and the use of public roads and mass transit are benefits provided by the City of Chicago, and those benefits satisfy the requirement that the tax is fairly related to benefits the City provides to the taxpayer. Therefore, the forth prong of the Complete Auto test is satisfied.

For the reasons stated above, this Court finds the amusement tax the City of Chicago imposes is consistent with the Commerce Clause of the U.S. Constitution. The amusement tax is applied to an activity with a substantial nexus with the City; it is fairly apportioned; it does not discriminate against interstate commerce; and it is fairly related to services which the City of Chicago provides to the taxpayers.

#### C. Uniformity Clause

In addition to their federal constitutional claims, Plaintiffs contend the amusement tax violates the uniformity clause because it applies to streaming services differently than it applies to other amusements in the city.

Article IX, § 2 of the Illinois Constitution, otherwise known as the uniformity clause, provides: "[i]n any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. 1970, art. IX § 2.

The uniformity clause of the Illinois Constitution was intended to be a broader limitation on legislative power than the limitation of the Equal Protection Clause of the federal constitution. *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 153 (2003): *Searle Pharms., Inc. v. Dep't of Revenue*, 117 Ill. 2d 454, 469 (1987); *Milwaukee Safeguard Ins. Co. v. Selcke*, 179 Ill. 2d 94, 102 (1997).

Although the uniformity clause imposes a more stringent standard than the Equal Protection Clause, the scope of a court's inquiry under the uniformity clause remains relatively narrow. *Allegro Services, Ltd v. Metro. Pier & Exposition Auth*, 172 Ill. 2d 243, 250 (1996). Statutes bear a presumption of constitutionality, and broad latitude is afforded to legislative classifications for taxing purposes. *Id.* 

The uniformity clause was "designed to enforce minimum standards of reasonableness and fairness as between groups of taxpayers." *Id.*; *Geja's Café v. Metro. Pier & Exposition Auth*, 153 Ill. 2d 239, 252 (1992). To survive scrutiny under the uniformity clause, a non-property tax classification must: (1) be based on a real and substantial difference between the people taxed and those not taxed, and (2) bear some reasonable relationship to the object of the legislation or to public policy. *Arangold*, 204 Ill. 2d at 153. These two requirements should be considered and treated separately. *Casey's Mktg. Co. v. Hamer*, 2016 IL App (1st) 143485, ¶ 22.

First, Plaintiffs argue the tax imposed on streaming services treats consumers of streaming services differently based on billing addresses, not based on where the streaming services are used. Yet in other instances, the amusement tax applies only to consumers who incur charges for amusements that take place in the city.

Second, Plaintiffs argue the amusement tax subjects streaming services to greater taxation than automatic amusement machines that deliver the same types of entertainment and thus violates the uniformity clause. Third, Plaintiffs assert the tax violates the uniformity clause because it taxes some performances at a higher rate than in-person performances.

Defendants respond there are real and substantial differences between residents of Chicago and non-residents. For example, the City of Chicago provides protection and other benefits to its residents and their property. Defendants argue there are real and substantial differences between an automatic amusement device and streaming products. Defendants assert: (1) an automatic amusement device is owned by a business such as a bar or arcade, and (2) an automatic amusement device is a stationary device that a consumer may not take away from an establishment, while a streaming product can be used on a mobile device at any location the consumer may choose. Finally, Defendants argue there are real and substantial differences between an amusement that is viewed in-person and one delivered electronically for viewing on a television or other device.

#### i. Real and Substantial Difference

When Plaintiffs challenge a legislative classification, they have the burden of showing the classification is arbitrary or unreasonable. *Geja's Café*, 153 Ill. 2d at 248. If a set of facts can reasonably be conceived that would sustain the legislative classification, the classification must be upheld. *Id.* In a uniformity clause challenge, Plaintiffs are not required to negate every conceivable basis that might support the tax classification. *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 72 (2008). Rather, once Plaintiffs have established a good-faith uniformity clause challenge, the burden shifts to the taxing body to produce a justification for the tax classification. *Id.* If the taxing body does so, the burden shifts back to Plaintiffs to persuade the court that the justification is insufficient, either as a matter of law or as unsupported by the facts. *Id.* If the plaintiff fails to meet that burden, judgment is proper for the taxing body as a matter of law.

Here, the ordinance grants many exemptions. The Illinois Supreme Court has "upheld tax exemptions based upon the character of an entity other than that upon which the incidence of a tax has been placed." *DeWoskin v. Lowe's Chicago Cinema*, 306 Ill. App. 3d 504, 520 (1st Dist. 1999). There is a real and substantial difference between the people taxed and those not taxed. As to streaming service, the people taxed have a Chicago billing address, and at least one of the Plaintiffs testified that he watches Netflix about 75% of the time on his home television. The other deposed Plaintiff stated that he uses Netflix and Spotify about 90% of the time in the City of Chicago. The City does not attempt to tax anyone without a Chicago billing address.

In addition, there are real and substantial differences between an automatic amusement device and streaming products. Specifically, the automatic amusement devices are tangible and stationary that cannot be removed, while, streaming products can be accessed from anywhere within the city of Chicago.

Moreover, there are real and substantial differences from streaming products and live performances of professional theater companies. Courts have found that live performances of professional theater companies advance the cultural interest in the community. See Kerasotes Rialto Theater Corp. v. Peoria, 77 Ill. 2d 491, 498 (1979) (noting that live performances of professional theater companies supply a reasonable justification for exempting patrons of live performances of professional theater companies in auditoriums or theaters that have a maximum seating capacity of not more than 750 from the tax imposed under the ordinance). As demonstrated, reasonably conceived facts exist to justify each exemption addressed in Plaintiffs' Motion for Summary Judgment. DeWoskin, 306 Ill. App 3d at 522.

#### ii. Reasonable Relationship

The next step in the uniformity clause analysis is to determine whether the tax classification bears some reasonable relationship to the object of the legislation or to public policy. The first task is to identify the purpose of the tax. See Grand Chapter, Order of the Eastern Star v. Topinka, 2015 IL 117083, ¶ 12.

Here, the Defendants show there is an administrative convenience for the City, businesses, and customers. The administrative convenience is a reasonable relationship for Defendants to impose a flat annual tax on each automatic amusement. See Paper Supply Co. v. Chicago, 57 Ill. 2d 553, 574-75 (1974) (holding that administrative convenience was a sufficient justification and reasonable in the collection of the tax). As noted, there are sufficient justifications for streaming products to be classified differently than live performances. Kerasotes, 77 Ill. 2d at 498. In any event, Defendants have shown the classification bears some reasonable relationship to the object of the legislation. Thus, Plaintiffs' fail to meet their burden. See Arangold, 204 Ill. 2d at 156 (noting that once the taxing body has offered a justification for the classification, "[t]he plaintiff then has the burden to persuade the court that defendant's explanation is insufficient as a matter of law, or unsupported by the facts" (internal quotation marks omitted)). Thus, this Court finds Defendants have offered a justification for the classification of streaming services, automatic amusement device and live performances.

#### D. Home Rule Authority

Plaintiffs also contend the amusement tax on streaming services applies beyond Chicago corporate limits, and the Illinois General Assembly has not expressly authorized the City of Chicago to tax streaming services beyond the borders of the city. Next, Plaintiffs assert the Mobile Telecommunications Sourcing Conformation Act, 35 ILCS 638/1 et seq. ("Mobile Sourcing Act") does not justify the taxation of extraterritorial activities because the Act does not expressly authorize the amusement tax on consumers that stream services outside Chicago.

Defendants counter the home rule authority applies because the City of Chicago is taxing amusements within the City. Defendants contend the streaming services are used by Chicago residents either exclusively or primarily within Chicago. Next, Defendants argue the Act provides express statutory authority to tax streaming services provided by telecommunications companies. Moreover, Defendants have implied authority to apply the Mobile Sourcing Act to all streaming services because the Act is a reasonable means of dealing with the issue of how to source charges related to the use of mobile devices.

"Home rule is based on the assumption that municipalities should be allowed to address problems with solutions tailored to their local needs." *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 29. Thus, article VII, section 6(a) of the Illinois Constitution provides:

[e]xcept as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare; to license; to tax; and to incur debt.

#### Ill. Const. 1970. art. VII, § 6(a).

"Section 6(a) was written with the intention to give home rule units the broadest powers possible." Palm, 2013 IL 110505, ¶ 30 (citing Scandron v. City of Des Plaines, 153 Ill. 2d 164, 185-86 (1996)). The constitution expressly provides the "[p]owers and functions of home rule units shall be construed liberally." Ill. Const. 1970. art. VII, § 6(m); Nat'l Waste and Recycling Ass'n v. Cnty. of Cook, 2016 IL App (1st) 143694, ¶ 27. The Illinois Constitution, however, limits a home rule unit to legislation "pertaining to its government and affairs." City of Chicago v. Village of Elk Grove Village, 354 Ill. App. 3d 423, 426 (2004) (quoting Ill. Const. 1970. art. VII, § 6(a)). Furthermore, under article VII, section 6(h), the General Assembly "may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit" (Ill. Const. 1970. art. VII, § 6(h)), but if the legislature intends to limit or deny the exercise of home rule powers, the statute must contain an express statement to that effect. Palm, 2013 IL 110505, ¶ 31. Thus, "[i]f a subject pertains to local government and affairs, and the legislature has not expressly preempted home rule, municipalities may exercise their power." Id. ¶ 36 (quoting City of Chicago v. StubHub, Inc., 2011 IL 111127, ¶ 22 n.2).

Plaintiffs assert the Mobile Sourcing Act does not justify the Chicago taxation of extraterritorial activities because the Act does not expressly authorize the amusement tax on consumers that stream services outside Chicago. In 2002, the United States Congress passed the

Mobile Telecommunications Sourcing Act, 4 U.S.C. §116 et seq. (MTSA). The MTSA enabled state and local governments to tax mobile telecommunications services.

Under the MTSA, a customer's mobile telephone service could be taxed "by the taxing jurisdiction whose territorial limits encompass the customer's place of primary use. Regardless of where the mobile telecommunication service originate, terminate, or pass through." 4 U.S.C. §117 (b). The MTSA provides that "the term 'place of primary use' means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs." 4 U.S.C §124(8).

The Illinois State Legislature has adopted the Mobile Sourcing Act., 35 ILCS 638, and it codifies the Mobile Telecommunications Sourcing Act. 35 ILCS 638/5. The Mobile Sourcing Act defines "place of primary use" as the "street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be: (i) the residential street address or the primary business street address of the customer; and (ii) within the licensed service area of the home service provider." The Act applies to charges "which are billed by or for the customer's home service provider," which means "the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications service." 35 ILCS 638/20; 35 ILCS 638/10. The Act provides that mobile services are primarily used in the place where the customer lives.

It is a fundamental principle that when courts construe the meaning of a statute, the primary objective is to ascertain and give effect to the intention of the legislature, and all other rules of statutory construction are subordinated to this cardinal principle. *Metzger v. DaRosa*, 209 Ill. 2d 30, 34 (2004). The plain language of the statute is the best indicator of the legislature's intent. *Id.* at 34-35. When the statute's language is clear, it will be given effect without resort to other aids of statutory construction. *Id.* at 35.

The Mobile Sourcing Act applies to charges "which are billed by or for the customer's home service provider," which means "the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services." 35 ILCS 638/20; 35ILCS 638/10. Many "home service providers" offer streaming services. For example, AT&T and Comcast are facilities based carriers, and they offer streaming services. As previously indicated, "[t]he plain language of the statute is the best indicator of the legislature's intent." *Metzger v. DaRosa*, at 34-35. Thus, the City has express authority to apply the Mobile Sourcing Act to streaming services provided by telecommunication companies.

However, even if the Defendants do not have express authority, Defendants have implied authority. See 65 ILCS 5/8-3-15 ("The corporate authorities of each municipality shall have all powers necessary to enforce the collection of any tax imposed and collected by such municipality, whether such tax was imposed pursuant to its home rule powers or statutory authority..."). The Mobile Sourcing Act is a reasonable means of addressing the concern of how to source charges related to the use of mobile devices. Other jurisdictions have analyzed the implied authority with respect to the Mobile Sourcing Act. See e.g., Virgin Mobile USA, SP v. Arizona Department of Revenue, 230 Ariz. 261 (2012) (stating nothing in the MTSA prohibits a state [or municipality]

from establishing itself as a tax situs for mobile service); *T-Mobile South, LLC v. Bonet*, 85 So. 3d 963 (Ala. 2011).

When the Mobile Sourcing Act is silent with respect to streaming services, the City of Chicago can still tax these services if there is a nexus to the City of Chicago and if the Tax does not conflict with the Commerce Clause. See Virgin Mobile USA, SP, 230 Ariz. 261, ¶ 20; Goldberg 488 U.S. at 259. In this case, the Mobile Sourcing Act applies to streaming services provided by telecommunications companies, and it is reasonable for Defendants to apply the Mobile Sourcing Act to the same streaming services when other businesses offer those streaming services.

A municipal ordinance is presumed constitutional, and the challenging party has the burden of rebutting that presumption. *Pooh Bah Enterprises, Inc.* 224 Ill.2d 390 at 406. Plaintiffs may make a constitutional challenge to the ordinance in two ways. First, a challenge can be "as applied," in which Plaintiffs argue that the statute is unconstitutional under circumstances specific to that plaintiff. In that situation, the facts surrounding the plaintiff's particular circumstances become relevant. Alternatively, a plaintiff can raise a "facial challenge", which is a significantly more difficult route. Unlike an as-applied challenge, the ordinance is invalid on its face only if no set of circumstances exists under which it would be valid. The plaintiff's individual circumstances are irrelevant in the context of a facial challenge. *Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 26.

#### i. Facial Challenge

Plaintiffs present a facial challenge to the validity of Section 4-156-020(G.1). Defendants maintain that Section G.1. does two things: "(1) it confirms that the amusement tax applies to video streaming, audio streaming and on-line games; and (2) it allows providers to utilize the rules set forth in the Mobile Sourcing Act." This framework allows for providers such as Hulu, Spotify, and Netflix to collect the amusement tax from Chicago residents, while overlooking non-residents.

"A facial challenge requires a showing that the statute is unconstitutional under any set of facts, i.e., the specific facts related to the challenging party are irrelevant." *People v. Thompson*, 2015 IL 118151, ¶ 36. The burden on the challenger is particularly heavy when a facial constitutional challenge is presented. *People v. Rizzo*, 2016 IL 118599, ¶ 24.

Although Plaintiffs rely on *Hertz Corp v. City of Chicago* for their argument that the tax is extraterritorial, this Court finds the case distinguishable. 2017 IL 119945. In *Hertz*, the tax at issue ("Ruling 11"), applied to vehicle rental companies doing business in the City of Chicago. Ruling 11 advised suburban vehicle rental companies within three miles of Chicago's borders to implement a specific system when renting to customers intending to use vehicles in Chicago. *Id.* Specifically, the companies were required to maintain written records of any vehicle driven in Chicago. *Id.* In the event of an audit, the written records would support any claim of exemption from the tax. *Id.* If a rental company within the three-mile radius failed to maintain proper records, then all rental customers with a Chicago address on their drivers' license are presumed to have used the rental vehicle primarily in Chicago. All rental customers without a Chicago address were presumed to have not used the rental vehicle in Chicago. *Id.* Plaintiffs alleged the tax ordinance was unconstitutional because it was an extraterritorial tax. ¶ 13. The Illinois Supreme Court held

that Ruling 11 violated the home rule authority of the Illinois Constitution because it had an extraterritorial effect, and thus was an improper exercise of Chicago's home rule powers. ¶¶ 33, 35.

Unlike *Hertz*, the customers here are residents of Chicago who pay their monthly subscription fees primarily for obtaining the privilege of using the streaming services in Chicago. The tax on streaming services applies to Chicago residents with billing addresses located within the City of Chicago. While the tax in *Hertz* was based on nothing more than a lessee's stated intention or a conclusive presumption of use in Chicago.

Here, the tax applies to the streaming services that occur within Chicago. The City of Chicago may collect taxes from entities that do business within the City limits. See S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56 (1972) (finding that out-of-county tobacco wholesalers are required to collect sales tax from retailers who sell cigarettes to customers in Chicago); American Beverage Ass'n v. City of Chicago, 404 Ill. App. 3d 682 (2010) (holding that wholesalers and retailers were required to collect sales tax on sales of bottled water). The businesses that stream services to the billing addresses of Chicago residents are within the taxing jurisdiction of the City of Chicago. Thus, Section 4-156-020(G.1) of the amusement tax is not an extraterritorial tax that violates the City of Chicago's home rule authority. The city is simply taxing an event that occurs within its boundaries and in an area for which it provides services. Thus, Plaintiffs fail to meet their burden that the amusement tax is facially unconstitutional.

#### ii. As-Applied Challenge

Next, Plaintiffs present an as-applied challenge to the amusement tax. The Illinois Supreme Court has noted that facial and as-applied challenges are not interchangeable, and there are fundamental distinctions between them. *Thompson*, 2015 IL 118151, ¶ 36. "An as-applied challenge requires a showing the statute violates the constitution as it applies to the facts and circumstances of the challenging party." *Id*.

Here, the streaming services are used by Chicago residents either exclusively or primarily within Chicago. The streaming services are billed to the address of the Chicago residents. Indeed, some Chicago residents may use their streaming services elsewhere, for example, while on vacation outside Chicago. Even so, their main use of the services is primarily within the City limits, and the residents are being billed at the address provided to the streaming services companies. The tax here is akin to the Chicago vehicle city sticker tax based on a Chicago billing address. See Rozner v. Korshak, 55 Ill. 2d 430 (1973). The vehicle may rarely be driven in Chicago, but the Chicago resident must buy the city sticker. This Court therefore finds Plaintiffs fail to meet their burden that the amusement tax is unconstitutional as-applied to Plaintiffs.

For all these reasons, Defendants' Motion for Summary Judgment is granted and Plaintiffs' Motion for Summary Judgment is denied.

#### II. ORDER

This matter having been fully briefed and the Court being fully apprised of the facts, law and premises contained herein, it is ordered as follows:

- A. Defendants' Motion for Summary Judgment is Granted.
- B. Plaintiffs' Motion for Summary Judgment is Denied.
- C. Plaintiffs' request to enjoin Defendants is Denied.
- D. This Order is final and appealable.

ENTERED:

Judge Carl Anthony Walker

ENTERED
JUDGE CARL ANTHONY WALKER-1913

MAY 24 2018

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IN
DEPUTY CLERK

Judge Carl Anthony Walker State of Illinois Circuit Court of Cook County Law Division - Tax and Miscellaneous Section 50 West Washington, Room 2505 Chicago, Illinois 60602

# TRONICALLY FILED 7/12/2016 10:49 AM 2015-CH-13399 CALENDAR: 1 PAGE 1 of 32 RCUIT COURT OF KEOUNTY, ILLINOIS LIAW DIVISION KEOROTHY BROWN

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION TAX AND MISCELLANEOUS REMEDIES SECTION

DESCRIPTION OF THE PROPERTY OF	) ) )	Case No. 2015 CH 13399 (Transferred to Law)
Plaintiffs,	) )	(Transferred to Law)
v.	)	
THE CITY OF CHICAGO, and DAN	)	
WIDAWSKY, in his official capacity as Comptroller of the City of Chicago,	)	
Defendants.	)	
	,	

## SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

#### Introduction

1. On June 9, 2015, the City of Chicago's Finance Department issued a ruling extending the city's 9% "Amusement Tax" to cover Internet-based streaming video services such as Netflix, Internet-based streaming audio and music services such as Spotify, and Internet-based gaming services such as Xbox Live – services the City has never taxed before and which the City Council has never authorized the Finance Department to tax. This lawsuit challenges that ruling for exceeding the Finance Department's authority, as a violation of the federal Internet Tax Freedom Act, 47 U.S.C. § 151 note (2015), and as a violation of the Illinois and federal constitutions.

#### Jurisdiction

- 2. This Court has subject matter jurisdiction over this matter under 735 ILCS 5/2-701 because Plaintiffs seek a declaratory judgment that a tax ruling issued by the City of Chicago Comptroller exceeds Defendants' authority under the law.
- 3. This Court has personal jurisdiction over Defendants because this lawsuit arises from the Defendants' actions in the State of Illinois.
- 4. Venue is proper in Cook County because Plaintiffs reside in Cook County, Illinois, and Defendants are located in Cook County.

#### **Parties**

- 5. Plaintiff Michael Labell is a resident of Chicago, Cook County, Illinois, and currently pays for subscriptions to Netflix's Internet video-streaming service and Spotify's Internet music-streaming service and to Amazon Prime, which among other things provides members with video and music streaming services.
- 6. Plaintiff Jared Labell is a resident of Chicago, Cook County, Illinois, and currently pays for a subscription to Amazon Prime, which among other things provides members with video and music streaming services.
- 7. Plaintiff Natalie Bezek was a resident of Chicago, Cook County, Illinois and paid for a subscription to Spotify's Internet music-streaming service from prior to June 2015 through September 2016.

DVGES 0f. 37 10/15/2016 10:49 AM ELECTRONICALLY FILED

- 8. Plaintiff Emily Rose was a resident of Chicago, Cook County, Illinois, and paid for subscriptions to Netflix and Hulu's respective Internet video-streaming services and to Amazon Prime, which among other things provides members with video and music streaming services, from prior to June 2015 through September 2016.
- 9. Plaintiff Bryant Jackson-Green was a resident of Chicago, Cook County, Illinois, and paid for subscriptions to Netflix and Hulu's respective Internet videostreaming services and Spotify's Internet music-streaming service and to Amazon Prime, which among other things provides members with video and music streaming services, from prior to June 2015 through June 2016.
- 10. Plaintiff Zack Urevig is a resident of Chicago, Cook County, Illinois, and currently pays for subscriptions to Netflix's Internet video-streaming service, Spotify's Internet music-streaming service, and to Amazon Prime, which among other things provides members with video and music streaming services.
- 11. Plaintiff Michael McDevitt is a resident of Chicago, Cook County, Illinois, and currently pays for a subscription to Xbox Live's "Gold" Internet gaming and digital media delivery service.
- 12. Plaintiff Forrest Jehlik is a resident of Chicago, Cook County, Illinois, and currently pays for a subscription to Netflix's Internet video-streaming service.
  - 13. Defendant City of Chicago is an Illinois municipal corporation.
- 14. Defendant Dan Widawsky is the Comptroller for the City of Chicago and has held that office at all relevant times. As Comptroller, Defendant Widawsky is

FORE 30 OF 3

the head of the Finance Department and is authorized to adopt, promulgate and enforce rules and regulations pertaining to the interpretation, administration and enforcement of Chicago's Amusement Tax. Chi. Mun. Code 4-156-034.

#### **Factual Allegations**

#### Chicago's Amusement Tax

- 15. The City of Chicago imposes a 9% "Amusement Tax" on admission fees or other charges paid for the privilege to enter, witness, view or participate in certain activities within the City of Chicago that the ordinance defines as "amusements." Chi. Mun. Code 4-156-020.
- 16. The Chicago Municipal Code defines the "Amusement" subject to the Amusement Tax to include just three categories of activities:
  - (1) any exhibition, performance, presentation or show for entertainment purposes, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition such as boxing, wrestling, skating, dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling or billiard or pool games;
  - (2) any entertainment or recreational activity offered for public participation or on a membership or other basis including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, bodybuilding or similar activities; or
  - (3) any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means.

Chi. Mun. Code 4-156-010.

FCHECLEONIC PITS BY 10,12,72016 10,49 AM ELECTRONIC ALLY FILED FCH. FLED FCH. FILED FCH. FILED FCH. FILED FCH. FLED FCH. FLED

- 17. Until June 9, 2015, the City did not interpret the Code's definition of "amusement" to include Internet-based streaming services for video, audio and gaming, such as Netflix, Spotify, and Xbox Live, and accordingly did not tax those services.
- 18. On June 9, 2015, however, Defendant Widawksy issued Amusement Tax Ruling #5 (the "Ruling") (attached as **Exhibit A**), declaring that the term "amusement" as defined by Chi. Mun. Code 4-156-010 would now include "charges paid for the privilege to witness, view or participate in amusements that are delivered electronically" (emphasis in original).
- 19. According to the Ruling, "charges paid for the privilege of watching electronically delivered television shows, movies or videos are subject to the amusement tax, if the shows, movies or videos are delivered to a patron (i.e., customer) in the City."
- 20. Further, the Ruling states that "charges paid for the privilege of listening to electronically delivered music are subject to the amusement tax, if the music is delivered to a customer in the City."
- 21. The Ruling also states that "charges paid for the privilege of participating in games, on-line or otherwise, are subject to the amusement tax if the games are delivered to a customer in the City."
- 22. According to the Ruling, "[t]he amusement tax does not apply to sales of shows, movies, videos, music or games (normally accomplished by a 'permanent' download). It applies only to rentals (normally accomplished by streaming or a

BYCHE2 04:35
10\17\7016 10:49 AM
ELECTRONICALLY FILED

PAGE

'temporary' download). The charges paid for such rentals may be subscription fees, per-event fees or otherwise."

- 23. The Ruling states that providers that receive charges for electronically delivered amusements are considered owners or operators and are required to collect the City's Amusement Tax from their Chicago customers.
- 24. The Amusement Tax applies to any customer whose residential street address or primary business street address is in Chicago, as reflected by his or her credit card billing address, zip code or other reliable information. The determination of sourcing made by the City of Chicago Department of Finance is based on rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq.
- 25. The Ruling states that where a charge is "bundled" by including both taxable and non-taxable elements, the Department of Finance applies the rules set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004). Thus, the amount of Amusement Tax is based on the amount paid for any amusement, but excludes any separately-stated charges not for amusements. However, if an operator fails to separate the amusement portion of the price from the non-amusement portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for amusements.
- 26. The Effective Date of the Ruling is July 1, 2015, but the Ruling states that "the Department will limit the effect of this ruling to periods on and after September 1, 2015."

BYCH90 04.37 10\17\7019 10:49 YM ELECTRONICALLY FILED 500

#### Harm to Plaintiffs

- 27. Plaintiffs are subscribers to various services that provide media delivered electronically, including Netflix, Hulu, Spotify, Xbox Live, and Amazon Prime.
- 28. Netflix is a provider of an on-demand Internet streaming media service, which allows subscribers to watch video content online, and of a flat-rate video-by-mail service, which allows subscribers to borrow DVD and Blu-ray video discs and return them in prepaid mailers. Hulu provides a similar video-streaming service but does not offer video-by-mail service.
- 29. Spotify is a music streaming service, which allows consumers access to a large library of recorded music without commercial interruptions for a subscription fee. Similar streaming music services are offered by Pandora, Apple Music, and Google Play.
- 30. Xbox Live Gold is an online multiplayer gaming and digital media delivery service created and operated by Microsoft, which for a fee, allows users to play games with others on an online network. Xbox Live Gold also provides paid members with the following features: matchmaking/smartmatch, private chat, party chat and in-game voice communication, game recording, media sharing, broadcasting one's gameplay via the Twitch live streaming application, access to free-to-play titles, "cloud" storage for gaming files, and early or exclusive access to betas, special offers, Games with Gold, and Video Kinect.
- 31. Amazon Prime is a membership service that provides members with certain benefits provided by Amazon.com, including free two-day shipping and

BYCHTY OF 37

10/17/2016 10:49 AM

ELECTRONICALLY FILED

9C9

discounts on certain items sold on its website, but also provides access to streaming movies, and music, cloud photo storage, and the ability to borrow e-books.

- 32. Plaintiffs Rose, Jackson-Green, Urevig, Jehlik, and Michael Labell, as paid subscribers to Netflix streaming video service, are (or have been) harmed because they are (or were) required to pay the tax on Internet-based video-streaming services, which increases the cost of subscribing to Netflix by nine percent.
- 33. Plaintiffs Rose and Jackson-Green, as paid subscribers to Hulu streaming video service, were harmed when they resided in Chicago because they were required to pay the tax on Internet-based video-streaming services, which increases the cost of subscribing to Hulu by nine percent.
- 34. Plaintiffs Bezek, Jackson-Green, Urevig, and Michael Labell, as paid subscribers to Spotify's streaming music service, are (or have been) harmed because they are (or have been) required to pay the tax on Internet-based streaming music services, which increases the cost of subscribing to Spotify by nine percent.
- 35. Plaintiff McDevitt, as a paid subscriber to Xbox Live Gold Internet-based gaming service, is harmed because he must pay the tax on Internet-based gaming services, which increases the cost of subscribing to Xbox Live Gold by nine percent.
- 36. Plaintiffs Rose, Jackson-Green, Urevig, Jared Labell, and Michael Labell, as paid Amazon Prime members, are (or have been) harmed because they are (or have been) required to pay the tax on Internet-based video and music services portion of the price of their membership, but if Amazon does not separate the price

DAGESS OF 32 10/12/2016 10:49 AM ELECTRONICALLY FILED 2007 ACV of these services from its non-taxable services, then they must paid the Amusement Tax on the full price of their Amazon Prime membership, either of which will increase the cost of subscribing to Amazon Prime.

#### Count I

The City of Chicago Comptroller has exceeded his authority by adopting Amusement Tax Ruling #5 and by extending the City's Amusement Tax to Internet-based streaming video services

- 37. Plaintiffs refer to, adopt, and set forth below Count I from Plaintiffs' First Amended Complaint for the sole purpose of preserving this cause of action for any potential appeal. See Bonhomme v. St. James, 2012 IL 112393, at ¶17 (2012) (explaining that in order to preserve a dismissed cause of action for appeal, an amended complaint must refer to or adopt the prior pleading, or the prior pleading ceases to be a part of the record, being in effect abandoned and withdrawn).
- 38. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.
- 39. The Chicago Municipal Code authorizes the Comptroller to "adopt, promulgate and enforce rules and regulations pertaining to the interpretation, administration and enforcement" of Chicago's Amusement Tax.
- 40. The Municipal Code does not, however, authorize the Comptroller to impose new taxes that the City Council has not authorized through a city ordinance.
- 41. The Comptroller may not use his rulemaking power to adopt a rule that is inconsistent with or exceeds the specific language in the ordinance that authorizes his rulemaking.

BYCE® 0€ 37 10/15/5016 10:49 YM ELECTRONICALLY FILED 8CP

- 42. Rules that are inconsistent with the ordinance under which they are adopted are invalid.
- 43. Here, the Amusement Tax's definition of "amusement" does not include video services streamed from the Internet and provided to a customer on a computer, mobile device, or other electronic device.
- 44. Nor does the ordinance's imposition of a tax on amusements "within the city" authorize a tax on video services streamed from the Internet, which may be provided anywhere, to customers with residency or billing address in the City of Chicago who might use those services, partially or entirely, outside of the City.
- 45. The Comptroller has exceeded his authority under the ordinance by issuing a rule that imposes a new tax that the City Council did not authorize in enacting the Amusement Tax.
- 46. In addition, the imposition of the Amusement Tax on Amazon Prime is a tax on a membership fee which covers a wide variety of both amusement and nonamusement activities. In addition to access to streaming movies and music, Amazon Prime provides paid members with free two-day shipping, discounts on certain items sold on its website, cloud photo storage, and the ability to borrow e-books.
- 47. A tax on the membership fee of Amazon Prime is not a tax on "amusements" or "places of amusements" pursuant to 65 ILCS 5/11-42-5.
- 48. Therefore Defendants have exceeded their authority in imposing the Amusement Tax on membership fees for Amazon Prime.

ELECTRONICALLY FILED 10/12/2016 10:49 AM PAGH) ID 0:43399 PAGHO 10:49 AM 49. The imposition of a tax of nine percent on streaming video services injures the Plaintiffs because their costs for these services have increased, or will imminently increase, by nine percent.

50. Plaintiffs Michael Labell, Jared Labell, Rose, Urevig, Jehlik, and Jackson-Green have a right to enjoin the unlawful taxation of streaming video services.

51. Plaintiffs Michael Labell, Jared Labell, Rose, Urevig, Jehlik, and Jackson-Green have no adequate administrative remedy.

52. The injury to Plaintiffs Michael Labell, Jared Labell, Rose, Urevig, Jehlik, and Jackson-Green is irreparable.

53. Plaintiffs Michael Labell, Jared Labell, Rose, Urevig, Jehlik, and Jackson-Green have no adequate remedy at law.

Wherefore, Plaintiffs Michael Labell, Jared Labell, Rose, Urevig, Jehlik, and Jackson-Green respectfully pray that the Court grant the following relief:

A. Declare that Defendant Comptroller Dan Widawsky has exceeded his authority by adopting Amusement Tax Ruling #5, which purportedly authorizes the City of Chicago to tax Internet-based streaming video services.

B. Enjoin Comptroller Dan Widawsky and the City of Chicago from enforcing Amusement Tax Ruling #5's application of the Amusement Tax on Internet-based streaming video services.

C. Award Plaintiffs damages for the amount of Amusement Tax paid on Internet-based streaming video services.

BYCH I 04 37 **5012-CH-13333 10\15\7010 10:43 YM** EFECLKONICY FIX EIFED D. Award Plaintiffs any additional relief the Court deems reasonable and proper.

#### Count II

The City of Chicago Comptroller has exceeded his authority by adopting Amusement Tax Ruling #5 and by extending the City's Amusement Tax to Internet-based streaming audio services

- 54. Plaintiffs refer to, adopt, and set forth below Count II from Plaintiffs' First Amended Complaint for the sole purpose of preserving this cause of action for any potential appeal. See Bonhomme, 2012 IL 112393, at ¶17.
- 55. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.
- 56. The Amusement Tax's definition of "amusement" does not include audio services streamed from the Internet and provided to a customer on a computer, mobile device, or other electronic device.
- 57. Nor does the ordinance's imposition of a tax on amusements "within the city" authorize a tax on audio services streamed from the Internet, which may be provided anywhere, to customers with residency or billing address in the City of Chicago who might use those services, partially or entirely, outside of the City.
- 58. The Comptroller has exceeded his authority under the ordinance by issuing a rule that imposes a new tax that the City Council did not authorize in enacting the Amusement Tax.
- 59. In addition, the imposition of the Amusement Tax on Amazon Prime is a tax on a membership fee which covers a wide variety of both amusement and nonamusement activities. In addition to access to streaming movies and music,

 Amazon Prime provides paid members with free two-day shipping, discounts on certain items sold on its website, cloud photo storage, and the ability to borrow e-books.

- 60. A tax on the membership fee of Amazon Prime is not a tax on "amusements" or "places of amusements" pursuant to 65 ILCS 5/11-42-5.
- 61. Therefore Defendants have exceeded their authority in imposing the Amusement Tax on membership fees for Amazon Prime.
- 62. The imposition of a tax of nine percent on streaming audio services injures the Plaintiffs because their costs for these services have increased, or will imminently increase, by nine percent.
- 63. Plaintiffs Michael Labell, Jared Labell, Rose, Bezek, Urevig, and Jackson-Green have a right to enjoin the unlawful taxation of streaming media services.
- 64. Plaintiffs Michael Labell, Jared Labell, Rose, Bezek, Urevig, and Jackson-Green have no adequate administrative remedy.
- 65. The injury to Plaintiffs Michael Labell, Jared Labell, Rose, Bezek, Urevig, and Jackson-Green is irreparable.
- 66. Plaintiffs Michael Labell, Jared Labell, Rose, Bezek, Urevig, and Jackson-Green have no adequate remedy at law.

Wherefore, Plaintiffs Michael Labell, Jared Labell, Rose, Urevig and Jackson-Green respectfully pray that the Court grant the following relief:

FOR ELECTRONIC ALL FILED PAGE 13399

PAGE 13 OF 32

PAGE 13 OF 32

PAGE 13 OF 32

A. Declare that Defendant Comptroller Dan Widawsky has exceeded his authority by adopting Amusement Tax Ruling #5, which purportedly authorizes the City of Chicago to tax Internet-based streaming audio services.

B. Enjoin Comptroller Dan Widawsky and the City of Chicago from enforcing Amusement Tax Ruling #5's application of the Amusement Tax on Internet-based streaming audio services.

C. Award Plaintiffs damages for the amount of Amusement Tax paid on Internet-based streaming audio services.

D. Award Plaintiffs any additional relief the Court deems reasonable and proper.

#### **Count III**

The City of Chicago Comptroller has exceeded his authority by adopting Amusement Tax Ruling #5 and by extending the City's Amusement Tax to Internet-based streaming gaming services

- 67. Plaintiffs refer to and adopt Count III from Plaintiffs' First Amended Complaint for the sole purpose of preserving this cause of action for any potential appeal. See Bonhomme, 2012 IL 112393, at ¶17.
- 68. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.
- 69. The Amusement Tax's definition of "amusement" does not include gaming services streamed from the Internet and provided to a customer on a computer, mobile device, or other electronic device.
- 70. Nor does the ordinance's imposition of a tax on amusements "within the city" authorize a tax on gaming services streamed from the Internet, which may be

**BYCI₽ I+ 01:3330 5012-CH-13330 10\15\501€ 10:40 ∀W EFECLKONICYFIT**X EIFED **EFECLKONICYFIT**X EIFED

provided anywhere, to customers with residency or billing address in the City of Chicago who might use those services, partially or entirely, outside of the City.

- 71. The Comptroller has exceeded his authority under the ordinance by issuing a rule that imposes a new tax that the City Council did not contemplate or authorize in enacting the Amusement Tax.
- 72. In addition, the imposition of the Amusement Tax on Xbox Live Gold is a tax on a membership fee which covers a wide variety of both amusement and nonamusement activities. In addition to the ability to play games with others on an online network, Xbox Live Gold provides paid members with matchmaking/smartmatch, private chat, party chat and in-game voice communication, game recording, media sharing, broadcasting one's gameplay via the Twitch live streaming application, access to free-to-play titles, "cloud" storage for gaming files, and early or exclusive access to beta versions of software, special offers, "Games with Gold," and "Video Kinect."
- 73. A tax on the membership fee of Xbox Live Gold is not a tax on "amusements" or "places of amusements" pursuant to 65 ILCS 5/11-42-5.
- 74. Therefore Defendants have exceeded their authority in imposing the Amusement Tax on membership fees for Xbox Live Gold.
- 75. The imposition of a tax of nine percent on the membership fee for Xbox Live Gold injures Plaintiff McDevitt because the costs for these services have increased, or will imminently increase, by nine percent.

BYCHEIR 0€ 37 10/17/2016 10:49 AM ELECTROVICALLY FILED 76. Plaintiff McDevitt has a right to enjoin the unlawful taxation of streaming media services.

77. Plaintiff McDevitt has no adequate administrative remedy.

78. Plaintiffs McDevitt's injury is irreparable.

79. Plaintiff McDevitt has no adequate remedy at law.

Wherefore, Plaintiff McDevitt respectfully prays that the Court grant the following relief:

A. Declare that Defendant Comptroller Dan Widawsky has exceeded his authority by adopting Amusement Tax Ruling #5, which purportedly authorizes the City of Chicago to tax Internet-based streaming gaming services.

B. Enjoin Comptroller Dan Widawsky and the City of Chicago from enforcing Amusement Tax Ruling #5's application of the Amusement Tax on Internet-based streaming gaming services.

C. Award Plaintiffs damages for the amount of Amusement Tax paid on Internet-based streaming gaming services.

D. Award Plaintiffs any additional relief the Court deems reasonable and proper.

#### Count IV

Amusement Tax Ruling #5's tax on streaming services violates the Internet Tax Freedom Act, 47 U.S.C. § 151 note (2015).

80. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

BYCEÐ 13330 10\15\701**0 10:43 YM** ELECTRONICALLY FILED 55 PM 56 PM 57 PM

- 81. The Internet Tax Freedom Act ("Act"), which is set forth in a note to 47 U.S.C. § 151, provides that no State or political subdivision of a State may impose multiple or discriminatory taxes on electronic commerce.
- 82. The Act defines discriminatory tax, in part, as "any tax imposed by a State or political subdivision thereof on electronic commerce" that:
  - (i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;
  - (ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period; [or]
  - (iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means. . . .

Act  $\S 1105(2)(A)$ .

- 83. The Act defines "electronic commerce" as "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access." § 1105(3).
- 84. The term "tax" under the Act includes those "for the purpose of generating revenues for governmental purposes" and those imposed on "a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity." § 1105(8).

BVCET1 0€ 37 10/15/5019 10:43 PW ELECTRONICALLY FILED 350

- 85. Chicago Municipal Code 4-156-020, as interpreted and applied by the Comptroller through Amusement Tax Ruling #5, imposes an unlawful discriminatory tax on electronic commerce because it applies to Netflix's video streaming service but does not apply to Netflix's video-by-mail service.
- 86. The Amusement Tax, as interpreted and applied by the Ruling, also unlawfully discriminates against electronic commerce because it imposes a higher tax rate on theatrical, musical, and cultural performances that are delivered through an online streaming service than it imposes on those same performances if they are consumed in person.
- 87. The Amusement Tax provides an exemption for in-person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons. Section 4-156-020(D)(1).
- 88. The Amusement Tax provides a reduced rate of five percent for in-person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is more than 750 persons. Section 4-156-020(E).
- 89. However, electronically delivered audio or video of the same performances is taxed at nine percent.
- 90. Thus, performances consumed in person are subject to an Amusement Tax of either 0% or 5%, depending on the capacity of the venue at which they are

FACE 18:33 10/15/5016 10:49 AM PERCTROUICALLY FILED 25 0.52 26 0.52 27 0.52 27 0.52 27 0.52 27 0.52 27 0.52 27 0.52 27 0.53 2 performed, but streaming audio or video of such performances is subject to an Amusement Tax of 9%.

91. The Ruling thus forces Plaintiffs to pay a higher tax rate if they choose to

consume a musical, theatrical, or cultural performance through a streaming media

service than if they choose to attend a performance in person. In this way, the

Amusement Tax, as interpreted and applied by the Ruling, imposes an unlawful

discriminatory tax on electronic commerce.

Wherefore, Plaintiffs Michael Labell, Jared Labell, Rose, and Jackson-Green

respectfully pray that the Court grant the following relief:

A. Declare that the Amusement Tax, as interpreted by Amusement Tax

Ruling #5 and applied by the Comptroller, violates the Internet Tax Freedom Act,

47 U.S.C. § 151 note (2015) because it taxes Internet-based streaming services for

video and audio while exempting or not taxing other services for video and audio not

delivered via the Internet.

B. Enjoin Comptroller Dan Widawsky and the City of Chicago from enforcing

Amusement Tax Ruling #5's application of the Amusement Tax on Internet-based

streaming services for video and audio where similar services not delivered via the

Internet are not taxed or taxed at a lower rate.

C. Award Plaintiffs damages for the amount of Amusement Tax paid on

Internet-based streaming services for video, audio, and gaming.

D. Award Plaintiffs' reasonable costs and expenses of this action, including

attorney fees, pursuant to 42 U.S.C. § 1983 and § 1988 or any other applicable law;

ELECTRONICALLY FILED 2015-CH-13399
PAGHEID of 32

E. Award Plaintiffs any additional relief the Court deems reasonable and proper.

#### Count V

Amusement Tax Ruling #5's tax on streaming services violates the Uniformity Clause of the Illinois Constitution, Article IX, Section 2.

- 92. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.
- 93. The Uniformity Clause, Article IX, Section 2, of the Illinois Constitution provides:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

- 94. In order to comply with the Uniformity Clause, a tax must meet two requirements: (1) it must be based on a "real and substantial" difference between those subject to the tax and those that are not; and (2) it must "bear some reasonable relationship to the object of the legislation or to public policy." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 150 (2003).
- 95. The Amusement Tax, as interpreted and applied by the Ruling, imposes a higher tax rate on theatrical, musical, and cultural performances that are delivered through an online streaming service than it imposes on those same performances if they are consumed in person.
- 96. The Amusement Tax provides an exemption for in-person live theatrical, live musical or other live cultural performances that take place in any auditorium,

theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons. Section 4-156-020(D)(1).

- 97. The Amusement Tax provides a reduced rate of five percent for in-person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is more than 750 persons. Section 4-156-020(E).
- 98. However, electronically delivered audio or video of the same performances is taxed at nine percent.
- 99. There is no "real and substantial" difference between those subject to the tax persons watching theatrical, musical, and cultural performances online and those that are not persons watching theatrical, musical, and cultural performances live.
- 100. Further, taxing some customers of theatrical, music, and cultural performances at higher rate than others does not bear any reasonable relationship to the purpose of the amusement tax or to public policy.
- 101. Thus, the Amusement Tax, as interpreted and applied by the Ruling, violates the Uniformity Clause of the Illinois Constitution.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief:

A. Declare that the Amusement Tax, as interpreted by Amusement Tax

Ruling #5 and applied by the Comptroller, violates the Uniformity Clause, Article

IX, Section 2, of the Illinois Constitution because it taxes Internet-based streaming

FACH 21 OF 32 10/12/2016 10:49 AM ELECTRONICALLY FILED services for video and audio while exempting or not taxing other services for video and audio not delivered via the Internet.

B. Enjoin Comptroller Dan Widawsky and the City of Chicago from enforcing Amusement Tax Ruling #5's application of the Amusement Tax on Internet-based streaming services for video, audio, and gaming.

C. Award Plaintiffs damages for the amount of Amusement Tax paid on Internet-based streaming services for video, audio, and gaming.

D. Award Plaintiffs' reasonable costs and expenses of this action, including attorney fees, pursuant to 740 ILCS 23/5(c) or any other applicable law;

E. Award Plaintiffs any additional relief the Court deems reasonable and proper.

#### Count VI

Amusement Tax Ruling #5's tax on streaming services violates the Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3.

102. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

103. The Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution, grants Congress the power to regulate interstate commerce and prohibits state interference with interstate commerce.

104. A local tax satisfies the Commerce Clause only if it "(1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the

BYCHESS 04 37 10/17/2016 10:49 AM ELECTROVIC ALLED services provided by the State." Quill Corp. v. North Dakota, 504 U.S. 298, 311 (1992).

- 105. The Amusement Tax, as interpreted and applied by the Ruling, does not satisfy the first requirement of the Commerce Clause because the activities that it taxes Internet-based streaming of video, audio, and gaming– do not have a substantial nexus with the taxing jurisdiction, Chicago, since the activities do not take place in Chicago, but on the Internet.
- 106. Further, the Amusement Tax, as interpreted and applied by the Ruling, does not satisfy the second requirement of the Commerce Clause that it be fairly apportioned because the tax is not limited to the portion of value that is fairly attributable to economic activity within the taxing jurisdiction. The City cannot tax economic value that is exclusively attributable to out-of-state activities here the provision of Internet-based streaming services by out-of-state companies.
- 107. In addition, the Amusement Tax, as interpreted and applied by the Ruling, does not satisfy the third requirement of the Commerce Clause that it not discriminate against interstate commerce. The Amusement tax imposes a higher tax rate on theatrical, musical, and cultural performances that are delivered through an online streaming service provided by out-of-state providers than it imposes on those same performances if they are consumed exclusively in the City of Chicago.
- 108. Finally, the Amusement Tax, as interpreted and applied by the Ruling, does not satisfy the fourth requirement of the Commerce Clause that the activity

BYCES 04.37 10\15\5016 10:49 AM ELECTRONICALLY FILED CV 0.132 CV 0.132 PAGES streaming video, audio, and gaming services from providers that have no connection to the City of Chicago, except that some of their customers have billing addresses in Chicago, are in no way related to any services provided by the City. Sporting events and concerts and other amusements that take place in the City of Chicago and cable television, are given "protection, opportunities and benefits" of the City of Chicago and state of Illinois, whereas out-of-state providers of Internet-based streaming services receive no such protection, opportunities and benefits. See Asarco, Inc. v. Idaho State Tax Comm'n, 458 U.S. 307, 315 (1982).

109. Thus, the Amusement Tax, as interpreted and applied by the Ruling, violates the Commerce Clause of the United States Constitution.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief:

A. Declare that the Amusement Tax, as interpreted by Amusement Tax Ruling #5 and applied by the Comptroller, violates the Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution because it is applied to an activity with no substantial nexus with the City; it is not fairly apportioned; it discriminates against interstate commerce, and/or it is not fairly related to the services provided by the City.

B. Enjoin Comptroller Dan Widawsky and the City of Chicago from enforcing Amusement Tax Ruling #5's application of the Amusement Tax on Internet-based streaming services for video, audio, and gaming.

EFECTRONIC ALT FILED

10/12/2016 10:49 AM

EFECTRONIC ALT FILED

C. Award Plaintiffs damages for the amount of Amusement Tax paid on Internet-based streaming services for video, audio, and gaming.

D. Award Plaintiffs' reasonable costs and expenses of this action, including attorney fees, pursuant to 42 U.S.C. § 1983 and § 1988 or any other applicable law;

E. Award Plaintiffs any additional relief the Court deems reasonable and proper.

#### **Count VII**

Amusement Tax Ruling #5's tax on streaming services exceeds the City's authority under the Illinois Constitution

110. Under Illinois law, all home rule ordinances must fall within the scope of Article VII, Section 6(a) of the Illinois Constitution, which states that "a home rule unit may exercise any power and perform any function pertaining to its government and affairs."

111. The Illinois Constitution prohibits home rule units from taxing business transactions outside of their respective jurisdictions because such taxation constitutes an unauthorized extraterritorial exercise of power. Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431 (2d Dist. 2006).

112. The Amusement Tax, as interpreted by Amusement Tax Ruling #5 and as amended by the City Council on November 2015 in Chi. Mun. Code 4-156-020, subjects customers with Chicago billing addresses to tax on the charges paid for video streaming services, listening to electronically delivered music and participating in games online when those customers are located outside of the City at the time they incur the charges.

BYCE**52** 0€ 37 **5012-CH-13399** ELECTRONICALLY FILED VAV 113. Amusement Tax Ruling #5 and the November 2015 amendment by the City Council, Chi. Mun. Code 4-156-020, exceed the grant of the authority set forth by Article VII, Section 6(a), because they have an extraterritorial effect by taxing

customers with Chicago billing addresses for activities occurring outside the City.

114. Amusement Tax Ruling #5 and the November 2015 amendment by the

City Council, Chi. Mun. Code 4-156-020, attempt to expand the City's taxing and

regulatory jurisdiction to transactions and business activities conducted outside the

City and thus are unconstitutional under Article VII, Section 6 of the Illinois

Constitution.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief:

A. Declare that the Amusement Tax, as interpreted by Amusement Tax

Ruling #5 and applied by the Comptroller, is unconstitutional under Article VII,

Section 6 of the Illinois Constitution because it attempts to expand the taxing and

regulatory jurisdiction of the City to transactions and business activities conducted

outside of the City.

B. Enjoin Comptroller Dan Widawsky and the City of Chicago from enforcing

Amusement Tax Ruling #5's application of the Amusement Tax on Internet-based

streaming services for video, audio, and gaming.

C. Award Plaintiffs damages for the amount of Amusement Tax paid on

Internet-based streaming services for video, audio, and gaming.

D. Award Plaintiffs' reasonable costs and expenses of this action, including

attorney fees, pursuant to pursuant to 740 ILCS 23/5(c) or any other applicable law;

E. Award Plaintiffs any additional relief the Court deems reasonable and proper.

Dated: October 12, 2016

Respectfully submitted,

By:

One of their attorneys

Jacob H. Huebert (#6305339) Jeffrey M. Schwab (#6290710)

Liberty Justice Center (#49098) 190 S. LaSalle Street, Suite 1500 Chicago, Illinois 60603 Telephone (312) 263-7668 Facsimile (312) 263-7702 jhuebert@libertyjusticecenter.org jschwab@libertyjusticecenter.org

> BYCH 13399 10/17/2016 10:49 AM ELECTRONIĆÅLLY FILED

# LECTRONICALLY FILED 10/12/2016 10:49 AM 2015-CH-13399 PAGE 28 of 32

# Exhibit A

# CITY OF CHICAGO DEPARTMENT OF FINANCE AMUSEMENT TAX RULING

Pursuant to Sections 2-32-080, 2-32-096, 3-4-030, 3-4-150 and 4-156-034 of the Municipal Code of Chicago, the City of Chicago hereby adopts and promulgates Amusement Tax Ruling #5, effective July 1, 2015.

Dated: June 9, 2015

Dan Widaws y Comptroller

Amusement Tax Ruling #5

Subject: Electronically Delivered Amusements

Effective Date: July 1, 2015

## **Ordinance Provisions**

1. Section 4-156-020(A) of the Municipal Code of Chicago ("Code") states, in pertinent part:

Except as otherwise provided by this article, an amusement tax is imposed upon the patrons of every amusement within the city.

2. Code Section 4-156-010 states, in pertinent part:

"Amusement" means: (1) any exhibition, performance, presentation or show for entertainment purposes, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition such as boxing, wrestling, skating, dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling or billiard or pool games; (2) any entertainment or recreational activity offered for public participation or on a membership or other basis including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, bodybuilding or similar activities; or (3) any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means. (emphasis added).

# 3. Code Section 4-156-030(A) states in pertinent part:

It shall be the joint and several duty of every owner, manager or operator of an amusement or of a place where an amusement is being held, and of every reseller to secure from each patron or buyer the tax imposed by Section 4-156-020 of this article and to remit the tax to the department of finance not later than the 15th day of each calendar month for all admission fees or other charges received during the immediately preceding calendar month ... (emphasis added).

# 4. Code Section 4-156-010 states in pertinent part:

"Owner" means: (1) with respect to the owner of a place where an 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 an amusement in such place; (2) with respect to the owner of an amusement, any person which has an ownership or leasehold interest in such amusement or any person who has a proprietary interest in the amusement so as to entitle such person to all or a portion of the proceeds, after payment of reasonable expenses, from the operation, conduct or presentation of such amusement, excluding proceeds from nonamusement services and from sales of tangible personal property; (3) with 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. (emphasis added).

# 5. Code Section 4-156-010 states in pertinent part:

"Operator" means any person who sells or resells a ticket or other license to an amusement for consideration or who, directly or indirectly, receives or collects the charges paid for the sale or resale of a ticket or other license to an amusement. The term includes, but is not limited to, persons engaged in the business of selling or reselling tickets or other licenses to amusements, whether on-line, in person or otherwise. The term also includes persons engaged in the business of facilitating the sale or resale of tickets or other licenses to amusements, whether on-line, in person or otherwise. (emphasis added).

# 6. Code Section 4-156-010 states in pertinent part:

"License" means a ticket or other license granting the privilege to enter, to witness, to view or to participate in an amusement, or the opportunity to obtain the privilege to enter, to witness, to view or to participate in an amusement, and includes but is not limited to a permanent seat license. (emphasis added).

7. Code Section 4-156-010 states in pertinent part:

"Ticket" means the privilege to enter, to witness, to view or to participate in an amusement, whether or not expressed in a tangible form.

## **Taxability**

- 8. The amusement tax applies to charges paid for the privilege to witness, view or participate in an amusement. This includes not only charges paid for the privilege to witness, view or participate in amusements *in person* but also charges paid for the privilege to witness, view or participate in amusements that are *delivered electronically*. Thus:
  - a. charges paid for the privilege of watching electronically delivered television shows, movies or videos are subject to the amusement tax, if the shows, movies or videos are delivered to a patron (*i.e.*, customer) in the City (*see* paragraph 13 below);
  - b. charges paid for the privilege of listening to electronically delivered music are subject to the amusement tax, if the music is delivered to a customer in the City; and
  - c. charges paid for the privilege of participating in games, on-line or otherwise, are subject to the amusement tax if the games are delivered to a customer in the City.

The customer will normally receive the provider's electronic communications at a television, radio, computer, tablet, cell phone or other device belonging to the customer.

- 9. Providers who receive charges for electronically delivered amusements are owners or operators and are required to collect the City's amusement tax from their Chicago customers. *See* paragraphs 13 and 14 below. As of the date of this ruling, the rate of the tax is 9% of the charges paid.
- 10. The amusement tax does not apply to *sales* of shows, movies, videos, music or games (normally accomplished by a "permanent" download). It applies only to *rentals* (normally accomplished by streaming or a "temporary" download). The charges paid for such rentals may be subscription fees, per-event fees or otherwise.
- 11. Charges that are not subject to the amusement tax may be subject to another tax (such as the City's personal property lease transaction tax, Code Chapter 3-32), but this ruling concerns only the amusement tax.

# **Bundled Charges**

12. Where a charge is "bundled" by including both taxable and non-taxable elements (either non-taxable in the first instance or exempt), the Department of Finance ("Department") will apply the same rules that are set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004). That ruling states, among other things, that "[i]f the lessor fails to separate the

lease or rental portion of the price from the non-lease or non-rental portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for the use of any personal property." *See also* Code Section 4-156-020(H) (providing that the taxable "admission fees or other charges" do not include charges that are not for amusements, but only if those charges are separately stated and optional). Therefore, if a bundled charge is primarily for the privilege to enter, to witness, to view or to participate in an amusement, then the entire charge is taxable.

# Sourcing

13. The Department will utilize the rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638, to determine sourcing for the amusement tax. In general, this means that the amusement tax will apply to customers whose residential street address or primary business street address is in Chicago, as reflected by their credit card billing address, zip code or other reliable information.

## Nexus

14. Because the amusement tax is imposed on the patron, and applies only to activity (*i.e.*, the amusement) that takes place within Chicago, there is no question that the tax applies whenever the amusement takes place in Chicago. The issue of nexus arises, at most, with regard to the question of whether a given provider has an obligation to *collect* the tax from its customer. That issue is beyond the scope of this ruling, and any provider with a question about that topic should consult its attorneys. In addition, a provider may request a private letter ruling from the Department, pursuant to Uniform Revenue Procedures Ordinance Ruling #3 (June 1, 2004).

# Implementation

15. In order to allow affected businesses sufficient time to make required system changes, the Department will limit the effect of this ruling to periods on and after September 1, 2015. This paragraph does not release or otherwise affect the liability of any business that failed to comply with existing law before the effective date of this ruling.

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION TAX AND MISCELLANEOUS REMEDIES SECTION

MICHAEL LABELL, JARED LABELL, et al. )	
Plaintiffs,	No. 2015 CH 13399
v. )	(Transferred to Law)
CITY OF CHICAGO DEPARTMENT OF )	2200 3 0
FINANCE, et al.	202 B
Defendants.	E Roy

# ANSWER TO SECOND AMENDED COMPLAINT

Defendants answer Plaintiffs' Second Amended Complaint for Declaratory

Judgment and Injunctive Relief as follows:

1. On June 9, 2015, the City of Chicago's Finance Department issued a ruling extending the city's 9% "Amusement Tax" to cover Internet-based streaming video services such as Netflix, Internet-based streaming audio and music services such as Spotify, and Internet-based gaming services such as Xbox Live — services the City has never taxed before and which the City Council has never authorized the Finance Department to tax. This lawsuit challenges that ruling for exceeding the Finance Department's authority, as a violation of the federal Internet Tax Freedom Act, 47 U.S.C. § 151 note (2015), and as a violation of the Illinois and federal constitutions.

ANSWER: Defendants admit that the City of Chicago's Department of Finance issued Amusement Tax Ruling #5 ("Ruling") to provide guidance regarding application of the Amusement Tax, Chapter 4-156 of the Municipal Code of Chicago, to amusements delivered over the Internet, such as streaming videos, music and games. Defendants also admit that this lawsuit was brought to challenge the Ruling on various

grounds. Defendants deny the remaining allegations of this paragraph and each of them.

2. This Court has subject matter jurisdiction over this matter under 735 ILCS 5/2-701 because Plaintiffs seek a declaratory judgment that a tax ruling issued by the City of Chicago Comptroller exceeds Defendants' authority under the law.

**ANSWER:** Defendants admit that the Circuit Court of Cook County has subject matter jurisdiction, but they deny the remaining allegations of this paragraph and each of them.

3. This Court has personal jurisdiction over Defendants because this lawsuit rises from the Defendants' actions in the State of Illinois.

#### ANSWER: Admit.

4. Venue is proper in Cook County because Plaintiffs reside in Cook County, Illinois, and Defendants are located in Cook County.

ANSWER: Defendants admit that Cook County, Illinois is a proper venue for this action and that the City of Chicago and its Comptroller, now Erin Keane, are located in Cook County. Defendants lack knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

5. Plaintiff Michael Labell is a resident of Chicago, Cook County, Illinois, and currently pays for subscriptions to Netflix's Internet video-streaming service and Spotify's Internet music-streaming service and to Amazon Prime, which among other things provides members with video and music streaming services.

**ANSWER:** Defendants lack knowledge sufficient to form a belief as to the truth of these allegations.

6. Plaintiff Jared Labell is a resident of Chicago, Cook County, Illinois, and currently pays for a subscription to Amazon Prime, which among other things provides members with video and music streaming services.

**ANSWER:** Defendants lack knowledge sufficient to form a belief as to the truth of these allegations.

7. Plaintiff Natalie Bezek is a resident of Chicago, Cook County, Illinois, and currently pays for a subscription to Spotify's Internet music-streaming service.

**ANSWER:** Defendants lack knowledge sufficient to form a belief as to the truth of these allegations.

8. Plaintiff Emily Rose is a resident of Chicago, Cook County, Illinois, and currently pays for subscriptions to Netflix and Hulu's respective Internet video-streaming services and to Amazon Prime, which among other things provides members with video and music streaming services.

**ANSWER**: Defendants lack knowledge sufficient to form a belief as to the truth of these allegations.

9. Plaintiff Bryant Jackson-Green is a resident of Chicago, Cook County, Illinois, and currently pays for subscriptions to Netflix and Hulu's respective Internet video-streaming services and Spotify's Internet music-streaming service and to Amazon Prime, which among other things provides members with video and music streaming services.

**ANSWER**: Defendants lack knowledge sufficient to form a belief as to the truth of these allegations.

10. Plaintiff Zack Urevig is a resident of Chicago, Cook County, Illinois, and currently pays for subscriptions to Netflix's Internet video-streaming service, Spotify's Internet music-streaming service, and to Amazon Prime, which among other things provides members with video and music streaming services.

**ANSWER**: Defendants lack knowledge sufficient to form a belief as to the truth of these allegations.

11. Plaintiff Michael McDevitt is a resident of Chicago, Cook County, Illinois, and currently pays for a subscription to Xbox Live's "Gold" Internet gaming and digital media delivery service.

**ANSWER**: Defendants lack knowledge sufficient to form a belief as to the truth of these allegations.

12. Plaintiff Forrest Jehlik is a resident of Chicago, Cook County, Illinois, and currently pays for a subscription to Netflix's Internet video-streaming service.

**ANSWER:** Defendants lack knowledge sufficient to form a belief as to the truth of these allegations.

13. Defendant City of Chicago is an Illinois municipal corporation. **ANSWER:** Admit.

14. Defendant Dan Widawsky is the Comptroller for the City of Chicago and has held that office at all relevant times. As Comptroller, Defendant Widawsky is the head of the Finance Department and is authorized to adopt, promulgate and enforce rules and regulations pertaining to the interpretation, administration and enforcement of Chicago's Amusement Tax. Chi. Mun. Code 4-156-034.

ANSWER: Defendants admit that Dan Widawsky was the City of Chicago's Comptroller on the days when the Ruling was issued and the initial complaint in this matter was filed, and that the Comptroller, now Erin Keane, is head of the Department of Finance and authorized to adopt, promulgate and enforce rules and regulations

pertaining to the interpretation, administration and enforcement of Chicago's Amusement Tax.

15. The City of Chicago imposes a 9% "Amusement Tax" on admission fees or other charges paid for the privilege to enter, witness, view or participate in certain activities within the City of Chicago that the ordinance defines as "amusements." Chi. Mun. Code 4-156-020.

# ANSWER: Admit.

- 16. The Chicago Municipal Code defines the "Amusement" subject to the Amusement Tax to include just three categories of activities:
  - (1) any exhibition, performance, presentation or show for entertainment purposes, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition such as boxing, wrestling, skating, dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling or billiard or pool games;
  - (2) any entertainment or recreational activity offered for public participation or on a membership or other basis including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, bodybuilding or similar activities; or
  - (3) any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means.

# Chi. Mun. Code 4-156-010.

ANSWER: Defendants admit that these three categories are from the Amusement Tax's definition of an amusement. Defendants deny the remaining allegations of this paragraph and each of them.

17. Until June 9, 2015, the City did not interpret the Code's definition of "amusement" to include Internet-based streaming services for video, audio and gaming, such as Netflix, Spotify, and Xbox Live, and accordingly did not tax those services.

ANSWER: Denied.

18. On June 9, 2015, however, Defendant Widawksy issued Amusement Tax Ruling #5 (the "Ruling") (attached as Exhibit A), declaring that the term "amusement" as defined by Chi. Mun. Code 4-156-010 would now include "charges paid for the privilege to witness, view or participate in amusements that are *delivered electronically*" (emphasis in original).

ANSWER: Defendants admit that Dan Widawsky issued the Ruling on June 9, 2015.

Defendants deny the remaining allegations of this paragraph and each of them.

19. According to the Ruling, "charges paid for the privilege of watching electronically delivered television shows, movies or videos are subject to the amusement tax, if the shows, movies or videos are delivered to a patron (i.e., customer) in the City."

ANSWER: Admit.

20. Further, the Ruling states that "charges paid for the privilege of listening to electronically delivered music are subject to the amusement tax, if the music is delivered to a customer in the City."

ANSWER: Admit.

21. The Ruling also states that "charges paid for the privilege of participating in games, on-line or otherwise, are subject to the amusement tax if the games are delivered to a customer in the City."

ANSWER: Admit.

22. According to the Ruling, "[t]he amusement tax does not apply to sales of shows, movies, videos, music or games (normally accomplished by a 'permanent' download). It applies only to rentals (normally accomplished by streaming or a

'temporary' download). The charges paid for such rentals may be subscription fees, perevent fees or otherwise."

## ANSWER: Admit.

23. The Ruling states that providers that receive charges for electronically delivered amusements are considered owners or operators and are required to collect the City's Amusement Tax from their Chicago customers.

# ANSWER: Admit.

24. The Amusement Tax applies to any customer whose residential street address or primary business street address is in Chicago, as reflected by his or her credit card billing address, zip code or other reliable information. The determination of sourcing made by the City of Chicago Department of Finance is based on rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq.

#### ANSWER: Denied.

25. The Ruling states that where a charge is "bundled" by including both taxable and non-taxable elements, the Department of Finance applies the rules set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004). Thus, the amount of Amusement Tax is based on the amount paid for any amusement, but excludes any separately-stated charges not for amusements. However, if an operator fails to separate the amusement portion of the price from the non-amusement portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for amusements.

# ANSWER: Denied.

26. The Effective Date of the Ruling is July 1, 2015, but the Ruling states that "the Department will limit the effect of this ruling to periods on and after September 1, 2015."

#### ANSWER: Admit.

27. Plaintiffs are subscribers to various services that provide media delivered electronically, including Netflix, Hulu, Spotify, Xbox Live, and Amazon Prime.

**ANSWER:** Defendants lack knowledge sufficient to form a belief as to the truth of these allegations.

28. Netflix is a provider of an on-demand Internet streaming media service, which allows subscribers to watch video content online, and of a flat-rate video-by-mail service, which allows subscribers to borrow DVD and Blu-ray video discs and return them in prepaid mailers. Hulu provides a similar video-streaming service but does not offer video-by-mail service.

ANSWER: Admit.

29. Spotify is a music streaming service, which allows consumers access to a large library of recorded music without commercial interruptions for a subscription fee. Similar streaming music services are offered by Pandora, Apple Music, and Google Play.

ANSWER: Defendants admit the allegations concerning Spotify, Pandora and Apple Music. Defendants lack knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

30. Xbox Live Gold is an online multiplayer gaming and digital media delivery service created and operated by Microsoft, which for a fee, allows users to play games with others on an online network. Xbox Live Gold also provides paid members with the following features: matchmaking/smartmatch, private chat, party chat and in-game voice communication, game recording, media sharing, broadcasting one's gameplay via the Twitch live streaming application, access to free-to-play titles, "cloud" storage for gaming files, and early or exclusive access to betas, special offers, Games with Gold, and Video Kinect.

**ANSWER:** Defendants admit that Xbox Live Gold is an online multiplayer gaming service offered by Microsoft for which a fee is charged, but they lack knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

31. Amazon Prime is a membership service that provides members with certain benefits provided by <u>Amazon.com</u>, including free two-day shipping and discounts on certain items sold on its website, but also provides access to streaming movies, and music, cloud photo storage, and the ability to borrow e-books.

ANSWER: Defendants admit that Amazon Prime is a membership service that provides members with various benefits, including shipping and discounts on certain items, along with access to streaming movies, music and other products, but they lack knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

32. Plaintiffs Rose, Jackson-Green, and Michael Labell, as paid subscribers to Netflix streaming video service, are harmed because they must pay the tax on Internet-based video-streaming services, which increases the cost of subscribing to Netflix by nine percent.

ANSWER: Defendants admit that the Amusement Tax rate is nine percent and that application of the tax to a charge for a streaming video service would increase the cost of subscribing to such a service. Defendants deny the remaining allegations of this paragraph and each of them.

33. Plaintiffs Rose and Jackson-Green, as paid subscribers to Hulu streaming video service, were harmed when they resided in Chicago because they were required to pay the tax on Internet-based video-streaming services, which increases the cost of subscribing to Hulu by nine percent.

**ANSWER:** Defendants admit that the Amusement Tax rate is nine percent and that application of the tax to a charge for a streaming video service would increase the cost of subscribing to such a service. Defendants deny the remaining allegations of this paragraph and each of them.

34. Plaintiffs Bezek, Jackson-Green, Urevig, and Michael Labell, as paid subscribers to Spotify's streaming music service, are (or have been) harmed because they are (or have been) required to pay the tax on Internet-based streaming music services, which increases the cost of subscribing to Spotify by nine percent.

**ANSWER:** Defendants admit that the Amusement Tax rate is nine percent and that application of the tax to a charge for a streaming music service would increase the cost of subscribing to such a service. Defendants deny the remaining allegations of this paragraph and each of them.

- 35. Plaintiff McDevitt, as a paid subscriber to Xbox Live Gold Internet-based gaming service, is harmed because he must pay the tax on Internet-based gaming services, which increases the cost of subscribing to Xbox Live Gold by nine percent.
- ANSWER: Defendants admit that the Amusement Tax rate is nine percent and that application of the tax to a charge for on-line gaming would increase the cost of subscribing to such a service. Defendants deny the remaining allegations of this paragraph and each of them.
- 36. Plaintiffs Rose, Jackson-Green, Urevig, Jared Labell, and Michael Labell, as paid Amazon Prime members, are (or have been) harmed because they are (or have been) required to pay the tax on Internet-based video and music services portion of the price of their membership, but if Amazon does not separate the price of these services from its non-taxable services, then they must paid the Amusement Tax on the full price of their Amazon Prime membership, either of which will increase the cost of subscribing to Amazon Prime.

ANSWER: Defendants deny that Plaintiffs Rose, Jackson-Green, Urevig, Jared Labell, and Michael Labell are or have been harmed by the purported application of the Amusement Tax to an Amazon Prime membership. Defendants lack knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

#### Counts I through III Paragraphs 37 through 79

Counts I through III were dismissed pursuant to the Court's July 21, 2016 order.

#### Count IV

80. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

**ANSWER:** In answer to this paragraph 80, Defendants incorporate by reference their answers to corresponding paragraphs, above.

81. The Internet Tax Freedom Act ("Act"), which is set forth in a note to 47 U.S.C. § 151, provides that no State or political subdivision of a State may impose multiple or discriminatory taxes on electronic commerce.

ANSWER: Admit.

- 82. The Act defines discriminatory tax, in part, as "any tax imposed by a State or political subdivision thereof on electronic commerce" that:
- (i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;
- (ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period; [or]
- (iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means . . . . Act § 1105(2)(A).

ANSWER: Admit.

83. The Act defines "electronic commerce" as "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access." § 1105(3).

ANSWER: Admit.

84. The term "tax" under the Act includes those "for the purpose of generating revenues for governmental purposes" and those imposed on "a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity." § 1105(8).

ANSWER: Admit.

85. Chicago Municipal Code 4-156-020, as interpreted and applied by the Comptroller through Amusement Tax Ruling #5, imposes an unlawful discriminatory tax on electronic commerce because it applies to Netflix's video streaming service but does not apply to Netflix's video-by-mail service.

ANSWER: Denied.

86. The Amusement Tax, as interpreted and applied by the Ruling, also unlawfully discriminates against electronic commerce because it imposes a higher tax rate on theatrical, musical, and cultural performances that are delivered through an online streaming service than it imposes on those same performances if they are consumed in person.

ANSWER: Denied.

87. The Amusement Tax provides an exemption for in-person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons. Section 4-156-020(D)(1).

ANSWER: Admit.

88. The Amusement Tax provides a reduced rate of five percent for in-person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is more than 750 persons. Section 4-156-020(E).

ANSWER: Admit.

89. However, electronically delivered audio or video of the same performances is taxed at nine percent.

**ANSWER:** Defendants admit that electronically delivered audio or video of a live performance would not qualify for the exemption or low rate. Defendants deny the remaining allegations of this paragraph and each of them.

90. Thus, performances consumed in person are subject to an Amusement Tax of either 0% or 5%, depending on the capacity of the venue at which they are performed, but streaming audio or video of such performances is subject to an Amusement Tax of 9%.

**ANSWER:** Defendants admit that electronically delivered audio or video of a live performance would not qualify for the exemption or low rate. Defendants deny the remaining allegations of this paragraph and each of them.

91. The Ruling thus forces Plaintiffs to pay a higher tax rate if they choose to consume a musical, theatrical, or cultural performance through a streaming media service than if they choose to attend a performance in person. In this way, the Amusement Tax, as interpreted and applied by the Ruling, imposes an unlawful discriminatory tax on electronic commerce.

ANSWER: Denied.

#### Count V

92. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

**ANSWER:** In answer to this paragraph 92, Defendants incorporate by reference their answers to corresponding paragraphs, above.

93. The Uniformity Clause, Article IX, Section 2, of the Illinois Constitution provides:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

ANSWER: Admit.

94. In order to comply with the Uniformity Clause, a tax must meet two requirements: (1) it must be based on a "real and substantial" difference between those subject to the tax and those that are not; and (2) it must "bear some reasonable relationship to the object of the legislation or to public *policy*." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 150 (2003).

ANSWER: Admit.

95. The Amusement Tax, as interpreted and applied by the Ruling, imposes a higher tax rate on theatrical, musical, and cultural performances that are delivered through an online streaming service than it imposes on those same performances if they are consumed in person.

ANSWER: Defendants admit that electronically delivered audio or video of a live performance would not qualify for the exemption or low rate. Defendants deny the remaining allegations of this paragraph and each of them.

96. The Amusement Tax provides an exemption for in-person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons. Section 4-156-020(D)(1).

ANSWER: Admit.

97. The Amusement Tax provides a reduced rate of five percent for in-person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is more than 750 persons. Section 4-156-020(E).

ANSWER: Admit.

98. However, electronically delivered audio or video of the same performances is taxed at nine percent.

**ANSWER:** Defendants admit that electronically delivered audio or video of a live performance would not qualify for the exemption or low rate. Defendants deny the remaining allegations of this paragraph and each of them.

99. There is no "real and substantial" difference between those subject to the tax — persons watching theatrical, musical, and cultural performances online — and those that are not — persons watching theatrical, musical, and cultural performances live.

ANSWER: Denied.

100. Further, taxing some customers of theatrical, music, and cultural performances at higher rate than others does not bear any reasonable relationship to the purpose of the amusement tax or to public policy.

ANSWER: Denied.

101. Thus, the Amusement Tax, as interpreted and applied by the Ruling, violates the Uniformity Clause of the Illinois Constitution.

ANSWER: Denied.

#### Count VI

102. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

**ANSWER:** In answer to this paragraph 102, Defendants incorporate by reference their answers to corresponding paragraphs, above.

103. The Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution, grants Congress the power to regulate interstate commerce and prohibits state interference with interstate commerce.

ANSWER: Defendants admit that the Commerce Clause, Article I, Section 8, Clause 3 of the United States Constitution, grants Congress the power to regulate interstate commerce. Defendants deny the remaining allegations of this paragraph and each of them.

104. A local tax satisfies the Commerce Clause only if it "(1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State." Quill Corp. v. North Dakota, 504 U.S. 298, 311 (1992).

ANSWER: Defendants admit the quoted language appears in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). Defendants deny the remaining allegations of this paragraph and each of them.

105. The Amusement Tax, as interpreted and applied by the Ruling, does not satisfy the first requirement of the Commerce Clause because the activities that it taxes — Internet-based streaming of video, audio, and gaming— do not have a substantial nexus with the taxing jurisdiction, Chicago, since the activities do not take place in Chicago, but on the Internet.

ANSWER: Denied.

106. Further, the Amusement Tax, as interpreted and applied by the Ruling, does not satisfy the second requirement of the Commerce Clause — that it be fairly apportioned — because the tax is not limited to the portion of value that is fairly attributable to economic activity within the taxing jurisdiction. The City cannot tax economic value that is exclusively attributable to out-of-state activities — here the provision of Internet-based streaming services by out-of-state companies.

ANSWER: Denied.

107. In addition, the Amusement Tax, as interpreted and applied by the Ruling, does not satisfy the third requirement of the Commerce Clause — that it not discriminate against interstate commerce. The Amusement tax imposes a higher tax rate on theatrical, musical, and cultural performances that are delivered through an online streaming service provided by out-of-state providers than it imposes on those same performances if they are consumed exclusively in the City of Chicago.

ANSWER: Denied.

108. Finally, the Amusement Tax, as interpreted and applied by the Ruling, does not satisfy the fourth requirement of the Commerce Clause — that the activity taxed be fairly related to the services provided by the City. Internet-based streaming video, audio, and gaming services from providers that have no connection to the City of Chicago, except that some of their customers have billing addresses in Chicago, are in no way related to any services provided by the City. Sporting events and concerts and other amusements that take place in the City of Chicago and cable television, are given "protection, opportunities and benefits" of the City of Chicago and state of Illinois, whereas out-of-state providers of Internet-based streaming services receive no such protection, opportunities and benefits. *See Asarco, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 315 (1982).

ANSWER: Denied.

109. Thus, the Amusement Tax, as interpreted and applied by the Ruling, violates the Commerce Clause of the United States Constitution.

ANSWER: Denied.

#### Count VII

110. Under Illinois law, all home rule ordinances must fall within the scope of Article VII, Section 6(a) of the Illinois Constitution, which states that "a home rule unit may exercise any power and perform any function pertaining to its government and affairs."

ANSWER: Denied.

111. The Illinois Constitution prohibits home rule units from taxing business transactions outside of their respective jurisdictions because such taxation constitutes an unauthorized extraterritorial exercise of power. Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431 (2d Dist. 2006).

ANSWER: Denied.

112. The Amusement Tax, as interpreted by Amusement Tax Ruling #5 and as amended by the City Council on November 2015 in Chi. Mun. Code 4-156-020, subjects customers with Chicago billing addresses to tax on the charges paid for video streaming services, listening to electronically delivered music and participating in games online when those customers are located outside of the City at the time they incur the charges.

ANSWER: Denied.

113. Amusement Tax Ruling #5 and the November 2015 amendment by the City Council, Chi. Mun. Code 4-156-020, exceed the grant of the authority set forth by Article VII, Section 6(a), because they have an extraterritorial effect by taxing customers with Chicago billing addresses for activities occurring outside the City.

ANSWER: Denied.

114. Amusement Tax Ruling #5 and the November 2015 amendment by the City Council, Chi. Mun. Code 4-156-020, attempt to expand the City's taxing and regulatory jurisdiction to transactions and business activities conducted outside the City and thus are unconstitutional under Article VII, Section 6 of the Illinois Constitution.

ANSWER: Denied.

## FIRST AFIIRMATIVE DEFENSE (Lack of Standing)

Plaintiffs are residents of the City of Chicago, who allege that they are subscribers to certain online streaming services. As such, Plaintiffs lack standing to assert any claims under the Commerce Clause of the United States Constitution. In addition, to the extent that Plaintiffs are asserting as-applied claims based on facts that apply solely to other people, and not to Plaintiffs themselves, Plaintiffs lack standing to assert those claims as well.

WHEREFORE, the City of Chicago asks the Court to enter judgment in its favor based on Plaintiffs' lack of standing.

## SECOND AFIIRMATIVE DEFENSE (Failure to Exhaust Administrative Remedies)

Plaintiffs are residents of the City of Chicago, who allege that they are subscribers to certain online streaming services. To the extent that Plaintiffs are asserting as-applied claims based on facts that apply solely to themselves, and not to other people, Plaintiffs must exhaust their administrative remedies.

WHEREFORE, the City asks the Court to enter judgment in its favor based on Plaintiffs' failure to exhaust their administrative remedies.

CITY OF CHICAGO

Steventometto

Attorney No. 90909
Weston Hanscom
Steven J. Tomiello
City of Chicago Department of Law
30 North LaSalle Street, Suite 1020
Chicago, IL 60602
(312) 744-9077/7803
steven.tomiello@cityofchicago.org

By

#### CERTIFICATE OF SERVICE

I, Steven J. Tomiello, certify that today, November 17, 2016, I caused DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT to be served on the individuals listed on the Service List below by United States Mail (First Class, postage paid) and email before 5:00 p.m.

Steven J. Tomiello

#### SERVICE LIST

Jacob H. Huebert -- jhuebert@libertyjusticecenter.org Jeffrey Schwab -- jschwab@libertyjusticecenter.org Liberty Justice Center 190 S. LaSalle St., Suite 1500 Chicago, IL 60603

ELECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399 CALENDAR: 04 PAGE 1 of 32 CIRCUIT COURT OF

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS CHANCERY DIVISION CHANCERY DIVISION CLERK DOROTHY BROWN TAX AND MISCELLANEOUS REMEDIES SECTION

MICHAEL LABELL, et al.	)
Plaintiffs,	) Case No. 2015 CH 13399
v.	) (Transferred to Law)
THE CITY OF CHICAGO, et al.	)
Defendants.	)

#### PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Jeffrey M. Schwab (#6290710) Jacob H. Huebert (#6305339) Liberty Justice Center (#49098) 190 S. LaSalle Street, Suite 1500 Chicago, Illinois 60603 Telephone (312) 263-7668 Facsimile (312) 263-7702 jschwab@libertyjusticecenter.org jhuebert@libertyjusticecenter.org

Attorneys for Plaintiffs

#### TABLE OF CONTENTS

Table	e of Co	ntents	ii
Table	e of Au	thorities	iv
Intro	duction	n	1
Plain	tiffs' S	tatement of Facts	1
I.	The C	Chicago Municipal Code provides for a tax on amusements.	1
II.		City applies the amusement tax to streaming services through Amusement Ruling #5.	3
III.	Desc	ription of various streaming service providers.	5
IV.	Plain	tiffs use of streaming services and payment of the amusement tax.	6
Sumi	mary J	udgment Standard	8
Argu	ment		8
I.	excee	City's application of the amusement tax to streaming services eds its authority to tax under Article VII, Section 6(a) of the Illinois titution.	8
II.	I. The amusement tax applies to streaming services differently than it applies to in-person amusements in violation of the Uniformity Clause of the Illinois Constitution.		13
	A.	The amusement tax violates the Uniformity Clause because it applies to streaming services differently than it applies it other amusements.	13
	B.	The Ruling violates the Uniformity Clause because it subjects streaming services to greater taxation than automatic amusement machines that deliver the same types of entertainment.	16
	C.	The Ruling violates the Uniformity Clause because it taxes certain performances delivered through streaming services at a higher rate than it taxes in-person live performances.	17
III.		nmusement tax discriminates against electronic commerce in violation of the net Tax Freedom Act.	18

IV.		ion of the Commerce Clause of the United States Constitution	. 22
	A.	There is no substantial nexus between Chicago and streaming services	22
	B.	There is no fair apportionment between the tax and the customer's use of streaming services.	24
	C.	The tax on streaming services is not fairly related to the extent of the contact with Chicago.	25
Concl	lusion		25

# SLECTRONICALLY FILED **9/27/2017 4:28 PM 2015-CH-13399** PAGE 4 of 32

#### TABLE OF AUTHORITIES

#### Cases

Allegro Servs. v. Metro. Pier & Exposition Auth., 172 Ill. 2d 243 (1996)	13
Allied-Signal, Inc. v. Dir., Div. of Taxation, 504 U.S. 768 (1992).	23
Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981)	25
Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977)	22
Empress Casino Joliet Corp. v. Giannoulias, 231 Ill. 2d 62 (2008)	13
Federated Distribs., Inc. v. Johnson, 125 Ill. 2d 1 (1988)	14, 15
Geja's Cafe v. Metro. Pier & Exposition Auth., 153 Ill. 2d 239 (1992)	13
Goldberg v. Sweet, 488 U.S. 252 (1989)	24
Hertz Corp. v. City of Chi., 2017 IL 119945	9, 10, 11
Irwin Indus. Tool Co. v. Ill. Dep't of Revenue, 238 Ill. 2d 332 (2010)	24
National Bellas Hess v. Department of Revenue, 386 U.S. 753 (1967)	23
Nat'l Pride of Chicago, Inc. v. Chicago, 206 Ill. App. 3d 1090 (1st Dist. 1990)	17
Performance Mktg. Ass'n v. Hamer, 2013 IL 114496	20, 22
Purdy Co. of Illinois v. Transportation Ins. Co., 209 Ill. App. 3d 519 (1st Dist. 1991)	8
Pyne v. Witmer, 129 Ill. 2d 351 (1989)	8
Quill Corp. v. North Dakota, 504 U.S. 298 (1992)	22, 23
Searle Pharmaceuticals, Inc. v. Dep't of Revenue, 117 Ill. 2d 454 (1987)	13, 14
Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431 (2006)	9, 11, 12
Federal Authorities	
U.S. CONST. art. I, § 8, cl. 3	22
Internet Tax Freedom Act, 47 U.S.C. § 151, note	18, 19, 20

Trade Facilitation and Trade Enforcement Act of 2015, 114 Pub. L. No. 125, 130 Stat. 122 (2016)
47 C.F.R. § 20.3
S. Report No. 105-184 (1998)
H.R. Rep. No. 105-808, pt. 1 (1998)
State and Local Authorities
ILL. CONST. art. VII, § 6
ILL. CONST. art. IX, § 2
735 ILCS 5/2-1005
Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq 4, 12
Chi. Mun. Code § 4-156-010, et seq
Chi. Dep't Finance Amusement Tax Ruling #5
Chi. 2016 Revenue Ordinance
Chicago Amend Coun. J. 11-12-98, p. 81835
Other Authorities
Internet jukeboxes offer countless tunes, GMA News Online, http://www.gmanetwork.com/news/scitech/content/7070/internet-jukeboxes-offer-countless-tunes/story

#### Introduction

The City of Chicago applies its amusement tax – a 9% tax on charges paid for the privilege to enter, witness, view, or participate in amusements that take place *within the City of Chicago* – on charges paid for Internet-based streaming video, audio, and gaming services ("streaming services") by customers with Chicago billing address only, regardless of whether those customer use those streaming services within the City of Chicago. The Court should enjoin the application of the amusement tax on streaming services because: (1) imposing the amusement tax on streaming services exceeds the City's authority to tax under Article VII, Section 6(a) of the Illinois Constitution; (2) taxing streaming services differently than equivalent in-person amusements violates the Illinois Constitution's Uniformity Clause; (3) applying the tax to streaming services imposes a discriminatory tax on electronic commerce in violation of the Internet Tax Freedom Act; and (4) taxing activity outside the City's borders violates the U.S. Constitution's Commerce Clause.

#### **Plaintiffs' Statement of Facts**

- I. The Chicago Municipal Code provides for a tax on amusements.
- 1. The City of Chicago imposes a 9% tax on charges paid for the privilege to enter, witness, view, or participate in certain activities within the City of Chicago that the Chicago Municipal Code ("Code") defines as amusements (the "amusement tax"). Chi. Mun. Code § 4-156-020, Exhibit A.
- 2. The Code defines an "amusement" subject to the amusement tax to include three categories of activities:
  - (1) any exhibition, performance, presentation or show for entertainment purposes, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition

- such as boxing, wrestling, skating, dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling or billiard or pool games;
- any entertainment or recreational activity offered for public participation or on a membership or other basis including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, bodybuilding or similar activities; or
- (3) any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means.

#### Ex. A, § 4-156-010.

- 3. The Code requires that every owner, manager, or operator of an amusement or a place where an amusement is being held, and every reseller, collect the amusement tax from every customer of an amusement in Chicago, and remit the tax to the Chicago Department of Finance by the 15th of each calendar month. Ex. A, § 4-156-030(A).
- 4. The Code exempts "automatic amusement machines" from the amusement tax and instead subjects their operators to a \$150 tax per year per device. Ex. A, § 4-156-160.
  - 5. The Code defines an "automatic amusement machine" as:

    any machine, which, upon . . . any . . . payment method, may be operated by the public generally for use as a game, entertainment or amusement . . . and includes but is not limited to such devices as jukeboxes, marble machines, pinball machines, movie and video booths or stands and all [similar] games, operations or transactions . . . .

#### Ex. A, § 4-156-150.

6. The Code exempts from the amusement tax charges for "in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons," Ex. A, § 4-156-020(D)(1), and taxes such performances in a space with a capacity of greater than 750 persons at a reduced rate of 5%. Ex. A, § 4-156-020(E).

- 7. "Live theatrical, live musical or other live cultural performance" means a live performance in any of the disciplines which are commonly regarded as part of the fine arts, such as live theater, music, opera, drama, comedy, ballet, modern or traditional dance, and book or poetry readings. The term does not include such amusements as athletic events, races or performances conducted at adult entertainment cabarets. Ex. A, § 4-156-010.
  - II. The City applies the amusement tax to streaming services through Amusement Tax Ruling #5.
- 8. On June 9, 2015, then-Comptroller of the City of Chicago, Dan Widawksy, issued Amusement Tax Ruling #5 (the "Ruling"), declaring that the term "amusement" as defined by the Code includes "charges paid for the privilege to witness, view or participate in amusements that are *delivered electronically*" (emphasis in original). **Exhibit B**.
- 9. According to the Ruling, amusements delivered electronically include: (1) "charges paid for the privilege of watching electronically delivered television shows, movies or videos . . . delivered to a patron (i.e., customer) in the City"; (2) "charges paid for the privilege of listening to electronically delivered music . . . delivered to a customer in the City"; and (3) "charges paid for the privilege of participating in games, on-line or otherwise . . . delivered to a customer in the City." Ex. B.
- 10. The Ruling states that providers who receive charges for electronically delivered amusements are considered owners or operators and therefore are required to collect the City's amusement tax from their Chicago customers. Ex. B.
- 11. Under the Ruling, "[t]he amusement tax does not apply to sales of shows, movies, videos, music or games (normally accomplished by a 'permanent' download). It applies only to rentals (normally accomplished by streaming or a 'temporary' download). The charges paid for such rentals may be subscription fees, per-event fees or otherwise." Ex. B.

- 12. The Ruling states that the amusement tax applies to any customer of an amusement delivered electronically whose residential street address or primary business street address is in Chicago, as reflected by his or her credit card billing address, zip code, or other reliable information. This "sourcing" determination is based on rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq. Ex. B.
- 13. The Ruling states that "[b]ecause the amusement tax is imposed on the patron, and applies only to activity (i.e., the amusement) that takes place within Chicago, there is no question that the tax applies whenever the amusement takes place in Chicago." Ex. B.
- 14. The Ruling states that the question of whether a given provider has an obligation to collect the tax from its customer is beyond the Ruling's scope and that a provider may request a private letter ruling from the Chicago Department of Finance, pursuant to Uniform Revenue Procedures Ordinance Ruling #3 (June 1, 2004). Ex. B.
- 15. The Ruling states that where a charge is "bundled" by including both taxable and non-taxable elements, the Department of Finance applies the rules set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004). Thus, the amount of amusement tax is based on the amount paid for any amusement, but excludes any separately-stated charges not for amusements. However, if an operator fails to separate the amusement portion of the price from the non-amusement portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for amusements. Ex. B.
- 16. The effective date of the Ruling was July 1, 2015, but the Ruling states that the effect of the Ruling would be limited to periods on and after September 1, 2015." Ex. B.
- 17. In November 2015, the City Council, as part of the City's Revenue Ordinance for 2016, amended the Code as it relates to the amusement tax. That amendment states:

In the case of amusements that are delivered electronically to mobile devices, as in the case of video streaming, audio streaming and on-line 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. If those rules indicate that the tax applies, it shall be presumed that the tax does apply unless the contrary is established by books, records or other documentary evidence.

2016 Revenue Ordinance (relevant portions) attached as **Exhibit C**, adding § 4-156-020(G)(1).

- 18. Prior to the Ruling, the Department of Finance was conducting audits and discovery investigations of providers of streaming services, and some of those providers were collecting the amusement tax from their Chicago customers. Dep. of Mark Pekic, p. 28:15 29:11, **Exhibit D**.
- 19. Mark Pekic is a City of Chicago Auditor Supervisor whose responsibilities include interpreting the amusement tax. Ex. D, p. 24: 3-7.
- 20. If the City of Chicago were to find that a provider of streaming services was not responsible for collecting and remitting the amusement tax from its Chicago customers because it did not have a substantial nexus to Chicago, the Chicago customers of such streaming services would be liable to pay the City the amount of the amusement tax owed on the charges for those streaming services. Ex. D, p. 53:5-14.

#### III. Description of various streaming service providers.

- 21. Netflix is a provider of an on-demand Internet streaming media service, which allows subscribers to watch video content online and offers a flat-rate video-by-mail service, which allows subscribers to borrow DVD and Blu-ray video discs and return them in prepaid mailers. Pls' Resp. Defs' Request for Documents, ¶ 1, Exhibit E.
- 22. Hulu is a provider of an on-demand Internet streaming media service, which allows subscribers to watch video content online. Ex. E,  $\P$  1.

- 23. Spotify is a music streaming service, which allows consumers access to a large library of recorded music without commercial interruptions for a subscription fee. Ex. E, ¶ 1. Similar streaming music services are offered by Pandora (Pandora.com) Apple Music (https://www.apple.com/music), and Google Play (https://play.google.com).
- 24. Xbox Live Gold is an online multiplayer gaming and digital media delivery service created and operated by Microsoft, which for a fee, allows users to play games with others on an online network. Xbox Live Gold also provides paid members with the following features: matchmaking/smartmatch, private chat, party chat and in-game voice communication, game recording, media sharing, broadcasting one's gameplay via the Twitch live streaming application, access to free-to-play titles, "cloud" storage for gaming files, and early or exclusive access to betas, special offers, Games with Gold, and Video Kinect. Ex. E, ¶ 1.
- 25. Amazon Prime is a membership service that provides members with certain benefits provided by Amazon.com, including free two-day shipping and discounts on certain items sold on its website, but also provides access to streaming movies, and music, cloud photo storage, and the ability to borrow e-books. Ex. E, ¶ 1.
  - IV. Plaintiffs use of streaming services and payment of the amusement tax.
- 26. Starting before June 2015, and continuing through the present, Michael Labell has been a resident of Chicago, Illinois, and has paid for subscriptions to Netflix since January 2016, Spotify since January 2015, and Amazon Prime since February 2016. Decl. Michael Labell, **Exhibit F**, ¶¶ 1-2. Netflix and Spotify have collected the amusement tax in the amount of \$59.49 from Michael Labell. *Id*. ¶ 8.
- 27. Starting before June 2015, and continuing through the present, Jared Labell has been a resident of Chicago, Illinois, and has paid for a subscription to Amazon Prime since

November 2016. Decl. Jared Labell, **Exhibit G**, ¶¶ 1-2. Amazon Prime has not collected the Chicago amusement tax from Jared Labell. *Id*. ¶ 3.

- 28. Starting before June 2015, and continuing through the present, Forrest Jehlik has been a resident of Chicago, Illinois, and has paid for a subscription to Netflix since January 2016. Decl. Forrest Jehlik, **Exhibit H**, ¶¶ 1-2. Netflix has collected the amusement tax in the amount of \$17.10 from Forrest Jehlik. *Id*. ¶ 4.
- 29. Starting in 2014, and continuing through the present, Zack Urevig has lived in Chicago, Illinois, and has paid for subscriptions to Netflix and Amazon Prime since prior to June 2015, and Spotify since June 2016. Decl. Zack Urevig, **Exhibit I**, ¶¶ 1-2; Dep. Zack Urevig, p. 4:14-20; 12:3-7; 14:2-4; 20:15-16; **Exhibit J**. Netflix and Spotify have collected the amusement tax in the amount of \$30.78 from Zack Urevig. Ex. I, ¶ 8.
- 30. Starting before June 9, 2015, and up until June 2016, and then from June 10, 2017, and continuing through the present, Bryant Jackson-Green was a resident of Chicago, Illinois, and has paid for subscriptions to Netflix from December 2015 through the present, Hulu from February 2016 through July 2016, Spotify since January 2015, and Amazon Prime since October 2016. Decl. Bryant Jackson-Green, **Exhibit K**, ¶¶ 1-2; Dep. Bryant Jackson-Green, **Exhibit L**, 4:11 5:15; 8:11-15; 11:8-11; 23:9-14; 27:10-11. Netflix, Hulu, and Spotify have collected the amusement tax in the amount of \$41.85 from Bryant Jackson-Green. Ex. K, ¶ 10.
- 31. Natalie Bezek was a resident of Chicago, Illinois from prior to June 2015 until September 2016, and paid for a subscription to Spotify from April 2015 to August 2016, December 2016, and from March 2017 through September 2017. Decl. Natalie Bezek, **Exhibit M**, ¶¶ 1-2. Spotify collected the Chicago amusement tax from Natlie Bezek in the amount of \$9.00, even for the months after she moved out of Chicago. *Id.* ¶¶ 3-4.

32. Emily Rose was a resident of Chicago, Illinois from prior to June 2015 until September 2016, and paid for subscriptions to Netflix from November 2015 to October 2016, Hulu from September 2015 to October 2016, and Amazon Prime since January 2015. Decl. Emily Rose, **Exhibit N**, ¶¶ 1-2. Netflix collected the amusement tax in the amount of \$8.64 from Emily Rose, including for the months of October and November 2016 after she moved out of Chicago in September 2016. *Id*. ¶¶ 3-5. Hulu and Amazon Prime never collected the Chicago amusement tax from Ms. Rose. *Id*. ¶¶ 6-7.

#### **Summary Judgment Standard**

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c). Inferences may be drawn from undisputed facts, and summary judgment should be denied only where reasonable persons could draw divergent inferences from the undisputed facts. *Pyne v*. *Witmer*, 129 Ill. 2d 351, 358 (1989). General assertions unsupported by any evidentiary facts are insufficient to raise a triable issue as against uncontroverted evidentiary matter. *Purdy Co. of Illinois v. Transportation Ins. Co.*, 209 Ill. App. 3d 519, 529 (1st Dist. 1991).

#### **Argument**

I. The City's application of the amusement tax to streaming services exceeds its authority to tax under Article VII, Section 6(a) of the Illinois Constitution.

Article VII, Section 6(i) of the Illinois Constitution provides that "home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." It is axiomatic that home rule units have no jurisdiction beyond their corporate limits except what is expressly granted by the legislature.

Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431, 434 (2006). "Thus, home rule units may not extend their home rule powers, such as the taxing power, beyond their borders unless expressly authorized by the General Assembly." Hertz Corp. v. City of Chi., 2017 IL 119945, ¶ 14. Here, the amusement tax on streaming services applies beyond Chicago corporate limits, and the Illinois General Assembly has not expressly authorized the City to tax streaming services beyond its borders.

The amusement tax on streaming services imposes a 9% tax on customers of streaming services who have Chicago billing addresses regardless of whether those customers ever actually consume those streaming services in or outside of Chicago. As a result, the amusement tax on streaming services inevitably has the extraterritorial effect of taxing customers with Chicago billing addresses who only use a service outside of Chicago and therefore exceeds the grant of the authority set forth by Article VII, Section 6(a).

Apart from the Ruling, the amusement tax applies to certain "amusement" activities in Chicago regardless of whether the patron of such amusement lives in or outside of the city. For example, a person who purchases tickets to see the Chicago Blackhawks play hockey at the United Center in Chicago must pay the 9% amusement tax on the price of those tickets regardless of whether he or she lives in Chicago. But Chicago does not, and cannot, impose the amusement tax on patrons, even those who live in Chicago, of activities that do not take place in Chicago. Thus, a person who purchases tickets to see the Chicago Wolves play hockey at Allstate Arena, in Rosemont, just outside of Chicago, pays no amusement tax to the City – even if the purchaser lives in Chicago.

That only makes sense – but that is not how the Ruling applies the amusement tax to streaming services. Under the Ruling, the 9% amusement tax is applied to charges for streaming

services for any customer who provides a Chicago billing address, regardless of whether that customer uses those services in Chicago or somewhere else. Thus, the amusement tax applies to streaming services without regard to whether the consumption of those services takes place within Chicago: Everyone with a Chicago billing address pays the tax even if they only use a service outside Chicago, and everyone without a Chicago billing address does not pay the tax, even if they only use those services within Chicago.

If the City applied the amusement tax to amusements generally in the same way it applies the tax to streaming services, it would charge persons with a billing address in Chicago when they purchase tickets for any amusement anywhere – such as a hockey game in Rosemont – but would not tax persons who do not have a billing address in Chicago when they purchase tickets for any amusements that physically take place in Chicago – like a hockey game at the United Center.

And that would obviously exceed the City's constitutional taxing authority under Article VII, Section 6 of the Illinois Constitution.

Indeed, the Illinois Supreme Court has recently held that Chicago has no authority to tax activities outside its borders except where the Illinois General Assembly has explicitly authorized it to do so. *See Hertz Corp.*, 2017 IL 119945, ¶ 14. In *Hertz*, the City of Chicago attempted to impose its lease tax on all Chicago residents who leased vehicles from suburban vehicle rental agencies located within three miles of Chicago's borders – based on the assumption that all Chicago residents would use the rental vehicles primarily in the City – in the absence of written proof that a Chicago resident customer would use the vehicle primarily outside of Chicago. *Id.* at ¶ 5. In contrast, the City did not impose the lease tax on persons who were not Chicago residents who leased vehicles from such suburban vehicle rental agencies. *Id.* The Illinois Supreme Court found that the City had improperly extended its home rule power to

tax beyond its borders because it imposed the lease tax "not on actual use within the City's borders but on the lessee's stated intent to use the property in Chicago or, failing any statement of intent, on presumed use based upon the lessee's residence address." *Id.* at ¶ 29.

The Ruling's application of the amusement tax is analogous to the City's application of the lease tax that the Court struck down in *Hertz*. The Ruling's imposition of the amusement tax on streaming services is not based on actual use within the city's borders but on "the conclusive presumption of taxability based on residency" – or in this case a Chicago billing address. Those with a Chicago billing address are presumed to use streaming services in Chicago, while those without a Chicago billing address are presumed to not use streaming services in Chicago. And unlike the lease tax ruling in *Hertz*, the Ruling does not provide any way for a customer with a Chicago billing address to overcome the presumption that he or she will use streaming services exclusively in Chicago. That means that the City will *always* impose the amusement tax on streaming services used outside of Chicago by customers with a Chicago billing address.

Like the lease tax in *Hertz*, the amusement tax on streaming services is a tax on activities that take place outside of Chicago's borders. And, like the City's extraterritorial application of the lease tax, the Ruling's application of the amusement tax to activities outside its borders has not been expressly authorized by the General Assembly. *See Seigles, Inc.*, 365 Ill. App. 3d at 434. Therefore, the Ruling, like the City's application of the lease tax, exceeds the City's constitutional authority and is therefore invalid.

The Ruling's text attempts to justify its taxation of extraterritorial activities by citing the state's Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq. ("Mobile Sourcing Act"). SOF 12. But a statutory authorization for a municipality's extraterritorial exercise of power must be express, not implied. *Seigles, Inc.*, 365 Ill. App. 3d at 435. And the

Mobile Sourcing Act does not expressly authorize the City to impose the amusement tax on customers of streaming services with Chicago billing addresses when they use those services outside of Chicago.

The Mobile Sourcing Act allows a municipality to tax charges paid by customers of "mobile telecommunications services" provided by a "home service provider" if the customer's place of primary use is within the territorial limits of that municipality. 35 ILCS 638/20(b). And the Mobile Sourcing Act allows a municipality to tax a cell phone customer if his or her residential street address or primary business street address and the cell phone service provider's licensed service area are in the municipality's boundaries. 35 ILCS 638/10.

But that has nothing to do with streaming services. Streaming services are not "mobile telecommunications services," which the law defines as radio communication services carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, 47 C.F.R. § 20.3; 35 ILCS 638/10, and which are essentially cellular services that provide telephone and Internet access. And the providers of streaming services are not "home service providers," which the law defines as a facilities-based carriers or resellers with a customer contract for the provision of mobile telecommunications services, 35 ILCS 638/10 – in other words, cellular service providers like Verizon and Sprint. Therefore, the Mobile Sourcing Act does not provide the City with any *express* authority to tax streaming services that are used outside of its borders. *See Seigles, Inc.*, 365 Ill. App. 3d at 434.

For these reasons, the Ruling's application of the amusement tax on streaming services exceeds the City's constitutional authority to tax amusements, and this Court should declare the Ruling invalid and enjoin its enforcement.

# II. The amusement tax applies to streaming services differently than it applies to in-person amusements in violation of the Uniformity Clause of the Illinois Constitution.

The Uniformity Clause (Article IX, § 2) of the Illinois Constitution provides:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

This clause "imposes more stringent limitations than the equal protection clause on the legislature's authority to classify the subjects and objects of taxation." *Allegro Servs. v. Metro. Pier & Exposition Auth.*, 172 Ill. 2d 243, 249 (1996). The test that courts apply in Uniformity Clause cases (the *Searle* test) is "well-established": "a non-property tax must be based on a real and substantial difference between the people taxed and not taxed, and must bear some reasonable relationship to the object of the legislation or to public policy." *Geja's Cafe v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 247 (1992) (citing *Searle Pharmaceuticals, Inc. v. Dep't of Revenue*, 117 Ill. 2d 454, 468 (1987)).

A plaintiff is not required to come forward with any and all conceivable explanations for the tax and then prove each one unreasonable; upon a good-faith uniformity challenge, a taxing body must produce a justification for its classifications. *Geja's Cafe*, 153 Ill. 2d at 248. It then becomes the plaintiff's burden to persuade the court that the purported justification is insufficient, either as a matter of law or as unsupported by the facts. *Id.* at 248-49; *see also Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 72 (2008).

## A. The amusement tax violates the Uniformity Clause because it applies to streaming services differently than it applies it other amusements.

The amusement tax, by its terms, applies to amusements *within the City of Chicago*. Chi. Mun. Code 4-156-020. But the way that the City imposes the amusement tax on streaming

services treats customers of streaming services differently based on the billing addresses of those customers, not based on whether such customers use streaming services in Chicago.

While the purported purpose of the amusement tax is to tax customers for the privilege of using streaming services and other amusements that take place in Chicago, the Ruling *only* applies the tax to customers of streaming services with Chicago billing addresses regardless of whether they use those services in Chicago, and *never* applies to customers of streaming services that do not have Chicago billing addresses, even if those customers use those streaming services in Chicago. In contrast, the amusement tax otherwise applies *only* to customers of all other amusements who incur charges for amusements that take place in Chicago, and *never* applies to customers of amusements who incur charges for amusements that take place outside of Chicago, even if those customers are Chicago residents, or have Chicago billing addresses.

In *Searle*, the Illinois Supreme Court found that there is no real and substantial difference between a corporation that is a member of an affiliated corporate group and elects to file a federal consolidated income tax return and a corporation that is a member of an affiliated corporate group and does not elect to file a consolidated corporate Federal income tax return, where the state permitted the latter to "carry back" an operating loss over the three previous years, but prohibited the former from doing so. 117 Ill. 2d at 469. The Illinois Supreme Court has also found that where two alcoholic products were virtually identical save for the method of production of their alcoholic content, there was no real and substantial difference between them, and the state could not tax one at a rate nearly eight times higher. *Federated Distribs., Inc. v. Johnson*, 125 Ill. 2d 1, 21 (1988). The Court found that taxing these virtually identical low-alcohol products at different rates bore no reasonable relationship to the object of the legislation

 to promote temperance in the consumption of alcohol – and in fact, it would actually frustrate that purpose. *Id*.

The City's inconsistent application of the amusement tax is similarly irrational. There is no "real and substantial difference" between customers of streaming services who are taxed under the Ruling and those who are not that is rationally related to the City's objective in taxing amusements that take place within Chicago. There is no "real and substantial difference" between customers of streaming services who do not live in Chicago but use those services in Chicago – who are not taxed – and customers of other amusements that take place in Chicago and do not live in Chicago – who are taxed. Similarly, there is no "real and substantial difference" between customers of streaming services who live in Chicago but use streaming services outside of Chicago – who are taxed – and customers of other amusements that take place outside of Chicago and live in Chicago – who are not taxed. The only difference is the type of amusement that the customer is paying for – either in or outside of Chicago.

Further, there is no rational relationship between the different applications of the amusement tax to streaming services and other amusements and the object of the amusement tax. The purpose of the amusement tax is to tax charges paid on amusements that take place in Chicago, and the amusement tax does, in general, only tax amusements that tax place within Chicago – but not with respect to streaming services, which the City taxes not based on whether they are used in Chicago but based on a customer's billing address, which has no necessary relationship to where the customer uses the service. Thus, the Ruling's application of the amusement tax to streaming services violates the Uniformity Clause.

# B. The Ruling violates the Uniformity Clause because it subjects streaming services to greater taxation than automatic amusement machines that deliver the same types of entertainment.

The amusement tax also violates the Uniformity Clause for a second reason: because it does not apply to "automatic amusement machines," that provide video, music, and gaming entertainment, such as video machines, jukeboxes, and pinball machines, SOF 5, but, under the Ruling, does apply to streaming services, similar services transmitted over the Internet that provide video, music, and gaming. The Code exempts use of automatic amusement machines from the amusement tax and instead subjects their operators to a \$150 tax per year per device. SOF 4.

There is no "real and substantial difference" between customers of automatic amusement machines and customers of streaming services that justifies exempting the former from taxation and taxing the latter. Both services provide on-demand video, music, or gaming entertainment. For example, Spotify, an Internet music service, allows consumers to access recorded music from a library of music for a fee, SOF 23, – just as a jukebox does. The Sold allows one to play videogames, SOF 24, just as a coin-operated video game machine does, and Netflix allows one to watch videos, SOF 21, just as a video booth does. Yet customers of streaming services are taxed at 9%, while customers of automatic amusement machines are not taxed at all. The only difference between customers of automatic amusement machines and customers of streaming services is how the customer accesses the video, audio, or gaming entertainment.

When Chicago imposed its transaction tax on coin-operated self-serve car washes, while exempting automatic car washes, the First District Court of Appeals found no real and

<sup>&</sup>lt;sup>1</sup> Modern jukeboxes, incidentally, can operates by allowing one to choose a song from a library on the Internet. *See, e.g,* Internet jukeboxes offer countless tunes, GMA News Online, http://www.gmanetwork.com/news/scitech/content/7070/internet-jukeboxes-offer-countless-tunes/story.

substantial difference between self-serve car washes and automatic car washes, calling it an "artificial distinction . . . based solely on the customer's hands-on participation in [the self-serve] wash process." *Nat'l Pride of Chicago, Inc. v. Chicago*, 206 Ill. App. 3d 1090, 1104-05 (1st Dist. 1990). The distinction between streaming services and automatic amusement machines is similarly arbitrary.

In addition, the tax on customers of streaming services, but not customers of automatic amusement machines does not bear a reasonable relationship to the object of the legislation or to public policy. The purported purpose of the amusement tax is to tax customers of amusements that take place in Chicago. But exempting customers of automatic amusement machines in Chicago does not serve that purpose.

C. The Ruling violates the Uniformity Clause because it taxes certain performances delivered through streaming services at a higher rate than it taxes in-person live performances.

The Ruling also violates the Uniformity Clause for a third reason: because it taxes certain performances at a higher rate than the Code taxes those same performances when they are consumed in person. The Code exempts from the amusement tax "admission fees to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons," and taxes such performances in a space with a capacity of greater than 750 persons at a reduced rate of 5%. SOF 6. The City asserts that the purpose of the exemption is to "foster the production of live performances that offer theatrical, musical or cultural enrichment to the city's residents and visitors." Chicago Amend Coun. J. 11-12-98, p. 81835, **Exhibit O**.

There is no real and substantial difference between live theatrical, musical, or cultural performances and streaming services providing similar or identical performances. The only difference is that live performances take place at a specific venue in Chicago, whereas such customers of streaming services can view similar performances from anywhere. This is not a difference in substance; it is a difference in form. The substance – the performances – are the same; it is only the form – whether one is watching at a specific venue or on the Internet – that is different.

In addition, exempting (or applying a reduced rate to) live theatrical, musical, or cultural performances from the amusement tax while applying the tax to streaming services that provide similar or identical performances bears no reasonable relationship to the object of the legislation or to public policy. The City's purpose is to foster the production of live performances that offer theatrical, musical, or cultural enrichment to the City's residents and visitors, and viewing such performances over the Internet furthers that purpose. City residents who view such performances on the Internet can be just as enriched as persons who view them in person, and those who produce such performances can profit from having them sold through streaming services. The reality is that the City is simply using the amusement tax to benefit certain amusements that it likes at the expense of other amusements. That's exactly what the Uniformity Clause prohibits.

For these reasons, the City's favorable treatment of live theater, musical, or cultural performances by eliminating or reducing the amusement tax on those performance, while imposing the amusement tax on similar streaming services violates the Uniformity Clause.

### III. The amusement tax discriminates against electronic commerce in violation of the Internet Tax Freedom Act.

The Internet Tax Freedom Act ("ITFA"), which is set forth in a note to 47 U.S.C. § 151, provides that no state or political subdivision of a state may impose multiple or discriminatory

taxes on electronic commerce. ITFA § 1101(a). Congress enacted ITFA to "foster the growth of electronic commerce and the Internet by facilitating the development of a fair and consistent Internet tax policy." S. Report No. 105-184, at 1 (1998). One of ITFA's primary purposes is to prevent state and local taxing authorities from imposing discriminatory taxes on electronic commerce that would stifle its development. *See, e.g.*, H.R. Rep. No. 105-808, pt. 1, at 8–9 (1998) (explaining that discriminatory state taxation could prevent electronic commerce from becoming ubiquitous); S. Rep. No. 105-184, at 2, 11 (1998) (stating that ITFA was intended to encourage "policies on taxation that eliminate any disproportionate burden on interstate commerce conducted electronically and establish a level playing field between electronic commerce using the new media of the Internet and traditional means of commerce").

ITFA accordingly imposes a moratorium on "discriminatory taxes on electronic commerce." ITFA § 1101(a)(2). Further, Congress recently enacted a permanent moratorium on discriminatory taxes on electronic commerce with the Trade Facilitation and Trade Enforcement Act of 2015, 114 Pub. L. No. 125, § 922, 130 Stat. 122 (2016). "Electronic commerce" is "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access." ITFA § 1105(3). The term "tax" under the ITFA includes those that a seller is required to collect and remit. ITFA § 1105(8). A tax on electronic commerce tax is deemed to be a "discriminatory tax" if it:

- (i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means; [or]
- (ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means . . .; [or]

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means . . . .

Id. § 1105(2)(A)(i)-(iii). ITFA does not prohibit the taxation of electronic commerce transactions per se but does prohibit jurisdictions from imposing greater tax burdens on electronic transactions when such burdens are not imposed on traditional commerce. Moreover, in determining the existence of discrimination, ITFA compares transactions that are "similar"; they need not be identical.

ITFA prohibits the City from imposing a tax at a different rate on services provided over the Internet, such as streaming services, than on transactions involving similar services provided through other means, ITFA, § 1105(2)(A)(ii), and from imposing an obligation to pay the tax on a different person or entity on services provided by the Internet, than on transactions involving similar services provided through other means, ITFA § 1105(2)(A)(iii).

The Illinois Supreme Court recently addressed whether a state statute violated ITFA by requiring out-of-state retailers to collect use taxes on performance marking sales exceeding \$10,000. *Performance Mktg. Ass'n v. Hamer*, 2013 IL 114496, ¶ 23. "Performance marketing" refers to marketing or advertising programs in which a person or organization that publishes or displays an advertisement is paid by a retailer when a specific action, such as a sale, is completed. *Id.* at ¶ 8. The statute imposed the use tax obligation on out-of-state retailers that made sales through performance marketing over the Internet, but did not impose the obligation on out-of-state retailers conducting performance marketing activities through print media or on over-the-air broadcasting in Illinois. *Id.* at ¶ 23. The Court held that the statute violated ITFA because it only applied to online performance marketing and therefore imposed a discriminatory tax on electronic commerce.

Similarly, under the Ruling, the amusement tax imposes an unlawful discriminatory tax on electronic commerce by taxing streaming services but not on similar amusements that take place in person in Chicago.

The Ruling's imposition of the amusement tax on streaming services violates ITFA because, as explained in Section II.B, it requires customers of streaming services to pay the amusement tax, even as the Code entirely exempts users of "automatic amusement machines," – which also allow users to watch videos, listen to music, and play games – from taxation. Rather, the City imposes a \$150 tax per year per device on the operator of the automatic amusement machine. Thus, the City taxes entertainment that is delivered through the Internet at a higher rate than it taxes identical entertainment that is not delivered through the Internet – precisely what ITFA prohibits.

In addition, the application of the amusement tax on streaming services violates ITFA because, as explained in Section II.C, live theatrical, musical, and cultural performances at theaters and other venues are either exempt from the amusement tax or are taxed at a lower rate, depending on the size of the venue. Streaming services that provide access to similar or identical theatrical, musical, or cultural performance over the Internet are subject to the 9% amusement tax, and thus are tax at a higher rate than similar live in-person theatrical, musical, and cultural performances.

Defendants cannot distinguish between live performances in a theater or other venue and those delivered through the Internet by asserting, as they do, that the two are different because the experience of watching an in-person performance is different from the experience of watching a performance on the Internet. That is the exact distinction that ITFA prohibits: treating a product delivered online as though it is different simply because it is delivered online. No

doubt the "experience" of participating in performance marketing delivered over the Internet is much different from the experience of participating in performance marketing delivered in print or on an over-the-air broadcast – but the Illinois Supreme Court nonetheless held that the state could not impose a use-tax obligation on one but not the other. *Performance Mktg.*, 2013 IL at ¶ 23. Likewise, in this case, streaming services provide theatrical, musical, and cultural performances as those performed live and in person. The fact that the latter provide a different experience that are similar (and sometimes identical) in content to those performed live and in person. The fact that the latter may provide a different experience because they are in person and not on the Internet, is not an appropriate distinction to make under ITFA; it is the very distinction that ITFA prohibits. Therefore, the Ruling's application of the amusement tax to streaming services violates ITFA.

# IV. The amusement tax applies to streaming services that are used outside Chicago in violation of the Commerce Clause of the United States Constitution.

The Commerce Clause (Article I, Section 8, Clause 3) of the United States Constitution prohibits state interference with interstate commerce. A local tax satisfies the Commerce Clause only if it "(1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977); *Quill Corp. v. North Dakota*, 504 U.S. 298, 311 (1992). The Ruling's application of the Amusement Tax to Internet services violates requirements (1), (2) and (4).

## A. There is no substantial nexus between Chicago and streaming services.

The Ruling's application of the amusement tax to streaming services does not satisfy the substantial-nexus requirement. For an activity to have a substantial nexus with a particular

jurisdiction, there must be a connection between the jurisdiction and the activity itself – not just a connection between the jurisdiction and the actor the government seeks to tax. *Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768, 778 (1992).

In *National Bellas Hess v. Department of Revenue*, 386 U.S. 753 (1967), the Supreme Court struck down an attempt by Illinois to require an out-of-state mail-order house to collect the state's use tax when its only connection with Illinois customers was by delivery of goods by common carrier or mail. *Id.* at 754. The company owned no tangible property in Illinois, had no sales outlets, representatives, telephone listings, or solicitors in Illinois, and did not advertise in Illinois by radio, television, billboards, or newspapers. *Id.* The Court concluded that the company's contacts were insufficient to satisfy the substantial-nexus requirement. *Id.* at 759. As the Supreme Court later explained, *Bellas Hess* stands for the proposition that a vendor whose only contacts with the taxing State are by mail or common carrier lacks the "substantial nexus" required by the Commerce Clause. *Quill Corp.*, 504 U.S. at 311.

Under the Ruling, there is no substantial nexus between streaming services that are taxed and Chicago. The Ruling's use of billing addresses as a proxy for use of streaming services within the city does not ensure a substantial nexus between the City and activities it is taxing. Again, the substantial-nexus rule requires that the City have a connection with the *activity* is taxing – not just the *actor* who pays the tax. *Allied-Signal*, *Inc.*, 504 U.S. at 778. But the Ruling's taxation based on billing addresses ensures only (at most) that the City has a connection with the actor who pays the tax – it does not ensure that the City has any connection with the activity being taxed because, as discussed above, a customer with a Chicago billing address might consume streaming services entirely outside Chicago. The Ruling therefore fails the substantial-nexus requirement and violates the Commerce Clause.

## B. There is no fair apportionment between the tax and the customer's use of streaming services.

In addition, the Ruling's tax on streaming services does not satisfy the fair-apportionment requirement of the Commerce Clause test because the tax is imposed when the customer is witnessing, viewing, or participating in amusements outside of Chicago. "The primary purpose of the fair apportionment prong . . . is to prevent multiple taxation by 'ensur[ing] that each State taxes only its fair share of an interstate transaction." *Irwin Indus. Tool Co. v. Ill. Dep't of Revenue*, 238 Ill. 2d 332, 345 (2010) (citation omitted). To be fairly apportioned, a tax must be internally and externally consistent. *Id.* at 345-46. To be internally consistent, a tax must be structured so that, if every state were to impose the same tax, no multiple taxation would result. *Id.* at 346. To be externally consistent, a tax must apply only to that portion of the revenues from the interstate activity that reasonably reflects the in-state component of the activity being taxed. The Court thus examines "the in-state business activity which triggers the taxable event and the practical or economic effect of the tax on that interstate activity." *Id.* (quoting *Goldberg v. Sweet*, 488 U.S. 252, 260-61 (1989)).

Here, the Ruling's tax on streaming services is not externally consistent – it does not apply only to that portion of the revenues from the interstate activity that reasonably reflects the instate component of the activity being taxed. The City taxes streaming services based on the customer's billing address, not where the customer uses those services. The Ruling's tax on streaming services is all or nothing: If you have a billing address in Chicago, you pay the tax; if you don't have a billing address in Chicago, you don't pay the tax, regardless of how much you use those streaming services in Chicago.

## C. The tax on streaming services is not fairly related to the extent of the contact with Chicago.

Finally, the Ruling's tax on streaming services does not satisfy the fairly related requirement. The "fairly related" prong of the Commerce Clause test requires that "the measure of the tax must be reasonably related to the extent of the contact." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 626 (1981). Here, the tax on streaming services is not reasonably related to the extent of the contact with Chicago. As stated through this brief, the City imposes the tax on streaming services only on those who have a Chicago billing address, but does not impose the tax on those without a Chicago billing address. Allowing the City to tax amusements simply because a customer has a billing address in the City, would allow the City to tax all Chicago residents who pay for amusements outside of the city. This is not enough to satisfy the fourth prong – that the tax is fairly related to contact of the activity with Chicago.

#### Conclusion

Plaintiffs ask the Court to enter summary judgment (1) declaring that the Ruling's application of the amusement tax to streaming services violates Article VII, Section 6 and the Uniformity Clause of the Illinois Constitution, the Internet Tax Freedom Act, and the Commerce Clause of the U.S. Constitution; (2) enjoining the City from collecting the Ruling's tax on streaming services; and (2) awarding the Plaintiffs \$166.86 in damages for the amount in amusement taxes collected from each of them for their use of streaming services.

Dated: September 27, 2017

Respectfully submitted,

One of their attorneys

Jeffrey M. Schwab (#6290710) Jacob H. Huebert (#6305339) Liberty Justice Center (#49098) 190 S. LaSalle Street, Suite 1500 Chicago, Illinois 60603 Telephone (312) 263-7668 Facsimile (312) 263-7702 jschwab@libertyjusticecenter.org jhuebert@libertyjusticecenter.org

#### **CERTIFICATE OF SERVICE**

I, Jeffrey Schwab, an attorney, hereby certify that on September 27, 2017, I served the foregoing Plaintiffs' Motion For Summary Judgment on Defendants' counsel of record by the Court's Electronic Filing System and electronic mail to Steve Tomiello (Steven.Tomiello@cityofchicago.org).

Jeffrey M. Schwab

# ELECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399 PAGE 32 of 32

#### IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION TAX AND MISCELLANEOUS REMEDIES SECTION

MICHAEL LABELL, et al.	)			
Plaintiffs,	) Case No. 2015 CH 13399			
v.	) (Transferred to Law)			
THE CITY OF CHICAGO, et al.	)			
Defendants.	)			
PLAINTIFFS' I	LIST OF EXHIBITS			
Exhibit A – Chi. Mun. Code § 4-156-010, et se	eq.			
Exhibit B – Amusement Tax Ruling #5				
Exhibit C – 2016 Chi. Revenue Ordinance				
Exhibit D – Deposition of Mark Pekic				
Exhibit E – Plaintiffs' Responses to Defendants' Requests for Documents				
Exhibit F – Declaration of Michael Labell				
Exhibit G – Declaration of Jared Labell				
Exhibit H – Declaration of Forrest Jehlik				
Exhibit I – Declaration of Zack Urevig				
Exhibit J – Deposition of Zack Urevig				
Exhibit K – Declaration of Bryant Jackson-Gre	een			
Exhibit L – Deposition of Bryant Jackson-Gree	en			
Exhibit M – Declaration of Natalie Bezek				
Exhibit N – Declaration of Emily Rose				

Exhibit O - Chi. Amd. Coun. J. 11-12-98

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 16
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit A

#### Municipal Code of Chicago

#### CHAPTER 4-156 AMUSEMENTS

#### **Article I. Amusements**

	4-156	-010	Definitions.
	4-156	-020	Tax imposed.
	4-156	-030	Collection, payment and accounting.
4-156-033		-032	Additional tax imposed on tour boat operators.
		-033	Reserved.
		-034	Rules and regulations.
4-156-035		-035	<b>Application of Uniform Revenue Procedures Ordinance.</b>
4-156-040		-040	Raffles – Terms defined.
_	4-156	050	Raffles – Licenses – Issuance by city clerk.
≓.	4-156	-060	Raffles – Licenses – Requirements.
	4-156	-070	Raffles – Separate licenses – Fee – Term.
	₹ 2481.56	-080	Raffle tickets.
CALI	74 <u>7</u> 1 <u>5</u> 6	-090	Raffles – Prizes – Fees.
ELECTRONI	245€ 245€	-100	Raffles – Publication of rules and regulations.
ECTI	94-156	·110	Raffles – Fee exemption conditions.
E	4-156	-120	Auxiliaries and affiliates of organizations.
	4-156	-125	Intertrack wagering.
_	4-156	-130	Reserved.
	4-156	-140	Violations – Penalty.
			Article II. Automatic Amusement Devices
	4-156	-150	Definitions.
	4-156	-160	Tax imposed.
4-156-170		-170	Tax emblem.
	4-156	-180	Installation prerequisites.
	4-156	-190	Seizure for unlawful use.

4-156-230 Number of devices limited.

**4-156-200** Reserved.

4-156-210 Reserved.

4-156-220 Reserved.

4-156-240 Reserved. 4-156-260 Reserved. 4-156-270 Restrictions on use by minors. 4-156-280 Violation – Penalty. **Article III. Public Places of Amusement** 4-156-290 Definition. 4-156-300 License – Required – Special requirements for establishments catering to minors. 4-156-305 License – Exceptions. 4-156-310 License – Application – Contents. 4-156-311 Notice requirements; objections. 4-156-320 License – Application – Approval conditions. 4-156-321 Contingent approval. 4-156-330 Location restrictions. 4-156 340 Written guaranty required. 4-156-350 Occupancy enforcement. ইন্দ্রা<u>ছ</u>6-355 License – Issuance prohibited. 156 360 License – Fees. 24286-380 Public place of amusement – Exit diagram. 4-156-390 Ticket sales. 4-156-400 Reserved. 4-156-410 Motion picture theaters – Billboard contents. 4-156-420 Billiard rooms and poolrooms. **4-156-424** Outdoor patio. 4-156-430 Athletic contests at night and on weekday afternoons; restrictions. 4-156-435 Unregulated exhibition where intent is to harm a contestant – Prohibited – Enforcement. 4-156-440 Ventilation. 4-156-450 Gambling. **4-156-460 Drinking water.** 4-156-470 License – Statement of conditions. 4-156-480 Liability for certain additional city services. 4-156-484 Reserved. 4-156-485 License restrictions. 4-156-490 Reserved.

4-156-500 Sports plaza – Additional requirements. **4-156-510 Violation** – **Penalty.** 4-156-520 Construction of chapter. **Article IV. Indoor Special Events 4-156-530 Definitions. 4-156-540** License – Required. 4-156-550 Reserved. 4-156-560 Reserved. 4-156-570 Issuance of license – Prohibited when. 4-156-580 License – Term. 4-156-590 License – Posting – Transferability – Notice of changes. 4-156-600 License – Application – Deadline. 4-156-610 License fee. 4-156-620 Insurance – Required. 4-156 630 Indemnification agreement – Required. 돌아 640 Legal duties. THE 6 650 Unlawful acts. 1236-660 License – Suspension – Revocation. 4-156-670 Judicial review. 4-156-680 **Regulations.** 4-156-700 Violation – Penalty. **Article V. Performing Arts Venues** 4-156-710 **Definitions.** 4-156-720 License – Required. 4-156-730 License – Application – Contents. 4-156-740 Reserved. 4-156-750 Reserved. Article VI. Industrial Private Event Venue **4-156-800 Definitions.** 4-156-810 License required. 4-156-820 Issuance of license – Prohibited when. 4-156-830 License – Application. 4-156-840 Notice.

- 4-156-850 Denial of a license.
- 4-156-860 License fee.
- 4-156-870 Insurance Required.
- 4-156-875 License Posting Transferability Notice of changes.
- **4-156-880** Legal duties.
- 4-156-890 Unlawful acts.
- 4-156-900 License Suspension Revocation.
- 4-156-910 Judicial review.
- **4-156-920 Regulations.**
- 4-156-930 Joint and several liability for alcohol- related violations.
- 4-156-940 License revocation Waiting period for new license.
- 4-156-950 Violation Penalty.

#### ARTICLE I. AMUSEMENTS (4-156-010 et seq.)

#### 4-156-010 **Definitions.**

For purposes of this chapter:

Separation of purposes of this chapter:

For purposes of this chapter:

Separation of of this chapter:

S or pool games; (2) any entertainment or recreational activity offered for public participation or on a membership or other basis including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, bodybuilding or similar activities; or (3) any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means.

"Arcade" means a place of amusement that includes four or more automatic amusement devices; provided, however, that when calculating the number of automatic amusement devices, jukeboxes shall not be counted.

"Charges paid" means the gross amount of consideration paid for the privilege to enter, to witness, to view or to participate in an amusement, valued in money, whether received in money or otherwise, including cash, credits, property and services, determined without any deduction for costs or expenses whatsoever, but not including charges that are added on account of the tax imposed by this chapter or on account of any other tax imposed on the charge.

"Legal voter" means a person who has registered to vote and whose name appears on a poll sheet from the last preceding election regardless of whether primary, general or special.

"License" means a ticket or other license granting the privilege to enter, to witness, to view or to participate in an amusement, or the opportunity to obtain the privilege to enter, to witness, to view or to participate in an amusement, and includes but is not limited to a permanent seat license.

"Live theatrical, live musical or other live cultural performance" means a live performance in any of the disciplines which are commonly regarded as part of the fine arts, such as live theater, music, opera, drama, comedy, ballet, modern or traditional dance, and book or poetry readings. The term does not include such

amusements as athletic events, races or performances conducted at adult entertainment cabarets (as defined in Chapter 16-16 of this Code).

"Maximum capacity", for the sole purposes of the exemption and lower rate provided in Section 4-156-020, means the number of persons that an auditorium, theater or other space may accommodate as determined by the building commissioner pursuant to Chapter 13-36 of this Code or by any other appropriate government official; provided, however, that "maximum capacity" shall not exceed the maximum number of tickets or admissions that may be made available for sale to a performance as stated in any binding written agreement relating to that performance. If the number of tickets or admissions actually sold to a performance exceeds the legally permissible limit, for purposes of determining the applicable tax, "maximum capacity" shall mean such greater number.

"Operator" means any person who sells or resells a ticket or other license to an amusement for consideration or who, directly or indirectly, receives or collects the charges paid for the sale or resale of a ticket or other license to an amusement. The term includes, but is not limited to, persons engaged in the business of selling or reselling tickets or other licenses to amusements, whether on-line, in person or otherwise. The term also includes persons engaged in the business of facilitating the sale or resale of tickets or other licenses to amusements, whether on-line, in person or otherwise.

"Owner" means: (1) with respect to the owner of a place where an 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 an amusement in such place; (2) with respect to the owner of an amusement, any person which has an ownership or leasehold interest in such amusement or any person who has a proprietary interest in the amusement so as to entitle such person to all or a portion of the proceeds, after payment of able expenses, from the operation, conduct or presentation of such amusement, excluding proceeds from the operation sales of tangible personal property; (3) with any person operating a the patron for furnishing, transmitting, or otherwise providing access to paid television programming.

"Paid television" means 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.

"Patron" means a person who acquires the privilege to enter, to witness, to view or to participate in an amusement.

"Person" means 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.

"Resale" means the resale of a ticket or other license to an amusement after the ticket or other license has been sold by the owner, manager or operator of the amusement, or by the owner, manager or operator of the place where the amusement is being held, to an independent and unrelated third party.

"Reseller" means a person who resells a ticket or other license to an amusement for consideration. The term includes but is not limited to ticket brokers, and applies whether the ticket is resold by bidding, consignment or otherwise, and whether the ticket is resold in person, at a site on the Internet or otherwise.

"Special seating area" means an enclosed or substantially enclosed apartment-style room containing or making available amenities for the exclusive use of the patrons thereof whether denominated as luxury or super suites or skyboxes or by other similar terms. Such amenities may include, but are not necessarily limited to, television (including closed-circuit capacity), bathroom, refrigerator, telephone service, storage sink, living room or lounge furniture, special spectator seating, food, heat, air conditioning and parking.

"Ticket" means the privilege to enter, to witness, to view or to participate in an amusement, whether or not expressed in a tangible form.

(Added Coun. J. 5-22-91, p. 335; Coun. J. 12-9-92, p. 25465; Amend Coun. J. 11-17-93, p. 42192; Amend Coun. J. 11-15-95, p. 11995; Amend Coun. J. 7-2-97, p. 48017; Amend Coun. J, 11-12-98, p. 81835; Amend Coun. J. 4-21-99, p. 91750; Amend Coun. J. 3-5-03, p. 104990, § 5; Amend Coun. J. 11-30-05, p. 62481, § 2; Amend Coun. J. 5-24-06, p. 76269, § 1; Amend Coun. J. 11-13-07, p. 14999, Art. II, § 1; Amend Coun. J. 11-13-07, p. 15814, § 1; Amend Coun. J. 12-12-07, p. 16789, § 2; Amend Coun. J. 11-19-08, p. 48243, Art. I, § 1; Amend Coun. J. 2-11-09, p. 54733, § 1; Amend Coun. J. 11-19-14, p. 98063, § 4; Amend Coun. J. 2-10-16, p. 18766, § 4)

#### 4-156-020 Tax imposed.

- A. Except as otherwise provided by this article, an amusement tax is imposed upon the patrons of every amusement within the City. The rate of the tax shall be equal to nine percent of the admission fees or other charges paid for the privilege to enter, to witness, to view or to participate in such amusement, unless subsection E or J of this section provides for a lower rate.
  - B. The tax imposed by subsection A shall not apply to the following persons or privileges:
    - (1) patrons of automatic amusement machines as defined in Article II of this chapter, or
- (2) the privilege of witnessing or participating in any stock show or business show that is not open to the general public, or
- (3) the privilege of hiring a horse-drawn carriage licensed under chapter 9-108 of this Code or a pedicab Ricensed under chapter 9-110 of this code, or the privilege of witnessing or participating in any amateur production or activity, such as amateur
- the privilege of witnessing or participating in any amateur production or activity, such as amateur athletic events, conducted by a not-for-profit organization operated exclusively for the privilege of participating in any amateur event, such as an amateur athletic event, where (event takes place primarily on the public way or other public property. (b) any required permits are obtained.
  - (41) the privilege of participating in any amateur event, such as an amateur athletic event, where (a) the event takes place primarily on the public way or other public property, (b) any required permits are obtained, (c) the event, or the organization conducting the event, is open to the public, (d) at least 100 individuals pay to participate in the event, and (e) the event will promote or celebrate the City, its civic institutions, or public activities or events in the City, and will promote the interests and welfare of the City, or
  - (5) subject to satisfying the requirement contained in subsection (C) of this section, the privilege of witnessing or participating in any amusement sponsored or conducted by and the proceeds of which, after payment of reasonable expenses, inure exclusively to the benefit of:
    - (a) religious, educational and charitable institutions, societies or organizations;
    - (b) societies or organizations for the prevention of cruelty to children or animals;
    - (c) societies or organizations conducted and maintained for the purpose of civic improvement;
  - (d) fraternal organizations, legion posts, social and political groups which conduct amusements, sponsored occasionally but not more often than twice yearly;

Provided, however, that the entities described in paragraphs (a) to (d) are 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;

(e) organizations or persons in the armed services of the United States, or National Guard organizations, reserve officers' associations, or organizations or posts of war veterans, or auxiliary units or societies of such

posts or organizations, if such posts, organizations, units or societies are organized in the State of Illinois, and if no part of their earnings inure to the benefit of any private shareholder or person;

(f) organizations or associations created and maintained for the purpose of benefiting the members, or dependents or heirs of members, of the police or fire departments of any political subdivision of the State of Illinois.

Provided that the exemptions contained in paragraphs (a) through (f) shall apply only to benefits or other fundraising events and shall not apply to more than two events per calendar year which shall not exceed a total of 14 calendar days;

- (g) societies or organizations conducted for the sole purpose of maintaining symphony orchestras, opera performances or artistic presentations, including, but not limited to, musical presentations ("artistic societies or organizations"), if the artistic society or organization (i) receives substantial support from voluntary contributions, (ii) is a not-for-profit institution where no part of the net earnings inure to the benefit of any private shareholder or person, and (iii) either (a) bears all risk of financial loss from its presentation of the amusement and the amusement is limited to an engagement of not more than eight calendar days over the course of a calendar year or (b) is substantially and materially involved in the production and performance of the amusement. Where an amusement is sponsored or conducted by two or more artistic societies or organizations, the requirements of subsections (i) and (ii) of this subsection 4-156-020(B)(5)(g) must be met by each of such artistic societies or organizations, but the requirements of subsection (iii) may be met by any of such artistic societies or organizations, individually or in combination.
- C. (1) None of the exemptions contained in subsection B(5) of this section shall apply to a person or privilege unless a written notice of the amusement is filed with the department of finance at least 30 calendar leaves prior to the amusement or 15 calendar days prior to the date that admission tickets to the amusement are raised available for sale, whichever is earlier. The notice shall be on a form prescribed by the comptroller, and shall contain all information and materials necessary to permit the department of finance to consider the exemption claimed by the applicant is applicable.
- Upon the request of the person filing the notice, the department of finance shall indicate within 14 calendar days after receiving the notice whether the claimed exemption does or does not apply, or whether additional information is necessary to make a determination.
- D. (1) The tax imposed in subsection A of this section shall not apply to or be imposed upon the admission fees to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons.
- (2) Initiation fees and membership dues paid to a health club, racquetball club, tennis club or a similar club or organization, when such club or organization is organized and operated on a membership basis and for the recreational purposes of its members and its members' guests, shall be exempt from the tax imposed in subsection A of this section. This exemption shall not be construed to apply to any fees paid or based upon, in any way whatsoever, a per-event or a per- admission basis.
- E. The rate of the tax imposed in subsection A of this section shall be five percent of the admission fees or other charges to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is more than 750 persons.
- F. The tax imposed in subsection A of this section shall apply to and be imposed upon 100 percent of the admission fees or other charges (including, but not limited to, the gross lease or rental amount) paid for the privilege of using special seating areas to witness or to view an amusement; provided, however, that the amusement tax that would otherwise be due upon such charges shall be reduced by any other city taxes imposed

on such charges, if such taxes are separately stated and paid by the patron, either directly or as an authorized reimbursement.

- G. It shall be presumed that all amusements are subject to tax under this article until the contrary is established by books, records or other documentary evidence.
- G.1. In the case of amusements that are delivered electronically to mobile devices, as in the case of video streaming, audio streaming and on-line 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. If those rules indicate that the tax applies, it shall be presumed that the tax does apply unless the contrary is established by books, records or other documentary evidence.
- H. For the purpose of determining the amount of the amusement tax due under Section 4-156-020, admission fees or other charges shall be computed exclusive of this tax, any federal, state or county taxes imposed upon the amusement patron and any separately stated optional charges for nonamusement services or for the sale or use of tangible personal property.
- I. It is unlawful for any person to produce, present, conduct, or resell tickets to, any amusement without collection of the tax, except as provided in this article.
- J. Notwithstanding subsections A and E of this section, the rate of the tax imposed upon the buyer of a ticket or other license in a resale transaction shall be equal to three and one-half percent of the admission fees or other charges paid for the ticket or other license in the resale transaction.

K. To prevent multiple taxation, any patron who pays the tax imposed by this chapter may claim a credit

- Amend Coun. J. 11-15-95, p. 91750; Amend Coun. J. 12-15-04, p. 39840, § 1; Amend Coun. J. 6-13-07, p. 1943, Amend Coun. J. 4-21-99, p. 91750; Amend Coun. J. 12-15-04, p. 39840, § 1; Amend Coun. J. 6-13-07, p. 1943,
  - § 1; Amend Coun. J. 11-13-07, p. 15814, § 1; Amend Coun. J. 11-19-08, p. 48243, Art. I, § 1; Amend Coun. J. 11-16-11, p. 13798, Art. I, § 4; Amend Coun. J. 11-26-13, p. 67528, § 2; Amend Coun. J. 4-30-14, p. 80633, § 4; Amend Coun. J. 11-19-14, p. 98063, § 4; Amend Coun. J. 10-28-15, p. 12062, Art. IV, § 1; Amend Coun. J. 11-16-16, p. 38042, Art. III, § 4)

#### 4-156-030 Collection, payment and accounting.

- A. It shall be the joint and several duty of every owner, manager or operator of an amusement or of a place where an amusement is being held, and of every reseller to secure from each patron or buyer the tax imposed by Section 4-156-020 of this article and to remit the tax to the Department of Finance not later than the 15th day of each calendar month for all admission fees or other charges received during the immediately preceding. A verified statement of admission fees or charges in a form prescribed by the Comptroller shall accompany each remittance. Acceptance by the City of any amount tendered in payment of the tax shall be without prejudice to any claim, demand or right on account of any deficiency.
- B. Every person required to collect and remit the tax imposed by Section 4-156-020 of this article, or pay the tax directly to the department of finance, shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transaction that gave rise, or may have given rise, to the tax liability or any exemption that may be claimed. All such books, records and accounts shall be available for inspection by the department of finance at all reasonable times during business hours of the day.
- C. Every owner, manager, operator, or reseller who is required to collect the tax imposed by Section 4-156-020 of this article shall be considered a tax collector for the city. All amusement tax collected shall 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 shall not excuse or release the patron from the obligation to pay the tax.

- D. Notwithstanding any other provision of this Code, in order to permit sound fiscal planning and budgeting by the city, no person shall be entitled to a refund of, or credit for, either tax imposed by this article unless the person files a claim for refund or credit within one year after the date on which the tax was paid or remitted to the department of finance. This provision shall apply to any claim for credit or refund for which the comptroller has not issued a final determination as of the effective date of this subsection 4-156-030(D).
  - E. [Reserved]
  - F. [Reserved]
- G. Notwithstanding any other provision of this chapter, for all periods beginning on or after January 1, 2000, (1) all tax returns shall be filed with the department of finance on an annual basis on or before August 15 of each year in accordance with Sections 3-4-186 and 3-4-189 of this Code, (2) all tax payments and remittances shall be made in accordance with either Section 3-4-187 (payment of actual tax liabilities) or Section 3-4-188 (payment of estimated taxes) and (3) the provisions of Sections 3-4-186, 3-4-187, 3-4-188 and 3-4-189 shall control over any contrary provisions in this chapter regarding the subjects covered by those sections.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 12-15-92, p. 27387; Amend Coun. J. 11-15-95, p. 11995; Amend Coun. J. 11-12-98, p. 81835; Amend Coun. J. 11-17-99, p. 18040, § 1.2; Amend Coun. J. 12-12-01, p. 75777, § 2.15; Amend Coun. J. 5-24-06, p. 76269, § 1; Amend Coun. J. 11-13-07, p. 15814, § 1; Amend Coun. J. 11-19-08, p. 48243, Art. I, § 4; Amend Coun. J. 11-16-11, p. 13798, Art. I, § 4; Amend Coun. J. 11-19-14, p. 98063, § 4; Amend Coun. J. 11-16-16, p. 38042, Art. III, § 4)

## 218156 032 Additional tax imposed on tour boat operators.

- In addition to the tax imposed by Section 4-156-020, a tax is imposed upon all persons engaged in the section 4-156-032, the term "tour boat" shall mean any vessel or other water craft on which amusements take place, as the term "amusement" is defined in Section 4-156-010.
- B. A tour boat operator that has paid or remitted the tax imposed by Section 4-156-020 in connection with the same transactions that are subject to subsection A of this section shall be entitled to a credit against the amount of tax owed under subsection A of this section. The tour boat operator shall have the burden of proving its entitlement to this credit with books, records and other documentary evidence.
- C. Tour boat operators shall file returns and pay the tax as follows: (1) all tax returns shall be filed with the Department of Finance on an annual basis on or before August 15 of each year in accordance with Sections 3-4-186 and 3-4-189 of this Code, (2) all tax payments shall be made in accordance with either Section 3-4-187 (payment of actual tax liabilities) or Section 3-4-188 (payment of estimated taxes), and (3) Sections 3-4-186, 3-4-187, 3-4-188, and 3-4-189 shall control over any contrary provisions in this chapter regarding the subjects covered by those sections.
- D. The tax imposed by this section shall not apply to any person, activity or privilege that under the Constitution or statutes of the United States, or the constitution or statutes of the State of Illinois, may not be made the subject of taxation by the City.

(Added Coun. J. 11-16-16, p. 38042, Art. III, § 4)

#### 4-156-033 Reserved.

**Editor's note** – Coun. J. 11-19-14, p. 98063, § 4, repealed § 4-156-033, which pertained to additional tax imposed on sellers of tickets.

#### 4-156-034 Rules and regulations.

The comptroller is authorized to adopt, promulgate and enforce rules and regulations pertaining to the interpretation, administration and enforcement of this article, including but not limited to the meaning and scope of the exemptions contained in Section 4-156-020.

(Amend Coun. J. 11-12-98, p. 81835; Amend Coun. J. 11-16-11, p. 13798, Art. I, § 4)

#### 4-156-035 Application of Uniform Revenue Procedures Ordinance.

Whenever not inconsistent with the provisions of this chapter or whenever this chapter is silent, the provisions of the Uniform Revenue Procedures Ordinance, Chapter 3-4 of this Code, as amended, shall apply and supplement this chapter.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 11-12-98, p. 81835)

#### 4-156-040 Raffles – Terms defined.

Whenever used in Sections 4-156-040 through 4-156-120 of this Code, the word "Act" shall mean "an Act to provide for licensing and regulating certain games of chance." Public Law 81-1356, as amended. Whenever used in said section of this Code, the words "raffle", "religious", "charitable", "labor", "fraternal", "educational" and "veterans" shall have the respective meanings specified in Section 2 of the Act.

(Added Coun. J. 12-9-92, p. 25465)

#### 4-156-050 Raffles – Licenses – Issuance by city clerk.

The city clerk shall have the authority to issue licenses for raffles, as defined in the Act, subject to the limitations stated in Section 4-156-020 of this article.

# School Coun. J. 12-9-92, p. 25465)

Seterans' organizations which are located within the corporate limits of the City of Chicago and which operate without profit to their members, and which have been in existence continuously for a period of five years immediately before applying for such license and have had during said period a bona fide membership engaged in carrying out their objects. Application shall be made in writing, no fewer than ten days before the intended sale of raffle chances, on forms provided by the city clerk's office. Each application shall contain the name and address of the applicant, the area in which the raffle chances will be sold or issued, the time and manner and location of determining the winning chances, and such other information as the city clerk's office may require. Each application must contain a sworn statement attesting to the not-for-profit character of the applicant, signed by its presiding officer and secretary.

(Added Coun. J. 12-9-92, p. 25465)

#### 4-156-070 Raffles – Separate licenses – Fee – Term.

Each raffle must be conducted in accordance with Sections 4, 5 and 6, inclusive, of the Act. The fee for such license shall be as set forth in Section 4-5-010. The license shall be valid for the duration of one year.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 11-15-06, p. 92532, § 1; Amend Coun. J. 1-13-10, p. 83191, § 1)

#### 4-156-080 Raffle tickets.

Each raffle ticket, chance or other raffle token shall state on its face the name and address of the licensee, the date or dates of the drawing, and the prize or prizes to be awarded; provided, however, that this requirement shall not apply to any raffle in which prizes in aggregate value under \$50.00 are awarded. No such ticket,

chance or token shall be sold or issued more than 364 days before the determination of the winning chance or chances.

(Added Coun. J. 12-9-92, p. 25465)

#### 4-156-090 Raffles - Prizes - Fees.

The maximum cash prize awarded in any raffle shall be \$100,000.00; the maximum retail value of a non-cash prize awarded in any raffle shall be \$100,000.00. The aggregate value of all prizes awarded in any raffle shall not exceed \$200,000.00. The maximum fee for any chance shall be \$500.00; all such fees shall be paid in currency, or by check or credit card.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 9-27-07, p. 9559, § 1)

#### 4-156-100 Raffles – Publication of rules and regulations.

The commissioner of business affairs and consumer protection or his designated agent, shall publish rules and regulations not inconsistent with this chapter or the Act governing the conduct of raffles licensed hereunder.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 12-8-04, p. 38063, § 1; Amend Coun. J. 5-9-07, p. 105047, § 9; Amend Coun. J. 11-19-08, p. 47220, Art. V, § 5)

#### 4-156;110 Raffles – Fee exemption conditions.

Notwithstanding any provision of Section 4-156-060 of the Municipal Code, no license fee shall be charged for any other raffle conducted by a qualifying organization in the same calendar year during which such organization has paid a raffle license fee and conducted the licensed raffle.

Added Coun. J. 12-9-92, p. 25465)

Added Coun. J. 12-9-92, p. 25465) Symples in this chapter, the word "organization" shall include an auxiliary or affiliate of a licensee.

Added Coun. J. 12-9-92, p. 25465)

#### 4-156-125 Intertrack wagering.

- Whenever used in this section, the word "Act" shall mean the "Illinois Horse Racing Act of 1975", as amended. Whenever used in this section, the words "board" and "intertrack wagering location licensee" shall have the meanings specified in Sections 3.01 and 3.073, respectively, of the Act.
- (b) A one-dollar admission fee is imposed upon each patron of an intertrack wagering location facility located wholly within the corporate boundaries of the city. It shall be the duty of each such intertrack wagering location licensee to collect such admission fee and, within 48 hours of collection, to remit the fees to the board. As provided in Section 27 of the Act, the board shall cause such fees to be distributed to the city. The comptroller is authorized and directed to collect such fees as shall be distributed by the board to the city.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 11-16-11, p. 13798, Art. I, § 4)

#### 4-156-130 Reserved.

Editor's note – Coun. J. 5-9-12, p. 27485, § 75 repealed § 4-156-130, which pertained to severability.

#### 4-156-140 Violations – Penalty.

Any person violating any of the provisions of this chapter shall be fined not less than \$200.00 nor more than \$500.00 for each offense. Every day such violation continues shall constitute a separate and distinct offense.

(Added Coun. J. 12-9-92, p. 25465)

A116

#### ARTICLE II. AUTOMATIC AMUSEMENT DEVICES (4-156-150 et seq.)

#### 4-156-150 **Definitions.**

As used in this chapter:

"Automatic amusement device" means any machine, which, upon the insertion of a coin, slug, token, card or similar object, or upon any other payment method, may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score, and includes but is not limited to such devices as jukeboxes, marble machines, pinball machines, movie and video booths or stands and all games, operations or transactions similar thereto under whatever name by which they may be indicated. Bingo devices are deemed gambling devices and are therefore prohibited for use except as provided by state law. If a machine consists of more than one game monitor which permits individuals to play separate games simultaneously, each separate game monitor shall be deemed an automatic amusement device.

"Illegal amusement device" means an automatic amusement device that: includes a knock-off circuit; or allows more than ten replays or free games, or maintains a count of payoffs or the number of times a person has won a game played on the device; or maintains a tally of players' scores other than the tally displayed to players; or fails to display in the required manner a tax emblem required by chapter; or has been used for illegal gambling. "Illegal amusement device" does not include a device that properly displays a required tax emblem, that is not used for illegal gambling and that qualifies either as a crane game as defined in the Illinois Criminal Code of 1961 or as a redemption machine as defined in the Illinois Criminal Code. An automatic amusement device shall not be deemed an illegal automatic amusement device because of internal diagnostic devices or capabilities that are able to record and maintain statistical data such as the number of coins or tokens deposited, the number of games played or the number of games won, if such diagnostic devices or capabilities are intended and exclusively for auditing of game performance.

Enock-off circuit" means any mechanical or electrical device, circuitry or modification on an automatic ment device, whereby free games shown on an externally visible indicator are released, while a record of so released is maintained on a second indicator, meter or counter, either inside or outside the device. A button installed by the manufacturer of the automatic amusement device shall not, without more, constitute a knock-off circuit.

The phrase "more than ten replays or free games" means more than ten replays or free games at one time. "Free game or replay" does not include an extension of a game awarded as a result of the player's skill, such as an extra ball in a pinball game or extended playing time in a video game.

"Payoff" means the giving of money or other thing of value in exchange for a player's accumulated points or free games or replays.

The phrase "a count of payoffs or the number of times a player has won a game played on the device" means a tally, whether on paper, mechanical or electronic, and regardless of whether maintained inside, on or outside the automatic amusement device. The phrase is not intended to include a record of scores, accessible to players of the device, and linked to previous players' names, nicknames, initials or other identifiers, for purposes of comparison and competition.

The phrase "tally of players' scores other than the tally displayed to players" does not include a record of scores, accessible to players of the device, and linked to previous players' names, nicknames, initials or other identifiers, for purposes of comparison and competition.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 7-2-97, p. 48017; Amend Coun. J. 4-1-98, p. 65262; Amend Coun. J. 12-15-99, p. 21529, § 1; Amend Coun. J. 7-25-01, p. 65052, § 1)

#### 4-156-160 Tax imposed.

An annual tax in the amount of \$150.00 for each calendar year is imposed upon all automatic amusement devices operated for gain or profit per device.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 11-10-99, p. 14998, § 1.1; Amend Coun. J. 11-17-99, p. 17487, § 1.1; Amend Coun. J. 3-13-13, 48628, § 1)

#### 4-156-170 Tax emblem.

The automatic amusement device tax shall be paid by the owner of such device to the city clerk. The city clerk shall issue as evidence of the payment of the tax a self-voiding adhesive tax emblem to be placed on each device. Such emblem shall bear the words "City of Chicago Amusement Device Tax", the names of the mayor and the city clerk, and such other wording as may be prescribed by the mayor. It shall be unlawful for any person to mutilate said tax emblem during the year for which it was issued.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 6-30-09, p. 65579, § 3)

#### 4-156-180 Installation prerequisites.

It shall be unlawful for the owner or lessee of any premises or person in control of such premises to permit the installation or use of an automatic amusement device within the City of Chicago for gain or profit unless the tax has been paid and is evidenced by a tax emblem affixed to the automatic amusement device in a conspicuous location. Each such device shall be plainly labeled with the name, address and telephone number of its owner. No person shall remove, alter or deface the tax emblem or label required by this section, or allow use of an automatic amusement machine if the tax emblem or label has been removed, altered, defaced or become illegible. The owner or lessee of the premises where the device is placed for operation by the public and every person responsible for the premises shall be jointly and severally liable for a violation of this section.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 12-15-99, p. 21529, § 1)

### عاريط 156 190 Seizure for unlawful use.

Seizure for unawful use.

The seizur within seven days of such seizure for the purpose of reviewing the appropriateness of the seizure, and held until such time as the owner of such device pays the delinquent tax, reimburses the department of finance, business affairs and consumer protection or the city clerk for actual cartage cost incurred in the seizure and pays to the department of finance, business affairs and consumer protection or the city clerk \$20.00 for each day or part of day said device has been in storage. If criminal charges involving the use or condition of the device are pending, the device shall be held until disposition of the criminal charges. If it is determined at the hearing by a preponderance of the evidence that the seized device is not an illegal amusement device, it shall be returned to the owner without charge. If it is determined at the hearing that the automatic amusement device was used for illegal gambling, it shall be destroyed by the city, and all money found within the device at the time of confiscation shall become the property of the city, and shall be used to defray the costs of cartage, notice, storage and hearings. If the owner of the device does not claim the automatic amusement device within 14 days after the mailing of the notice, the device and its contents will be treated as abandoned property and the device will be destroyed.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 4-1-98, p. 65262; Amend Coun. J. 7-27-05, p. 53211, § 1; Amend Coun. J. 11-19-08, p. 47220, Art. V, § 5; Amend Coun. J. 6-30-09, p. 65579, § 3; Amend Coun. J. 11-16-11, p. 13798, Art. I, § 4)

#### 4-156-200 Reserved.

Editor's note – Coun. J. 5-9-12, p. 27485, § 76 repealed § 4-156-200, which pertained to a license requirement. 4-156-210 Reserved.

**Editor's note** – Coun. J. 5-9-12, p. 27485, § 77 repealed § 4-156-210, which pertained to license application and examination of records.

#### 4-156-220 Reserved.

**Editor's note** – Coun. J. 5-9-12, p. 27485, § 78 repealed § 4-156-220, which pertained to investigation and refusal of license application.

#### 4-156-230 Number of devices limited.

It is unlawful for any person to operate or permit the operation of an arcade unless the person in control of such place has first obtained a public place of amusement license.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 7-2-97, p. 48017)

#### 4-156-240 Reserved.

**Editor's note** – Coun. J. 7-2-97, p. 48017, repealed § 4-156-240, which pertained to arcades – location restrictions.

#### 4-156-260 Reserved.

FILED

**Editor's note** – Coun. J. 7-2-97, p. 48017, repealed § 4-156-260, which pertained to games rooms – locations restrictions.

#### 4-156 270 Restrictions on use by minors.

(a) No person, firm, corporation, organization or other legal entity shall permit, and it shall be unlawful for, grapherson under 17 years of age, who is not accompanied by a parent or legal guardian, to operate any attic amusement device, except upon the premises of the city airports, between the hours of 8:00 a.m. and p.m. on days in which the city's public schools are in session.

No person, firm, corporation, organization or other legal entity shall permit, and it shall be unlawful for, alcoholic liquor for consumption on the premises.

The prohibition described in this subsection (b) shall not prohibit any person or legal entity to permit any person under the age of 21 to play an automatic amusement device located at an establishment validly licensed as a restaurant which sells alcoholic liquor for consumption on the premises, if the minor is accompanied by a parent or legal guardian.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 1-12-94, p. 44537; Amend Coun. J. 7-2-97, p. 48017, § 3; Amend Coun. J. 5-9-07, p. 105047, § 9; Amend Coun. J. 4-10-13, p. 51227, § 1)

#### 4-156-280 Violation – Penalty.

- (a) The owner, manager, licensee or person in control of premises where an automatic amusement device is used for illegal gambling shall be subject to a fine of \$5,000.00 for each device so used. Any person violating any other provision of this chapter by possession or use of an illegal amusement device shall be fined not less than \$500.00 nor more than \$1,000.00 for each offense. Every day such violation continues shall constitute a separate and distinct offense. Fines under this section shall be in addition to suspension or revocation of business licenses issued under this Code, and in addition to confiscation and destruction of illegal amusement devices.
- (b) Upon a third violation of the provisions of this chapter relating to possession or use of an illegal amusement device occurring on the same premises for a period of five years, all city licenses issued for business activity on those premises shall be revoked, and no automatic amusement device may be placed on the premises for a period of one year from the date of revocation. Nothing in this section limits the authority of the mayor to

revoke a license on a licensee's first or second violation during such period. For purposes of this subsection (b), "licensee" includes an employee or agent of a licensee.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 4-1-98, p. 65262)

#### ARTICLE III. PUBLIC PLACES OF AMUSEMENT (4-156-290 et seq.)

#### 4-156-290 Definition.

As used in this chapter, a public place of amusement means any building or part of a building, park or other grounds used or intended to be used for any amusement as defined in Article I of this chapter; provided that any entity which is licensed as a children's services facility pursuant to Chapter 4-75 of this Code shall not be considered a public place of amusement.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 11-15-95, p. 11995; Amend Coun. J. 7-2-97, p. 48017; Amend Coun. J. 5-12-10, p. 91343, § 3; Amend Coun. J. 6-6-12, p. 28356, § 8)

#### 4-156-300 License – Required – Special requirements for establishments catering to minors.

- (a) Unless specifically exempted in Section 4-156-305 or subsection (f) of this section, it shall be unlawful for the owner, lessee or manager of any property, or for any other person, to produce, present or conduct thereon, any amusement unless the owner, lessee or manager of such property has first obtained a public place of amusement license. If an amusement is produced, presented or conducted on any property without a valid public place of amusement license first having been obtained, and unless Section 4-156-305 or subsection (f) of this section applies, all of the following persons shall be in violation of this subsection: (1) the owner of the property, (2) the lessee of the property, (3) the manager of the property, (4) the producer of the amusement, (5) the presenter of the amusement and (6) the person conducting the amusement. Each person found in violation of this subsection (a) shall be subject to a fine of up to \$10,000.00.
- If any part of the property is used or intended for use for any amusement, a public place of amusement shall be required, regardless of whether the use is incidental to the property's principal use.
- If more than one amusement is produced, presented or conducted at any single place or premises as part of a single business, only one public place of amusement license shall be required.
- (d) A public place of amusement license shall be required for any public resort for underage persons which is designed, used or intended to be used primarily for participation by minors in entertainment or amusement primarily involving music, music videos and dancing. Examples of such resorts shall include, but are not limited to, a dry dance hall, nonalcohol bar, "dry cabaret", "juice bar" or "teenage cabaret". No public resort for underage persons, as defined herein, may operate between the hours of 2:00 a.m. and 11:00 a.m. or be eligible for a retail liquor license under Chapter 4-60 of this Code.
- (e) In addition to any other penalty provided by law, any violation of any requirement set forth in subsection (d) of this section or any rule or regulation promulgated thereunder may result in revocation of all city licenses pertaining to that establishment.
- (f) No public place of amusement license shall be required if (1) the property is a church, temple, synagogue or other place of worship, or school which has been inspected pursuant to Section 13-20-020 within the 12-month period preceding the production, presentation or conduct of any amusement; and (2) the sponsor of the event is affiliated with the church, temple, synagogue or other place of worship, or school; and (3) all necessary food, liquor and other licenses and permits required by this Code have been obtained.

(Added Coun. J. 12-9-92, p. 25465; Amend Coun. J. 7-13-94, p. 53392; Amend Coun. J. 7-2-97, p. 48017; Amend Coun. J. 5-17-00, p. 32887, § 1; Amend Coun. J. 10-6-05, p. 58166, § 1; Amend Coun. J. 5-9-12, p. 25460, § 2; Amend Coun. J. 5-9-12, p. 27485, § 79; Amend Coun. J. 11-8-12, p. 38872, § 102; Amend Coun. J. 4-10-13, p. 51217, § 2)

#### 4-156-305 License – Exceptions.

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 5
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit B

#### CITY OF CHICAGO DEPARTMENT OF FINANCE AMUSEMENT TAX RULING

Pursuant to Sections 2-32-080, 2-32-096, 3-4-030, 3-4-150 and 4-156-034 of the Municipal Code of Chicago, the City of Chicago hereby adopts and promulgates Amusement Tax Ruling #5, effective July 1, 2015.

Dated: June 9, 2015

Dan Widaws y Comptroller

Amusement Tax Ruling #5

Subject: Electronically Delivered Amusements

Effective Date: July 1, 2015

#### **Ordinance Provisions**

1. Section 4-156-020(A) of the Municipal Code of Chicago ("Code") states, in pertinent part:

Except as otherwise provided by this article, an amusement tax is imposed upon the patrons of every amusement within the city.

2. Code Section 4-156-010 states, in pertinent part:

"Amusement" means: (1) any exhibition, performance, presentation or show for entertainment purposes, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition such as boxing, wrestling, skating, dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling or billiard or pool games; (2) any entertainment or recreational activity offered for public participation or on a membership or other basis including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, bodybuilding or similar activities; or (3) any paid television programming, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means. (emphasis added).

#### 3. Code Section 4-156-030(A) states in pertinent part:

It shall be the joint and several duty of every owner, manager or operator of an amusement or of a place where an amusement is being held, and of every reseller to secure from each patron or buyer the tax imposed by Section 4-156-020 of this article and to remit the tax to the department of finance not later than the 15th day of each calendar month for all admission fees or other charges received during the immediately preceding calendar month ... (emphasis added).

#### 4. Code Section 4-156-010 states in pertinent part:

"Owner" means: (1) with respect to the owner of a place where an 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 an amusement in such place; (2) with respect to the owner of an amusement, any person which has an ownership or leasehold interest in such amusement or any person who has a proprietary interest in the amusement so as to entitle such person to all or a portion of the proceeds, after payment of reasonable expenses, from the operation, conduct or presentation of such amusement, excluding proceeds from nonamusement services and from sales of tangible personal property; (3) with 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. (emphasis added).

#### 5. Code Section 4-156-010 states in pertinent part:

"Operator" means any person who sells or resells a ticket or other license to an amusement for consideration or who, directly or indirectly, receives or collects the charges paid for the sale or resale of a ticket or other license to an amusement. The term includes, but is not limited to, persons engaged in the business of selling or reselling tickets or other licenses to amusements, whether on-line, in person or otherwise. The term also includes persons engaged in the business of facilitating the sale or resale of tickets or other licenses to amusements, whether on-line, in person or otherwise. (emphasis added).

#### 6. Code Section 4-156-010 states in pertinent part:

"License" means a ticket or other license granting the privilege to enter, to witness, to view or to participate in an amusement, or the opportunity to obtain the privilege to enter, to witness, to view or to participate in an amusement, and includes but is not limited to a permanent seat license. (emphasis added).

7. Code Section 4-156-010 states in pertinent part:

"Ticket" means the privilege to enter, to witness, to view or to participate in an amusement, whether or not expressed in a tangible form.

#### **Taxability**

- 8. The amusement tax applies to charges paid for the privilege to witness, view or participate in an amusement. This includes not only charges paid for the privilege to witness, view or participate in amusements *in person* but also charges paid for the privilege to witness, view or participate in amusements that are *delivered electronically*. Thus:
  - a. charges paid for the privilege of watching electronically delivered television shows, movies or videos are subject to the amusement tax, if the shows, movies or videos are delivered to a patron (*i.e.*, customer) in the City (*see* paragraph 13 below);
  - b. charges paid for the privilege of listening to electronically delivered music are subject to the amusement tax, if the music is delivered to a customer in the City; and
  - c. charges paid for the privilege of participating in games, on-line or otherwise, are subject to the amusement tax if the games are delivered to a customer in the City.

The customer will normally receive the provider's electronic communications at a television, radio, computer, tablet, cell phone or other device belonging to the customer.

- 9. Providers who receive charges for electronically delivered amusements are owners or operators and are required to collect the City's amusement tax from their Chicago customers. *See* paragraphs 13 and 14 below. As of the date of this ruling, the rate of the tax is 9% of the charges paid.
- 10. The amusement tax does not apply to *sales* of shows, movies, videos, music or games (normally accomplished by a "permanent" download). It applies only to *rentals* (normally accomplished by streaming or a "temporary" download). The charges paid for such rentals may be subscription fees, per-event fees or otherwise.
- 11. Charges that are not subject to the amusement tax may be subject to another tax (such as the City's personal property lease transaction tax, Code Chapter 3-32), but this ruling concerns only the amusement tax.

#### **Bundled Charges**

12. Where a charge is "bundled" by including both taxable and non-taxable elements (either non-taxable in the first instance or exempt), the Department of Finance ("Department") will apply the same rules that are set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004). That ruling states, among other things, that "[i]f the lessor fails to separate the

lease or rental portion of the price from the non-lease or non-rental portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for the use of any personal property." *See also* Code Section 4-156-020(H) (providing that the taxable "admission fees or other charges" do not include charges that are not for amusements, but only if those charges are separately stated and optional). Therefore, if a bundled charge is primarily for the privilege to enter, to witness, to view or to participate in an amusement, then the entire charge is taxable.

#### Sourcing

13. The Department will utilize the rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638, to determine sourcing for the amusement tax. In general, this means that the amusement tax will apply to customers whose residential street address or primary business street address is in Chicago, as reflected by their credit card billing address, zip code or other reliable information.

#### Nexus

14. Because the amusement tax is imposed on the patron, and applies only to activity (*i.e.*, the amusement) that takes place within Chicago, there is no question that the tax applies whenever the amusement takes place in Chicago. The issue of nexus arises, at most, with regard to the question of whether a given provider has an obligation to *collect* the tax from its customer. That issue is beyond the scope of this ruling, and any provider with a question about that topic should consult its attorneys. In addition, a provider may request a private letter ruling from the Department, pursuant to Uniform Revenue Procedures Ordinance Ruling #3 (June 1, 2004).

#### Implementation

15. In order to allow affected businesses sufficient time to make required system changes, the Department will limit the effect of this ruling to periods on and after September 1, 2015. This paragraph does not release or otherwise affect the liability of any business that failed to comply with existing law before the effective date of this ruling.

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 4
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit C



### City of Chicago



SO2015-7403

## Office of the City Clerk

**Document Tracking Sheet** 

Meeting Date:

10/14/2015

Sponsor(s):

Emanuel (Mayor)

Sawyer (6) Hairston (5)

Tunney (44)

Munoz (22)

Laurino (39)

Mitts (37)

Solis (25)

Zalewski (23)

O'Connor (40)

Reilly (42)

Sposato (38)

Beale (9)

Quinn (13)

Moore (49)

Cochran (20)

Burke (14)

Austin (34)

Burnett (27)

Harris (8)

O'Shea (19)

Burns (4)

Reboyras (30)

Thompson (11)

Foulkes (16)

Ordinance

Type: Title:

ELECTRONICALLY FILED

Amendment of Municipal Code Titles 3, 4, 7, 9, 11 and 13

concerning various fines and fees (2016 Revenue

Ordinance)

Committee(s) Assignment:

Committee on Finance



# JECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399 PAGE 3 of 4

#### CHICAGO October 21, 2015

To the President and Members of the City Council:

Your Committee on Finance having had under consideration

A substitute ordinance authorizing amendments to various sections of the Municipal Code of Chicago, which relate to revenue derived from certain taxes, fines, and fees.

O2015-7403

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Ordinance Transmitted Herewith

This recommendation was concurred in by \_\_\_\_\_\_\_\_\_(a viva voce vote of members of the committee with \_\_\_\_\_\_\_2 \_\_\_\_\_\_dissenting vote(s).

Aldermen Maldonado (26) and Arena (45) vote no.

Respectfully submitted

Chairman

## Article IV Amusement Tax

SECTION 1. Section 4-156-020 of the Municipal Code of Chicago is hereby amended by adding the language underscored, as follows:

#### 4-156-020 Tax imposed.

#### (Omitted text is unaffected by this ordinance)

- G. It shall be presumed that all amusements are subject to tax under this article until the contrary is established by books, records or other documentary evidence.
- in the case of video streaming, audio streaming and on-line 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. If those rules indicate that the tax applies, it shall be presumed that the tax does apply unless the contrary is established by books, records or other documentary evidence.

(Omitted text is unaffected by this ordinance)

SECTION 2. With regard to the amendments in Section 1 of the Amusement Tax portion of this ordinance, the purpose of said amendment is to eliminate ambiguity and clarify rather than change the law.

#### Article V Parking Tax

SECTION 1. Chapter 4-236 of the Municipal Code of Chicago is hereby amended by adding the language underscored and by deleting the language struck through, as follows:

#### 4-236-010 Definitions.

For the purpose of this chapter, whenever any of the following words, terms or definitions are used, they shall have the meaning ascribed to them in this section:

(Omitted text is unaffected by this ordinance)

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 72
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit D

Mark Pekic Labell v. City of Chicago

```
1
    STATE OF ILLINOIS )
                          SS.
 2
    COUNTY OF COOK
 3
          IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
                 COUNTY DEPARTMENT, LAW DIVISION
 4
5
    MICHAEL LABELL, JARED LABELL,
    et al.,
6
                Plaintiffs,
7
                                          No. 15 CH 13399
             vs.
8
                                      )(Transferred to Law)
    CITY OF CHICAGO DEPARTMENT OF
9
    FINANCE, et al.,
10
                Defendants.
```

The deposition of MARK PEKIC, taken before Suzan A. Gualano, Certified Shorthand Reporter, taken pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court thereof pertaining to the taking of depositions for the purpose of discovery at 30 North LaSalle Street, Suite 1020, Chicago, Illinois, commencing at 9:59 a.m. on June 15, 2017.

20

11

14

15

16

17

18

19

21

22

23

24

Bridges Court Reporting Page: 1

Mark Pekic Labell v. City of Chicago

1	APPEARANCES:
2	
3	LIBERTY JUSTICE CENTER MR. JEFFREY M. SCHWAB MR. JAMES J. McQUAID
4	MR. JOSEPH E. TABOR 190 South LaSalle Street
5	Suite 1500
6	Chicago, Illinois 60603 (312) 263-7668
7	jschwab@libertyjusticecenter.org
8	On behalf of the Plaintiffs;
9	CITY OF CHICAGO DEPARTMENT OF LAW
10	MR. STEVEN J. TOMIELLO MR. WESTON W. HANSCOM
FILED 11	MR. MARQUES BERRINGTON 30 North LaSalle Street
LY FI 8 PM 399 72	Suite 1020
CAL 17 4:2 14-13 13 oF	Chicago, Illinois 60602 (312) 744-7803
RONI(27/201'2016-C) PAΘΕ	steven.tomiello@cityofchicago.org
ELECTRON 9/27/201 1 2015-0 P-PAGH	whanscom@cityofchicago.org marques.berrington@cityofchicago.org
五 15	On behalf of the Defendants.
16	
17	
18	
19	
20	
21	
22	
23	

Bridges Court Reporting Page: 2

24

Mark Pekic Labell v. City of Chicago

1

2

3

5

6

7

8

9

(Witness sworn.)

MR. SCHWAB: This a the deposition in Labell vs. City of Chicago. This is the deposition of Mark Pekic. It is about three minutes to 10:00 a.m. on June 15th, 2017.

MARK PEKIC,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

#### EXAMINATION

BY MR. SCHWAB:

Can you please state your name for the record?

- A. Mark Pekic.
- Q. And have you ever had your deposition taken before, Mr. Pekic?
  - A. Yes, I have.
  - Q. How many times?
  - A. Two times, as I recall; yes, two.
- Q. So you're basically familiar with the procedure here, but if you wouldn't mind, let me go over a few guidelines.

So the court reporter is recording everything that we say. So please answer audibly and in a clear manner so she can correctly record your

15

16

17

18

19

20

21

22

23

24

1

answers. Is that all right?

A. Yes.

3 4

5

Q. And please wait until I'm done asking the question to answer, and I'll try to wait until you're done answering the question to also speak. Does that make sense?

6

7

A. Yes, it does.

8

9

Q. If you don't understand a question, you can ask me to repeat or rephrase it. All right?

10

A. Yes.

1

11

Q. And your lawyer may -- or lawyers may object to a question I ask, but unless he, they, tell you not to answer, you can answer despite their objection.

Okay?

15

14

A. Sounds good.

16

17

18

Q. And you can take a break at any time you want except that if I've asked a question and you have yet to answer it, I'll just ask you to please answer the question before we break. Is that all right?

19

A. Yes.

2021

Q. All right. Thank you.

22

Did you speak with anyone in preparation of this deposition?

23

24

A. I spoke to our two lawyers, Wes Hanscom and

1 Steven Tomiello.

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

23

- Q. Did you refer to any notes or documents in your preparation?
  - A. Documents, yes.
  - Q. And what documents did you refer to?
  - A. I don't know the terminology, but the complaint or whatever you guys had.
    - Q. Mm-hmm.
  - A. And the -- I think it was -- I think the interrogatories -- the questions that you guys asked our law department.
    - Q. The interrogatories?
    - A. Is that what it's called?
    - Q. Yes. Okay. Anything else?
    - A. With them, no.
    - Q. By yourself did you review anything?
  - A. The only other thing I reviewed was our Ruling No. 5, Amusement Tax Ruling No. 5.
    - Q. Okay. Do you have a high school degree?
    - A. Yes.
    - Q. And do you have a college degree?
- 22 A. Yes.
  - Q. And what's your college degree in?
- A. Accounting.

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

23

- And where did you go to school? Ο.
- 2 Α. I went to the University of Illinois at 3 Chicago.
  - And what year did you graduate from the Ο. University of Illinois-Chicago?
    - Α. 2000.
  - Okay. And after you graduated from 0. University of Illinois in Chicago, did you get a job or did you get further education?
    - Α. I got a job.
  - And where did you get a job after you Ο. graduated from college?
  - Where I'm presently employed, the City of Α. Chicago, in the tax division.
  - Is the job that you got when you graduated 0. from -- after you graduated from college -- the same that you have now?
    - Α. No. It was an entry-level job.
  - And have you been employed by the Ο. Okav. City of Chicago since you graduated or since you took that first job?
    - Α. Yes.
- Okay. And what was the title of your first Ο. 24 job?

3

4

5 6

7

8

10

LECTRONICALLY FILED 9/27/2017 4:28 PM 1 2015-CH-13399 T PM PAGE 9 ok/72 T

15

16 17

18

19

20

21

22

23

24

- A. My first job was auditor I.
- Q. Okay. And what does auditor -- what does "auditor I" mean?
- A. "Auditor" means you have auditors I, II, III, and IV, and then the next level above that is audit supervisor, what my current title is.

Auditor I means entry-level auditor that conducts audits of businesses that may or may not have tax exposure within the City of Chicago's tax ordinances.

MR. HANSCOM: Excuse me, Jeff. Can we just go off the record for a second?

MR. SCHWAB: Sure.

(Discussion off the record.)

MR. SCHWAB: Ready to go back on?

# BY MR. SCHWAB:

- Q. For the position of auditor I, what were the job duties?
- A. Well, like I just said, to audit businesses, to verify compliance with the City of Chicago tax ordinances. Basically, the auditor supervisor or audit manager -- there have been numerous ways how audits are assigned, but as an auditor I, you get your assigned caseloads of audits, and you contact the

2

3

4

5

6

7

8

9

ELECTRONICALLY FILED
9/27/2017 4:28 PM

1 2016-CH-13399 1 1
P PAGE 10 0072 1 0

16

17

18

19

20

21

22

23

24

taxpayer, and you conduct the audit to determine if they are, A, in compliance with the tax code and nothing further needs to be done at the conclusion of those types of audits.

If they're not in compliance, and it's determined that additional liability is due, then I would calculate liability and then present it to the taxpayer, and then they'd either pay, or they have a right to disagree, and then we would actually file a formal determination assessment. And there's a process there where they get to protest within 35 days and it gets forwarded to our law department who then works usually with the taxpayer's representative, if they so deem, and try to come to an amicable conclusion before going to a hearing.

- Q. And as an auditor I, all of these businesses that are being audited are assigned to you. You're not determining which businesses to audit?
- A. No auditor is determining which businesses to audit.
- Q. How do the auditors determine -- who determines which businesses to audit?
- A. It varies. It could be the audit supervisor, audit manager. There's also -- they do

statistical analysis. Like, sometimes we've had people -- it's their job to do that -- and see if there's any sort of variances that go beyond the mean of what people have followed during a predetermined period -- I've never done those type -- and then they determine who to actually audit.

We also have discovery investigations, though, that sometimes some auditors do. And when I was an auditor I, sometimes we would have to do them, sometimes we wouldn't. Sometimes they have designated silo that these people handle discovery investigations and whatnot.

entails -- the key difference is -- if there's a business out there that may potentially be subject to one of our tax codes but is not currently remitting the tax, or it appears -- not appears -- they're not remitting the tax, and we feel they may be subject to this due to the types of transactions they're conducting, we conduct a discovery investigation which is not a full-blown audit. It's just the auditor will conduct the business to say we have this tax code or tax codes, here's the ordinance, we feel you may be subject to this through our preliminary research, and

we'll discuss this further during the course of the investigation -- that you may be subject to this tax code.

Then we start a discourse to say why they are or aren't. We listen to why they tell us why they are or aren't. We might have a misunderstanding of what their business model is and whatnot.

Usually, though, what happens is, once they see and understand the ordinance -- sometimes they're not even aware of the ordinance for whatever reason -- they see that some of their transactions are subject to the particular ordinance, then they end up filing and paying, and we don't do a full-blown investigation of it, we just look at their backup to say, okay, cross the Ts. Dot the Is. The math is right. What did you base this on? We don't go into an actual full-blown audit of someone like that.

- Q. Okay. And who determines whether to do a discovery investigation?
- A. Again, it's not the auditors. It's whoever is assigning -- excuse me -- not assigning the audit, but whoever found the lead through whatever course it was -- the supervisor investigating through research or just understanding the industries in said tax codes

1

3

4

5

6

7

9

10

BCTRONICALLY FILEL 9/27/2017 4:28 PM T 2015-CH-13399 T P PAGE 13 0-972 T

15

16 17

18

19

20

21

22

23

24

where you have, oh, we have an amusement payer here.

In theory, if we had a professional baseball team in the City that was not remitting the taxes -- the amusement taxes to the City of Chicago, that would be a very large red flag, especially since the other one is remitting it. Why isn't this one remitting it? Just to give you an extreme example to understand this.

So it would be the supervisor, manager, or statistical analysis person would say, why is this one not remitting an amusement tax? On face value, it appears that he should be. Then we would assign it, and the auditor would be told this is a discovery investigation, not an audit because we don't need to do a full-blown audit of all their tax codes. They might be remitting other tax codes, not this one, or no tax codes. So once -- they need to contact them just to get them in compliance with that tax code.

- Q. Okay. You mentioned, found the lead, is there any kind of process that you're aware of that -- for the audit supervisor or whoever is looking into a lead? How do you determine what to look for?
- A. If it's for audits, we know we have certain industries, like professional sports teams, cable

23456

7

8

9

ELECTRONICALLY FILED 9/27/2017 4:28 PM 
1. 2015-CH-133399 
2. PAGE 14 0072 
1.

16 17

18

15

19 20

21

22

23

24

companies, people that are very high payers, you know, they're tax collectors for amusement tax. So we know that collecting and securing and then remitting to us very large sums of money that belong to the City of Chicago.

So usually within every audit cycle we will audit those bigger ones just for the fact they're bigger because any little mistake, we don't want to find out too many years later that, oh, my God, now we have all these back interests in taxes. It's mutually beneficial to audit them every audit cycle.

For the non-big ones -- again, it's anyone with a statistical analysis, people who are remitting for taxes but there's a variance there that goes above a mean that's determined relative to the other payers. So that's how the audits would be.

And then, for the discoveries, it would be something as simple as, I could see like a certain industry where, hmm, why is this industry not remitting this tax? This looks like it's very similarly situated to another industry who is paying the tax. Why aren't they paying the tax? Or someone within the said industry, the competitor that maybe just popped up, and I became aware of it. Oh, they've

been around for X-amount of years or they just started. So someone like that that we feel doesn't appear to be in compliance and could be subject to it, we contact them.

Sometimes we find out that, oh, no, they're not similarly situated or they're not remitting the tax because of X-amount of reasons, be it their business doesn't operate in one way that it appeared to be or for legal reasons they're different. So then we determine that, okay, you're not subject to the tax.

- Q. So in determining whether to undergo a discovery investigation, you mentioned things like, oh, we found out like this industry was being taxed; this other industry wasn't. Is that something that you find out in the general course of, like, your work, or is it something that you actively look for?
- A. No. Sometimes in the general course of my work. I don't really actively look for that. Just being a citizen in civilization, I keep my eyes open. You know, I'm a consumer as well. So that's about as active as it needs to be.
- Q. So would it be accurate to say that, you know, if you're reading a news article about a

business or something, you may be saying to yourself, I wonder if -- that business seems like it should be paying the amusement tax. I wonder if they are, and then you look? Is that something that you might do?

- A. Yes.
- Q. Okay. And is there anybody within the department whose job it is just to do -- or to come up with discovery investigations?
- A. That's part of my job. It's just I have many duties in my job. The number one thing is supervising audit investigations and discovery investigations.

I don't supervise many discovery investigations anymore because now -- just due to the work flow, it made more sense to have one supervisor conducting the discovery investigations. But I have conducted supervised discovery investigations for many years, and I still have a few left on my staff's caseload.

But to further answer your question, no, but we do have someone currently on staff that picks audit targets through a statistical analysis, but I don't believe he picks discovery targets because he's looking at prior remittances to determine.

2

3

4

5

6

7

8

17

18

19

20

21

22

23

24

- Q. Okay. Let's get into, currently you're an audit supervisor, correct?
  - A. Correct.
  - Q. And you started out as auditor I, correct?
  - A. Correct.
- Q. And you mentioned that there is also auditor II, III, and IV?
  - A. Yes.
- Q. And were you auditor two, three, and four, at some point as well?
- A. I was auditor II and auditor III, and then I was promoted to an audit supervisor.
- Q. Okay. And can you tell me the differences between auditor I, II, and III, and IV? Are they just like more experienced, or is there other differences?
- A. Generally, it's more experience, and then it's promotion on merit, from what you've proven in your performance and your evaluations.

Auditors Is and IIs are considered, just generally speaking, junior auditors. It's nowhere set in stone that way, but just generally speaking.

And auditor IIIs and auditor IVs are considered more senior auditors.

Auditor Is and 2s kind of have generally the

same type of caseload when it comes to difficulties,

and IIIs and IVs have slightly more difficult --

potentially difficult, I should

say -- audits in a caseload.

Q. What's an example? How do you distinguish between an audit that is simple and difficult?

A. Generally speaking, it's subjective, and also not an exact science because you might think that the easiest audit in the world will be straightforward and you find out all these legal issues, or this taxpayer has very poor internal controls, things of that nature. So it could be more difficult than you think.

But just like life, in general, generally speaking, you can make some determinations that usually end up proving correct when it comes to difficulty of things.

Usually, cable companies, sports teams are more difficult just due to the nature of the size and the different types of revenue streams they have. Or you have, say, a movie theater, much more simple. They sell movie tickets, those are taxable. They don't have many exemptions or many types of revenue streams.

Bridges Court Reporting Page: 17

Q. So is it fair to say that an entity that is either larger and/or has more revenue streams is generally a more difficult audit?

A. Generally, but not -- I cannot say the majority of the time, though, because you could have one, as I stated, where it's a very large taxpayer, but it's a very simple, straightforward, linear revenue stream they have.

- Q. Okay. A few minutes ago you mentioned some of the -- some of your duties as an audit supervisor. Can you give me a summary of what your other duties are?
- A. My other duties would entail supervising the audits of the auditors on my staff, answering any questions that may come up or issues or concerns, speaking to the taxpayer representative when needed, also conferring with our legal counsel when there are legal issues that come up that -- I may have experience in that. I may even have an opinion or a very strong opinion or even be certain that I'm correct, but not being a lawyer, I need to confer with our legal counsel.

I'm trying to think of anything else. And that's about it -- any questions or concerns that come

2

3

4

5

6

18

19

20

21

22

23

24

up in the course of any of the tax codes that I'm responsible for.

- Q. Okay. And let's get into that. What tax codes are you responsible for?
- A. Currently, I'm responsible for the amusement tax, the hotel tax, the boat mooring tax, the titled use tax, and the nontitled use tax.
- Q. So I think I understand what the hotel tax and the boat mooring tax is.

What is the titled use and the nontitled use tax?

- A. Titled use is for titled property, like boats and cars. Nontitled use tax is for nontitled personal property: computers, desks, things of that nature.
  - Q. Is this a sales tax?
  - A. It's a use tax, both of them.
- Q. Okay. And going back to the auditors, do they each also have specific taxes that they're responsible for or does it vary?
- A. No, it varies. Within my silo, those are my tax codes, and any auditor can do any of those tax codes -- audits that pertain to those tax codes and would have them on their caseload.

0NICALLY FILE 2017 4:28 PM 5-CH-13399 □ GE 21 @72 □

Also, we have many other tax codes in the City. While they may not be in my silo -- for example, if I'm auditing one tax code, say it's an amusement taxpayer who also purchases nontitled personal property for use outside the City of Chicago -- excuse me -- purchased from a vendor located outside of the City of Chicago for use in the City of Chicago, that would expose them potentially to the nontitled use tax, and they would have to conduct an audit for that tax code.

That's actually a bad example, because that's one of my tax codes. I was trying to give you one that's not.

But, in theory -- like a lease transaction tax where if in one of their audits they determine or even have someone who is remitting that tax, they would have to audit that tax, of course, if we have audit. Because when we conduct an actual full-blown audit of an entity, we make sure that they're in compliance with all the tax codes.

Q. So it's possible, even though it's outside of what you say is your silo, that you could be working with another tax because a company that you're currently auditing happens to be in noncompliance with

that tax code as well, or because you're auditing every -- compliance with all the taxes?

- A. The latter of what you said was more accurate.
  - Q. Okay.
- A. Because when it's a full-blown audit, we need to make sure -- there are over 30 tax codes we have. On face value you could see or -- like a sports team is not going to be subject to this tax code, but a lot of them you have to make sure that you're reviewing -- even if they're not registered for it, just to see and inquire do they have an exposure to that, and they will be registered for other ones.

Like, for my hotel tax, for example, some of them could be registered for up to 13 taxes so -- which, as you can see, I am not responsible for 13 taxes, so I can have an auditor reviewing many other tax codes for a hotel audit where they are registered and remitting all these taxes. They absolutely have to conduct a full-blown audit of all those tax codes.

- Q. Okay. And is there a position above auditor supervisor?
  - A. Yes.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

- 1 (
- 10
- 9/27/2017 4:28 PM 9/27/2017 4:28 PM 1 2015-CH-13399 T P PAGE 23 0072 T
  - 15
  - 16
  - 17
  - 18
  - 19
  - 20
  - 21
  - 22
  - 23
  - 24

- Q. And what position is that?
- A. That is my superior. He is an audit manager.
- Q. Okay. And so you have a direct superior that's an audit manager, correct?
  - A. Correct.
- Q. And is there a direct supervisor over the audit manager?
  - A. Yes.
  - Q. And what position is that?
  - A. His title is deputy director of tax.
- Q. Okay. And am I right to assume that there's a director of tax above the deputy director of tax?
- A. There's always a boss of somebody, right?

  You are correct to assume that. That would be -- as I understand it, there's -- I'm not quite sure of the full title, but there's another managing deputy, I think it's called.
  - Q. Okay.
- A. It's basically between the director -- deputy director of tax, there's a managing deputy right above him that he reports to, and then I believe it's the comptroller that that person reports to.

18

19

20

21

22

23

- Q. And the comptroller is the head of the Department of Revenue?
- A. The Department of Finance. It used to be Department of Revenue. Now we've been finance for a few years now.
- Q. Okay. How many audit supervisors are there in the Department of Finance?
  - A. Currently, there are six audit supervisors.
- Q. Okay. And is there more than one audit manager?
- A. Yes. Currently, there are two audit managers over that area.
- Q. Okay. And can you estimate how many auditors there are in the department?
  - A. Let me just add it up.
  - Q. Unless you know the exact answer.
- A. I don't know the exact answer, but I can tell you very close. Just let me do the math in my head real quick.
- There's between 30 to 40, I'd like to say, at any given time.
- Q. Okay. So you said part of your silo was the amusement tax. That's the Municipal Code
- 24 Chapter 4-156, right? That's the part of the code

2

3

4

5

6

7

8

9

18

19

20

21

22

23

24

that you're responsible for?

- Α. Yes.
- In your job responsibilities, is any Okay. part of your job responsibilities -- does any part involve interpreting ordinances like, for example, the Amusement Tax, Chapter 4-156?
  - Α. Yes.

MR. SCHWAB: Okay. I'm going to mark a document No. 1 here.

> (Deposition Exhibit No. 1 marked as requested.)

### BY MR. SCHWAB:

I'm going to hand you what I've just marked Exhibit 1. I'll hand them out to counsel.

So I've handed you what I marked or what the court reporter has marked Exhibit 1. Have you seen this document before?

- Α. Yes.
- Okay. And what is this document? Ο.
- I believe, just as it says, "Notice of Α. Deposition."
  - Q. This is for your deposition, right?
  - Α. Correct.
    - Okay. If you look at the front page, it Ο.

2

3

4

5

6

7

8

9

says, "One or more persons of knowledge and prepared to testify on behalf of the City of Chicago with respect to the following subjects."

And then -- starting on Page 1 and then going onto Page 2, there are four things.

If you reviewed this document and those four things, is it safe to say that you have knowledge on those four subjects?

- A. Yes, it is safe to say that.
- Q. Okay. And do -- you have a familiarity with Amusement Tax Code Ruling No. 5?
  - A. Yes, I do.
- Q. And you mentioned earlier that you had reviewed it before this deposition, correct?
  - A. Correct.
- Q. And is part of your job responsibilities enforcing the amusement tax, including the way that it's interpreted in Ruling No. 5?
  - A. Yes, that is correct.
- Q. And am I right to say that Amusement Tax
  Ruling No. 5 interprets the amusement tax to apply to
  what I'm going to call "providers of Internet-based
  streaming video, audio, and gaming services"?
  - A. Yes. Generally speaking, I think you're

ELECTRONICALLY FILED 9/27/2017 4:28 PM 12 2015-CH-143399 17 15 PAGE 26 0472 17 0

15

16

1718

19

20

21

22

23

24

Bridges Court Reporting Page: 25

2

3

4

5

6

7

8

9

17

18

19

20

21

22

23

24

right. Just about the Internet thing, it could be any sort of streaming, in theory. Not being a tech wizard, just thinking off the top of my head right now, yes, the majority of those would be Internet delivered.

- What would be an example of a streaming service that wasn't delivered via the Internet?
- Well, I can't think of one. You made it a complete totality statement, so I didn't want to answer in totality.
- It could be a streaming service that isn't on the Internet, but you're not aware of any?
  - Exactly. I'm not a tech wizard, though. Α.
- If I call those, for like brevity's sake, 0. "streaming services" for the rest of this deposition, you'll understand that's what we're talking about? The providers that are subject to the amusement tax pursuant to Ruling 5. Is that fair?
- If you use the term, "streaming," I Yes. understand what you're talking about. I think we have an agreement on that.
- I don't want to say that long thing every single time.
  - And I agree, too. I just wanted to make Α.

- 1
- sure we're on the same page there.
- 2
- Q. Okay. Did you have any involvement in drafting Amusement Tax Ruling 5?
- 3 4
- A. No.

remember exactly.

5

6

- Q. Did you ever attend any meetings regarding Tax Ruling 5?
- 7
- A. No, not as I recall. No meetings regarding that ruling.
- 8
- Q. How about after the ruling was issued, were there any meetings about how, as a department, you would enforce it or provide audits?
- 10

11

- A. No. I don't recall any meetings after it was drafted and issued regarding that.
- TRONICAL /27/2017 4:2 2015-CH-13
- Q. Okay. When did you become first aware of Ruling 5?

15 16

14

A. As I recall, I believe it is when it was drafted, sometime in the summer of 2015. I don't

18

17

Q. And was it before it was, like, officially issued to the public or was it after?

20

21

22

19

A. To be honest, I don't recall specifically for that. It may have been before it was issued to the public -- slightly before, but I absolutely was

aware of it when it was issued to the public.

24

23

As I recall, the effective date went as of 9-1-2015, as it states in there. I don't remember exactly the chronological order when it was issued before then.

- Q. Okay. And is that -- you mentioned 9-1-2015. Is that when you began enforcing the Amusement Tax Ruling 5?
- A. To answer for Ruling 5, yes, but we were enforcing the substance of what's explained in Ruling 5 well before that. That's why, for me, Ruling 5 wasn't any huge -- I looked at it more as clarification. I knew pretty much and agreed with my interpretation what was the substance of what was in there already.
- Q. Okay. So you mentioned that before Ruling 5 you were enforcing the substance of Ruling 5. What do you mean by that?
- A. What I mean by that is we were conducting audits and discovery investigations of people in the streaming line of business for quite sometime before that. And as I recall, that's what led to people deciding that they should draft Ruling 5 to provide some clarity for what the department deemed as a taxability of these services. And, most importantly,

from my point of view, for the enforcement of taxability of these streaming services which is what we were -- we were conducting our investigations for quite sometime before the issuance of Ruling 5, just as it states in Ruling 5, because we were following what we interpreted the application of the ordinance to be to the streaming services.

- Q. And so is it safe to say then that prior to Ruling 5 there were entities that were paying the amusement tax that provided streaming services?
  - A. Yes.
- Q. Okay. So there's -- Ruling 5 mentions streaming services that deliver television shows, movies, or videos.

Can you give me, like, what's an example of, like, either a company or, like a service? What would be an example of something like that that maybe you have audited, or it doesn't have to be, but how would you interpret that?

A. If I can name a specific company?

MR. HANSCOM: I think the way counsel has put his question, you can answer that without regard to who has been audited or not. Just your understanding of the types of companies or products that it would apply

1 to.

2

3

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

23

24

MR. SCHWAB: I'm not necessarily asking for a -- the question is about specifically who's being audited.

## BY THE WITNESS:

- A. Understood. But you would like a specific company name?
- Q. You don't have to, but if you have one, that's fine.
  - A. I could.
- Q. I don't think that that would run afoul of what we discussed yesterday.
  - MR. HANSCOM: I don't either.

    You can go ahead and answer.

### BY THE WITNESS:

- A. I don't either. I just wanted to clarify that.
- A good example would be a company Hulu,  $\mbox{H-U-L-U}$ .
- Q. Mm-hmm. So they provide a streaming television show service?
- A. Streaming television shows. I believe they have movies on there sometimes, if I'm not mistaken, and they have a free service as well as a premium

2

3

4

5

6

7

8

9

1 (

10

ONICALLY FILED 72017 4:28 PM 16-CH-13399 □ 16E 32 №72 □

15

14

16 17

18

19

20

21

22

23

24

service that you have to pay for.

Q. And the premium service would be the one that would be subject to the tax since, obviously, you can only tax what's being spent?

- A. Absolutely. Do the math. Nine percent of zero charged -- exactly. That's an audit joke. Put that for the record.
- Q. And how about, the ruling also mentions electronically-delivered audio or music. Similarly, can you give me an example or a type of service that would fall under that category?
  - A. Apple iTunes.
- Q. So iTunes, as I understand it, you download a music file, like, permanently? Is that subject to the amusement tax, or is that subject to a different tax?
- A. That permanent download, if I'm using the technology correctly here, if we're speaking about the same thing -- is a -- a permanent download is not a quote/unquote rental or a temporary streaming of the music. It's actually you purchasing that piece of music in a permanent download that is yours now, and it's no different than when you would, in the old days, purchase a CD and it was now yours to do as you

pleased within the legality of the copyright. That's the same thing as a purchase. So that would be subject to not any tax that we have jurisdiction with, but the sales tax.

Q. The Chicago sales tax, correct?

1

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

23

24

- A. The Chicago sales tax, but the state of Illinois has jurisdiction over that.
- Q. Okay. And in the City of Chicago, what is that sales tax percentage?
- A. That sales tax percentage now is 1 and a quarter, I believe.
  - Q. That's the percent for the City?
  - A. Currently, right now, yes.
- Q. And the ruling also mentions electronically delivered or streaming games. Can you give me an example of what, like, a service that provides a streaming game would be?
  - A. Xbox would be a good example.
  - Q. This is like Xbox Live?
- A. Xbox Live, I believe. Sometimes these businesses they change the name or they'll offer an Xbox Live platform and then offer this.
- As far as I'm aware, yes, Xbox Live is the common term they go by.

Bridges Court Reporting Page: 32

1

ELECTRONICALLY FILED 9/27/2017 4:28 PM 1 2016-CH-13399 T 5 P PAGE 34 0972 T

16

17

18

19

20

21

22

23

24

Q. Okay. And what's your understanding of how the City determines whether -- let me back up for a second.

The amusement tax, does it apply to the provider, or does it apply to the customer of the provider?

- A. The amusement tax is subject to the customer of the provider. They are the user. The ultimate liability rests on the customer. The provider has tax-collection responsibilities.
- Q. Okay. So the customer is the taxpayer, correct?
  - A. Correct.
- Q. But the way that I understand Ruling 5 and the amusement tax combined to operate is that the customer pays the tax to the provider?
  - A. That is correct.
- Q. And then the provider remits that tax to the City of Chicago?
  - A. That is correct.
  - Q. How often does the provider do that?
- A. The provider remits to the Department of Finance once a month, and then files an annual fiscal tax return which covers the 12-month period of

July 1st from a given year to the following June 30th.

Q. And when it remits the tax, does it just simply remit an amount of money? Are there any reports that it has to submit?

- A. There are no reports. They just remit an amount of money. And in the old days there would be a coupon with the payment. Now, everyone does it online.
  - Q. Electronic payment to the City?
- A. Electronic payment, literally the amount of money that shows up in our database. And the only report that is needed is when the annual return is filed.
- Q. And what is -- what's on the annual fiscal report?
  - A. For amusement tax?
  - Q. Yes, for amusement tax.
- A. For amusement tax, you have the front page which shows the amount of gross receipts inclusive of the tax, then any deductions, then the gross amount of tax -- excuse me -- the net amount of tax due after said deductions inclusive of the tax. Then the tax is backed out to come to the tax due. That's the front page of the return.

T4:28 PM CH-1,3399 T CH-1,3399 T CH-1,3399 T CH-1,3399 T CH-1,36 0,972 T CH-1,

It's supported by a worksheet which states the different revenue streams that led to Line 1 of what would be taxable. Because, again, for amusement tax you have a lot of different industries. You can have a movie theater company, we have a sports team, a streaming service, things of that nature.

And then it lists all the deductions, more detailed, you know, like A, B, C, D. And then the final page is an annualization schedule which summarizes the amounts remitted throughout the 12-month period and it should reconcile with the front page of the return of the tax due.

- Q. And is it similar to like my personal income tax that there may be a discrepancy and so that I may owe money at the end of the year, as a provider?
- A. That could be. The amount that you pay throughout the year has to be on an annualization schedule. It's summarized. You have to put the exact amount there that you remitted.

But if you were to find out, in your example, oh, I remitted the wrong amount, it should be this, you have to make sure it's reflected in the annualization schedule, and it would need to be shown on the front page of the return.

3

2

4

5 6

7

8

9

10

ONICALLY FILEI /2017 4:28 PM 15-CH-13399 T

15

14

16 17

18

19

20

21

22

23

24

So your full return: the front page, worksheet, annualization schedule, would have the corrected amount, as you said, that's due. When it's processed in our system, it would post against the payments that you made, which in your example you said were deficient. So, therefore, it would create a deficiency which would say, for example, you under-remitted for \$1,000 for the fiscal tax year, and there would be interest and penalties calculated on that underpayment amount.

Labell v. City of Chicago

- Q. About how often does that happen? Let's just say for the amusement tax.
- A. It would be pure speculation. It doesn't happen as -- most people do, do it correctly, from what I've seen over the years. So the majority of people do it correctly, but I can't tell you an exact amount. There are just too many tax returns, too many payers. I'm sure it fluctuates from year to year.
- Q. Are there any examples where a provider might overpay? Pay too much?
  - A. Yes. Would you like an example?
- Q. You don't have to give me a specific example. But in that situation, what happens? Do they get a refund, or what happens?

A. Yes. It would create that same system where it would post against the payments. The return would say it's overpaid and post against the payment. So now they say we have \$1,000 of excess remitted to the City. That would hit a refund queue which would then be assigned to whoever is the supervisor for said tax code.

So, for example, if it was an amusement tax taxpayer, that would then be queued over to me, and then I would assign someone to do a refund review of that.

Actually, just so you know, that's also one of my duties. I don't think I mentioned it there -- I apologize -- earlier about my duties -- is to supervise refund reviews.

They're essentially kind of like how a discovery investigation would be where we are -- for compliance, we're determining if there is potential liability.

A refund is just the complete inverse of that. We're not trying to do a full-blown audit here and take tons of resources and our time or the taxpayer's time, but the taxpayer is essentially, with that return, is coming to us and saying, "I paid the

2

3

4

5

6

7

8

9

17

18

19

20

21

22

23

24

City \$1,000 too much." So we need to review that. can't just have the comptroller write over a check and hand it over. We need to verify that that amount was accurate, and I assign it over to one of my auditors.

It's a very simple process. They contact the taxpayer and say, "You overpaid this. Why? How did you determine it? Show me the reports and the backup that made you determine it's substantiated."

More often than not it's very linear and just a silly mistake on someone's part on their end. They substantiate it. I review the file then. if I see everything is substantiated there, and I approve it, and I give it -- it goes all the way up the chain of command to the comptroller and they cut a check for the \$1,000 that goes back to the business.

So when you mentioned this review, I assume this is true in any kind of audit. You mentioned documents that you review to make sure that you've got the accurate amount.

What are included on those documents? Are those like a list of, like, sales, or what are on them?

Generally speaking, a list of sales from their billing reports, any summary spreadsheets they

might have that transfer over from the billing reports to how they've calculated it to get to the return.

Q. Okay. And in determining who pays the amusement tax for streaming services, the ruling mentions that it's based on the residential street address or primary business address in Chicago reflected on a credit card bill address, ZIP code or any other reliable information.

Is it safe to say that means basically the address that -- the billing address that a customer uses to a streaming service?

- A. That's correct. From my experience dealing with these businesses and a similarly-situated business, that is correct.
- Q. And is there any other, like -- because it mentions, "reliable information." Is there any other information that it might be based on that isn't the billing address?
- A. Not from my experience because that is what these businesses use to determine the actual billing address and where these -- excuse me -- where the subscribers are located. So, therefore, we follow that as well.
  - Q. Okay. And is there any point in your audit

2

3

4

5

6

7

8

9

16

17

18

19

20

21

22

23

24

that you would review that determination? Like -- let me back up. Let me strike that question.

I think I understand you to say that that determination is made by the provider; is that right?

- A. Yes.
- Q. Okay. And now I'll ask the question I was going to ask. Is there any circumstance in an audit where you would review that decision by a provider about which customers are required to pay the tax?
  - A. Yes.
- Q. And can you tell me what those circumstances would be?
- A. When it comes to a streaming service or any business that's similarly situated like that where you have Chicago and non-Chicago customers. They have a billing system in place which codes people accordingly. This is a Chicago customer. This one is not a Chicago customer.
- So, obviously, we test the Chicago customers to make sure that they, A, indeed are Chicago customers, and, B, that the full amount of the charge that could be subject to tax is being remitted on, as well as we test some of the non-Chicago customers just to verify that their internal controls are in place

with their billing systems so they don't say that this customer is located in Naperville, and then we look at it like, oh, 30 Naperville customers, for some reason 12 of them are Chicago customers. I'm seeing it right here on North State Street.

So we test that to verify the accuracy of their billing reports.

- Q. Okay. What happens if a provider, let's say, of streaming services, fails to collect from a taxpayer, a taxpayer in Chicago? Is that operator still liable to the City to pay what that tax would be?
  - A. Yes.
- Q. And so even if the provider doesn't collect from the customer, the City collects from the provider anyway, correct?
  - A. Correct.
- Q. Do you know of any examples where that happens where a provider doesn't collect from the customers and that you've had to collect from the provider? Let me just ask, has that ever happened?
  - A. Yes.
- MR. HANSCOM: Could we clarify? Are we talking about the streaming alone or just any situation?

2

3

4

5

6

7

8

9

ELECTRONICALLY FILED 9/27/2017 4:28 PM 1 2015-CH-13399 1 1 2 PAGE 43 & 272 1 0

16

17

18

19

20

21

22

23

24

MR. SCHWAB: Let's narrow it to streaming for right now.

#### BY THE WITNESS:

- A. My assumption was you're referring to streaming, and yes, that's correct.
- Q. And is it -- what reason -- is there any reason that an operator would not collect from its customers? Is that because they want to provide their customers -- I mean, do you know any reasons why they would do that?
- A. It would be pure speculation on my part, if you'd like me to speculate.
- Q. No, that's okay. If you don't know, then you don't know.
- A. It would be assumption and speculation on my part, but I've never actually verified that where I spoke to someone -- to the said provider and said, "How did you not know this? Why weren't you guys remitting this?"
- I don't -- not just with streaming, with anybody. It's inconsequential to me. They could, in theory, complain to me if that were to happen, but I haven't experienced that.
  - Q. And, you know, maybe you just answered this,

but just let me ask this question again. If you did -- if this is implied in your answer, then let me know.

So when there is an operator that hasn't remitted taxes that -- let's say, streaming taxes, that it owes to the City that it's not collecting from its customers, generally is it because they aren't aware of the tax?

MR. HANSCOM: Just say what you know or if you've got an understanding.

#### BY THE WITNESS:

- A. Just to make sure, you did say specifically "streaming services"?
  - O. Yeah.
- A. Can you state the question again to make sure I get it right?
- Q. Sure. In the situations that we've been talking about where a streaming provider hasn't collected a tax from the customers and remitted that tax to the City, is it your understanding that the general reason they don't do that is because they don't know about the tax?
  - MR. HANSCOM: I'm going to object to the form.

    Go ahead, if you can.

2

#### BY THE WITNESS:

3

4

5

6

7

8

9

10

6/27/2017 4:28 PM 9/27/2017 4:28 PM 1 2016-CH-13399 T P PAGE 45 @972 T

15

16 17

18

19

20

21

22

23

24

A. I'd be speculating on that too to say a general reason. And also, I honestly don't know whether they truthfully knew about the tax or not, with a person that's responsible in their tax department, I honestly wouldn't know. Because in theory, someone can tell me they didn't know about the tax, and I don't have a polygraph on them where they may be very familiar with this tax.

In theory, they could have worked for someone else who was a taxpayer of the amusement tax for many years and tell us, you know, deceitfully, I never knew about this tax.

- Q. Okay.
- A. That's just being honest with that, to answer that question.
- Q. Well, are you aware of any streaming provider that hadn't paid or hadn't collected and remitted the tax to the City that specifically told you -- you don't tell me which one it is. Are you aware of any that specifically told you that they didn't know about this tax?
- A. Not that specifically told me. But from talking to my auditors, as I recall, I'm sure I maybe

2

3

4

5

6

7

8

9

15

16

17

18

19

20

21

22

23

24

heard a few where someone might have said that we didn't know about this tax. Whether it's truthful or not, you know, so...

- Under your understanding of the amusement tax, would it be legal -- we can expand this to any amusement tax collector, any provider -- would it be legal for them not to collect the tax from their customers but then remit the amount of the tax that's owed from their customers to you and have a business model where they don't collect the tax from their customers at all, they just pay it themselves?
- Not being a lawyer, I don't know about the legality of that. But if I were auditing said amusement business and in an investigation, being an audit or discovery or whatever, and I saw that they needed to remit X-amount of tax, say \$100,000 for this said period, and they remitted to us \$100,000, but they didn't collect it from their customers, in our enforcement area, I would be fine with that. But we would inquire to them saying, "You do understand that the ultimate incident of liability rests on the customer here. You could be collecting this from the customer."
  - Okay. Is there ever a circumstance whereby Ο.

2

3

4

5

6

7

8

9

16

17

18

19

20

21

22

23

24

the City might take an action against a customer that -- who hasn't paid the tax to a provider that isn't remitting the tax to the City?

- A. Excuse me. Can you restate that question again?
  - Q. Maybe I should rephrase it.

My question is, would there ever be a circumstance where the City might take action against the customer instead of the provider where the provider is not remitting the amusement tax to the City?

MR. HANSCOM: Is this in any situation?

MR. SCHWAB: Any amusement tax.

#### BY THE WITNESS:

- A. Yes.
- Q. And can you tell me what those -- what that situation, or if there's more than one, what they are?
- A. I can name the exact situation, but it would be obvious who the tax -- who the tax collector was. Is that a confidentiality thing? Because when I say the nature of it, it's going to be obvious. Anyone would know.
- MR. HANSCOM: You can't describe it generally without it being obvious?

I honestly couldn't. THE WITNESS:

right now, and I am scanning my brain right now.

revealing some confidentiality, you shouldn't.

2

MR. HANSCOM: Can you think of any other that

3

would be an example?

THE WITNESS:

MR. HANSCOM:

THE WITNESS:

Okay.

4

MR. SCHWAB: Is it the only one that you're aware

That's the only one I can think of

Well, if you can't do it without

It's too obvious right now.

Let me -- let me ask that question

Has there ever been a situation where the

5

of?

6

7

8

9

10

11

BY MR. SCHWAB:

But the answer is yes, there is such a

situation?

Very, very rare, but yes.

16 17

14

15

again but now narrow it to the streaming service

City has taken action against a customer of a

streaming service provider that hasn't remitted the

18

providers.

Ο.

19

20

21

22

Α.

0.

No, not that I'm aware of. Could you ever imagine a situation where the

23 24

City might have to do that?

tax?

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

10

1

ECTRONICALLY FILE 9/27/2017 4:28 PM T 2015-CH-13399 T P PAGE 49 @972 T

15

16 17

18

19

20

21

22

23

24

- A. No.
- Q. Okay. How about providers of streaming services that don't have any physical presence in the City of Chicago? Do you communicate with those service providers about the tax obligations that they have?
  - A. By not having physical presence, you mean?
  - Q. Aside from the fact that they have --
- A. No address, no employees that ever set foot in the City?
  - Q. Right.
- A. Like, literally, the only presence is they have subscribers in the City?
  - Q. Yes.
  - A. Yes, I had contact with them.
- Q. And this contact is that they're responsible to pay the tax, correct?
- A. We inquire with them in a discovery investigation and say, "It appears you may be subject to this tax."
- Q. Okay. Have you ever audited a company that doesn't have any physical presence in Chicago, for failure to pay the amusement tax that's the streaming service provider?

1

4

5 6

7

8

9

10

9/27/2017 4:28 PM 1 2015-CH-13399 T P PAGE 50 @\$72 T

15

16 17

18

19

20

21

22

23

24

A. Not audited, but we have conducted discovery investigations.

Q. Okay. If there were -- would the City have -- could the City engage in enforcement actions against the streaming service provider that doesn't have a physical presence in the city?

MR. HANSCOM: Object to the form.

But go ahead, if you can.

#### BY THE WITNESS:

- A. Can you repeat the question again?
- Q. Sure. I'll restate it.

If a streaming service provider doesn't have any physical address or employees and it's only ties to the City is its streaming service customers, doesn't collect the tax from its customers and doesn't remit the tax to the City of Chicago, could the City bring enforcement actions against it?

- A. Yes, we could, in the form of a discovery investigation, yes.
  - Q. Okay. How about an audit?
- A. We could, in theory, but this is under the assumption that this taxpayer is not even remitting any taxes to us, as you said, correct?
  - Q. Right.

2

3

4

5

6

7

8

9

of seem to make more sense to initially do a discovery

So just the flow of our work, it would kind

investigation on them.

Q. And if the discovery investigation led you to believe that they did owe money under the amusement tax, would you provide an audit then?

MR. HANSCOM: Object to the form.

MR. SCHWAB: Do you understand my question?

MR. HANSCOM: Go ahead and explain as best you can.

#### BY THE WITNESS:

- A. To answer your question, I need to explain to you that if we determined that there was a deficiency there, an amount due for this taxpayer who is not remitting anything to us, correct?
  - O. Correct.
- A. We would calculate an amount due and then inform them of that amount due.
- Q. Okay. And if you did that, and then the provider did not pay, would the City take any additional action?
  - MR. HANSCOM: I'll object to the form.

Can we clarify whether they conclude that the provider has physical presence or not?

15

16

17

18

19

20

21

22

23

24

3

4

5

6

7

9

10

9/27/2017 4:28 PM 17/2017 4:28 PM 17/2015-CH-13399 17 18/2016-CH-13399 17

15

16

17

18

19

20

21

22

23

24

MR. SCHWAB: Yeah. Let's say it's -- they conclude that it doesn't have physical presence other than its customers being in the City, yeah. Is that helpful?

MR. HANSCOM: Yes.

If you can answer, based on what you think you would do or what your understanding would be in that situation.

#### BY THE WITNESS:

- A. This situation, just to reiterate to make sure I'm on the same page with you, you say we calculated an additional amount due during the discovery investigation. The business is refusing to pay and in disagreement, and this business does not have a physical presence in the City?
  - O. Correct.
- A. In that situation, that would be a nexus issue, and I would refer it to our legal counsel on that.
- Q. Are you aware of any situations like that that have happened?
  - A. Yes.
- Q. And are you aware of any situations where that happened and the City took additional action?

Just to clarify, maybe additional action -- an enforcement action to try to force the provider to pay the tax.

- A. Specifically, I can't say for certain, but generally we're talking about streaming, right?
  - O. Yes.
- A. Generally, there could have been a situation where it was proven after discussing this with our legal counsel and our legal counsel discussing this with the legal representatives of the business where it was determined by them that, oh, you do have nexus, for whatever reason. I wouldn't be a party to those discussions.

So, in theory, that may have happened where then the business agreed, okay, we do have nexus, and we will pay this now. When, in that situation, the only issue is nexus.

- Q. Okay. So yeah. So it's safe to say in those situations, the issue is whether that company has sufficient nexus with the City of Chicago, and that's a determination for your legal department not for you?
- A. In that situation where we deemed there to be an amount -- there is a transaction, Chicago

subscriber, the business is not arguing that there is a Chicago subscriber here, but they're claiming nexus; yes, I will have to refer to our legal counsel on that.

- Q. Okay. In that situation where you have a provider that doesn't have a nexus or doesn't have a physical -- let's say we have a provider that doesn't have a physical presence in Chicago other than their customers, is there any obligation by the customer to pay the tax to the City of Chicago?
- A. As I understand it, legally, I imagine there would be because in the ordinance it says they are -- the taxpayer is where the ultimate liability rests on.
- Q. Are you aware of any situation
  where -- let's just limit this to streaming, the
  amusement tax for streaming where a customer has
  remitted tax directly to the City of Chicago for the
  amusement tax.
- A. No, I am not personally aware of that situation.
- Q. How about a situation where the City took action against a customer for the streaming service for not paying, just streaming?

2

3

4 5

6

7

8

9

10

27/2017 4:28 PM 2015-CH-13399 TPAGE 55 & 277

15

14

16

17

19

18

20

2122

23

24

- A. I am not aware of a situation like that, no.
- Q. Okay. There is -- in the amusement tax there is a provision that provides an exemption from the amusement tax for in-person live theatrical, live musical, or other live cultural performances that take place in any auditorium, theater, or other space in the City whose maximum capacity, including balconies, is not more than 750 persons.

Can you give me, like, an example of, like, you don't have to, like, name specific taxpayers, or whatever providers, but, like, what would be an example of like a live theatrical, live musical, other live cultural performance?

- A. Ballet.
- Q. How about a play?
- A. Yes.
- Q. A musical would be one?
- A. Musical, yes.
- Q. It says, "musical."

How about what's a live cultural performance? I guess ballet would be one of those things. Anything else that you can think of?

A. I can think of numerous -- the umbrella that covers underneath the live cultural performance, it's

not, as I understand it, open to subjective understanding. Like, you could have a rap concert where I have -- I don't care for rap music much, so on face value I could say, well, what's the cultural significance of that, but it's one of the arts.

So the way I understand it is live cultural has to have a live person in front of you in the presence of the person paying for the privilege to view this live person in the flesh performing this -- one of the cultural arts, be it music, performance theater.

- Q. How about comedy?
- A. Comedy, yes. This is an exhaustive list. I may leave something off the list.
  - Q. I don't expect you to.
- A. The thing is that within those realms you might love Beethoven, I may think he's garbage, but everyone would normally think it's cultural. But even -- any musical performance is deemed, as I understand it, to be culturally significant to qualify for that, as long as it's a live person in front of you.
- Q. Is there any kind of live performance under your understanding of the amusement tax that would not

- be like a live cultural performance?
- A. A live performance that's not a live cultural performance?
  - Q. Yes.
- A. Like sports teams, like, you know, Cubs game, Sox game, Bears game. That's a live person performing in front of you in a presentation, but it's not deemed one of the cultural arts, per se. It's an athletic event.
- Q. Okay. All right. And are part of your job responsibilities enforcing the amusement tax for automatic amusement machines?
  - A. No, it is not.
- Q. Is the automatic amusement machine subject to an amusement tax or subject to a different kind of tax?
- A. The automatic amusement machines are devices, as we use those terms interchangeably. They're subject to the automatic amusement device tax code which is an emblem that they pay for. I don't enforce it. I believe it's a yearly emblem. I forget how much money it is. And they need to pay for it and then affix it on their device.
  - Q. And these automatic amusement machines are

things like video games or pinball or jukeboxes; is that correct?

- A. Yes, pool tables, things like that.
- Q. I want to turn your attention to -- in the Amusement Tax Ruling 5 there is a discussion about bundled services. Can you tell me what a "bundled service" would be?
- A. A bundled service, as I understand, in my experience, just generally speaking, what I've seen in the amusement industry is when you have a provider that's charging a subscriber X-amount of dollars, say \$100, for example, and that \$100 is comprised of, say, \$60 which would be subject to the amusement tax, \$20 that's just subject to no taxes that we have on record, and then maybe \$10 that is subject to a telecom tax and \$10 that's subject to whatever, a restaurant tax or something else.
- Q. Okay. And in the course of auditing, does it often happen that you uncover that there's a service that is bundled that you have to sort of untangle to find out how much is subject to the amusement tax or other taxes?
  - A. Not often, but it does happen.
  - Q. And when it does happen, is it -- does the

provider generally provide a breakdown of how much is subject to each tax?

A. Yes. They provide it to us -- some of them do -- on their backup billing reports. The customer won't see it. They'll just see in that example a \$100 flat amount, this is what I paid, the taxes, and the customer pays it because that's how it was advised, and then they'll get all these bundled services. But the actual provider does have the backup billing to properly code their tax codes when applicable.

Q. How does the provider determine what percentage of a given fee, say \$100, as you said, is subject to which taxes for a bundled service?

MR. HANSCOM: Object to the form.

Go ahead.

#### BY THE WITNESS:

A. From my experience, just generally speaking, we're dealing with different industries here. From my experience, they know the service that they're providing and the cost of it. Because remember, a lot of times some of them may or may not have these bundled charges that are comprised of charges that they would normally charge in a nonbundled form so they would know that.

But even if they didn't know that, they could provide us what the actual charges are, the bundled charges, unbundled, and then we would look at that, and if it appears to be reasonable, they're in substantiation with that, we would agree to that. Sometimes I have to refer to our law department to determine the reasonableness of it.

- Q. And I think you mentioned that there are some providers that don't provide a breakdown of what percentage is subject to each tax in their bundled services. So in that situation, how do you determine what -- does your department determine how to break it down, or do you communicate with the customer and ask them for a breakdown? How does that work?
- A. The way it works is initially we will tell them, since this is a bundled charge here, which we feel, you know, there's definitely -- for example, amusement tax exposure is most, if not all of it, that the full amount is deemed taxable for amusement tax until you provide documentation to substantiate otherwise.
  - Q. Okay. So the onus is on them?
  - A. Yes.
  - Q. Okay. And if provided with that

communication, how -- what do they generally do to prove that it's -- you know, that there's a breakdown between amusements and other kinds of services that are taxed or not taxed?

A. This is assuming that they even cared to, because many businesses I've dealt with don't even -- they have business models where they don't care -- they say they can't, they have no desire to, it doesn't matter.

So this is assuming someone who is responding to us saying that this is a bundled charge and I want to show you what the bundle is comprised of; is that correct?

- O. Yes.
- A. Your question was again? Can you repeat the question?
- Q. Yeah. What do they provide you? What evidence do they provide you? What evidence do you consider sufficient to show that there's a breakdown in the bundled service?
- A. This is for streaming or for any amusement provider?
  - Q. Well, does it make a difference?
  - A. It does.

3

4

5

6

7

8

9

10

27/2017 4:28 PM 2015-CH-1,3399 T PAGE 62 (\$772 T

15

14

16 17

18

19

20

21

22

23

24

- Q. Let's say streaming then.
- A. For streaming, in my experience, I've only experienced it one time, and I did not -- at that point, we referred to our legal counsel, and they handled the negotiations from that point forward.
- Q. Okay. In a situation you mentioned that there are some businesses that just don't care to break down the bundled service. So they just pay the amusement tax on all of the costs of their bundled service or the charge that they provide. So if they charge \$100, and it's 9 percent tax, and it's a bundled service, they pay \$9; is that right?
  - A. This is for an amusement tax in general?
  - Q. Yeah.
  - A. Yes.
- Q. Okay. So they just don't break it down; they'll just pay the \$9 for the amusement tax because they don't care to break it down even if they think it's less than 100 percent goes to the amusement tax?
  - A. That is correct.
- MR. HANSCOM: Jeff, could we just take a break in a minute, just a five-minute break?
- MR. SCHWAB: We can do that. You know what? Why don't we do that because I'm pretty much done. Maybe

2

3

5

6

7

8

9

16

17

18

19

20

21

22

23

24

I can talk to these guys, and then we can come back and probably in maybe like 10 or 15 minutes we'll be done.

MR. HANSCOM: Thank you.

(A short break was had.)

MR. SCHWAB: Back on the record.

Just a few more questions.

#### BY MR. SCHWAB:

- Q. So I think you mentioned that, you know, there are some providers that don't want to break down bundled services, is that correct -- and they just end up paying the entire amusement tax?
- A. Providers, you mean -- not necessarily streaming, though, just any amusement providers?
- Q. There are some amusement providers that bundle services that make a decision not to break down that bundle and end up paying for the amusement tax for the complete cost of the bundled service, correct?
- A. You are correct in that there are some that, from my experience, that say they are bundling charges. I can't specifically think of one where, oh, wow, we said this is definitely a bundled charge, but they don't care. Usually, the reason they don't care is because their business model is set up where you

2

3

4

5

6

7

8

9

ELECTRONICALLY FILED 9/27/2017 4:28 PM c 2015-CH-1,3399 t c PAGE 64 94/72 t 0

16

17

18

19

20

21

22

23

24

might get a free shirt or something like that, something of that nature where it is very incidental to what's being provided there.

So from my experience, as I recall, the ones who are bundling it and don't care to break it down, my assumption is that it's not much of a bundle to begin with, or it's parts of the amusement being provided, and then you have some very small thing like that.

- Q. Okay. Could at least, in theory, those providers that pay -- that, like, in theory, have bundled services, part of the services that they're providing not be subject to any tax?
  - A. In theory, that could be correct, yes.
- Q. And yet they pay, you know, the -- for the 100 percent of the bundled service, right?
  - A. Yes. In theory, yes.
- Q. Okay. So why then is the provider allowed to make that determination and not the customer who ultimately, as you mentioned, is the taxpayer?
  - MR. HANSCOM: Object to the form.

If you have an understanding, go ahead.

BY THE WITNESS:

A. I could not honestly answer to that except

2

3

4

5

6

7

8

9

18

19

20

21

22

23

24

for the fact that the provider does have tax collection responsibilities, and I, as an enforcement agent of the City of Chicago and conducting an investigation on said provider.

- Okay. Let's say that a provider that provides bundled services for amusements, again, you know, that has decided they're going to pay the amusement tax for 100 percent of what they charge for their bundled service, if a customer believed that part of the bundled service was not subject to any Chicago tax, is there a mechanism by which that customer could complain to the City that it should not collect 100 percent of the amusement tax from that provider?
- I'm not certain if there's a mechanism because I don't believe -- they would not contact me. But, in theory, maybe there is. We do have a customer service line, so maybe that person who is the subscriber who is disgruntled about this could call our customer service, but I'm not sure exactly where that call would end up going. I've never experienced an actual customer complaining that came across my desk about that complaint.
  - Okay. And just to clarify, if that O.

happened, you're not sure what you or the City of Chicago would do in that situation?

MR. HANSCOM: Object to the form.

But go ahead.

3

4

5

I'm not sure because I haven't experienced It's one of those things, if it were to happen, then I would experience it. Potentially, I'd be involved and then, you know...

provider to actually break down the bundled service?

Might the City do an audit and force the

6

7

8

9

10

### BY THE WITNESS:

Ο.

11 14

Are you saying, in theory, if we were aware of that customer's complaint?

0. Yes.

16

17

15

18

19

20

21

22

23

24

In theory, if I were auditing someone in that situation and I was aware of their customer's complaint, but I was auditing the subscriber, how would I become aware of the customer's complaint? Through the subscriber telling me?

Through the hotline or the customer service 0. Suppose they called the customer service line and they said, you know, they're charging us 9 percent on everything that we pay, but this isn't just an amusement tax, there are some other things that aren't

2

4

5

6

7

8

9

10

15

16

17

18

19

20

\_ `

21

22

23

24

taxable.

A. I mean, this is a lot of theoretical. This is assuming this person would do it and I found out about it?

- Q. Right.
- A. And then I'd be concurrently conducting an investigation of the provider, and this is assuming that the customer, also, too -- this is assuming the customer -- you know, customers say a lot of things. This is assuming that the customer -- does he have a legal background? Does he have an accounting background? What's his basis on that? It could be completely, completely an unsophisticated basis on not understanding tax law or tax enforcement. But we're assuming -- we're assuming a lot here.

If I was auditing a subscriber -- excuse me. If I was auditing a provider and they weren't collecting -- well, no, in your situation they are collecting the full amount.

- Q. Yes.
- A. And they're saying they don't want to break it down?
  - O. Yes.
  - A. I would agree with them.

Mark Pekic Labell v. City of Chicago

Q. And even with a customer complaint?

A. Yes.

MR. HANSCOM: Object to the form.

But go ahead.

#### BY THE WITNESS:

A. In that situation, I absolutely would. It's very theoretical. I've been doing this job for 17 years, and it's very theoretical.

MR. SCHWAB: Anything else? Okay.

I don't have any more questions.

Do you have anything?

MR. HANSCOM: No. Thank you.

MR. SCHWAB: Okay. Thank you.

MR. HANSCOM: We'll reserve. All right. We'll see you guys next week.

(Witness excused.)

16 17

14

15

1

2

3

4

5

6

7

8

9

10

18

19

20

21

22

23

24

Bridges Court Reporting Page: 67

Mark Pekic Labell v. City of Chicago

1	STATE OF ILLINOIS ) ) SS. COUNTY OF COOK )					
2						
3	IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION					
4						
5	MICHAEL LABELL, JARED LABELL, ) et al.,					
6	Plaintiffs, )					
7	)					
8	vs. ) No. 15 CH 13399 )(Transferred to Law)	) No. 15 CH 13399 )(Transferred to Law)				
9	CITY OF CHICAGO DEPARTMENT OF ) FINANCE, et al.,					
10	Defendants. )					
<u>a</u> 11						
ELECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399 H	I, MARK PEKIC, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken on June 15, 2017; that I have read the foregoing transcript of my deposition, consisting of Pages 1 through 67 inclusive, and affix my signature to same.					
ETE 15	No corrections have been made.					
16	Corrections have been made and					
17	are included with the following errata sheet(s).					
18						
19	MARK PEKIC					
20						
21	SUBSCRIBED AND SWORN to before me this day					
22	of, 2017.					
23	Notary Public					
24						
25						

Bridges Court Reporting Page: 68

STATE OF ILLINOIS SS: COUNTY OF DU PAGE

I, Suzan A. Gualano, Certified Shorthand Reporter No. 084-001847, and Registered Professional Reporter within and for the County of DuPage and State of Illinois, do hereby certify on June 15, 2017, at 9:59 a.m., at 30 North LaSalle Street, Suite 1020, Chicago, Illinois, the deponent, MARK PEKIC, personally appeared before me.

I further certify that MARK PEKIC was by me duly sworn to testify to the truth and that the foregoing is a true record of the testimony given by MARK PEKIC.

I further certify that the deposition terminated at 11:28 a.m.

I further certify that there were present at the taking of said deposition the persons and parties as indicated on the appearance page made a part of this deposition transcript.

I further certify that the signature of the witness to the foregoing deposition was reserved by agreement of counsel; and that I am not counsel for nor in any way related to any of the parties to this suit, nor am I in any way interested in the outcome thereof.

IN TESTIMONY WHEREOF, I do hereunto set my hand this 18th day of August, 2017.

22

23

24

SUZAN A. GUALANO, CSR, RPR License No. 084-001847

Surana Guerlano

August 18, 2017

**ATTN: Weston W. Hanscom** 

City of Chicago - Revenue Litigation Division

Date Taken: June 15, 2017

Case Name: Labell v. City of Chicago

**Deponent: Mark Pekic** 

Dear Weston W. Hanscom,

Please make arrangements for the deponent to read his or her transcript. If there are any transcription errors, please have the deponent note them on the enclosed errata sheet.

When this process has been completed, the deponent must sign the signature page and each errata sheet at the bottom, and his/her signature must be notarized. Please make a copy for your own records and

at the bottom, and his/her signature must be notarized. Please make a copy for your own records and seemed a copy to my office and all respective counsel.

Seemed a copy to my office and all respective counsel.

The As provided by Rule 207(A) of the Supreme Court Rules, as amended, if after 28 days the deponent has read and signed the deposition transcript, it will be understood that the signature is waived and the transcript may be used as though signed.

Sincerely,

Stephanie Silva

**Bridges Court Reporting** 10 S. LaSalle St., Ste. 1950

Alephani Xin

Chicago, IL 60603 (312) 332-6345

CC: Jeffrey W. Schwab

ELECTRONICALLY FILED

### ERRATA SHEET

	PA	.GE	_LINE	SHOULD BE:		
				REASON:		
	PAGE		_LINE	SHOULD BE:		
				REASON:		
	PAGE		_LINE	SHOULD BE:		
				REASON:		
	PAGE		_LINE	_SHOULD BE:		
				REASON:		
	PA	GE	_LINE	SHOULD BE:		
Э				REASON:		
	ŖА	.GE	_LINE	REASON:SHOULD BE:SHOULD BE:SHOULD BE:REASON:		
	72 of 7			REASON:		
	AGE.	GE	_LINE	SHOULD BE:		
	_			REASON:		
	PA	GE	_LINE	_SHOULD BE:		
				REASON:		
	PA	.GE	_LINE	_SHOULD BE:		
				REASON:		
	PAGE		LINE	_SHOULD BE:		
				REASON:		
	PA	.GE	_LINE	_SHOULD BE:		
				REASON:		
SIGNATURE:						

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 12
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit E

## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL LABELL, et al.,	)	
Plaintiffs,	)	Case No. 2015 CH 13399
v.	)	
THE CITY OF CHICAGO, at al.,	)	
Defendants.	)	

# PLAINTIFFS' OBJECTIONS AND ANSWERS TO DEFENDANTS' FIRST SET OF REQUESTS FOR DOCUMENTS

Plaintiffs' answer Defendants City of Chicago and Dan Widawsky's First Set of Requests for Documents as follows.

#### **GENERAL OBJECTIONS**

- A. Plaintiffs object to providing any information in response to

  Defendants' Requests for Documents that is protected by the attorney-client

  privilege, the work-product doctrine, or any other privilege or immunity, or that is

  otherwise protected from disclosure under the Illinois Supreme Court Rules, the

  Illinois Code of Civil Procedure, the Illinois Rules of Evidence, or any other relevant statutory or case law.
- B. Plaintiffs object to Defendants' Requests for Documents to the extent that they purport to require disclosure of information beyond the scope of permissible discovery under the Illinois Supreme Court Rules or any other applicable law or rules.

- C. Plaintiffs object to each of Defendants' Requests for Documents to the extent that it seeks information that is not relevant and/or material to any claim or defense of any party to this action and is not reasonably calculated to lead to the discovery of admissible evidence.
- D. Plaintiffs object to Defendants' Requests for Documents to the extent that they are vague, overly broad, unduly burdensome, or would require an unreasonable investigation on Plaintiffs' part.
- E. Plaintiffs object to Defendants' Requests for Documents to the extent that they seek information beyond Plaintiffs' knowledge and/or outside Plaintiffs' possession, custody, or control.
- F. Plaintiffs object to Defendants' Requests for Documents to the extent that they seek information that is public and therefore equally accessible and available to Defendants.
- G. Plaintiffs object to Defendants' Requests for Documents to the extent that they seek information that is in the possession of Defendants and is thus equally accessible and available to Defendants.
- H. Plaintiffs object to Defendants' Requests for Documents to the extent that they call for a narrative response and are more suitable for a deposition.
- I. Plaintiffs object to Defendants' Requests for Documents to the extent that they call for a legal conclusion.
- J. Plaintiffs object to ambiguous Requests for Documents and, more specifically, to answering any Interrogatory to the extent that the definitions and

BYCE 3 OL 17 5012-CH-13399 6\52\5011 4:58 bW EFECLKOMICYTTA EIFED interpretations Defendant would ascribe to these Requests for Documents and answers thereto would differ from those of Plaintiffs. Plaintiffs' answers are based on Plaintiffs' interpretation of these Requests for Documents and their terms.

K. Plaintiffs' response to a particular Interrogatory shall not be deemed an admission or acknowledgement that such Interrogatory seeks information that is relevant to any claim or defense in this action and is without prejudice to Plaintiffs' right to contend at trial or any stage of this proceeding, or in any subsequent action or proceeding, that the requested information is inadmissible, irrelevant, immaterial, or otherwise objectionable.

L. Without waiving or limiting the foregoing General Objections, or any of the specific objections set forth herein or in Plaintiffs' respective individual answers to Defendant's Requests for Documents, Plaintiffs provide their Answers to Defendants' Requests for Documents, preserving and intending to preserve:

- 1. The right to object to the relevancy, materiality, privilege, or admissibility of any evidence for any purpose in the trial of this or any other action;
- 2. The right to object to the use of evidence and/or the information contained therein in any proceeding, including the trial of this or any other action;
- 3. The right to object, upon any ground, to any demand for further answers to the Requests for Documents or to any other discovery request involving or relating to the subject matter of the Requests for Documents to which answers are given; and

BYCE † 01.15 5012-CH-13336 6\51\5011 †:58 bW EFECLKONIC-YFTX EIFED 705 A

- 4. The right at any time to revise, correct, supplement, clarify, and/or amend any responses furnished.
- 1. All agreements and/or terms and conditions for any online streaming service to which you subscribed during any period from January 2015 through the date of response.

ANSWER: Plaintiffs object to this request because the information sought is public and therefore equally accessible and available to Defendants. Plaintiffs object to this request as unduly burdensome, overbroad, and not reasonably specific. Plaintiffs object to this request as irrelevant to the extent it calls for information from online streaming services to which Plaintiffs subscribed that was not alleged in the Complaint and such online streaming services to which Plaintiffs subscribed prior to the effective date of the Ruling at issue in the case. Notwithstanding and without waiving the foregoing objections, see Netflix terms of use,

https://help.netflix.com/legal/termsofuse?locale=en&docType=termsofuse, Spotify terms of use, https://www.spotify.com/us/legal/end-user-agreement/, Amazon Prime terms of use,

https://www.amazon.com/gp/help/customer/display.html/ref=amb\_link\_373730582\_3
?ie=UTF8&nodeId=13819201&pf\_rd\_m=ATVPDKIKX0DER&pf\_rd\_s=cent, Hulu
terms of use, http://www.hulu.com/terms, and Xbox Live terms of use,
http://www.xbox.com/en-US/Legal/LiveTOU.

2. All ads, brochures, manuals, web site screen shots or other documents describing the features, benefits, functions, costs or other attributes of any online streaming service to which you subscribed during any period from January 2015 through the date of response.

byce 2 of 12 2015-ch-13399 9/27/2017 4:28 pm Electronically 902∀ 905∀ ANSWER: Plaintiffs object to this request to the extent that it calls for documents in the possession of third parties that are not in Plaintiffs' possession, custody, or control. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants.

Plaintiffs object to this request as unduly burdensome, overbroad, and not reasonably specific. Plaintiffs object to this request as irrelevant to the extent it calls for information from online streaming services to which Plaintiffs subscribed that were not alleged in the Complaint and such online streaming services to which Plaintiffs subscribed prior to the effective date of the Ruling at issue in the case.

Notwithstanding and without waiving the foregoing objections, see the documents referenced in Plaintiff's answer to Defendants' Request to Produce No. 1.

3. All invoices received for any online streaming service to which you subscribed for any period from January 2015 through the date of response.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs object to this request as unduly burdensome, overbroad, and not reasonably specific. Plaintiffs object to this request as irrelevant to the extent it calls for information from online streaming services to which Plaintiffs subscribed that were not alleged in the Complaint and such online streaming services to which Plaintiffs subscribed prior to the effective date of the Ruling at issue in the case. Notwithstanding and without waiving the foregoing objections, Plaintiffs will produce records for relevant streaming services for the relevant time period. Investigation continues.

BYCE 6 of 17 2012-CH-13399 EFECLKOQICYFTX BIFED 2007 FFECLKOQICYFTX BIFED 4. All records of payment for any online streaming service to which you subscribed for any period from January 2015 through the date of response.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs object to this request as unduly burdensome, overbroad, and not reasonably specific. Plaintiffs object to this request as irrelevant to the extent it calls for information from online streaming services to which Plaintiffs subscribed that was not alleged in the Complaint and such online streaming services to which Plaintiffs subscribed prior to the effective date of the Ruling at issue in the case. Notwithstanding and without waiving the foregoing objections, see Answer to Request 3.

5. All records of where you have witnessed or participated in any online videos, music and games pursuant to any online streaming service to which you subscribed during any period from January 2015 through the date of response.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs object to this request as unduly burdensome, overbroad, irrelevant, and not reasonably specific.

6. All documents that you intend to submit in support of your contention that the Netflix video streaming service is "similar" to the Netflix video-by-mail service, as the term "similar" is used in the Internet Tax Freedom Act ("ITFA").

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Notwithstanding and without waiving the foregoing objections, Plaintiffs reference <a href="https://www.netflix.com">www.netflix.com</a> in response to this request. Investigation continues.

600 PAGE 1 0€ 15 5012-CH-13339 6\7\7011 4:58 bW 6\7012 BTECLKONICYTTA EIFED 6\7012 BOSA 7. All documents that you intend to submit in support of your contention that cultural performances delivered through online streaming services are "similar" to cultural performances witnessed in person, as the term "similar" is used in the ITFA.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

8. All documents that you intend to submit in support of your contention that online streaming services are "similar" to automatic amusement devices, as the term "similar" is used in the ITFA.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

9. All other documents that you intend to submit in support of your contention that the City's amusement tax, as applied to online streaming services, violates the ITFA.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

10. All documents that you intend to submit in support of your contention that there is no "real and substantial difference" between cultural performances delivered through online streaming services and cultural performances witnessed in person, as the term "real and substantial difference" is used in connection with the Uniformity Clause of the Illinois Constitution ("Uniformity Clause").

BYCE 8 04 15 5012-CH-13336 6\5\501\dagged 4:58 bw 6000 6000 ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

11. All documents that you intend to submit in support of your contention that there is no "real and substantial difference" between online streaming services and automatic amusement devices, as the term "real and substantial difference" is used in connection with the Uniformity Clause.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

12. All documents that you intend to submit in support of your contention that there is no "real and substantial difference" between residents and non-residents, as the term "real and substantial difference" is used in connection with the Uniformity Clause.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

13. All other documents that you intend to submit in support of your contention that the City's amusement tax, as applied to online streaming services, violates the Uniformity Clause.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request

60 0€ 17 50 12-CH-13399 60 121/50 12 4:58 BW 61 12 BW because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

14. All documents that you intend to submit in support of your contention that the City's amusement tax, as applied to online streaming services, does not have a substantial nexus with Chicago.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

15. All documents that you intend to submit in support of your contention that the City's amusement tax, as applied to online streaming services, is not fairly apportioned.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

16. All documents that you intend to submit in support of your contention that the City's amusement tax, as applied to online streaming services, discriminates against interstate commerce.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

17. All documents that you intend to submit in support of your contention that the City's amusement tax, as applied to online streaming services, is not fairly related to services provided by the City.

 ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

18. All other documents that you intend to submit in support of your contention that the City's amusement tax, as applied to online streaming services, violates the Commerce Clause of the United States Constitution.

ANSWER: Plaintiffs object to this request to the extent that it seeks materials not in Plaintiffs' possession. Plaintiffs further object to this request because the information sought is public and therefore equally accessible and available to Defendants. Investigation continues.

19. All reports that relate to this matter and were prepared by any lay or expert witness who may testify in support of your claims.

ANSWER: Plaintiffs object to this Request to the extent that it seeks documents protected by the attorney-client privilege or work-product doctrine. Investigation continues.

Dated: December 19, 2016

Respectfully submitted,

One of their attorneys

Jeffrey M. Schwab (#6290710)
Jacob H. Huebert (#6305339)
Liberty Justice Center (#49098)
190 S. LaSalle Street, Suite 1500
Chicago, Illinois 60603
Telephone (312) 263-7668
Facsimile (312) 263-7702
jhuebert@libertyjusticecenter.org
jschwab@libertyjusticecenter.org

BYGE 11 0€ 15 **5012-CH-13336** 6\Z\\70**1\** 4:78 BW ELECTROMICALLY FILED CLCV CLCV

#### **CERTIFICATE OF SERVICE**

I, Jeffrey Schwab, an attorney, hereby certify that on December 19, 2016, I served the foregoing Plaintiffs' Objections and Answers to Defendants' First Set of Requests for Documents on Defendants' counsel of record by electronic mail and regular mail sent to:

Steve Tomiello
Weston Hanscom
Kim Cook
City of Chicago Department of Law
Revenue Litigation Division
30 North LaSalle Street, Suite 1020
Chicago, IL 60602
Steven.Tomiello@cityofchicago.org

Jeffrey/M. Schwalt

BY STAND STAND STREET STAND STAND STAND STREET STAND STREET STAND STREET STAND STAND

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 38
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit F

# ELECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399 PAGE 2 of 38

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL LABELL, et al.,	)
Plaintiffs,	) Case No. 2015 CH 13399 ) (Transferred to Law)
v.	)
THE CITY OF CHICAGO, at al.,	)
Defendants.	)

#### DECLARATION OF MICHAEL LABELL

#### I, Michael Labell, declare as follows:

- 1. I have been a resident of Chicago, Illinois prior to June 2015 to the present.
- 2. Since January 2016 and up until the present, I have paid for a subscription to Netflix. Since January 2015, I have paid for a subscription to Spotify. Since February 2016 I have paid for a subscription to Amazon Prime.
- 3. From January 2016 until the present, Netflix charged me \$15.98 per month and collected \$1.44 per month from me for the Chicago amusement tax.
- 4. Since January 2016, Netflix has collected a total of \$30.24 from me for the Chicago amusement tax.
- 5. From January 2015 through June 2016, Spotify charged me \$9.99 per month and from September 2015 through June 2016, Spotify has collected \$0.90 per month from me for the Chicago amusement tax. From July 2016 until the present, Spotify charged me \$14.99 per month and collected \$1.35 per month from me for the Chicago amusement tax.

- 6. Since September 2015, Spotify has collected a total of \$29.25 from me for the Chicago amusement tax.
- 7. Amazon has not collected the Chicago amusement tax from me for my Amazon Prime subscription.
- 8. To date, the total amount in Chicago amusement tax that I have paid for my Netflix and Spotify subscriptions has been \$59.49.
- 9. I have attached receipts of my Netflix, Spotify, and Amazon Prime subscriptions that represent the amounts I have paid monthly for these services and for the amusement tax.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September <u>25</u>, 2017

Michael Labell

RECEIPT		Amazon.com, Inc. 410 Terry Avenue North Seattle, WA 98109-5210 USA
Receipt number: M6QE8X8	BTKK84FJPTMAD0	
Billing date: February 16, 2016	Billed to: Michele Labell	Method of Payment:
	Chicago, II United States	
This is not a VAT invoice		
Item:		Amount:
Prime Membership Fee		\$99.00



Customer Michele Labell

Invoice #

485212116

Date 1/7/16

Description Netflix Service

Service period 1/7/16—2/6/16

Amount \$15.98

Tax \$1.44

Total Paid \$17.42

Payment method

1 of 1



Customer Michele Labell

Invoice #

944937983

Date 2/9/16

Description Netflix Service

Service period 2/7/16—3/6/16

Amount \$15.98

Tax \$1.44

Total Paid \$17.42

Payment method

1 of 1



Customer Michele Labell

Invoice #

1532230022

Date 3/9/16

Description Netflix Service

Service period 3/9/16—4/8/16

Amount \$15.98

Tax \$1.44

Total Paid \$17.42

Payment method

1 of 1



Customer Michele Labell

Invoice #

89509738

Date 4/9/16

Description Netflix Service

Service period 4/9/16—5/8/16

Amount \$15.98

Tax \$1.44

Total Paid \$17.42

Payment method

1 of 1



Customer Michele Labell

Invoice #

1783875410

Date 5/9/16

Description Netflix Service

Service period 5/9/16—6/8/16

Amount \$15.98

Tax \$1.44

Total Paid \$17.42

Payment method

1 of 1



Customer Michele Labell

Invoice #

886728946

Date 6/9/16

Description Netflix Service

Service period 6/9/16—7/8/16

Amount \$15.98

Tax \$1.44

Total Paid \$17.42

Payment method



1 of 1



Customer Michele Labell

Invoice #

811007292

Date 7/9/16

Description Netflix Service

Service period 7/9/16—8/8/16

Amount \$15.98

Tax \$1.44

Total Paid \$17.42

Payment method

1 of 1

11/13/16, 2:59 PN



Customer Michele Labell

Invoice #

1863259420

Date 8/9/16

Description Netflix Service

Service period 8/9/16—9/8/16

Amount \$7.99

Tax \$0.72

Total Paid \$8.71

Payment method

1 of 1

11/13/16, 2:59 PN

NETFLIX

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Michele Labell

Invoice #

245789763

Date 9/9/16

Description Netflix Service

Service period 9/9/16—10/8/16

Amount \$9.99

Tax \$0.90

Total Paid \$10.89

Payment method



NETFLIX

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Michele Labell

Invoice #

1436264928

Date 10/9/16

Description Netflix Service

Service period 10/9/16—11/8/16

Amount \$9.99

Tax \$0.90

Total Paid \$10.89

Payment method

1 of 1



Customer Michele Labell

Invoice #

2099734033

Date 12/7/15

Description Netflix Service

Service period 12/7/15—1/6/16

Amount \$15.98

Tax \$1.44

Total Paid \$17.42

Payment method

1 of 1



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-password/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

January 8, 2015

Order number

515177325013

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

Price

\$9.99

Sales tax 0%

\$0.00

Total

\$9.99

1 of 1

11/13/16, 3:19 PN



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-password/)

Notification settings (/us/account /notifications/)

Offline devices
(/us/account
/offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

February 8, 2015

Order number

538397943019

Payment method

PayPal

Retailer

Spotify USA Inc.

**VAT** number

80-0555431

Username

labellmd

**Price** 

\$9.99

Sales tax 0%

\$0.00

Total

\$9.99

1 of 1

11/13/16, 3:18 PN



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /changepassword/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

March 8, 2015

Order number

561430835018

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

**Price** 

\$9.99

Sales tax 0%

\$0.00

**Total** 

\$9.99

1 of 1



Account overview (/us/account /overview/)

Date

April 8, 2015

Order number

590903553014

Premium for Family (/us/account /familyplan/)

Edit profile

(/us/account /profile/)

(/us/account

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

Price

\$9.99

Sales tax 0%

\$0.00

Total

\$9.99

/changepassword/) Notification

Change password

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)



Account overview (/us/account /overview/)

Premium for Family (/us/account

Edit profile (/us/account /profile/)

/familyplan/)

Change password (/us/account /changepassword/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

**Date** May 8, 2015

**Order number** 619948646010

Payment method PayPal

Retailer

Spotify USA Inc.

**VAT number** 80-0555431

Username labellmd

**Price** \$9.99

**Sales tax 0%** \$0.00

**Total** \$9.99

1 of 1



Account overview (/us/account /overview/)

Date

Retailer

**VAT** number

Username

Order number

June 8, 2015

649566130013

Premium for Family

(/us/account

/familyplan/)

Payment method PayPal

Edit profile (/us/account

/profile/)

80-0555431

Spotify USA Inc.

Change password

(/us/account

/change-

password/)

labellmd

Price

\$9.99

Sales tax 0%

\$0.00

Total

\$9.99

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /changepassword/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

July 8, 2015

Order number

678524142018

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

**Price** 

\$9.99

Sales tax 0%

\$0.00

Total

\$9.99

1 of 1

11/13/16, 3:17 PN



Account overview (/us/account /overview/)

/familyplan/)

Edit profile

(/us/account /profile/)

(/us/account /change-

password/)

Change password

Date

August 8, 2015

Order number

709120069014

Premium for Family (/us/account Payment method

PayPal

Retailer

Spotify USA Inc.

**VAT number** 

80-0555431

Username

labellmd

Price

\$9.99

Sales tax 0%

\$0.00

Total

\$9.99

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

1 of 1



Account overview (/us/account /overview/)

Order number

September 8, 2015

741134032019

Premium for Family (/us/account /familyplan/)

Edit profile

(/us/account /profile/)

Payment method

PayPal

Retailer

Date

Spotify USA Inc.

**VAT** number

80-0555431

Username

labellmd

**Price** 

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

(/us/account /changepassword/)

Change password

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)



Account overview (/us/account /overview/)

Premium for Family

(/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-

password/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

October 8, 2015

Order number

773129316016

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

**Price** 

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

1 of 1



Account overview (/us/account /overview/)

Date

November 8, 2015

806896259017

Premium for Family (/us/account /familyplan/)

Payment method

Order number

PayPal

Retailer

Spotify USA Inc.

**VAT** number

80-0555431

Username

**Price** 

labellmd

Change password

(/us/account

/change-

Edit profile

(/us/account /profile/)

Sales tax 9% password/)

\$9.99

Total

\$0.90

Notification settings (/us/account

/notifications/)

\$10.89

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)



Account overview (/us/account /overview/)

Date

Order number

Payment method

December 8, 2015

Premium for Family (/us/account

/familyplan/)

Edit profile

(/us/account /profile/)

843257955016

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

Change password Price

(/us/account

/change-

password/)

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /récover-playlists/)

Subscription (/us/account /subscription/)



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-password/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

January 8, 2016

Order number

882674341012

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

**Price** 

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

1 of 1



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-password/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

February 8, 2016

Order number

118488016759074

Payment method

PayPal

Retailer

Spotify USA Inc.

**VAT** number

80-0555431

Username

labellmd

Price

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

1 of 1

11/13/16, 3:08 PN



Account overview (/us/account /overview/)

Date

March 8, 2016

Order number

118488016759074

Premium for Family (/us/account /familyplan/)

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

Change password Price

(/us/account

Edit profile

(/us/account /profile/)

/change-

password/)

Sales tax 9%

\$0.90

\$9.99

Total

\$10.89

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-password/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

April 8, 2016

Order number

118488016759074

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

**Price** 

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

1 of 1

11/13/16, 3:07 PM



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-password/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

**Date** 

May 8, 2016

Order number

118488016759074

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

**Price** 

\$9.99

Sales tax 9%

\$0.90

**Total** 

\$10.89

1 of 1

11/13/16, 3:07 PN



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-password/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

June 8, 2016

Order number

118488016759074

Payment method

PayPal

Retailer

Spotify USA Inc.

**VAT number** 

80-0555431

Username

labellmd

**Price** 

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

1 of 1

11/13/16, 3:06 PM



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-password/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

July 3, 2016

Order number

241439900759076

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

**Price** 

\$14.99

Sales tax 9%

\$1.35

Total

\$16.34

1 of 1

11/13/16, 3:06 PN



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /changepassword/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

August 3, 2016

Order number

241439900759076

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

Price

\$14.99

Sales tax 9%

\$1.35

**Total** 

\$16.34

1 of 1

byge 32 of 38 2015-CH-13399 9/27/2017 4:28 PM Electronically 11/13/16, 3:05 PN



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /change-password/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

September 3, 2016

Order number

241439900759076

Payment method

PayPal

Retailer

Spotify USA Inc.

**VAT** number

80-0555431

Username

labellmd

**Price** 

\$14.99

Sales tax 9%

\$1.35

Total

\$16.34

1 of 1

11/13/16, 3:04 PN



Account overview (/us/account /overview/)

Premium for Family (/us/account /familyplan/)

Edit profile (/us/account /profile/)

Change password (/us/account /changepassword/)

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

Date

October 3, 2016

Order number

241439900759076

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

labellmd

**Price** 

\$14.99

Sales tax 9%

\$1.35

Total

\$16.34

1 of 1

11/13/16, 3:04 PN



Account overview (/us/account /overview/)

(/us/account /familyplan/)

Edit profile

(/us/account /profile/)

(/us/account /change-

password/)

Change password

Date

November 3, 2016

Order number

241439900759076

Premium for Family
Payment method

PayPal

Retailer

Spotify USA Inc.

**VAT** number

80-0555431

Username

labellmd

**Price** 

\$14.99

Sales tax 9%

\$1.35

**Total** 

\$16.34

Notification settings (/us/account /notifications/)

Offline devices (/us/account /offline-devices/)

Recover playlists (/us/account /recover-playlists/)

Subscription (/us/account /subscription/)

1 of 1

11/13/16, 3:03 PM

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 4
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit G

# ELECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399 PAGE 2 of 4

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL LABELL, et al.,	)	
	)	
Plaintiffs,	)	Case No. 2015 CH 13399
	)	(Transferred to Law)
v.	)	
	)	
THE CITY OF CHICAGO, at al.,	)	
	)	
Defendants.	)	

#### DECLARATION OF JARED LABELL

I, Jared Labell, declare as follows:

- 1. I have been a resident of Chicago, Illinois prior to June 2015 to the present.
- 2. Since November 2016 and up until the present, I have paid for a subscription to Amazon Prime.
- 3. Amazon has not collected the Chicago amusement tax from me for my Amazon Prime subscription.
- 4. I have attached receipts of my Amazon Prime subscriptions that represent the amounts I have paid monthly for these services and for the amusement tax.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September 25, 2017

Jared I

RECEIPT

Amazon.com, Inc.
410 Terry Avenue North
Seattle, WA 98109-5210 USA

Receipt number: Z6TGQ5BQ1NKN87YB5VM1

Billing date:
November 07, 2016

Billed to:
United States

This is not a VAT invoice

Item:

Amazon.com, Inc.
410 Terry Avenue North
Seattle, WA 98109-5210 USA

Method of Payment:

Method of Payment:

Amount:

Prime Membership Fee

60 by the distribution of the bound of the

\$99.00

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 15
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit H

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL LABELL, et al.,	)
Plaintiffs,	) Case No. 2015 CH 13399 ) (Transferred to Law)
v.	) (Transierred to Law)
THE CITY OF CHICAGO, at al.,	)
Defendants.	)

#### **DECLARATION OF FORREST JEHLIK**

- I, Forrest Jehlik, declare as follows:
- I have been a resident of Chicago, Illinois prior to June 2015 to the present.
- Since January 2016 and up until the present, I have paid for a subscription to Netflix.
- 3. From January 2016 until October 2016 and from December 2016 to the present, Netflix charged me \$8.99 per month and collected \$0.81 per month from me for the Chicago amusement tax. In November 2016, Netflix charged me \$9.99 and collected \$0.90 from me for the Chicago amusement tax.
- 4. Since January 2016, Netflix has collected a total of \$17.10 from me for the Chicago amusement tax.
- I have attached receipts of my Netflix subscription that represent the amounts I have paid monthly for these services and for the amusement tax.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and

as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September 25, 2017

Forrest Jehlik

Customer forrest jehlik

Invoice #

430364482

Date	Description	Service period	Amount
1/7/16	Netflix Service	1/6/16—2/5/16	\$8.99
Тах			\$0.81



Customer forrest jehlik

Invoice #

1230700594

Date	Description	Service period	Amount
2/6/16	Netflix Service	2/6/16—3/5/16	\$8.99
Tax			\$0.91
			\$0.81

Payment method

BYGE 2 04 12 **5012-CH-13336 6\73\\7011 4:38 BW** EFECLKONICYFTX EIFED **63SA** 

Customer forrest jehlik

Invoice #

1278325017

Date	Description	Service period	Amount
3/6/16	Netflix Service	3/6/16—4/5/16	\$8.99
Tax			\$0.81



Customer forrest jehlik

Invoice #

344647442

Date	Description	Service period	Amount
4/6/16	Netflix Service	4/6/16—5/5/16	\$8.99
Tax			\$0.81

Payment method



64 0€ 10 0€

Customer forrest jehlik

Invoice #

2045365325

Date	Description	Service period	Amount
5/6/16	Netflix Service	5/6/16—6/5/16	\$8.99
Тах			\$0.81
			\$9.80

Payment method

BYGE 8 04 12 **5012-CH-13336** 6\731\7011 4:38 **BM** EFECLKONICYFTX EIFED **632A** 

Customer forrest jehlik

Invoice #

630701008

Date	Description	Service period	Amount
6/6/16	Netflix Service	6/6/16—7/5/16	\$8.99
Tax			\$0.81



Customer forrest jehlik

Invoice #

1067699010

Date	Description	Service period	Amount
7/6/16	Netflix Service	7/6/16—8/5/16	\$8.99
Тах			\$0.81
Total Pai	id		\$9.80



Customer forrest jehlik

Invoice #

1632375245

Date	Description	Service period	Amount
8/6/16	Netflix Service	8/6/16—9/5/16	\$8.99
Tax			\$0.81



Customer forrest jehlik

Invoice #

6315195

Date	Description	Service period	Amount
9/6/16	Netflix Service	9/6/16—10/5/16	\$8.99
Tax			\$0.81
Total Pai			\$9.80

Payment method

645 17 01 12 2012-CH-13339 2013-CH-1338 BM 2013-CHE BD 2013-1339 2



Customer forrest jehlik

Invoice #

975738328

Date	Description	Service period	Amount
11/6/16	Netflix Service	11/6/16—12/5/16	\$9.99
Tax			\$0.90
Total Paid	d		\$10.89

Payment method



6012 0€ 12 0€ 12 0€ 13

Customer forrest jehlik

Invoice #

975738328

Date	Description	Service period	Amount
11/6/16	Netflix Service	11/6/16—12/5/16	\$9.99
Тах			\$0.90

Payment method

64 04 04 12 5012-CH-13389 6/21/3017 4:28 PM FLECTRONICALLY FILED 697

Customer forrest jehlik

Invoice #

2020352456

Date	Description	Service period	Amount
12/6/15	Netflix Service	12/6/15—1/5/16	\$8.99
Тах			\$0.8

Payment method



BYCE 12 04 12 **5012-CH-13366 6)/51/701***1* **4:78 <b>bW** EFECLKONICYFITK EIFED **072**A

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 23
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit I

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL LABELL, et al.,	)	
Plaintiffs,	)	Case No. 2015 CH 13399
v.	)	(Transferred to Law)
v.	)	
THE CITY OF CHICAGO, at al.,	)	
Defendants.	)	

#### DECLARATION OF ZACK UREVIG

#### I, Zack Urevig, declare as follows:

- 1. I have lived in Chicago, Illinois from 2014 to the present.
- 2. Since prior to June 9, 2015 and up until the present, I have paid for subscriptions to Netflix and Amazon Prime. Since June 2016, I have paid for a subscription to Spotify.
- 3. From March 2016 until June 2016, Netflix charged me \$7.99 per month and collected \$0.72 per month from me for the Chicago amusement tax.

  From July 2016 until the present, Netflix charged me \$9.99 per month and collected \$0.90 per month from me for the Chicago amusement tax.
- 4. Since March 2016, Netflix has collected a total of \$16.38 from me for the Chicago amusement tax.
- 5. Since June 2016, Spotify charged me \$9.99 per month and collected \$0.90 per month from me for the Chicago amusement tax.
- 6. Since June 2016, Spotify has collected a total of \$14.40 from me for the Chicago amusement tax.

- 7. Amazon has not collected the Chicago amusement tax from me for my Amazon Prime subscription.
- 8. To date, the total amount in Chicago amusement tax that I have paid for my Netflix and Spotify subscriptions has been \$30.78.
- 9. I have attached receipts of my Netflix, Spotify, and Amazon Prime subscriptions that represent the amounts I have paid monthly for these services and for the amusement tax.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September <u>15</u>, 2017

Zack Urevig

ELECTRONICALLY FILED 9/27/2017 4:28 PM PAGE 3 of 23 **RECEIPT** 

Amazon.com, Inc.

410 Terry Avenue North

Seattle, WA 98109-5210 USA

Receipt number: S7117ZF3TGK7981948D1

Billing date:

Billed to:

**Method of Payment:** 

December 22, 2015

Zachary Urevig

THE WATER BUILDING STAFF

CHICAGO, IL

**United States** 

This is not a VAT invoice

Item:

Amount:

Prime Membership Fee

\$99.00

# NETFLIX

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

629501533

Date 11/20/15

Description Netflix Service

Service period 11/20/15—12/19/15

Amount \$7.99

Total Paid \$7.99



# **NETFLIX**

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

1075304387

Date

12/20/15

Description

Netflix Service

Service period

12/20/15-1/19/16

**Amount** 

\$7.99

**Total Paid** 

\$7.99



# NETFLIX

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

1614133115

Date

1/20/16

Description

Netflix Service

Service period

1/20/16-2/19/16

**Amount** 

\$7.99

**Total Paid** 

\$7.99



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

9211012

Date 2/20/16

Description Netflix Service

Service period 2/20/16—3/19/16

Amount \$7.99

Total Paid \$7.99

Payment method



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

1806045723

3/20/16 Date **Netflix Service** Description

3/20/16-4/19/16 Service period

\$7.99 Amount

Tax \$8.71

**Total Paid** 

Payment method 📲

\$0.72

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

874550154

Date	4/20/16
Description	Netflix Service
Service period	4/20/165/19/16
Amount	\$7.99
Tax	\$0.72
Total Paid	\$8.71

Payment method ¶



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

810409770

 Date
 5/20/16

 Description
 Netflix Service

 Service period
 5/20/16-6/19/16

 Amount
 \$7.99

 Tax
 \$0.72

 Total Paid
 \$8.71

Payment method



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

1856628515

 Date
 6/20/16

 Description
 Netflix Service

 Service period
 6/20/16—7/19/16

 Amount
 \$7.99

 Tax
 \$0.72

 Total Paid
 \$8.71

Payment method

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

144570262

Date 7/20/16

Description Netflix Service

Service period 7/20/16—8/19/16

Amount \$9.99

Tax \$0.90

Total Paid \$10.89

Payment method 1

https://www.netflix.com/invoice/print/144570262

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

1460397750

Date 8/20/16

Description Netflix Service

Service period 8/20/16—9/19/16

Amount \$9.99

Tax \$0.90

Total Paid \$10.89

Payment method

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

1230935736

Date 9/20/16

Description Netflix Service

Service period 9/20/16—10/19/16

Amount \$9.99

Tax \$0.90

Total Paid \$10.89

Payment method -



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Zachary Urevig

Invoice #

491478682

Date 10/20/16

Description Netflix Service

Service period 10/20/16—11/19/16

Amount \$9.99

Tax \$0.90

Total Paid \$10.89

Payment method



Date

May 15, 2016

Order number

202107784425075

Payment method

Card (

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

22qwrbhxhvfyxgiryj2upk7tq

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

Legal (/us/legal/) Cookies (/us/legal/privacy-policy/#cookies) AdChoices (http://info.evidon.com/pub\_info/t120?v=1)

JSA

(/us/select-your-country/) 2016 Spotify AB

https://www.spotify.com/us/account/subscription/receipt/1054293644015

byce 13 of 23 2012-CH-13339 3/21/2013 4:28 PM ELECTROVICALLY FILED 487

**Date** June 14, 2016

**Order number** 202107784425075

Payment method Card

Retailer Spotify USA Inc.

**VAT number** 80-0555431

**Username** 22qwrbhxhvfyxgiryj2upk7tq

**Price** \$9.99

Sales tax 9% \$0.90

**Total** \$10.89

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) © 2016 Spotify AB

1/2

Legal (/us/legal/) Cookies (/us/legal/privacy-policy/#cookies) AdChoices (http://info.evidon.com/pub\_info/1120?v×1)

https://www.spotify.com/us/account/subscription/receipt/1100705451018

byce 18 of 23 2012-CH-13339 3\21\2011 4:28 bm EFECLKONICYFTX EIFED 88SA

Date

July 14, 2016

Order number

202107784425075

Payment method

Card

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

22qwrbhxhvfyxgiryj2upk7tq

Price

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) 2016 Spotify AB

Legal (/us/legal/) Cookies (/us/legal/privacy-policy/#cookies) AdChoices (http://info.evidon.com/pub\_info/t120?v=1)

https://www.spotify.com/us/account/subscription/receipt/1148700296011

byce 16 of 53 **5012-CH-13366 6\51\501\ 4**:5**8 bW** EFECLKONICYFTX EIFED **68SA** 

Date

August 14, 2016

Order number

202107784425075

Payment method

Card

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

22qwrbhxhvfyxgiryj2upk7tq

Price

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) 2016 Spotify AB

Legal (/us/legal/) Cookies (/us/legal/privacy-policy/#cookies) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

https://www.spotify.com/us/account/subscription/receipt/1195379584011

byce 50 of 53 **5012-CH-13338 6\53\501\ 4**:5**8 bW** EFECLKONICYFTX EIFED **09SA** 

Date

September 14, 2016

Order number

202107784425075

Payment method

Card Card

Retailer

Spotify USA Inc.

**VAT** number

80-0555431

Username

22qwrbhxhvfyxgiryj2upk7tq

Price

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) © 2016 Spotify AB

Legal (/us/legal/) Cookies (/us/legal/privacy-policy/#cookies) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

https://www.spotify.com/us/account/subscription/receipt/1250757676010

byce 51 of 53 **5012-CH-13366 6\51\501\ 4:58 bW** EFECLKONICYFTX EIFED **102A** 

Date

October 14, 2016

Order number

202107784425075

Payment method

Card Card

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

22qwrbhxhvfyxgiryj2upk7tq

Price

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

COMPANY

About (/us/about-us/contact/)

Jobs (/us/jobs/)

Press (https://press.spotify.com/us/)

News (https://news.spotify.com/us/)

COMMUNITIES

For Artists (https://www.spotifyartists.com/)

Developers (https://developer.spotify.com/)

Brands (/us/brands/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

(/us/select-your-country/) © 2016 Spotify AB

Legal (/us/legal/) Cookies (/us/legal/privacy-policy/#cookies) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

https://www.spotify.com/us/account/subscription/receipt/1304270997013

1/2

**by**GE 55 of 53 7012-CH-13366 9/27/2017 4:28 PM ELECTRONICALLY FILED 7658

RECEIPT		Amazon.com, Inc. 410 Terry Avenue North Seattle, WA 98109-5210 USA
Receipt number: JJ5FR5XQ	80P23073K3Q1	
Billing date:	Billed to:	Method of Payment:
December 22, 2016	Zachary Urevig	Visa ending in
	2149 W THOMAS ST APT # 1	
	CHICAGO, IL 60622-3629 United States	
This is not a VAT invoice		
Item:		Amount:
Prime Membership Fee		\$99.00

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 37
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit J

```
1
    STATE OF ILLINOIS
                                SS.
2
    COUNTY OF C O O K
3
      IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4
              COUNTY DEPARTMENT, LAW DIVISION
5
    MICHAEL LABELL, JARED
    LABELL, et al.,
6
                 Plaintiffs,
7
                                       No. 15 CH 13399
                                     (Transferred to Law)
      VS.
8
    CITY OF CHICAGO DEPARTMENT
9
    OF FINANCE, et al.,
10
                 Defendants.
```

11

14

15

16

17

18

19

20

21

22

23

24

The deposition of ZACHARY UREVIG, taken before Patricia A. Mache, Certified Shorthand Reporter and Notary Public, taken pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court thereof pertaining to the taking of depositions for the purpose of discovery at 30 North LaSalle Street, Suite 1020, Chicago, Illinois, commencing at 2:02 p.m. on the 12th day of July, A.D. 2017.

Bridges Court Reporting Page: 1

1 APPEARANCES: 2 LIBERTY JUSTICE CENTER 3 MR. JEFFREY M. SCHWAB 190 South LaSalle Street 4 Suite 1500 Chicago, Illinois 60603 5 312-263-7668 6 On behalf of the Plaintiffs; 7 CITY OF CHICAGO MR. MARQUES BERRINGTON 8 MS. AMY BRAMMELL MR. WESTON W. HANSCOM 9 MR. STEVEN J. TOMIELLO 30 North LaSalle Street 10 Suite 1020 Chicago, Illinois 60602 312-744-9077 11 On behalf of the Defendants. 14 15 16 17 18 19 20 21 22 23

1	INDEX
2	WITNESS PAGE
3	ZACHARY UREVIG
4	Examination by MR. HANSCOM4
5	
6	
7	EXHIBITS
8	DEPOSITION EXHIBITS PAGE
9	No. 1
10	No. 28 No. 38
ELECTRONICALLY FILED 9/27/2017 4:28 PM 12015-CH-13399 12 PM 12015-CH-1339 12 PM 12015-CH-1359 12	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	

1 (Witness sworn.) 2 WHEREUPON: 3 ZACHARY UREVIG, 4 called as a witness herein, having been first duly sworn, was examined and testified as 5 6 follows: 7 EXAMINATION 8 BY MR. HANSCOM: 9 Could you state your name, please. 0. 10 Zachary Urevig. Α. And where do you live? 0. Α. Chicago. The address? Q. 14 2149 West Thomas Street, apartment 1, Α. Chicago, Illinois 60622. 15 16 What neighborhood is that? 0. 17 Ukrainian Village. Α. How long have you lived there? 18 0. 19 Three years, I think. Yeah, three and Α. 20 a half years. 21 What is your basic educational 0. 22 background? 23 I have a bachelor's degree in history 24 from Purdue University.

- Q. When did you get that?
  - A. May 2012.
  - Q. So you've been out of school about five years?
    - A. Yes.

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

24

- Q. Any educational courses since then?
- A. No.
- Q. And how about your employment back since college?
- A. I worked briefly part time for a company called Home City Ice in Northwest Indiana and then I had an internship at the Cato Institute in Washington DC and since then I have been at the Illinois Policy Institute.
- Q. When did you start at the Illinois Policy Institute?
  - A. October or November 2013.
- Q. And so you've been working for them since you've been at the Chicago address that you mentioned?
  - A. Yes.
- Q. What does the Illinois Policy Institute do?
  - A. It's a public policy organization that

Bridges Court Reporting Page: 5
A299

tries to have free market principles in public policy.

- Q. And what do you do for them?
- A. Fundraising.

1

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

23

24

- Q. What is your title?
- A. External relations manager.
- Q. And has that been your position the entire time you've been with the business?
  - A. It has not.
- Q. What did -- tell me the dates and the different positions.
- A. When I started on staff I was called external relations associate and then -- I'm not sure if I remember exactly when that changed. I want to say -- if I had to guess was sometime in 2016, early 2016 maybe. I'm not positive.
- Q. And you've been in your current position since then?
  - A. Yes.
  - Q. Where is your office?
- A. 190 South LaSalle Street, Suite 1500,
  Chicago, Illinois.
  - Q. And has that been your office the whole time you've been with the Institute?

Bridges Court Reporting Page: 6

It was originally in a different unit

1

in the same building.

Α.

3

2

What is your basic schedule working for the Institute?

5

4

Monday through Friday 8:30 to 5:30.

6

The complaint in this case states that Ο. you subscribe to Netflix, Spotify, and Amazon Prime, is that correct?

8

9

7

Α. Yes.

10

11

And does it work if I refer to those as streaming services?

Α.

Yes.

14 15

Are there any other streaming services that you subscribe to?

16

Not that I can remember. Α.

17

MR. HANSCOM: Let's go off the record one second if we can.

18

(Whereupon, a short break was taken.)

19 20

MR. HANSCOM: Back on the record.

21

BY MR. HANSCOM:

22

23

I just want to identify a couple of 0. exhibits here which I've already marked. The

24

first I marked as Exhibit 1.

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

23

24

And is that a verification of Plaintiffs' Objections and Answers to Defendants' First Set of Interrogatories that you signed?

- A. (No audible response.)
- Q. You have to answer out loud for the court reporter.
  - A. Yes, I signed this.
- Q. And then I've marked as Exhibit 2
  Plaintiffs' Objections and Answers to
  Defendants' First Set of Interrogatories.

Could you take a look at that and see if that is the document that you were referring to in your verification which is Exhibit 1.

- A. Yes.
- Q. And then one more exhibit here at this point, Exhibit 3. These are what appear to be some billing statements addressed to you that were produced in this case.

And I would ask if you could flip through those and see if that's what those appear to be.

- A. Yes, appears to be.
- Q. And are these documents that you gave

to counsel to produce?

A. Yes.

1

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

- Q. Where did these come from; did you print them out?
- A. I printed them off of the account profile on the websites.
- Q. And if we could just take a quick look at these. The first one appears to be for Amazon Prime, is that correct?
  - A. Yes.
- Q. And then after that there are some statements for Netflix, correct?
  - A. Yes.
- Q. And then it looks like there are some statements for Spotify, is that correct?
  - A. Yes.
- Q. If we could start at the second page actually just looking at one of the Netflix's invoices or statements. So this one is dated November 20 of 2015, correct?
  - A. Yes.
- Q. And it says the service period is November 20 through December 19, correct?
  - A. Yes.

- Q. And the amount is \$7.99?
  - A. Yes.

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

23

- Q. So that's what you paid for your Netflix subscription that month?
  - A. I believe so.
- Q. If you can flip a few months later, it's the one with the little number at the bottom right that says 90.

Do you see that one?

- A. Yes.
- Q. And that's a Netflix statement dated March 20 of 2016. So it's a few months later, correct?
  - A. Yes.
- Q. And on this one there's tax added of 72 cents, correct?
  - A. Yes.
- Q. And then if we could flip back a little further to the one with the number 99 on the bottom right-hand corner.

That's a Spotify statement, correct?

- A. Yes.
- Q. And that one is dated June 14 of 2016?
- A. Yes.

2

3

5

6

7

8

9

10

11 14

15

16 17

18

19

20

21

22

23

- It does not appear to state the service 0. period, but would it be your understanding this would be a statement, a monthly statement, that would probably be for the period starting June 14 of 2016?
  - Α. I believe so, yes.
- And the price on that is \$9.99, Ο. correct?
  - Α. Yes.
- And then this one shows tax of Ο. 90 cents, correct?
  - Yes. Α.
- Now if we flip back to the first page of the exhibit, and this has the number 85 in the bottom right, that's the Amazon Prime statement, correct?
  - Α. Yes.
- And the Amazon Prime is a membership Ο. fee for the entire year, correct?
  - Α. Yes.
- So this one is dated December 22 of 2015 in the amount of \$99, correct?
  - Α. Yes.
  - So this one does not show any tax at Ο.

least at that point, correct?

- A. Yes.
- Q. Have you received an Amazon Prime -well, let me ask you: Have you paid an Amazon
  Prime membership fee for this more recent year
  since this?
  - A. Yes.
- Q. Would you be able to print out that statement from your computer as well?
  - A. Yes.
- Q. Do you recall -- this does not appear to be in the packet here that got produced. Do you know why?
- A. I probably printed this out before that occurred, December 2016.
- Q. Do you know whether the more recent statement that would have been dated around December of 2016, did that have tax on it?
  - A. I don't remember.
- Q. I want to ask you a little bit about these different streaming services and your use of them.
  - A. Okay.
  - Q. You want to start with Netflix?

ELECTRONICALLY FILED 9/27/2017 4:28 PM T 2015-CH-13399 T P PAGE 13 &\$37 T

1

2

3

4

5

6

7

8

9

15

16

17

18 19

20

21

22

23

2

3

5

6

7

8

9

- A. Okay.
  - Q. Do you remember when you first subscribed?
    - A. I do not remember.
    - Q. About how long has it been?
  - A. If I had to guess I would say maybe 2013, maybe 2014, possibly 2012. I honestly don't remember.
    - Q. But you were subscribing even before --
    - A. Yes.
  - Q. -- the first of these statements that are in Exhibit 3?

I'm sorry, go ahead. You have to answer out loud.

- A. Yes.
- Q. Were you living in Chicago at the time that you first signed up with Netflix?
  - A. If it was earlier than 2014, no.
- Q. Do you remember having Netflix when you were at Purdue?
- A. I did not. I believe I had it, if I recall correctly, it would have been maybe late 2012 or '13, early 2013.
  - Q. Where were you living then?

TRONICALLY FILED 7/27/2017 4:28 PM 2015-CH-1,3399 H PAGE 14 0937 H 0

15

14

16

17

18

19

20

21

22

22

23

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- \_\_\_\_
- 71KONICALLY FILEI 727/2017 4:28 PM 2015-CH-13399 T PAGE 15 0037 T
  - 15

- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

- A. Northwest Indiana.
- Q. Is it your recollection that you were living in Indiana then when you first signed up?
  - A. Yes.
  - Q. What was the process for signing up?
- A. I believe I went just to the page and -- I'm not sure exactly how it goes, but just created an account and then started getting billed and you had immediate access after that.
- Q. So you went to the Netflix website on your computer?
  - A. Yes.
- Q. And you had to put in a credit card number for the monthly payments, correct?
  - A. Yes.
  - Q. Did you enter an address?
  - A. If I had to guess, yes.
- Q. When you moved from Indiana to Chicago, do you remember changing the address that you had on file with Netflix?
  - A. Yes.
- Q. For a credit card you have to give the credit card company a billing address, correct?
  - A. Yes.

2

3

5

6

7

8

9

- Q. Do you recall is that how you gave
  Netflix your home address as well or was there a
  separate entry for the credit card and then just
  filling out your own address for Netflix?
  - A. I don't remember.
- Q. Do you remember when you moved to Chicago informing the credit card companies that you were changing your address?
  - A. I don't remember.
- Q. Each month in any event Netflix charges your credit card for the \$8 or so that the subscription costs, correct?
  - A. Yes.
- Q. And that allows you to use Netflix for that coming month, correct?
  - A. Yes.
- Q. What are the features of Netflix that you use it for?
  - A. To watch TV shows and movies.
- Q. Am I correct that the Netflix charge per month is the same no matter how much you do or don't use the subscription that month?
  - A. To my knowledge, yes.
  - Q. What kind of movie selection does

ELECTRONICALLY FILED 9/27/2017 4:28 PM T 2015-CH-13399 T P PAGE 16 0937 T 0

16

15

17

18

19

20

21

22

23

1 | Netflix have?

A. Seems to be a wide variety of different movies, some of them more recent, some of them older. Seems to be just kind of everything.

- Q. If a movie has just come out in the theaters, is that in your observation generally available on Netflix?
  - A. No.
- Q. If you wanted to find kind of an older sort of obscure movie, are you likely to find that on Netflix or does it seem to be newer type movies that are more popular?
- A. You could but not necessarily, if that makes sense.
- Q. And am I correct that Netflix in terms of TV shows has both reruns of shows that have been popular on network TV and then also some of its own special shows that Netflix produces?
  - A. Yes.
- Q. Do you watch any of the shows that are Netflix produced?
  - A. Yes.
- Q. What different devices do you use Netflix on?

2

3

5

6

7

8

9

15

14

16

17

18

19

20

21

22

23

A. I have a TV that I use it on, IPad, and sometimes my phone.

- Q. I assume the TV is at home, correct?
- A. Yes.

1

2

3

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

23

24

- Q. How many TV's do you have at home?
- A. Two.
- Q. And then in what situations would you use the iPad?
- A. If I'm travelling or sometimes if I'm just at home and someone else is using the TV.
- Q. Are there other people besides you who use your Netflix account?
  - A. Yes.
  - Q. And how many other people?
  - A. One.
  - Q. Is that someone who lives with you?
  - A. Yes.
- Q. About how much of your Netflix usage in a typical month is on your TV at home?
- A. Probably if I had to guess over 90 percent.
- Q. And could you give an approximation of how much would be used on the iPad or the cellphone?

Bridges Court Reporting Page: 17

2

3

5

6

7

8

9

- A. If I had to guess closer to zero on the phone but whatever the remaining balance would be on the iPad.
- Q. Do you ever -- well, let me ask you this: How do you get back and forth to work from home?
- A. I walk to the train and take the train to work.
  - O. Is that the Blue Line?
  - A. Yes.
- Q. Do you ever use Netflix for that commute?
  - A. I do not.
- Q. You mention travel, what travel do you do?
- A. If ever I'm on a plane going to another state or wherever.
  - Q. I'm sorry, I couldn't --
- A. If I'm ever travelling to another state on a plane, I'll usually watch something on Netflix or Amazon Prime. Or if I'm at my home, at my parents' house in Indiana, sometimes I'll use it there.
  - Q. And would that usually be the iPad in

ECTRONICALLY FILED 9/27/2017 4:28 PM T 2015-CH-1,3399 T P PAGE 19 @937 T 0

15

16 17

18

19

20

21

22

23

1 that case?

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

23

- A. Yes.
  - Q. How often do you do each of those things?
  - A. Travel through like airplanes, if I had to guess one or two times a year. Going home if I had to guess I would say one to two times a month.
  - Q. And if you go home to Indiana, would that generally just be a weekend visit for example?
    - A. Usually, yes.
  - Q. In the last, let's say last two years, so it's July of 2017 now, so back to about July of 2015, do you remember having had any entire months go by where you did not use your Netflix account at all?
    - A. I don't remember.
  - Q. So you don't remember that -- you might have had that happening but you don't remember it happening?
    - A. Yes.
  - Q. If it had happened, don't you think you would remember a whole month where you didn't

1 use it?

2

3

4

5

6

7

8

9

10

- I honestly can't recall.
- Have you in that same time frame had a month go by where you used your Netflix account but the entire time you used it it was outside of Chicago?
  - Α. No.
- Have there been any months where you used your Netflix account and the use was primarily outside of Chicago?
  - I don't think so, no.
- Let me ask you a little about Spotify. Ο. Now that's streaming for music, correct?
  - Α. Yes.
  - When did you first sign up for that? Ο.
- If I had to guess I would say June 2016 Α. or July.
- So you subscribed to that for about a 0. year?
  - Α. Yes.
- And did you sign up for that the same way, you go to the website and put in your credit card number?
  - I believe so, yes. Α.

11 14

15

16

17

19

18

20

21

22

23

1

- 2
- 3
- 4
- 5
- 6
- 7
- 8

9

- 10
- RONICALLY FILE 7/2017 4:28 PM 015-CH-13399 T
  - 15

- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

- Q. And that's billed the same way, correct? It's a set monthly charge for the whole month, correct?
  - A. Yes.
- Q. And if you use it a lot or you don't use it at all, it's still the same charge?
  - A. I believe so, yes.
  - Q. On what devices did you use Spotify?
- A. Usually my phone, my iPad. I have an Amazon Echo at home that I will use it on. That's usually about it.
- Q. In what situations would you use it on your iPad?
- A. Usually whenever I'm around the house if I wanted to be louder I'll use it on the iPad. If I'm travelling occasionally I'll use it on the iPad or my phone.
- Q. Do you listen to Spotify on your commute back and forth to work?
  - A. Usually, yes.
- Q. If you can hear it over the noise of the train, correct?
  - A. Yes.
  - Q. Does anybody else use your Spotify

1 subscription?

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

A. Not really, no.

- Q. Am I correct that with Spotify what you can do is pick a station which will be music by a particular artist or at least that kind of sound?
- A. You can chose individual songs or entire albums or the catalog of any artist that they have on there.
- Q. Could you give approximate percentages for this one too where how much of that you would listen to Spotify at home versus outside the house?
- A. I would say 90 percent is outside of the house.
- Q. And of that about how much is in Chicago versus if you were out of town?
- A. At least 90 percent is in Chicago or Illinois.
  - Q. Well, how about just in Chicago?
  - A. 90 percent in Chicago.
- Q. Have you in the last couple of years --well, I think you said that it's only been a year or so for Spotify. In that year that

1 yo

2

3

4

5

6

7

8

9

10

- you've subscribed to Spotify, do you remember any months where you did not use Spotify at all?
  - A. I do not.
- Q. And do you remember any months where you used Spotify but were outside of Chicago the entire time?
  - A. I do not.
- Q. Does Spotify offer the ability to listen live to a live concert while it's happening?
  - A. Not to my knowledge, no.
- Q. And I was going to ask you that about Netflix too. For Netflix can you watch something live while it's happening; do they offer that?
  - A. Not to my knowledge, no.
- Q. What kind of Internet service do you have at home?
  - A. AT&T.
  - Q. So is that DSL service?
- A. It's cable I believe.
  - Q. Is it satellite?
    - A. It is not.
    - Q. And then do you have a wireless modem

15

16

17

18

19

20

21

22

23

 $1 \mid \text{as well}$ ?

2

3

4

5

6

7

8

9

- A. Yes.
- Q. So that's what you could use if you want to listen to music through the Amazon -- forget what you called it?
  - A. Echo.
  - Q. (Continuing) Amazon echo?
  - A. Yes.
- Q. How about phone service, who do you get your phone service from?
  - A. Verizon.
- Q. Do you have a landline or just a cellphone?
  - A. Just a cellphone.
- Q. To your knowledge does Verizon offer any kind of video service on its cellphone that Verizon would charge you for?
  - A. Not to my knowledge.
- Q. So the cellphone that you would sometimes listen to Spotify on, you get your phone service for that cellphone from Verizon, correct?
  - A. Yes.
  - Q. And so Verizon bills you for the phone

15

16 17

18

19

20

21

22

23

- service itself, correct?
  - A. Yes.

1

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

23

- Q. Do you use your AT&T cable TV subscription?
- A. I do not have -- I don't have cable.

  The Internet itself is I believe is cable

  Internet, but I don't have a cable subscription

  itself.
- Q. So the only TV that you get is through Netflix?
  - A. Yes, and Amazon Prime.
- Q. So you get some TV shows and so on and movies that you can get through Amazon Prime?
  - A. Yes.
- Q. Are you able to watch news programs on TV at home?
- A. I'm not sure. Not live anyway as far as I know.
  - Q. And how about professional sports?
  - A. Not to my knowledge, no.
- Q. So I take it from your perspective you don't care about watching the sports or news programs or those kinds of things that they have with cable TV to have it be worth paying the

additional amount for that?

A. Yes.

1

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

- Q. And so the TV watching you want to get, some of the shows and the movies you get through Netflix, correct?
  - A. Yes.
- Q. Have you ever subscribed to Netflix video by mail?
- A. I don't know if what I originally subscribed to included that, but to my knowledge I've never used that, no.
- Q. So you don't recall ever having that process of picking out a DVD that they will send you a few days later to watch, correct?
  - A. Correct.
- Q. An issue that has been raised in this case has to do with automatic amusement devices. Do you recall that?
  - A. I do not.
- Q. Another issue that's been raised has to do with live performances of concerts or plays and so on.

Do you ever go to see plays?

A. No.

23 24

Bridges Court Reporting Page: 26

1

2

3

4

5

6

7

8

9

- Q. Do you ever go to concerts?
- A. Yes.
  - Q. What kind of concerts have you gone to and where?
  - A. I've gone to concerts at the Chicago Symphony Orchestra. I've gone to concerts at various venues throughout Chicago or Illinois.
  - Q. Let me ask you about the symphony concerts. Do you subscribe to those?
    - A. I do not.
  - Q. So when you've gone, it's just been for an individual performance?
    - A. Yes.
  - Q. How often have you done that in the last couple of years?
    - A. Maybe four times, five times.
    - Q. And did you buy the tickets yourself?
  - A. Usually my girlfriend has bought them. She works there.
  - Q. Do you know approximately how much the concert tickets cost?
    - A. I do not.
    - Q. Do you listen to symphony on Spotify?
    - A. No.

ELECTRONICALLY FILED 9/27/2017 4:28 PM T 2015-CH-13399 T P PAGE 28 @937 T 0

> 15 16

17

18 19

20

21

22

23

1

2

3

4

5

6

7

8

9

MR. HANSCOM: If we can take a five-minute break.

(Whereupon, a short break was taken.)

MR. HANSCOM: We are almost done, but I just have a few more things.

# BY MR. HANSCOM:

- Q. So besides the symphony, the other concerts you've gone to in Chicago, what were the venues on those?
- A. I believe I've been to Joe's on Weed Street before, House of Blues. I'm not sure of what else I've been to. I don't recall the name of the few other places.
- Q. For the House of Blues, who was the musician?
- A. I think it was Rod Tuffcurls and the Bench Press. It's like a random cover band.
- Q. Do you remember how much the tickets were for that?
- A. I want to say in between 25 and 40, but I don't remember exactly.
- Q. Have you ever bought a -- do you ever buy CD's of music?

15

14

16

17

18

19

20

21

22

23

A. I'll buy vinyl LP's, but I've never really bought a CD.

- Q. Have you ever bought a vinyl recording of a live concert?
  - A. No.

1

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

21

22

23

24

- Q. Have you ever bought a DVD of some kind of play or other performance that was live but then recorded on the DVD?
  - A. Not to my knowledge, no.
- Q. I think you said you don't recall going to any live plays in the last couple of years, correct?
  - A. Mm-hmm.
  - Q. You have --
  - A. Yes.
  - Q. You have got to say yes or no for her.

    Does that include, let's say, a

musical?

- A. I can't recall if I've been to any musicals in the last few years.
- Q. How about comedy company or standup comic, that kind of thing, have you gone to any of those live?
  - A. Yes.

Bridges Court Reporting Page: 29
A323

Q. When have you done that?

A. I believe I went to one last year, maybe two, I don't remember.

- Q. Where were those?
- A. I can't remember what it's called.
- Q. Just comedy --
- A. The one that like all the SNL guys start off from in Chicago.
  - Q. Saturday -- excuse me, Second City?
  - A. Yes.

2

3

5

6

7

8

9

10

14

15

16

17

18

19

20

21

22

23

24

- Q. And did you buy the tickets for that?
- A. I think my girlfriend did.
- Q. Do you know how much the tickets cost?
- A. I do not.
- Q. On Netflix do you ever watch comedy routines that they are showing?
  - A. Yes.
- Q. And those are recordings of comedy skits that were done in the past, correct?
  - A. To my knowledge, yes.
- Q. So it's not streaming live somebody performing, right, as you're watching it, correct?
  - A. Yes.

Bridges Court Reporting Page: 30
A324

Q. And you sometimes watch those on Netflix?

A. Yes.

1

2

3

4

5

6

7

8

9

10

11

14

15

16

17

18

19

20

- Q. And that's part of the subscription cost, correct?
  - A. Yes.
- Q. For Netflix you mention that they have both Netflix produced television shows and then reruns of television shows that are not produced by Netflix, correct?
  - A. Yes.
- Q. Approximately of the TV watching you do on Netflix, what percentage is each of those?
- A. I would say 75 percent is nonoriginal content and 25 percent is Netflix produced content.
- MR. HANSCOM: Okay. I don't think I've got anything else.
  - MR. SCHWAB: I don't have anything.
  - MR. HANSCOM: Thank you.
- THE COURT REPORTER: Signature?
- MR. SCHWAB: What -- I don't remember.
  - MR. HANSCOM: I think you reserved it.
  - MR. SCHWAB: I'll reserve.

24

23

Bridges Court Reporting Page: 31

THE COURT REPORTER: Did you want to order at this time?

MR. HANSCOM: We will hold off right now.

FURTHER DEPONENT SAITH NOT.

7/2017 4:28 PM 115-CH-143399 L AGE 33 6037 L

Bridges Court Reporting Page: 32

```
1
    STATE OF ILLINOIS
                                SS:
2
    COUNTY OF C O O K
3
      IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
            COUNTY DEPARTMENT - LAW DIVISION
4
    MICHAEL LABELL, JARED
5
    LABELL, et al.,
6
           Plaintiffs,
7
                                      No. 15 CH 13399
      VS.
                                   (Transferred to Law)
8
    CITY OF CHICAGO
    DEPARTMENT OF FINANCE,
9
    et al.,
10
           Defendants.
11
            I, ZACHARY UREVIG, state that I have read
14
    the foregoing transcript of the testimony given
15
    by me at my deposition of the 12th day of July,
```

the foregoing transcript of the testimony given by me at my deposition of the 12th day of July, 2017, and that said transcript constitutes a true and correct record of the testimony given by me at said deposition except as I have so indicated on the errata sheet provided herein.

20

```
ZACHARY UREVIG
```

Subscribed and sworn to before me this day of , 2017

24

16

17

18

19

21

22

1

2

3

4

5

6

7

8

9

10

14

15

16

17

18

19

20

21

22

23

24

Notary Public

I, Patricia A. Mache, Certified Shorthand Reporter for the State of Illinois, do hereby certify that the foregoing was reported by stenographic and mechanical means, which matter was held on the date and at the time and place set out on the title page hereof, and that the foregoing constitutes a true and accurate transcript of same.

I further certify that I am not related to any of the parties, and I have no financial interest in the outcome of this matter.

Patricia A. Mache

tring ( & Marlo

Certified Shorthand Reporter

July 25, 2017

**ATTN: Jeffrey Schwab Liberty Justice Center** 

Date Taken: July 12, 2017

Case Name: Labell v. City of Chicago

**Deponent:** Zachary Urevig

Dear Jeffrey Schwab,

Please make arrangements for the deponent to read his/her transcript. To purchase a copy of the deposition transcript, you may call our office at the above number. After the deponent has read the transcript, and if there are any transcription errors, please have the deponent note them on the enclosed errata sheet.

When this process has been completed, the deponent must sign the signature page and each errata sheet at the bottom, and his/her signature must be notarized. Please make a copy for your own records and send a copy to my office and all respective counsel.

provided by Rule 207(A) of the Supreme Court Rules, as amended, if after 28 days the deponent has not read and signed the deposition transcript, it will be understood that the signature is waived and the transcript may be used as though signed.

Sincerely,

Michael Duffy
Michael Duffy

Bridges Court Reporting 10 S. LaSalle St., Ste. 1950

Chicago, IL 60603 (312) 332-6345

CC: S. Tomiello

CTRONICALLY FILED 9/27/2017 4:28 PM

# ERRATA SHEET

	PA	GE	LINE	SHOULD BE:	 	 
				REASON:	 	
	PAGE_		LINE	SHOULD BE:	 	
				REASON:	 	
	PAGE		LINE	SHOULD BE:		
				REASON:	 	
	PAGE		LINE	SHOULD BE:		
ELECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399				REASON:	 	
	PA	GE_	LINE	SHOULD BE:		
	34of 37			REASON:	 	
		GE_	LINE	SHOULD BE:	 	
	PAGE			REASON:	 	
	PA			SHOULD BE:		
				REASON:	 	
	PA	GE_	LINE	SHOULD BE:		
				REASON:	 	
	PAGE		LINE	SHOULD BE:		
				REASON:	 	
	PA	.GE	LINE	SHOULD BE:	 	
				REASON:	 	
	PA	.GE	LINE	SHOULD BE:		
				REASON:		
			SIGN	ATURE:	 	

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 29
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit K

# ELECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399 PAGE 2 of 29

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL LABELL, et al.,	)	
	)	
Plaintiffs,	)	Case No. 2015 CH 13399
	)	(Transferred to Law)
v.	)	
	)	
THE CITY OF CHICAGO, at al.,	)	
	)	
Defendants.	)	

### DECLARATION OF BRYANT JACKSON-GREEN

- I, Bryant Jackson-Green, declare as follows:
- I was a resident of Chicago, Illinois from prior to June 2015 until June
   and then from June 10, 2017 until the present.
- 2. Since December 2015, I have paid for a subscription to Netflix. Since January 2015, I have paid for a subscription to Spotify. From February 2016 through July 2016, I paid for a subscription to Hulu Plus. Since October 2016, I have paid for a subscription to Amazon Prime.
- 3. From December 2015 until the present, Netflix charged me \$11.99 per month and collected \$1.08 per month from me from December 2015 through June 2017 for the Chicago amusement tax.
- 4. Since January 2016, Netflix has collected a total of \$20.52 from me for the Chicago amusement tax.
- 5. From January 2015 through May 2015, Spotify charged me \$9.99 per month. From June 2015 through May 2016, Spotify charged me \$4.99 per month, the student rate, and collected \$0.45 per month from me for the Chicago amusement

tax. From June 2016 through September 2017, Spotify charged me \$9.99 per month and collected \$0.90 per month from me for the Chicago amusement tax even though I moved to Evanston in June 2016.

- 6. Since June 2015, Spotify has collected a total of \$18.45 from me for the Chicago amusement tax.
- 7. Since February 2016 through July 2017, Hulu Plus charged me \$7.99 per month. And from February 2016 to May 2016, Hulu Plus collected \$0.72 per month from me for the Chicago amusement tax.
- 8. Hulu Plus has collected a total of \$2.88 from me for the Chicago amusement tax.
- 9. Amazon has not collected the Chicago amusement tax from me for my Amazon Prime subscription.
- 10. To date, the total amount in Chicago amusement tax that I have paid for my Netflix, Spotify, and Hulu Plus subscriptions has been \$41.85.
- 11. I have attached receipts of my Netflix, Spotify, Hulu Plus, and Amazon Prime subscriptions that represent the amounts I have paid monthly for these services and for the amusement tax.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September 27, 2017

Bryant Jackson-Green

ELECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399 PAGE 5 of 29

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Bryant Jackson-Green

Invoice #

480265087

Date 12/27/15

Description Netflix Service

Service period 12/27/15—1/26/16

Amount \$11.99

Tax \$1.08

Total Paid

Payment method



BYCE 6 of 59 **5012-CH-13338 6\53\5011 4:58 BW** EFECLKONICYTTA HIFED **6ESA** 

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Bryant Jackson-Green

Invoice #

2097689615

 Date
 1/27/16

 Description
 Netflix Service

 Service period
 1/27/16-2/26/16

 Amount
 \$11.99

 Tax
 \$1.08

 Total Paid
 \$13.07

Payment method



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Bryant Jackson-Green

Invoice #

1212855527

Date 3/27/16

Description Netflix Service

Service period 3/27/16—4/26/16

Amount \$11.99

Tax \$1.08

Total Paid \$13.07

Payment method



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Bryant Jackson-Green

Invoice #

1462896578

 Date
 4/27/16

 Description
 Netflix Service

 Service period
 4/27/16—5/26/16

 Amount
 \$11.99

 Tax
 \$1.08

Payment method

**Total Paid** 



BYCE 8 °L 50 5012-CH-13336 6\51\5011 4:58 BW EFECLKONICYFTX EIFED 8ESA 9ESA \$13.07

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Bryant Jackson-Green

Invoice #



235916400

Date	5/27/16
Description	Netflix Service
Service period	5/27/16—6/26/16
Amount	\$11.99
Tax	\$1.08

Total Paid \$13.07

Payment method



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Bryant Jackson-Green

Invoice #

1849129703

Date 6/27/16

Description Netflix Service

Service period 6/27/16—7/26/16

Amount \$11.99

Tax \$1.08

Total Paid \$13.07

Payment method



Date

January 19, 2015

Order number

523790670013

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$9.99

Sales tax 0%

\$0.00

Total

\$9.99

COMPANY

About (/us/about-us/contact/)

Jobs (/us/jobs/)

Press (https://press.spotify.com/us/)
News (https://news.spotify.com/us/)

COMMUNITIES

For Artists (https://artists.spotify.com/)

Developers (https://developer.spotify.com/)

Brands (/us/brands/)

USEFUL LINKS

Help (https://support.spotify.com/?

 $utm\_source=www.spotify.com\&utm\_medium=www\_footer)$ 

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

(/us/select-your-country/) 2016 Spotify AB

Date

February 19, 2015

Order number

547364086017

Payment method

PayPal

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$9.99

Sales tax 0%

\$0.00

Total

\$9.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) 2016 Spotify AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#st3) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

BYCE 13 04 50 5012-CH-13330 6/51/5011 4:58 BM EFECLBONICYTTA EITED 6 AEA 14 CH STEP

Date

June 1, 2015

Order number

41011860477072

Payment method

Card (

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 0%

\$0.00

Total

\$4.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) © 2016 Spotify AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

BYCE 14 OL 58 **3012-CH-13336 6)XJ/S01J 4:38 BW** EFECLKONICYFTX EIFED **44.8** 

Date

July 1, 2015

Order number

41011860477072

Payment method

Card

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 0%

\$0.00

Total

\$4.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) © 2016 Spotity AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#st3) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

Date

August 1, 2015

Order number

41011860477072

Payment method

Card (

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 0%

\$0.00

Total

\$4.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) © 2016 Spotify AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

byce 10 of 29 2015-ch-13339 9/27/2017 4:28 pm Electronicalled 9FEA

Date

October 1, 2015

Order number

41011860477072

Payment method

Card Card

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 9%

\$0.45

Total

\$5.44

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) © 2016 Spotify AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/f120?v=1)

byge 11 of 29 2015-ch-13399 9/27/2017 4:28 PM Electrouicalled 4 PE 2 PE

Date

November 1, 2015

Order number

41011860477072

Payment method

Card

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 9%

\$0.45

Total

\$5.44

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) 2016 Spotify AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChaices (http://info.evidon.com/pub\_info/1120?v=1)

byce 18 of 29 2015-ch-133399 9/27/2017 4:28 pm Electronicalled 8FEA 8FEA

Date

December 1, 2015

Order number

41011860477072

Payment method

Card (

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 9%

\$0.45

Total

\$5.44

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) © 2016 Spot.ry AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

byge 10 0€ 50 2015-ch-13339 9/27/2017 4:28 bm Electronicalled 6PEH 6PEH

Date

January 1, 2016

Order number

41011860477072

Payment method

Card

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 9%

\$0.45

Total

\$5.44

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

**USEFUL LINKS** 

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

(/us/select-your-country/) © 2016 Spotify AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

bVCE~50~ot~587012-CH-13366 9/27/2017 4:28 PM ELECTRONICALLY FILED 0588

**Date** February 1, 2016

**Order number** 41011860477072

Payment method Card

Retailer Spotify USA Inc.

**VAT number** 80-0555431

**Username** 1229180276

**Price** \$4.99

**Sales tax 9%** \$0.45

**Total** \$5.44

COMPANY COMMUNITIES

About (/us/about-us/contact/) For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

USEFUL LINKS

News (https://news.spotify.com/us/)

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify) (https://twitter.com/spotify) (https://www.facebook.com/Spotify)

JSA

(/us/select-your-country/) 2016 Spotify AB

 $\label{legal} \mbox{Legal (/us/legal/pnvacy-policy/)} \mbox{ $Cookies (/us/legal/pnvacy-policy/\#s13)$} AdChoices (http://info.evidon.com/pub_info/1120?v=1)$ $$ \mbox{$T$} \mb$ 

Date March 1, 2016

**Order number** 41011860477072

Payment method Card

Retailer Spotify USA Inc.

**VAT number** 80-0555431

**Username** 1229180276

**Price** \$4.99

**Sales tax 9%** \$0.45

**Total** \$5.44

COMPANY COMMUNITIES

About (/us/about-us/contact/) For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

USEFUL LINKS

News (https://news.spotify.com/us/)

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify) (https://twitter.com/spotify) (https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) 2016 Spotify AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

BYCE 75 °F. 75 **5012-CH-13333 6\73\7011 4:78 BM** EFECLKONICYTTA EIFED **25EA** 

Date

April 1, 2016

Order number

41011860477072

Payment method

Card (Card (

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 9%

\$0.45

Total

\$5.44

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

(/us/select-your-country/) © 2016 Spotify AB

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

BYCE 73 °L 73 7012-CH-13336 8/51/7011 4:78 BM EFECLKONICYFTK EIFED 878A

Date

May 1, 2016

Order number

41011860477072

Payment method

Card (

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 9%

\$0.45

Total

\$5.44

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

(/us/select-your-country/) © 2016 Spotify AB

Date

June 1, 2016

Order number

41011860477072

Payment method

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

 $utm\_source=www.spotify.com\&utm\_medium=www\_footer)$ 

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

(/us/select-your-country/) © 2016 Spotify AB

Date

September 1, 2015

Order number

41011860477072

Payment method

Card (

Retailer

Spotify USA Inc.

VAT number

80-0555431

Username

1229180276

Price

\$4.99

Sales tax 9%

\$0.45

Total

\$5.44

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://artists.spotify.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_footer)

Gift (/us/purchase/ecards/)

(http://instagram.com/spotify)

(https://twitter.com/spotify)

(https://www.facebook.com/Spotify)

USA

Legal (/us/legal/) Privacy (/us/legal/privacy-policy/) Cookies (/us/legal/privacy-policy/#s13) AdChoices (http://info.evidon.com/pub\_info/1120?v=1)

(/us/select-your-country/)





Hello Bryant Jackson-Green,

You sent a payment of \$8.71 USD to Hulu (<u>support@hulu.com</u>)

It may take a few moments for this transaction to appear in your account.

Merchant Hulu support@ hulu.com Instructions to merchant You haven't entered any instructions.

## Get a credit decision in seconds.

PayPal Extras MasterCard®.
PayPal Smart Connect Accounts.

Learn More

Description	Unit price	Qty	Amount
Hulu Plus	\$7.99 USD	1	\$7.99 USD
	S ubto T To:	ax	\$7.99 USD \$0.72 USD \$8.71 USD
	Payme	nt	\$8.71 USD
	Payment sent to support@ hulu.co	<u>om</u>	

Issues with this transaction?

You have 180 days from the date of the transaction to open a dispute in the Resolution Center.

Questions? Go to the Help Center at www.paypal.com/help.

Please do not reply to this email. This mailbox is not monitored and you will not receive a response. For assistance, log in to your PayPal account and click Help in the top right corner of any PayPal page.

You can receive plain text emails instead of HTML emails. To change your Notifications preferences, log in to your account, go to your Profile, and click My settings.

A357

PayPal Email ID PP120 - 4d8de737124e2

JECTRONICALLY FILE 9/27/2017 4:28 PM 2015-CH-13399 PAGE 27 of 29

PLFS-0126





Hello Bryant Jackson-Green,

You sent a payment of \$8.71 USD to Hulu (<u>support@hulu.com</u>)

It may take a few moments for this transaction to appear in your account.

Merchant Hulu support@ hulu.com Instructions to merchant You haven't entered any instructions.



## PAYPAL CREDIT. IT'S ABOUT TIME.

Get 6 months special financing on purchases of \$99 or more when you check out with PayPal and choose PayPal Credit. Subject to credit approval. See terms.



ED				
Descri	otion Unit price	C	ty	Amount
LLY F. 28 PN 13399 of 29	lus \$7.99 US D		1	\$7.99 USD
CTRONICA 9/27/2017 4: 2015-CH-1 PAGE 28	S ubtotal Tax Total		Issues wit transactio	
ELECTI 9/2 2/8	Payment Payment sent to support@ hulu.com		You have 1 the date of transaction	
R es olut	on Center.		dispute in t	

Questions? Go to the Help Center at www.paypal.com/help.

Please do not reply to this email. This mailbox is not monitored and you will not receive a response. For assistance, log in to your PayPal account and click Help in the top right corner of any PayPal page.

You can receive plain text emails instead of HTML emails. To change your Notifications preferences, log in to your account, go to your Profile, and click My settings.

Copyright © 1999-2016 PayPal. All rights reserved.

PayPal Email ID PP120 - ad90bba82fa55

A358 PLFS-0127

Amazon.com, Inc. **RECEIPT** 410 Terry Avenue North Seattle, WA 98109-5210 USA Receipt number: 7HY2SFH5HDBMQSTP8DN0 Billing date: Billed to: **Method of Payment:** October 15, 2016 Bryant Jackson-Green Debit Card ending in 2346 West Taylor Street Apt. 2F Chicago, IL 60612 **United States** This is not a VAT invoice Item: Amount: Prime Membership Fee \$99.00

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 18
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit L

```
STATE OF ILLINOIS )
                                                                                   INDEX
2
                       ) ss:
                                                            2
                                                                WITNESS
                                                                                                        EXAMINATION
3
    COUNTY OF C O O K )
                                                            3
                                                                BRYANT JACKSON-GREEN
4
         IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
                                                                By Mr. Hanscom..... 4
 5
              COUNTY DEPARTMENT - CHANCERY DIVISION
                                                            5
    MICHAEL LABELL, et al.,
6
                                                            6
7
            Plaintiffs,
                                                            7
                                      )
8
                                                            8
                                      ) No. 2015 L 13399
       VS.
                                                            9
9
    THE CITY OF CHICAGO. et al..
                                       )
                                                                                 EXHIBITS
10
            Defendants.
                                                           10
11
         The discovery deposition of BRYANT
                                                           11
                                                                               (NO EXHIBITS MARKED)
12
    JACKSON-GREEN, taken in the above-entitled cause,
                                                           12
13
    before Tabitha Watson, a notary public of Cook
                                                           13
    County, Illinois, on the 22nd of June, 2017, at the
14
                                                           14
15
    hour of 1:30 p.m., at 30 North LaSalle Street,
                                                           15
16
    Suite 1020, Chicago, Illinois, pursuant to Notice.
                                                           16
17
                                                           17
18
                                                           18
19
                                                           19
20
                                                           20
21
                                                           21
22
                                                           22
23
    Reported by: Tabitha Watson, CSR, RPR
                                                           23
24
    License No.: 084-004824
                                                           24
                                                        1
                                                                                                                   3
     APPEARANCES:
                                                                                    (Witness sworn.)
                                                            1
2
          LIBERTY JUSTICE CENTER, by
                                                            2
                                                                               BRYANT JACKSON-GREEN,
 3
          MR. JEFFREY M. SCHWAB
                                                            3
                                                                called as a witness herein, was examined and
 4
          190 South LaSalle Street, Suite 1500
                                                            4
                                                                testified as follows:
          Chicago, Illinois 60603
 5
                                                            5
                                                                                    EXAMINATION
6
          Phone: (312) 263-7668
                                                            6
                                                                BY MR. HANSCOM:
7
               Representing the Plaintiffs,
                                                            7
                                                                         Could you state your full name, please?
                                                                    Q.
 8
                                                            8
                                                                         Bryant Joaquin Jackson Green.
9
          CITY OF CHICAGO, CORPORATION COUNSEL
                                                            9
                                                                         Where do you live?
                                                                    Q.
10
          REVENUE LITIGATION DIVISION, by
                                                           10
                                                                         Chicago, Illinois.
                                                                    Α.
11
          MR. WESTON W. HANSCOM
                                                           11
                                                                         And what's the address?
                                                                    0.
12
          MR. MARQUES BERRINGTON
                                                           12
                                                                         4314 North Spaulding Street, Apartment 1,
                                                                    Α.
13
          MR. STEVE TOMIELLO
                                                           13
                                                                Chicago, Illinois. Zip code is 60618.
14
          30 North LaSalle Street, Suite 1020
                                                                         What neighborhood is that?
                                                           14
                                                                    Q.
          Chicago, Illinois 60602
15
                                                           15
                                                                         Irving Park.
                                                                    Α.
          Phone: (312) 744-6986
16
                                                           16
                                                                    0.
                                                                         How long have you lived there?
17
               Representing the Defendants.
                                                           17
                                                                         I just moved there on June 10th, so only a
18
                                                           18
                                                                couple week. A couple weeks now.
19
                                                           19
                                                                         Where did you live before that?
                                                                    Q.
20
                                                           20
                                                                         Evanston. The address there was 415
21
                                                           21
                                                                Howard Street. The unit was 1101, Evanston,
22
                                                           22
                                                                Illinois 60202.
23
                                                           23
                                                                         So you lived in Evanston up until just --
24
                                                           24
                                                                         Yes. Until June 10th.
                                                                    Α.
                                                                                                                   4
```

1	Q. Okay. And how long were you living in	1	Q. And now, it's Judge Evans that you did
2	Evanston?	2	that project for?
3	A. Approximately a year.	3	A. Yes.
4	Q. A year?	4	Q. And that just completed?
5	A. Yes. One year.	5	A. Yes.
6	Q. So that brings us back to about June of	6	Q. Are you working right now?
7	2016?	7	A. No. I'm full-time in school right now.
8	A. Yes.	8	Q. What was the nature of the work you did
9	Q. And where did you live before that?	9	for Judge Evans?
10	A. In Chicago. The address there was	10	A. I was project coordinator on the MacArthur
11	1800 West Belmont Avenue. The unit was 2N in	11	Grants. It's called the Safety and Justice
12	Chicago, Illinois. Zip code is 60657 I believe.	12	Challenge. Its general purpose is a safe reduction
13	60657.	13	in jail population.
14	Q. And how long did you live there?	14	Q. Did you do that work at the Daley Center?
15	A. One year.	15	A. I was across the street in the Dunne
16	Q. Could you just summarize for me briefly	16	building, 69 washington.
17	your educational background?	17	Q. Right. And the Liberty Justice Center,
18	A. Sure. So I got my bachelor's degree in	18	that's in downtown Chicago also, correct?
19	political science at the University of Chicago. I	19	A. Yes.
20	graduated in 2013.	20	Q. The studying at University of Chicago, was
21	In 2015, I started my master's in public	21	that in Hyde Park?
22	policy at Northwestern, and that should be done in	22	A. Yes.
23	August approximately.	23	Q. Where are you going for the schooling
24	Q. Could you briefly summarize your	24	you're doing now?
	5		7
1	employment background?	1	A. Northwestern University.
2	A. After college actually, in college as a	2	Q. And is that in Evanston?
3	senior, I started interning for the Liberty Justice	3	A. I'm mostly on the Chicago campus actually.
4	Center. It had to be January 2013, I joined	4	I think it's incorporated in Evanston anyway.
5	full-time that July and I stayed and worked then	5	Q. Where do you spend most of your time for
6	I went to the Illinois Policy Institute in early	6	that?
7	2015 and was there until this past October,	7	A. On mostly the building next to
8	October 2016.	8	Northwestern's law school on Chicago Avenue.
	After that, I took a position with the	9	
10	Chief Judge's office for the Cook County Circuit	10	· · · · · · · · · · · · · · · · · · ·
10	-		A. In Chicago. Yeah. In Chicago.  Q. The complaint in this case that we're here
11	Court and was with them on a project that concluded	11	•
12	at the end of May 2017.	12	for today says that you subscribe to Netflix, Hulu,
13	Q. Okay. So let me go back to the position	13	Spotify, and Amazon Prime, is that correct?
14	with Liberty Justice Center. What did you do for	14	A. Yes.
15	them?	15	Q. And does it work for you if I refer to
16	A. Legal researcher. Policy analyst was my	16	those as streaming services?
17	title. So legal researcher and policy analyst was	17	A. Yes.
18	, , ,		
19	my title.	18	Q. Are there any other streaming services
	my title. Q. The next place you said you worked at was?	18 19	that you describe to?
20	my title.  Q. The next place you said you worked at was?  A. Illinois Policy Institute.	18 19 20	that you describe to?  A. No. Not currently.
21	my title.  Q. The next place you said you worked at was?  A. Illinois Policy Institute.  Q. Where is that located?	18 19 20 21	that you describe to?  A. No. Not currently.  Q. Before we go further, one thing I'd like
21 22	my title.  Q. The next place you said you worked at was?  A. Illinois Policy Institute.  Q. Where is that located?  A. 190 South LaSalle Street.	18 19 20 21 22	that you describe to?  A. No. Not currently.  Q. Before we go further, one thing I'd like to do is just have you identify a couple of
21	my title.  Q. The next place you said you worked at was?  A. Illinois Policy Institute.  Q. Where is that located?	18 19 20 21	that you describe to?  A. No. Not currently.  Q. Before we go further, one thing I'd like



1	BY MR. HANSCOM:	1	MR. SCHWAB: Yes. I'll ask him to look for it
2	Q. I marked this as your Deposition	2	and we'll produce it.
3	Exhibit 1 let's go off the record.	3	MR. HANSCOM: Thank you.
4	(Discussion off the record.)	4	BY MR. HANSCOM:
5	BY MR. HANSCOM:	5	Q. Okay. I want to ask some questions now
6	Q. Handing you what we've marked as	6	about each of the streaming services that you do
7	Exhibit 1, is that your verification of the	7	subscribe to. I'd like to start with Netflix
8	plaintiff's objections and answers to	8	streaming. When did you first subscribe to
9	interrogatories in this case?	9	Netflix?
10	A. Yes.	10	A. I don't recall the exact date. I believe
11	Q. And that's your signature there?	11	it has been at least two to three years.
12	A. Yes.	12	Q. Do you remember where you lived at the
13	Q. And handing you what has been marked as	13	time?
14	Exhibit 2, is that a copy of the interrogatory	14	A. I was in Chicago when I started.
15	answers that you were verifying?	15	Q. How did you sign up for it initially?
16	A. Yes.	16	A. Online. I just a laptop as I recall.
17	Q. And then handing you what we've marked as	17	Q. Do you remember where you were when you
18	Exhibit 3, if you could flip through. Those appear	18	signed up?
19	to be billing statements from Netflix in the front	19	A. No. I'm sorry.
20	half and then Spotify in the second half?	20	Q. Would it have been in Chicago somewhere?
21	A. Yes.	21	A. Yes.
22	Q. Are those billing statements that were to	22	Q. What was the basic process for signing up?
23	you that you produced in this case?	23	A. As I recall, you just go to their website
24	A. Yes.	24	and they have, like, a prompt to sign up. I think
	9		11
1	Q. These do not include billing statements	1	it maybe came with a month long free trial. Then
2	from Hulu. Can you explain why? Or at least, I	2	you just register, provide your credit card
3	didn't see them. If you do, you can let me know.	3	information, and then you have service.
4	A. These look like they're just Netflix and	4	Q. And as a part of signing up, do you give a
5	Spotify. Hulu, if I recall properly, there might	5	home address?
6	have been some periods where I didn't have or I	6	A. Yes.
1 7	only had Hulu for several months perhaps, not the	7	Q. Is that part of putting down what your
8	entirety of 2015. I'm not clear what exactly those	8	credit card billing address is or is it just that
9	were.	9	they ask for your home address?
10	Q. So you did receive some form of billing	10	A. As I recall, it's a prompt just for the
11	statements from Hulu at some point?	11	credit card billing.
12	A. Yes.	12	Q. So at the time, the address you gave was
13	Q. Do you have those copies of those	13	your Chicago address I take it?
14	anymore?	14	A. Yes.
15	A. I think I should I could probably get	15	Q. Then how does Netflix bill you?
16	that.	16	A. I believe it's an automatic billing on a
17	Q. And then same thing with Amazon Prime. I	17	certain day of the month. It usually comes
18	did not see any billing statements in here for	18	regularly each month automatically.
19	Amazon Prime. Did you receive those at some point?	19	Q. So it automatically bills your credit
20	A. Yes.	20	card?
21	Q. And would you have copies of those as	21	A. Yes. The credit card I provided
22	well?	22	previously.
23	A. Yes.	23	Q. Now, we took a look at Exhibit 3 there and
24	MR HANSCOM: Just for the record then leff	17/	these were statements of some sort from Netflix T

1	take it well, how do you receive these?	1	has a Netflix application.
2	A. I usually don't the invoices usually	2	Q. And the offerings that they have include
3	aren't sent to me. I generally have to go on to	3	what types of things?
4	Netflix's platform to retrieve them.	4	A. Movies, television programs, both that
5	Q. You could go there and print one of these	5	were on network or cable TV and also their own
6	out?	6	original programs exclusive on Netflix.
7	A. Yes.	7	Q. Any other offerings you can think of?
8	Q. And is this how you generated these	8	A. Generally, just those items.
9	invoices or statements you produced?	9	Q. So for the movies, what type of selection
10	A. Yes.	10	do they have?
11	Q. From the Netflix invoice, it appears they	11	A. Do you mean like in terms of genre or
12	charge you about \$12 a month, correct?	12	Q. Genre or how recent, how old, that type of
13	A. Yes. Yes.	13	thing.
14	Q. And then these invoices have well,	14	A. It varies. I believe their general
15	looking at the very first one, that's for it's	15	categories would be from action, comedy to
16	dated December 27th of 2015, correct?	16	documentaries, animation, horror, thriller. And
17	A. Yes.	17	some of the films are fairly recent, you know, just
18	Q. And then it does have tax on there,	18	being released to DVD. There's nothing concurrent
19	correct?	19	in theaters anyway. Their original programming
20	A. Yes.	20	will usually come out once a year in a season
21	Q. And it says the service period is	21	format. There's some programs that would have been
22	December 27th through January 26th of 2016,	22	on for were created decades ago, others are, you
23	correct?	23	know, from this year.
24	A. Yes.	24	Q. So with the movies, if a movie has just
	13		15
1	Q. So with Netflix, you are paying a month in	1	come out in the theater, would that be available on
2	advance for the next month's service, correct?	2	Netflix right away?
3	A. Yes. I believe it's for the next month.	3	A. No. I think it depends on the licensing
4	Q. And by paying for that next month's	4	agreement where whatever that product is. But I
5	subscription, you get the ability to use that	5	think they generally aren't on Netflix until they
6	service during that coming month, correct?	6	completed their theater run.
7	A. Yes.	7	Q. As far as TV shows, would they have things
8	Q. And it's a set amount for the month no	8	like reruns of old television shows that were
9	matter how much you use it, correct?	9	popular?
10	A. Yes.	10	A. Yes.
11	Q. If you had more you wanted to say, go	11	Q. And then they do produce some of their own
12	ahead.	12	television shows, correct?
13	A. Unless I change the plan. I think there's	13	A. Yes. That's right.
14	options to change for more screens if you want.	14	Q. Are there examples of those you can think
15	Otherwise, yes, it's the same.	15	of?
16	Q. If you went for the whole month and didn't	16	A. The original shows?
17	use it, it would still be the \$12, correct?	17	Q. Yes.
18	A. Yes.	18	A. For example, Dare Devil, Luke Cage,
19	Q. What are the basic features and products	19	Jessica Jones, House of Cards.
20	that come with the Netflix streaming service?	20	Q. Right. And those are television shows you
21	A. It's usually just the ability to stream	21	can get with Netflix streaming that you couldn't
22	any of the programming options they have on say	22	otherwise get, correct?
~~	any or the programming operand they have on say		ound midd god, doill dod!

15

16

Yes. Except I believe some of those might

also be offered on DVD now, but otherwise, yes.

23

24

laptop, computer, cell phone, smart TV's, gaming

system, for example Playstation 4, anything that

14

23

1 What do you tend to use your Netflix 2 subscription for? 3 Watching television programs and 4 occasionally movies. 5 From that, I take it most of that with you would be the television shows? 6 7 Yes. 8 It's my understanding that with Netflix Q. 9 you can go online, put in your password, and you 10 can actually look at a history of your own viewing for your account. Is that your understanding? 11 12 Α. Yes. 13 Q. Have you ever done that? 14 Perhaps once or twice. Not very often. 15 Is there anyone else who uses your Netflix Q. 16 account? 17 Α. Yes. 18 And who is that? Q. 19 On my account, I think maybe I've had one 20 or two friends watch programs before, family 21 members as well. 22 Anyone who -- well, does anyone live with 23 you who regularly uses the account with you? 24 Yes. Yes. My partner. 17 And then, also, you've had some friends 1 2 who would occasionally use it, is that right? 3 Yes. 4 what are the -- are there some sort of 5 basic terms and limits on usage with Netflix, for 6 example, how many people can use it at a time? 7 I don't know for sure. I believe so, but 8 I can't confirm that. 9 Have you ever tried to have two people 10 watching a show at the same time, different shows for example? 11 12 Α. I haven't organized anything like that. 13 I'm not sure. 14 If you pick out a movie or a show that you want to watch, you can just basically click on that 15 16 and watch it right away, is that correct? 17 Α. 18 And you can watch it as many times as you Q. 19 want during that month? 20 Α. Yes. 21 Does Netflix offer any kind of a pay per 22 view that cost more than just the subscription to 23 watch some special event? 24 No, not to my understanding. And then if you weren't traveling but you

1	O Are you aware of any events that Notflix
1	Q. Are you aware of any events that Netflix
2	streams live so that if you're watching it, you're
3	watching it while it's happening?
4	A. I personally have not viewed this or heard
5	of it, but I can't say that they never do that.
6	Q. But you're not aware of any?
7	A. No. I'm not aware of it.
8	Q. What various devices do you use your
9	Netflix account on?
10	A. I view it through television, cell phone,
11	laptop, sometimes a tablet.
12	Q. What's the tablet?
13	A. It's an iPad, iPad mini.
14	Q. So let me go through those. With the TV,
15	I take it that would be at home?
16	A. Yes.
17	Q. Do you have just one TV at home or more
18	than one?
19	A. Two.
20	Q. If you were at home and you were going to
21	watch a movie or a show, would you normally watch
22	it on one of the TVs?
23	A. Yes.
24	Q. Bigger screen, right?
	19
1	
	A 18m lanna
_	A. Mm-hmm.
2	Q. Can you give me just an approximation of
2	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your
2 3 4	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?
2 3 4 5	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent.
2 3 4 5 6	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent.  Q. Then you mentioned a laptop. When what
2 3 4 5 6 7	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent.  Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?
2 3 4 5 6 7 8	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or
2 3 4 5 6 7 8	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home.
2 3 4 5 6 7 8 9	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent.  Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home.  Q. Can you give me examples of what you were
2 3 4 5 6 7 8 9 10 11	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?
2 3 4 5 6 7 8 9	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that?
2 3 4 5 6 7 8 9 10 11	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?
2 3 4 5 6 7 8 9 10 11 12	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that?
2 3 4 5 6 7 8 9 10 11 12 13	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent.  Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home.  Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that?  Q. Well, let's take traveling. Are you
2 3 4 5 6 7 8 9 10 11 12 13 14	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that? Q. Well, let's take traveling. Are you talking about a situation maybe where you're going
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that? Q. Well, let's take traveling. Are you talking about a situation maybe where you're going out of town and taking a flight somewhere?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent.  Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home.  Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that?  Q. Well, let's take traveling. Are you talking about a situation maybe where you're going out of town and taking a flight somewhere?  A. Usually not on a flight. Flights have
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that? Q. Well, let's take traveling. Are you talking about a situation maybe where you're going out of town and taking a flight somewhere?  A. Usually not on a flight. Flights have unreliable internet service, but perhaps on a train
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that? Q. Well, let's take traveling. Are you talking about a situation maybe where you're going out of town and taking a flight somewhere?  A. Usually not on a flight. Flights have unreliable internet service, but perhaps on a train I might.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent.  Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home.  Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that?  Q. Well, let's take traveling. Are you talking about a situation maybe where you're going out of town and taking a flight somewhere?  A. Usually not on a flight. Flights have unreliable internet service, but perhaps on a train I might.  Q. And have you done that?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that? Q. Well, let's take traveling. Are you talking about a situation maybe where you're going out of town and taking a flight somewhere?  A. Usually not on a flight. Flights have unreliable internet service, but perhaps on a train I might. Q. And have you done that? A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Can you give me just an approximation of what percentage of your use of Netflix is on your TV one of your TV's?  A. 75 percent. Q. Then you mentioned a laptop. When what circumstances would you use Netflix on your laptop?  A. Usually if I were traveling somewhere or just not home. Q. Can you give me examples of what you were doing when you've used it on a laptop?  A. I'm sorry. Could you clarify that? Q. Well, let's take traveling. Are you talking about a situation maybe where you're going out of town and taking a flight somewhere?  A. Usually not on a flight. Flights have unreliable internet service, but perhaps on a train I might. Q. And have you done that? A. Yes. Q. How often does that happen?

20

1	just weren't in the house, which situations would	1	Q. Have you had any months that you can
2	you use the laptop for?	2	recall in the last two years where you were out of
3	A. Say, for example, I went to a cafe in the	3	town the entire month?
4	Loop and just had an hour of free time. In that	4	A. No, I don't believe so.
5	case, I might watch something on the laptop or the	5	Q. Have you had any months where you were
6	tablet.	6	living in Chicago but used your Netflix account
7	Q. Okay. And then how about the cell phone?	7	most of the time outside of the city?
8	Which situations do you use Netflix on your cell	8	A. I don't recall.
9	phone?	9	Q. All right. Let me ask you about Hulu a
10	A. Similar circumstances, but I might not	10	little bit. When did you first subscribe to that?
11	have access to a Wi-fi connection, so I would use	11	A. I don't know the exact date. For Hulu, I
12	steaming through my cell phone provider to watch a	12	believe there might have been a couple periods
13	Netflix program on my cell phone in that case.	13	where I had it and cancelled service. The initial
14	Q. You mentioned that your partner also uses	14	sign up would have been a few years ago.
15	the account. Would that use be in pretty much the	15	Q. Have you subscribed to Hulu during some
16	same proportions that we talked about for your own	16	periods when you were also subscribing to Netflix?
17	uses?	17	A. Yes.
18	A. Do you mean in terms of platform.	18	Q. Now, they both stream video content?
19	Q. Yes.	19	A. Yes.
20	A. Yes. Roughly, I guess.	20	Q. Why did you subscribe to both?
21	Q. How about in terms of locations?	21	A. There is some programming that Hulu has a
22	A. Yes. In Chicago. Yes.	22	license to show that Netflix doesn't and vice
23	Q. Do you have a stationery desktop computer	23	versa. So to see some shows, you would have to
24	at home?	24	have one or the other.
	21		23
	21		23
		_	
1	A. I do not.	1	Q. Do you use Hulu also primarily for
2	A. I do not. Q. So you just use the laptop?	2	Q. Do you use Hulu also primarily for watching television shows?
<b>2</b> 3	<ul><li>A. I do not.</li><li>Q. So you just use the laptop?</li><li>A. Yes.</li></ul>	<b>2</b> 3	Q. Do you use Hulu also primarily for watching television shows?  A. Yes.
2 3 4	<ul> <li>A. I do not.</li> <li>Q. So you just use the laptop?</li> <li>A. Yes.</li> <li>Q. How do you go back and forth to school?</li> </ul>	2 3 4	Q. Do you use Hulu also primarily for watching television shows?  A. Yes.  Q. Does Hulu produce some of its own
2 3 4 5	<ul> <li>A. I do not.</li> <li>Q. So you just use the laptop?</li> <li>A. Yes.</li> <li>Q. How do you go back and forth to school?</li> <li>A. I usually take CTA, the L or generally</li> </ul>	2 3 4 5	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?
2 3 4 5 6	<ul> <li>A. I do not.</li> <li>Q. So you just use the laptop?</li> <li>A. Yes.</li> <li>Q. How do you go back and forth to school?</li> <li>A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus.</li> </ul>	2 3 4 5 6	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does.
2 3 4 5 6 7	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're	2 3 4 5 6 7	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of
2 3 4 5 6 7 8	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting?	2 3 4 5 6 7 8	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?
2 3 4 5 6 7 8	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before.	2 3 4 5 6 7 8	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale.
2 3 4 5 6 7 8 9	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone	2 3 4 5 6 7 8 9	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about
2 3 4 5 6 7 8 9 10 11	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around?	2 3 4 5 6 7 8 9 10 11	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least
2 3 4 5 6 7 8 9 10 11 12	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't.	2 3 4 5 6 7 8 9 10 11 12	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.
2 3 4 5 6 7 8 9 10 11 12 13	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would	2 3 4 5 6 7 8 9 10 11 12 13	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that?
2 3 4 5 6 7 8 9 10 11 12 13 14	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would it be accurate to say that in most months you use	2 3 4 5 6 7 8 9 10 11 12 13 14	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that? A. I haven't myself yet.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would	2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that?  A. I haven't myself yet.  Q. And then Hulu also has other television
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would it be accurate to say that in most months you use your Netflix account most of the time in Chicago? A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that? A. I haven't myself yet.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would it be accurate to say that in most months you use your Netflix account most of the time in Chicago? A. Yes. Q. Have you ever had a month where you used	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that? A. I haven't myself yet. Q. And then Hulu also has other television shows?  A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would it be accurate to say that in most months you use your Netflix account most of the time in Chicago? A. Yes. Q. Have you ever had a month where you used Netflix well, let me back up.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that?  A. I haven't myself yet. Q. And then Hulu also has other television shows?  A. Yes. Q. And Hulu has a selection of movies,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would it be accurate to say that in most months you use your Netflix account most of the time in Chicago? A. Yes. Q. Have you ever had a month where you used Netflix well, let me back up. Have you ever had a month where you can	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that? A. I haven't myself yet. Q. And then Hulu also has other television shows?  A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would it be accurate to say that in most months you use your Netflix account most of the time in Chicago? A. Yes. Q. Have you ever had a month where you used Netflix well, let me back up. Have you ever had a month where you can recall you went the whole month and did not use	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that? A. I haven't myself yet. Q. And then Hulu also has other television shows?  A. Yes. Q. And Hulu has a selection of movies, correct?  A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would it be accurate to say that in most months you use your Netflix account most of the time in Chicago? A. Yes. Q. Have you ever had a month where you used Netflix well, let me back up. Have you ever had a month where you can recall you went the whole month and did not use your Netflix account at all?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that?  A. I haven't myself yet. Q. And then Hulu also has other television shows?  A. Yes. Q. And Hulu has a selection of movies, correct?  A. Yes. Q. So the selections of TV shows and movies
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would it be accurate to say that in most months you use your Netflix account most of the time in Chicago? A. Yes. Q. Have you ever had a month where you used Netflix well, let me back up. Have you ever had a month where you can recall you went the whole month and did not use your Netflix account at all? A. I don't recall, but it's possible.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that?  A. I haven't myself yet. Q. And then Hulu also has other television shows?  A. Yes. Q. And Hulu has a selection of movies, correct?  A. Yes. Q. So the selections of TV shows and movies just are not always the same as the Netflix
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. I do not. Q. So you just use the laptop? A. Yes. Q. How do you go back and forth to school? A. I usually take CTA, the L or generally speaking, the L. Sometimes a bus. Q. Do you ever use Netflix while you're commuting? A. I have before. Q. Do you ever use Netflix on your cell phone if you're just walking around? A. Usually if I'm walking, no, I won't. Q. While you've been living in Chicago, would it be accurate to say that in most months you use your Netflix account most of the time in Chicago? A. Yes. Q. Have you ever had a month where you used Netflix well, let me back up. Have you ever had a month where you can recall you went the whole month and did not use your Netflix account at all?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Do you use Hulu also primarily for watching television shows?  A. Yes. Q. Does Hulu produce some of its own television shows?  A. Yes, it does. Q. Can you give me an example of one of those?  A. I believe one is the Handmaiden's Tale. Another I'm having a hard time thinking about the original one. I'm sorry. I believe at least that one is an original program.  Q. Have you sometimes watched that?  A. I haven't myself yet. Q. And then Hulu also has other television shows?  A. Yes. Q. And Hulu has a selection of movies, correct?  A. Yes. Q. So the selections of TV shows and movies

23



2

3

exclusive is my understanding.

Did you go through the same basic

And have you ever had a month where you

used Hulu and all of the use was outside of Chicago

if you were living in Chicago?

1	A. I can't recall.
2	Q. And have you ever had a month when you
3	were subscribing to Hulu and living in Chicago
4	where whatever use you had of Hulu was primarily
5	outside Chicago?
6	A. I can't recall.
7	Q. Okay. Let's move on to Spotify. Now,
8	Spotify is music streaming, correct?
9	A. Yes.
10	Q. When did you first subscribe to that?
11	A. A few years ago, prior to 2014 I believe.
12	Q. Were you living in Chicago at the time you
13	did that?
14	A. Yes.
15	Q. And have you subscribed to it since?
16	A. Yes.
17	Q. Was the sign-up procedure for Spotify
18	similar to what you subscribed for Netflix?
19	A. Yes, essentially.
20	Q. So you give a credit card number and they
21	automatically bill it?
22	A. Yes.
23	Q. When you moved from Chicago to Evanston
24	and from Evanston back to Chicago, did you have to
	27
	<del>-</del>
1	change your addresses that you gave any of the
2	streaming companies?
3	A. No. It would still function. I'm not
4	sure that I did necessarily adjust the billing
5	address on these occasions.
6	Q. Do you recall did you change the billing
7	address with the credit card company?
8	A. Yes, I usually have.
9	Q. How do you get your credit card
10	statements? Are those mailed to you?
11	A. I mostly get mine online.
12	Q. So you gave the credit card company an
13	e-mail address so that they could e-mail the
14	statement to you?
15	A. Yes.
16	Q. And then do you pay it online as well?
17	A. The
18	Q. Credit card statements.
19	A. Yes.
20	Q. How does the Spotify service work?
21	
21	A. Well, usually it's an application I
22	A. Well, usually it's an application I predominantly have on my cell phone, but you can

28

21

22

23

24

possible.

		1	
1	generally use it on my cell phone and you can play	1	Q. You would wear your earphones, correct?
2	a selection of music when you subscribe to the	2	A. Mm-hmm.
3	service, it's commercial free. You can play	3	Q. And you might listen to it commuting on
4	anything from their library as many times as you	4	the bus or train for example?
5	like within that month that you paid.	5	A. Yes.
6	Q. I use Pandora and with that, you can do a	6	Q. And on that one, I assume you might use it
7	search for some artist you like and then that	7	while you are walking around?
8	becomes a station and they'll play that person's	8	A. Yes.
9	music and similar sounding music. Does Spotify	9	Q. Do you recall any months when you did not
10	have a similar function?	10	use Spotify at all?
11	A. Yes, it does. It has a sort of a	11	A. No. Not at all.
12	station generator, for lack of a better term, where	12	Q. I'm the same way with Pandora. Can you
13	you can create a station based on an artist or a	13	sometimes listen to it while you're at work?
14	genre or a particular song.	14	A. Yes.
15	Q. And then it will do kind of random play	15	Q. Do you recall any months where your use of
16	within that sound?	16	Spotify while you were living in Chicago was
17	A. Yes.	17	completely outside of Chicago?
18	Q. But with Spotify, you can also just locate	18	A. No, I cannot.
19	individual songs you want to hear?	19	Q. Do you recall any months when it was
20	A. Yes.	20	primarily out of Chicago?
21	Q. Are you aware of Spotify, as a part of its	21	A. I don't recall.
22	subscription, offering any live streaming of live	22	Q. Do you have internet service at home?
23	concert events?	23	A. Yes.
24	A. I'm inclined to say they might have, but I	24	Q. Who do you have your internet service
-'	29	- '	31
1	don't know for sure. I personally have not	1	with?
2	listened to that if and when it has happened.	2	A. Through Comcast XFINITY.
3	Q. So with this subscription that you use,	3	Q. And then do you have a wireless modem as
4	what you're normally hearing is a recording of,	4	well?
5	say, a song from a CD, correct?	5	A. Yes.
6	A. Yes.	6	Q. How about phone service? Who do you have
<b>∤</b> 7	Q. And I know on Pandora, sometimes the	7	that with?
8	recording they'll play might be what was a live	8	A. I have only cell phone service, not home.
9	performance by an artist, but it's a recording of	9	But that's through T-Mobile.
10	it.	10	Q. Does T-Mobile offer any kind of video
11	A. Yes.	11	streaming with its service?
12	Q. So have you experienced the same thing	12	A. I don't think so. I don't think so.
13	with Spotify?	13	Q. If so, you've never used it?
14	A. Yes, I have.	14	A. Yeah. Never used it.
15	Q. On what well, let me back up.	15	Q. Do you know if they offer any kind of
16	Do you ever use Spotify on one of your	16	audio streaming?
17	TV's?	17	A. I don't believe so.
18	A. I have before, but rarely.	18	Q. Do you get cable TV at home?
19	Q. So usually it's your cell phone, correct?	19	A. Yes. Through Comcast.
20	A. Yes.	20	Q. Now, obviously Comcast cable TV has movies
21	Q. And where do you usually listen to it on	21	and TV shows, correct?
22	your cell phone?	22	A. Yes.
23	A. Often while commuting, sometimes at home.	23	Q. Why do you get that as well Netflix and
24	Anywhere. Anywhere I have my cell phone.	24	Hulu?
1 - 1	, raijinieie ± nave iiij eeri pilonei		

- Well, for internet service, Comcast offers it as a bundle. So it's cheaper to get cable with internet service than it is to get internet service alone. That said, I have not at any point at my current place watched any cable offering through Comcast and very, very rarely did at my location.
- So you really don't use the cable TV much at all?
  - Α.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

- Q. Have you noticed whether they charge Chicago amusement tax?
  - Whether Comcast --
  - Q. Comcast. Correct. Sorry.
    - Α. I have not.
- Have you seen ads or other information Q. that customers can now use their Comcast service to get shows or movies on a mobile device?
  - I don't believe so. I don't believe so.
  - You don't believe you've heard of that?
  - Α. I haven't heard of that. No.
  - I assume you do not get satellite TV? Q.
  - I do not.
  - MR. HANSCOM: Let's go off the record.

(Discussion off the record.)

once you were in Evanston you were getting charged the Chicago tax?

- I could check the statement through Netflix or Spotify for, say, July 2016 afterwards. It's not here, but I could get that.
- Okay. So what you're saying is you can't tell by looking at Exhibit 3 because the statements don't cover enough of that period?
  - Α. Yes.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

33

- 0. We talked about other users of your Netflix account and you mentioned sometimes friends. How often would that have been?
  - I can't -- I can only guess or speculate as far as a number. Perhaps once a month.
  - Just on a particular occasion, like to watch one movie or something like that?
  - Α. Yeah, I think.
- And on those occasions, was the friend with you or somewhere else?
- Not all the time. Sometimes they would be with me and other occasions they might not.
- And where were you friends located at the time?
  - Generally speaking, in Chicago. I do

35

BY MR. HANSCOM:

- A question I had, when you were living in Evanston, did the streaming services charge you Chicago tax?
- I'm not sure because I don't recall if I actually changed the billing address on the platform.
- Okay. Could you tell from the dates by looking at the Netflix invoices in Exhibit 3 -- I quess they're not invoices. Statements.
- So I moved in 2016 around June or July. It looks like -- it appears that the invoices end right before -- here, in Exhibit 3, end right before I moved. I would have moved in -- actually, I probably would have moved in July 2016 to Evanston. This runs up to -- this invoice date runs to June.
- Okay. So I can say that the last invoice date I have is for June 27th, 2016 and it covers service for that date, June 27th, 2016, through July 26th, 2016. So that would have overlapped when I lived in Evanston, but that billing was probably done while I lived in Chicago.
  - Q. Okay. But so then can you tell whether

- think I have a cousin in Virginia who probably used it once or twice too. That would have happened in Virginia.
- And then were there times where maybe a friend was at your house, you weren't there, but you said you can watch something on Netflix?
  - Perhaps. Yes. That may have happened.
- And then you mentioned that you might have sometimes used Netflix outside Chicago if you were traveling, correct?
  - Α. Yes.
- But that would have been only once every Q. three or four months?
  - Generally, yes.
  - Do you recall any of those trips Q. specifically?
  - When I travel, I tend to go to the DC area. That's where I'm from originally. Going home would probably be the most frequent time when that happened, but not exclusively. I've been to New Orleans once or twice. I may have watched it there or a couple other places.
    - How long would those visits have been for?
    - Generally not longer than a week.

36



- Q. Have you ever subscribed to Netflix video by mail?
  - Α. I have not.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 2

3

4

5

6

7

8

9

10

11 12

13

14

15

16

17

18

19

20

21

22

23

24

- Do you have an understanding of what that Q. product is?
- If I recall, it was like a service where you would subscribe to Netflix and then you would select DVD's that would be sent to you. Then I think there would be some limit on how many you can take at one time, maybe three or so. Then once you return them, they would send something else from the selection. And you can keep any of these DVD's for as long you continue to pay the subscription fees.
  - where does that understanding come from? Q.
- I believe I -- I believe my father used to have that service back in -- it had to be early 2000's or so. I know Blockbuster and such were still around then. I didn't subscribe to it, but I know people who did have it 15 or so years ago.
- Why do you subscribe to video -- the Netflix video streaming rather than the DVD?
- It's more convenient. You know, it's easier to watch something now than to wait seven

- 1 How about CD's for music? Do you own any Q. cp's?
  - I think I might still have one or two. I believe I still have one or two. I don't buy any.
  - And is that for largely the same reason, you might as well get the music from Spotify?

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

19

23

24

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

37

- A subject that is raised in the complaint 0. in this case is automatic amusement devices. Do you know what that phrase refers to?
  - No. Α.
- Let's say jukeboxes for music or pinball machines or video games that you see at an arcade or a bar, have you ever dealt with any of those?
  - Α. Yes.
  - When? Q.
  - Many times over the last several years. Α.
- 18 Have you ever used a jukebox? Q.
  - Α. Once or twice I think. Yeah.
- 20 Have you seen any recently? Q.
- 21 I think I see them occasionally at the Α. 22 bars.
  - And for those, usually you have to put in a coin and you can select a song on the jukebox,

- days for it to be mailed. Two, the selection I believe is different. So I'm not sure everything that they have on DVD or on streaming and vice versa would be available on that method. And then for some of Netflix's original programming, there may or may not be DVD's for them, so I couldn't access them if I only subscribed to the DVD delivery portion.
- Sometimes the DVD version of a movie will have a section with special effects at the end and interviews and that type of thing, correct?
  - Α.
- Is that something that the DVD has that Q. the video streaming generally does not have?
  - Yes, that's correct.
  - Q. Do vou own any DVD's?
- Yes. Α.
- Are these DVD's that you bought a long Q. time ago or do you continue to buy them now?
- Usually things I bought a years ago. I don't believe I bought a DVD in the last two years.
- Is that partly because you might as well get it with streaming?
  - Α. Yeah.

correct? 1

Α.

Yes.

- And those belong -- the jukebox, you can't carry it out of the bar or restaurant, correct?
  - Not without being arrested. Α.
- And the video games and pinball machines, it would be the same type of thing, correct?
  - Α. Yes.
- Did you ever go to the places like Dave & Buster's or Disney Quest that had a lot of game-type machines?
- Α. Yes.
- Do you remember, did they charge a cover Q. charge to go in?
- I don't think there's a cover charge. I think when you go in, you pay per game. There will be some rate, however many coins to engage for each one.
  - Amazon Prime. What features and benefits Q. does that have?
- So it's a couple parts. One is that you can get for Amazon products, free two-day shipping for things you order from Amazon directly and then some things from independent sellers. As part of

40



Q. That's a Roger and Hammerstein musical.	1	were in another city?
		A. Yes.
		<ul><li>Q. Do you remember where it was?</li><li>A. New York City I think.</li></ul>
	-	-
- ·	_	Q. So people go in to New York to see
-	_	theater, correct?
	-	A. Yes.
		Q. While you were there, did you stay at a
	_	hotel?
·		A. I stayed with friends actually.
		Q. But some people would go in and stay at
		hotels, correct?
		A. Yes.
		Q. And they might go out to dinner while
		they're there?
	_	A. Yes.
	17	MR. HANSCOM: Off the record.
·	18	(Discussion off the record.)
-		MR. HANSCOM: We are done unless you have
he only has two CD's or something. I don't know if	20	anything.
he knows.	21	MR. SCHWAB: I don't have any questions.
THE WITNESS: I can't really guess. It has	22	We'll reserve signature.
been so long, I'm not sure.	23	(Witness excused.)
BY MR. HANSCOM:	24	
		4
		STATE OF ILLINOIS )
		) ss:
_		COUNTY OF C O O K )
		IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
-		COUNTY DEPARTMENT - LAW DIVISION
A. Occasionally.	6	MICHAEL LABELL, et al.,
Q. Do you ever go to live sports events in	7	Plaintiffs, )
Chicago?	8	vs. ) No. 2015 L 1339
A. Yes.	9	THE CITY OF CHICAGO, et al.,
Q. Which ones have you gone to?	10	Defendants. )
A. Most recently, probably a White Sox game.	11	This is to certify that I have read the
Q. Do you ever watch a White Sox game at home	12	transcript of my deposition taken in the
on the television?	13	above-entitled cause by Tabitha Watson, Certified
A. Generally, no.	14	Shorthand Reporter, on 22nd of June, 2017, and that
Q. But if you had Comcast, you could watch it	15	the foregoing transcript accurately states the
for free other than what you pay for your Comcast,	16	questions asked and the answers given by me as they
correct?	17	now appear.
A. I'm not sure. I don't know if my package	18	<del></del>
covers it. I haven't used it.	19	BRYANT JACKSON-GREEN
Q. Are you aware of any plays or concerts in	20	SUBSCRIBED AND SWORN TO
	21	before me this day
Chicago that have been streamed live on Netflix.		
Chicago that have been streamed live on Netflix, Hulu, or Spotify?	22	of 2017.
Chicago that have been streamed live on Netflix, Hulu, or Spotify?  A. I'm not aware of one.	22 23	of 2017.
	with a particular set of songs, usually a CD will cost 10 to \$15, correct?  MR. SCHWAB: Objection. He says he hasn't he only has two CD's or something. I don't know if he knows.  THE WITNESS: I can't really guess. It has been so long, I'm not sure.  BY MR. HANSCOM:  45  Q. Would you agree in your observation that going to see a concert of somebody popular is going to tend to cost something like 80 or 100 dollars?  A. Yes. It could be that much.  Q. Do you ever watch sports?  A. Occasionally.  Q. Do you ever go to live sports events in Chicago?  A. Yes.  Q. Which ones have you gone to?  A. Most recently, probably a white Sox game.  Q. Do you ever watch a white Sox game at home on the television?  A. Generally, no.  Q. But if you had Comcast, you could watch it for free other than what you pay for your Comcast, correct?  A. I'm not sure. I don't know if my package	A. Yes. Q. And there's a movie version of the King and I. Have you ever seen that? A. I think so. Yes. Q. So if you wanted to buy a DVD of that movie or any other movie, would you agree generally that costs 10 to \$15 for a DVO? A. Approximately. Q. Would you also agree that, generally, if you're going to try to go see the play in person, the tickets are going to be more than that? A. Yes. Q. And with music, if you wanted to buy a CD with a particular set of songs, usually a CD will cost 10 to \$15, correct? MR. SCHWAB: Objection. He says he hasn't 19 he only has two CD's or something. I don't know if he knows. THE WITNESS: I can't really guess. It has been so long, I'm not sure. BY MR. HANSCOM:  Q. would you agree in your observation that going to see a concert of somebody popular is going to tend to cost something like 80 or 100 dollars? A. Yes. It could be that much. Q. Do you ever watch sports? A. Occasionally. Q. Do you ever go to live sports events in chicago? A. Yes. Q. Which ones have you gone to? A. Most recently, probably a white Sox game. Q. Do you ever watch a white Sox game at home on the television? A. Generally, no. Q. But if you had Comcast, you could watch it for free other than what you pay for your Comcast, correct? A. I'm not sure. I don't know if my package

1	STATE OF ILLINOIS )	1	McCorkle Litigation Services, Inc.
2	) SS:	2	200 N. LaSalle Street Suite 2900 Chicago, Illinois 60601-1014
3	COUNTY OF C O O K )	3	<b>,</b>
4	I, Tabitha Watson, a notary public within and		TIFIED MAIL / 9th, 2017
5	for the County of Cook and State of Illinois, do	Mr.	Bryant Jackson-Green
6	hereby certify that heretofore, to-wit, on the 22nd		North Spaulding Street, Apartment 1 cago, Illinois 60618.
7	of June, 2017, personally appeared before me, at 30	6 7	
8	North LaSalle Street, Suite 1020, Chicago,	IN I	RE: Labell, et al. vs. City of Chicago, et al.
9	Illinois, BRYANT JACKSON-GREEN, in a cause now		OF DEPOSITION: June 22nd, 2017 Mr. Jackson-Green,
10	pending and undetermined in the Circuit Court of	10 You	deposition in the above-entitled cause is now
11	Cook County, Illinois, wherein MICHAEL LABELL,	11	ly for reading and signing as required by law.
12	et al. is the Plaintiff, and THE CITY OF CHICAGO,	12 of	use call the Signature Department upon receipt this letter to schedule an appointment to come
13	et al. is the Defendant.		the above address to read and sign your osition. You have 28 days from the date of this
14	I further certify that the said witness was	cor	respondence in which to appear for reading and
15	first duly sworn to testify the truth, the whole	15 If y	ning. You fail to appear or notify us so that we may
16	truth and nothing but the truth in the cause		e arrangements for another appointment, your points are similable to the
17	aforesaid; that the testimony then given by said	atto	orneys and will be " used as fully as though
18	witness was reported stenographically by me in the	17 sigi 18 <u>.</u>	ned." Procedure outlined in Rule 207 (a) of
19	presence of the said witness, and afterwards	19	the Illinois Supreme Court Rules
20	reduced to typewriting by Computer-Aided	_	Procedure outlined in Rule 30 (e) of
21	Transcription, and the foregoing is a true and	20	the Rules of Civil Procedure for the U.S. District Courts
22	correct transcript of the testimony so given by	21	
23	said witness as aforesaid.	22	cerely,
24	I further certify that the signature to the		ly Alicea Tabitha Watson nature Department Court Reporter
	·		All attorneys ordering transcript.
	49		51
1	foregoing deposition was reserved by counsel for		
2	the respective parties.		
3	I further certify that the taking of this		
4	deposition was pursuant to Notice, and that there		
5	were present at the deposition the attorneys		
6	hereinbefore mentioned.		
7	I further certify that I am not counsel for nor		
8	in any way related to the parties to this suit, nor		
9	am I in any way interested in the outcome thereof.		
10	IN TESTIMONY WHEREOF: I have hereunto set my		
11	hand and affixed my notarial seal this 9th day of		
12	July, 2017.		
13			
14			
15	٨		
16	MHAMMINTAIN		
17	Josephanic		
18	NOTARY PUBLIC, COOK COUNTY, ILLINOIS		
19			
20			
21			
22			
23			
24			

ELECTRONICALLY FILED 9/27/2017 4:28 PM 2015-CH-13399 PAGE 15 of 18

ELECTRONICALLY FILED **9/27/2017 4:28 PM** 2015-CH-13399 PAGE 16 of 18

ELECTRONICALLY FILED **9/27/2017 4:28 PM** 2015-CH-13399 PAGE 17 of 18

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 13
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit M

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL LABELL, et al.,	)	
Plaintiffs,	)	Case No. 2015 CH 13399
	)	(Transferred to Law)
V.	)	
THE CITY OF CHICAGO, at al.,	)	
Defendants	)	

### DECLARATION OF NATALIE BEZEK

- I, Natalie Bezek, declare as follows:
- I was a resident of Chicago, Illinois from prior to June 2015 to
   September 2016. Since September 2016 I have lived in Washington DC.
- I paid for a subscription to Spotify from April 2015 to August 2016,
   December 2016, and March 2017 through September 2017.
- 3. Spotify charged me \$9.99 and collected \$0.90 per month from me for the Chicago amusement tax from July 2016 to August 2016, December 2016, and March 2017 through September 2017, even though I moved to Washington DC in September 2016.
- 4. Since April 2015, Spotify has collected a total of \$9.00 from me for the Chicago amusement tax.
- 5. I have attached receipts of my Spotify subscription that represent the amounts I have paid monthly for these services and for the amusement tax.

BYCE 5 0€ 13 **5012-CH-13333**8/51/5011 4:58 BW

EFECLKONICALLY FILED

6/5.6

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September 210, 2017

Natalie Bezek

ELECTROVICALLY FILED 9/27/2017 4:28 PM PAGE<sub>5</sub>3 of 13

Date April 10, 2015

**Order number** 29601759371075

Payment method iTunes IAP

Retailer Spotify AB

**VAT number** SE556703748501

**Username** nabezek

**Price** \$12.99

**Sales tax 0%** \$0.00

**Total** \$12.99

COMPANY COMMUNITIES

About (/us/about-us/contact/) For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/593569100013

Date

May 10, 2015

Order number

29601759371075

Payment method

iTunes IAP

Retailer

Spotify AB

**VAT** number

SE556703748501

Username

nabezek

**Price** 

\$12.99

Sales tax 0%

\$0.00

Total

\$12.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

**USEFUL LINKS** 

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/622311474010

Date

June 10, 2015

Order number

29601759371075

Payment method

iTunes IAP

Retailer

Spotify AB

VAT number

SE556703748501

Username

nabezek

**Price** 

\$12.99

Sales tax 0%

\$0.00

**Total** 

\$12.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

**USEFUL LINKS** 

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/651876040015

Date

July 10, 2015

Order number

29601759371075

Payment method

iTunes IAP

Retailer

Spotify AB

VAT number

SE556703748501

Username

nabezek

**Price** 

\$12.99

Sales tax 0%

\$0.00

**Total** 

\$12.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

**USEFUL LINKS** 

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/680691867013

Date

August 10, 2015

Order number

29601759371075

Payment method

iTunes IAP

Retailer

Spotify AB

**VAT** number

SE556703748501

Username

nabezek

Price

\$12.99

Sales tax 0%

\$0.00

**Total** 

\$12.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

**USEFUL LINKS** 

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/711616001014

Date

September 10, 2015

Order number

29601759371075

Payment method

iTunes IAP

Retailer

Spotify AB

VAT number

SE556703748501

Username

nabezek

**Price** 

\$12.99

Sales tax 0%

\$0.00

Total

\$12.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

**USEFUL LINKS** 

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/743648726011

Date October 10, 2015

**Order number** 29601759371075

Payment method iTunes IAP

Retailer Spotify AB

**VAT number** SE556703748501

**Username** nabezek

**Price** \$12.99

**Sales tax 0%** \$0.00

**Total** \$12.99

COMPANY COMMUNITIES

About (/us/about-us/contact/) For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

**USEFUL LINKS** 

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/775798158017

Date

November 10, 2015

Order number

29601759371075

Payment method

iTunes IAP

Retailer

Spotify AB

VAT number

SE556703748501

Username

nabezek

**Price** 

\$12.99

Sales tax 0%

\$0.00

**Total** 

\$12.99

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

**USEFUL LINKS** 

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/809688463011

Date

July 18, 2016

Order number

263119802371070

Payment method

PayPal

Retailer

Spotify USA Inc.

**VAT** number

80-0555431

Username

nabezek

Price

\$9.99

Sales tax 9%

\$0.90

Total

\$10.89

COMPANY

COMMUNITIES

About (/us/about-us/contact/)

For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

**USEFUL LINKS** 

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/1153713661011

Date August 18, 2016

**Order number** 263119802371070

Payment method PayPal

**Retailer** Spotify USA Inc.

**VAT number** 80-0555431

**Username** nabezek

**Price** \$9.99

**Sales tax 9%** \$0.90

**Total** \$10.89

COMPANY COMMUNITIES

About (/us/about-us/contact/) For Artists (https://www.spotifyartists.com/)

Jobs (/us/jobs/)

Developers (https://developer.spotify.com/)

Press (https://press.spotify.com/us/)

Brands (/us/brands/)

News (https://news.spotify.com/us/)

USEFUL LINKS

Help (https://support.spotify.com/?

utm\_source=www.spotify.com&utm\_medium=www\_f

Gift (/us/purchase/ecards/)

https://www.spotify.com/us/account/subscription/receipt/1200618628015

ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 29
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# Exhibit N

### IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MICHAEL LABELL, et al.,	)	
Plaintiffs,	)	Case No. 2015 CH 13399
a accessory	)	(Transferred to Law)
v.	)	
THE CITY OF CHICAGO, at al.,	)	
THE CITY OF CHICAGO, at al.,	)	
Defendants.	í	

#### DECLARATION OF EMILY ROSE

- I, Emily Rose, declare as follows:
- I was a resident of Chicago, Illinois from prior to June 2015 to the September 2016. Since September 2016, I have been a resident of Oak Ridge,
   Tennessee.
- 2. From November 2015 through October 2016, I paid for a subscription to Netflix. From September 2015 through October 2016, I paid for a subscription to Hulu. Since January 2015 I have paid for a subscription to Amazon Prime.
- 3. From November 2015 through October 2016, Netflix charged me \$7.99 per month and collected \$0.72 per month from me for the Chicago amusement tax.
- 4. From November 2015 through October 2016, Netflix has collected a total of \$8.64 from me for the Chicago amusement tax.
- 5. Even though I moved out of Chicago in September 2016, Netflix collected the Chicago amusement tax on my September 30, 2016 and October 31, 2016 bills, which included service from the end of September 2016 to the end of November 2016.

- 6. From September 2015 through October 2016, Hulu charged me \$7.99 per month but never collected the Chicago amusement tax from me.
- 7. Amazon has not collected the Chicago amusement tax from me for my Amazon Prime subscription.
- 8. I have attached receipts of my Netflix, Hulu, and Amazon Prime subscriptions that represent the amounts I have paid monthly for these services and for the amusement tax.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: September 26, 2017

Emily Rose

2012-CH-13399 2012-CH-13399 PLECTROUICALLY FILED PAGE 3 of 29

#### Account Statement | September 2015



Rose, Emily

Statement period: September 1, 2015 - September 30, 2015

#### **Balance Summary\***

			USD
Beginning Balance			0.00
Ending Balance			0.00

#### Account Activity

Date	Description	Currency	Amount	Fees	Total**
	Express Checkerd Payment Uper Technologies Inc.	USD			
9/17/2015	PreApproved Payment Bill User Payment: Hulu	USD	-7.99	0.00	-7.99
0/1/12010	7.99 USD	000	7.00	0.00	-1.55
	ID: 0K785943XV881593D				

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | October 2015





Statement period: October 1, 2015 - October 31, 2015

#### **Balance Summary\***

		USD
Beginning Balance		0.00
Ending Balance		0.00

#### **Account Activity**

Date	Description	Currency	Amount	Fees	Total*
10/17/2015	PreApproved Payment Bill User Payment: Hulu United Bank of Michigan - Checking x-5740 7.99 USD	USD	-7.99	0.00	-7.99
	ID: 66C60504H5765241C				
102212115	Express Checkout Payment Haymede, John		<b>46.89</b>	<b>(10)</b>	<b>269</b>
	Charles (Alberta Charles)				

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | November 2015



Rose, Emily

Statement period: November 1, 2015 - November 30, 2015

#### **Balance Summary\***

Datarios	
	USD
Beginning Balance	0.00
Ending Balance	0.00

**Account Activity** 

Date	Description	Currency	Amount	Fees	Total**
12/2013	Colors, Charleon Payment, Ulan Completioner, Tipo				4184
115/2013	English Committee (colored to be colored to				<b>6</b> 11
1/10/2011	Concess Chest and Payment Client I separate his Inc.		•		6.40
1/10/2011	Spress Cheutoul Payment the Technologies for		•	<b>@</b>	<b>69</b>
1(15/2013)	Express Checkout Payment Uper Rechtulogies, International Report of Management (1997)	•			•
115/2013	Capital Crieckoli Payress (Use Technologie In		•		•
1/18/2015	PreApproved Payment Bill User Payment: Hulu 7.99 USD	USD	-7.99	0.00	-7.99
	ID: 9RF32722FM066154S				

#### Account Statement | December 2015





Statement period: December 1, 2015 - December 31, 2015

#### **Balance Summary\***

	USD
Beginning Balance	0.00
Ending Balance	0.00

#### Account Activity

Date	Description	Currency	Amount	Fees	Total*
12/17/2015	PreApproved Payment Bill User Payment: Hulu 7.99 USD	USD	-7.99	0.00	-7.99
	ID: 2GT97680RE857525L				
2/23/2016	agress the sout Page on their real hologies, has		(3.05)	0.00	90
	Charles and Michigan Charles A 1/40 And List				
2/23/2015	Express Checkout Payment Ulur Technologies, Inp.	<b>WSDD</b>	251		(18)
	D 2014374818D488611ED				

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made; call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | January 2016



Rose, Emily

Statement period: January 1, 2016 - January 31, 2016

#### **Balance Summary\***

,	
	USD
Beginning Balance	0.00
Ending Balance	0.00

#### Account Activity



To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | February 2016



Rose, Emily

Statement period: February 1, 2016 - February 29, 2016

#### **Balance Summary\***

			USD
Beginning Balance			0.00
Ending Balance			0.00

#### Account Activity



To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | March 2016



Rose, Emily

Statement period: March 1, 2016 - March 31, 2016

#### **Balance Summary\***

	USD
Beginning Balance	0.00
Ending Balance	0.00

#### **Account Activity**

Date	Description	Currency	Amount	Fees	Total**
3/18/2016	PreApproved Payment Bill User Payment: Hulu United Bank of Michigan - Checking x-5740 7.99 USD	USD	-7.99	0.00	-7.99
	ID: 9D68115447310473V				



To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | April 2016



Rose, Emily

Statement period: April 1, 2016 - April 30, 2016

#### Balance Summary\*

		 USD
Beginning Balance		0.00
Ending Balance		0.00

#### **Account Activity**

Date	Description	Currency	Amount	Fees	Total**
	Express Checkout Payment, Ulter Technologies, Int.	180			
	Carried Marie		*******************************		*****************
4/17/2016	PreApproved Payment Bill User Payment: Hulu 7.99 USD	USD	-7.99	0.00	-7.99
	ID: 0L3080811G1698510				
4/18/2016	Express Checkout Fayment Albert Technologiess, Inc.		460		4
118/2013	Express Checkout Payment, Über Technologies, Imp Op Ed Brick of Wichiger - Greeking x 5746 (1997)				•

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | May 2016



Rose, Emily

Statement period: May 1, 2016 - May 31, 2016

#### **Balance Summary\***

•	USD
Beginning Balance	0.00
Ending Balance	0.00

#### **Account Activity**

Date	Description	Currency	Amount	Fees	Total*
5/18/2016	PreApproved Payment Bill User Payment: Hulu	USD	-7.99	0.00	-7.99
1,0011111111111111111111111111111111111	7.99 USD ID: 9RE81785PG8221250	******************************			
6/23/2018	Express Checkout Payment Ober Technologies, in Inned Bust of Manager - Discours - S740 - 44.71 U.S.			0.00	6147
<u></u>	ID: 53756333D91383030			<u></u>	
E/23/2010	Constitution of the Consti		25 00		<b>C</b> 45.0.
6232018	Company  Starbucks Coffee				<b>45</b> 0

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | June 2016



Rose, Emily

Statement period: June 1, 2016 - June 30, 2016

#### **Balance Summary\***

	USD
Beginning Balance	0.00
Ending Balance	0.00

#### **Account Activity**

Date	Description	Currency	Amount	Fees	Total**
6/18/2016	PreApproved Payment Bill User Payment: Hulu	USD	-7.99	0.00	-7.99
	7.99 USD ID: 9X9482606T637313V				

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | July 2016



Rose, Emily

Statement period: July 1, 2016 - July 31, 2016

#### **Balance Summary\***

	USD
Beginning Balance	0.00
Ending Balance	0.00

#### **Account Activity**

Date	Description	Currency	Amount	Fees	Total*
7/18/2016	PreApproved Payment Bill User Payment: Hulu 7.99 USD	USD	-7.99	0.00	-7.99
	ID: 54F50448KL088591U				
#18/2018	Groress Checkout Payment The Technologies, Ind				•
7 图2018	Cipes Charles Ayage 1 the Tourist on the				

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | August 2016





Statement period: August 1, 2016 - August 31, 2016

#### **Balance Summary\***

	USD
Beginning Balance	0.00
Ending Balance	0.00

#### **Account Activity**

Date	Description	Currency	Amount	Fees	Total*
	Coress Checkeut Payment. Uber Technologies, Inc.				
8/18/2016	PreApproved Payment Bill User Payment: Hulu 7.99 USD	USD	-7.99	0.00	-7.99
	ID: 08T76890WJ3014405				**************
8/23/2015	CAPIESS Checkout Payment COMEY CLOTHING PRIVATE	USU	207.90	(D.00)	£207 90
	inter Bank or Light in Charleng & 5740 2 207 40 USD				

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | September 2016





Statement period: September 1, 2016 - September 30, 2016

#### Balance Summary\*

	USD
Beginning Balance	0.00
Ending Balance	0.00

#### **Account Activity**

Date	Description	Currency	Amount	Fees	Total**
9/18/2016	PreApproved Payment Bill User Payment: Hulu 7.99 USD	USD	-7.99	0.00	-7.99
	ID: 0B943363DD137752V				

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees.

#### Account Statement | October 2016





Statement period: October 1, 2016 - October 31, 2016

#### **Balance Summary\***

	USD
Beginning Balance	0.00
Ending Balance	0.00

#### Account Activity

Date	Description	Currency	Amount	Fees	Total**
0/5/2016	Capess Checkout Payment J Grewing		20.6		20,67
10/18/2016	PreApproved Payment Bill User Payment: Hulu 7.99 USD	USD	-7.99	0.00	-7.99
	ID: 39U07427V34180059				

To report an unauthorized transaction or other error concerning your debit card, Direct inquiries to: call (402-938-3614), fax (303-395-2855) or write to us (PayPal Debit Card Department, P.O. Box 45950, Omaha, NE 68145-0950).

To report an unauthorized transaction or other error NOT involving your debit card, Direct inquiries to: call (402-938-3614) or write to us (Attn: Error Resolution Department, P.O. Box 45950, Omaha, NE 68145-0950).

You must notify us no later than 60 days after the unauthorized transaction or other error FIRST appears in your account statement. We will extend the 60-day time period if a good reason, such as a hospital stay, prevented you from notifying us within 60 days. Once you notify us of a suspected error, we will investigate your complaint or question within 10 business days. If we need more time, we may take up to 45 days to complete our investigation (or up to 90 days for point of sale or foreign initiated transactions). If we decide that we need more time to complete our investigation, we will provisionally credit your account for the amount of the suspected error. You will receive the provisional credit within 10 business days of the date we received your notice.

To cancel a pre-authorized or recurring payment or determine whether a pre-authorized or recurring transfer has been made: call us at 1-877-896-6383 (please note that only calls pertaining to pre-authorized or recurring payments will be accepted at this number).

<sup>\*</sup> The difference between your Beginning and Ending Balances may not equal the sum of all of your Account Activity in the Total column. This may occur, for example, if you have a pending or disputed transaction at the time you view your Account Statement.

<sup>\*\*</sup> For each transaction in your Account Activity, the Total equals the amount sent or received, plus or minus any Fees

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose



1507276628

Date 11/30/15

Description Netflix Service

Service period 11/30/15—12/29/15

Amount \$7.99

Tax \$0.72

Total Paid \$8.71

Payment method

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose

Invoice #

133057474

 Date
 12/31/15

 Description
 Netflix Service

 Service period
 12/31/15—1/30/16

 Amount
 \$7.99

 Tax
 \$0.72

VOI. 2

Total Paid \$8.71

Payment method

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose



1755480103

 Date
 1/31/16

 Description
 Netflix Service

 Service period
 1/31/16—2/28/16

 Amount
 \$7.99

 Tax
 \$0.72

Payment method

**Total Paid** 



\$8.71

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose



800147782

 Date
 3/1/16

 Description
 Netflix Service

 Service period
 2/29/16-3/28/16

 Amount
 \$7.99

 Tax
 \$0.72

 Total Paid
 \$8.71

Payment method



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose



859487279

 Date
 3/31/16

 Description
 Netflix Service

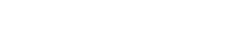
 Service period
 3/31/16-4/29/16

 Amount
 \$7.99

 Tax
 \$0.72

 Total Paid
 \$8.71

Payment method



https://www.netflix.com/invoice/print/859487279

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose



Invoice #

1747278033

 Date
 4/30/16

 Description
 Netflix Service

 Service period
 4/30/16—5/29/16

 Amount
 \$7.99

 Tax
 \$0.72

Payment method

**Total Paid** 



\$8.71

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose

Invoice #

105329332

Date 5/31/16

Description Netflix Service

Service period 5/31/16—6/29/16

Amount \$7.99

Tax \$0.72

Total Paid \$8.71

Payment method



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose

Invoice #

1560741636

Date 6/30/16

Description Netflix Service

Service period 6/30/16 – 7/29/16

Amount \$7.99

Tax \$0.72

Total Paid \$8.71

Payment method •



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose

Invoice #

1094913710

Date 7/31/16

Description Netflix Service

Service period 7/31/16—8/30/16

Amount \$7.99

Tax \$0.72

Total Paid \$8.71

Payment method

https://www.netflix.com/invoice/print/1094913710

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose

Invoice #

474416004

 Date
 9/1/16

 Description
 Netflix Service

 Service period
 8/31/16-9/29/16

 Amount
 \$7.99

 Tax
 \$0.72

Payment method

**Total Paid** 



\$8.71

Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA

Customer Emily Rose



2096647575

 Date
 9/30/16

 Description
 Netflix Service

 Service period
 9/30/16—10/29/16

 Amount
 \$7.99

 Tax
 \$0.72

Total Paid \$8.71

Payment method



Netflix, Inc. 100 Winchester Circle Los Gatos, CA 95032, USA



Invoice #

459102126

 Date
 10/31/16

 Description
 Netflix Service

 Service period
 10/31/16—11/29/16

 Amount
 \$7.99

 Tax
 \$0.72

 Total Paid
 \$8.71

Payment method



ELECTRONICALLY FILED
9/27/2017 4:28 PM
2015-CH-13399
CALENDAR: 04
PAGE 1 of 11
CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

# **Exhibit O**

Alderman Beavers moved to reconsider the foregoing vote. The motion was lost.

## AMENDMENT OF TITLE 4, CHAPTER 156 OF MUNICIPAL CODE OF CHICAGO REGARDING AMUSEMENT TAX.

The Committee on Finance submitted the following report:

CHICAGO, November 12, 1998.

To the President and Members of the City Council:

Your Committee on Finance, having had under consideration a substitute ordinance authorizing the amending of Chapter 4-156 of the Municipal Code of the City of Chicago regarding the amusement tax, having had the same under advisement, begs leave to report and recommend that Your Honorable Body Pass the proposed substitute ordinance transmitted herewith.

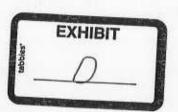
This recommendation was concurred in by a viva voce vote of the members of the committee.

Respectfully submitted,

(Signed) EDWARD M. BURKE, Chairman.

Alderman Burke moved to Substitute for the substitute ordinance transmitted with the forgoing committee report. The motion Prevailed.

Thereupon, on motion of Alderman Burke, the substitute ordinance was *Passed* by yeas and nays as follows:



Yeas - Aldermen Granato, Haithcock, Tillman, Preckwinkle, Holt, Lyle, Dixon, Shaw, Balcer, Frias, Olivo, Burke, Jones, Peterson, Murphy, Rugai, Troutman, DeVille, Munoz, Zalewski, Chandler, Solis, Ocasio, Burnett, E. Smith, Burrell, Wojcik, Suarez, Matlak, Austin, Banks, Allen, O'Connor, Doherty, Natarus, Bernardini, Hansen, Levar, Shiller, Schulter, M. Smith, Moore, Stone -- 43.

Nays -- None.

Alderman Natarus moved to reconsider the foregoing vote. The motion was lost.

The following is said ordinance as passed:

WHEREAS, The City Council wishes to foster the production of live performances that offer theatrical, musical or cultural enrichment to the city's residents and visitors; and

WHEREAS, Small theaters and other small venues often promote the local production of new and creative live cultural performances, and often have the most difficulty absorbing or passing on any additional costs; and

WHEREAS, Costs faced by those who produce live theatrical, musical, or other culturally enriching performances at smaller venues are substantial, and such performances often require governmental support since they could not otherwise flourish; and

WHEREAS, The City incurs substantial additional costs for police protection and other services in connection with live amusements held at venues having a maximum capacity of five thousand (5,000) or more persons; and

WHEREAS, It is the intent of this Council that the tax treatment of a given amusement taking place in the city be the same regardless of the similarly-sized theater or other venue in which it is held; now, therefore,

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. Chapter 4-156 of the Municipal Code of Chicago shall be amended by deleting the language in brackets and adding the language in italics, as follows:

Section 4-156-010 Definitions.

For purposes of this chapter:

"Amusement" means: (1) any exhibition, performance, presentation or show for entertainment purposes, whether viewed within or outside the home, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition such as boxing, wrestling, skating, dancing, swimming, racing or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling or billiard and pool games; (2) any entertainment or recreational activity offered for public participation or on a membership or other basis including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, body building or similar activities; or (3) any paid television programming, whether transmitted by wire, cable, fiberoptics, laser, microwave, radio, satellite or similar means.

"Maximum capacity" means the number of persons that an auditorium, theater or other space may accommodate as determined by the building commissioner pursuant to chapter 13-36 of this code or by any other appropriate government official; provided, however, that "maximum capacity" shall not exceed the maximum number of tickets or admissions that may be made available for sale to a performance as stated in any binding written agreement relating to that performance. If the number of tickets or admissions actually sold to a performance exceeds the legally permissible limit, for purposes of determining the applicable tax, "maximum capacity" shall mean such greater number.

"Owner" means (1) with respect to the owner of a place where an 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 an amusement in such place; (2) with respect to the owner of an amusement, any person who has an ownership or leasehold interest in such amusement or any person who has a proprietary interest in the amusement so as to entitle such person to all or a portion of the proceeds, after payment of reasonable expenses, from the operation, conduct or presentation of such amusement, excluding proceeds from nonamusement services and from sales of tangible personal property; (3) with respect to paid television programming, 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.

4-156-020 Tax imposed.

- A. [An] Except as otherwise provided by this article, an amusement tax is imposed upon the patrons of [any] every amusement within the city. The rate of the tax shall be [in an amount] equal to seven percent of the admission fees or other charges paid for the privilege to enter, to witness, to view or to participate in such amusement, unless subsection E of this section provides for a lower rate [;provided, however, that this tax].
- B. The tax imposed by subsection A shall not apply to the following persons or privileges:
  - (1) patrons of automatic amusement machines as defined in article II of this chapter, or
  - (2) [be imposed upon] the privilege of witnessing or participating in any stock show or business show that is not open to the general public, or
  - (3) [be imposed upon] the privilege of hiring a horse-drawn carriage licensed under chapter 9-108 of this code, or[,]
  - (4) the privilege of witnessing or participating in any amateur production or activity, such as amateur musicals, plays and athletic events, conducted by a not-for-profit organization operated exclusively for charitable, educational or religious purposes, or
- (5) [except as limited below, be imposed upon] subject to satisfying the requirement contained in subsection (C) of this section, the privilege of witnessing or participating in any amusement sponsored or conducted by and the proceeds of which, after payment of reasonable expenses, inure exclusively to the benefit of:
  - [(1)] (a) religious, educational and charitable institutions, societies or organizations;
    - [(2)] (b) societies or organizations for the prevention of cruelty to children

or animals;

- [(3) societies or organizations conducted for the sole purpose of maintaining symphony orchestras, opera performances and artistic presentations, including, but not limited to, musical presentations, and receiving substantial support from voluntary contributions;]
- [(4)] (c) societies or organizations conducted and maintained for the purpose of civic improvement;
- [(5)] (d) fraternal organizations, legion posts, social and political groups which conduct amusements, sponsored occasionally but not more often than twice yearly [for periods not longer than 30 days];

Provided, however, that the entities described in paragraphs ([1]a) to ([5]d) are 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.

- [(6)] (e) organizations or persons in the armed services of the United States, or National Guard organizations, reserve officers' associations, or organizations or posts of war veterans, or auxiliary units or societies of such posts or organizations, if such posts, organizations, units or societies are organized in the state of Illinois, and if no part of their earnings inure to the benefit of any private shareholder or person;
- [(7)] (f) organizations or associations created and maintained for the purpose of [benefitting] benefitting the members, or dependents or heirs of members, of the police or fire departments of any political subdivision of the state of Illinois[.];

Provided that the exemptions contained in paragraphs (a) through (f) shall apply only to benefits or other fundraising events and shall not apply to more than two events per calendar year which shall not exceed a total of 14 calendar days;

(g) societies or organizations conducted for the sole purpose of maintaining symphony orchestras, opera performances and artistic presentations, including, but not limited to, musical presentations, if the society or organization (i) receives substantial support from voluntary contributions, (ii) is a not-for-profit institution where no part of the net earnings inure to the benefit of any private shareholder or person, and (iii) either (a) bears all risk of financial loss from its presentation of the amusement, where the amusement takes place at a venue that is owned or operated by the society

or organization, and where the amusement is limited to an engagement of not more than four calendar days over the course of a calendar year or (b) is substantially and materially involved in the production and performance of the amusement.

- C. (1) None of the exemptions contained in subsection B(5) of this section shall apply to a person or privilege unless a written notice of the amusement is filed with the department of revenue at least 30 calendar days prior to the amusement or 15 calendar days prior to the date that admission tickets to the amusement are first made available for sale, whichever is earlier. The notice shall be on a form prescribed by the director of revenue, and shall contain all information and materials necessary to permit the department to consider whether the exemption claimed by the applicant is applicable.
- (2) Upon the request of the person filing the notice, the department shall indicate within 14 calendar days after receiving the notice whether the claimed exemption does or does not apply, or whether additional information is necessary to make a determination.
- [B.]D. (1) The tax imposed in subsection A of this section shall not apply to or be imposed upon the admission fees to witness in person live theatrical, live musical or other live cultural performances [of professional theater companies] that take place in any auditorium [or], theater or other space in the city whose maximum [seating] capacity, including all balconies and other sections, is not more than 750 persons.

[A professional theater company, as used in this article, is hereby defined as any society, organization, association, corporation or entity which advances the cultural interests of the city of Chicago through the production of live theatrical and dramatic presentations of plays, musicals or operas to a seated audience in the city.]

- (2) Initiation fees and membership dues paid to a health club, racquetball club, tennis club or a similar club or organization, when such club or organization is organized and operated on a membership basis and for the recreational purposes of its members and its member's guests, shall be exempt from the tax imposed in subsection A of this section. This exemption shall not be construed to apply to any fees paid or based upon, in any way whatsoever, a per-event or a per-admission basis.
- E. The rate of the tax imposed in subsection A of this section shall be 3% of the admission fees or other charges to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or

other space in the city whose maximum capacity, including all balconies and other sections, is more than 750 persons and less than 5,000 persons.

- [C.]F. The tax imposed in subsection A of this section shall apply to and be imposed upon 60 percent of the admission fees or other charges (including, but not limited to, the gross lease or rental amount) paid for the privilege of using special seating areas to witness or to view an amusement.
- [D.]G. [(1) In the case of any amusement for which a full exemption from payment of the amusement tax is provided under any of the classifications in this article, written notice of the amusement shall be filed with the director of revenue by the person or persons who are sponsoring or conducting the amusement or who are required to collect the tax, on a form prescribed by the director of revenue, at least 15 days prior to the holding of such amusement. This requirement shall not apply, however, if the requirement contained in subsection (D)(2) is satisfied.
- (2) In the event that live performances are conducted by a professional theater company in an auditorium or theater that has a maximum seating capacity, including all balconies, of not more than 750 persons as provided in section 4-156-020(B)(1) of this article, the auditorium or theater may apply to the director for an exemption not to exceed three years upon providing proof of its seating capacity. This exemption may be renewed for additional periods, each renewal period not to exceed three years, upon a showing to the director that the maximum seating capacity of the auditorium or theater does not exceed 750 persons. The three year exemption provided by this subsection shall not apply to any amusement that does not otherwise meet all the requirements contained in section 4-156-020(B)(1) of this article.
- (3) No person may claim any full exemption provided by this article unless the notice required by subsection (D)(1) of this section or the application required by subsection (D)(2) of this section is filed with the director.] It shall be presumed that all amusements are subject to tax under this article until the contrary is established by books, records or other documentary evidence.
- [E.] H. For the purpose of determining the amount of the amusement tax due under section 4-156-020, admission fees or other charges shall be computed exclusive of this tax, any federal, [or] state or county taxes imposed upon the amusement patron and any separately stated charges for nonamusement services or for sales of tangible personal property.
- [F.] I. It is unlawful for any person to produce, present, conduct or resell tickets to, any amusement without collection of the tax, except as provided in

this article.

[G.] J. Notwithstanding subsection A of this section, if an owner, manager or operator of an amusement or of a place where an amusement is being held, or if a reseller of tickets to an amusement, is a party to a franchise agreement or any other agreement with the city pursuant to which the owner, manager, operator or reseller compensates the city for the right to use the public way or to do business in the city, liability under the tax imposed by subsection A shall be reduced by the amount paid to the city pursuant to the agreement.

#### 4-156-030 Collection, payment and accounting.

A. It shall be the *joint and several* duty of every owner, manager or operator of an amusement or of a place where an amusement is being held, and of every reseller of tickets to an amusement, to secure from each patron the tax imposed by section 4-156-020 of this article and to remit the tax to the department of revenue not later than the last day of each calendar month for all admission fees or other charges received during the immediately preceding calendar month; provided, however, that a reseller of tickets shall be required to collect and remit tax to the department only on that portion of the ticket price that exceeds the original or face amount of the tickets. A verified statement of admission fees or charges in a form prescribed by the director of revenue shall accompany each remittance. Acceptance by the city of any amount tendered in payment of the tax shall be without prejudice to any claim, demand or right on account of any deficiency.

E. Notwithstanding subsection A of this section 4-156-030, a reseller of tickets shall not be required to collect the tax imposed by section 4-156-020, and remit the tax to the department of revenue, if the purchaser of such tickets will in turn act as a reseller of the same tickets, provided that the purchaser supplies to the reseller (1) a written verification that the purchaser intends to resell the tickets and (2) the tax registration number issued to the purchaser by the department of revenue.

F. Persons having an average monthly liability of less than \$100 during the immediately preceding 12 calendar months may apply to the director of revenue to pay or remit the tax imposed by section 4-156-020 of this article on an annual rather than a monthly basis. The director of revenue shall approve any such application after confirming the facts stated therein; provided, however, that the

director shall withdraw such approval if the person's average monthly liability subsequently exceeds \$100.

4-156-034 Rules and regulations.

The director of revenue is authorized to adopt, promulgate and enforce rules and regulations pertaining to the interpretation, administration and enforcement of this article, including but not limited to the meaning and scope of the exemptions contained in section 4-156-020.

4-156-035 Application of uniform revenue procedure ordinance.

Whenever not inconsistent with the provisions of this chapter or whenever this chapter is silent, the provisions of the Uniform Revenue Procedures Ordinance, chapter 3-4 of [the municipal] this code [of Chicago], as amended, shall apply and supplement this chapter.

[4-156-400

It is unlawful for any licensee to display upon the licensed premises or to print or write or permit to be printed or written upon any ticket of admission to the licensed premises or upon any charge ticket for any amusement in the licensed premises, any statement or legend indicating that the amount of the tax imposed by article I of this code is added or to be added to the admission fee or other charge for said amusement.]

SECTION 2. This ordinance shall take effect on January 1, 1999; provided, however that the three percent (3%) tax rate provided by subsection 4-156-020(E) and the revisions to subsection 4-156-020(D) shall apply only to admission charges or other fees billed and paid on or after January 1, 1999, and provided further that the amendments to subsection 4-156-020(B) shall not result in tax being imposed on any amusement where the amusement's owner or sponsor has entered into an agreement with a performer or production company relating to the amusement prior to January 1, 1999.

PROPERTY AT 4420 SOUTH WOLCOTT AVENUE APPROVED FOR CLASS 6(b) TAX INCENTIVE BENEFITS PURSUANT TO COOK COUNTY REAL PROPERTY CLASSIFICATION ORDINANCE.

The Committee on Finance submitted the following report:

CHICAGO, November 12, 1998.

To the President and Members of the City Council:

Your Committee on Finance, having had under consideration a resolution authorizing the approval of a Class 6(b) tax incentive classification for the property located at 4420 South Wolcott Avenue pursuant to the Cook County Real Property Ordinance, having had the same under advisement, begs leave to report and recommend that Your Honorable Body *Adopt* the proposed resolution transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the committee.

Respectfully submitted,

(Signed) EDWARD M. BURKE, Chairman.

On motion of Alderman Burke, the said proposed resolution transmitted with the foregoing committee report was *Adopted* by yeas and nays as follows:

Yeas -- Aldermen Granato, Haithcock, Tillman, Preckwinkle, Holt, Lyle, Beavers, Dixon, Shaw, Balcer, Frias, Olivo, Burke, Jones, Peterson, Murphy, Rugai, Troutman, DeVille, Munoz, Zalewski, Chandler, Solis, Ocasio, Burnett, E. Smith, Burrell, Wojcik, Suarez, Matlak, Austin, Colom, Banks, Allen, Laurino, O'Connor, Doherty, Natarus, Bernardini, Hansen, Levar, Shiller, Schulter, M. Smith, Moore, Stone -- 46.

Nays -- None.

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION TAX AND MISCELLANEOUS REMEDILS SECTION

MICHAEL LA	BELL, JARED LABELI	L, et al.	TO THE PARTY OF TH
	Plaintiffs,		No. 2015 CH 13399
	v.	)	(Transferred to Law)
CITY OF CHIO FINANCE, et a	CAGO DEPARTMENT (	OF )	Judge Walker
	Defendants.	)	

#### DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

Pursuant to Section 2-1005 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1005, defendants City of Chicago ("City") and its Comptroller hereby move for summary judgment as to all of plaintiffs' claims. Defendants will file a separate memorandum in support of their motion.

WHEREFORE, defendants move for summary judgment as to all of plaintiffs' claims.

By:

Dated: November 15, 2017

Respectfully submitted,

Weston Hanscom
Steven Tomiello
Marques Berrington
City of Chicago, Department of Law
Revenue Litigation Division
30 North LaSalle Street, Suite 1020
Chicago, IL 60602
(312) 744-9077/7803/6995
Attorney No. 90909
steven.tomiello@cityofchicago.org

#### **CERTIFICATE OF SERVICE**

I, Marques A. Berrington, an attorney, certify that on November 15, 2017, I caused the foregoing Cross-Motion for Summary Judgment to be served on Defendants by causing such to be mailed to the address set forth above before 5:00 p.m.

Marques A. Berrington

## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION TAX AND MISCELLANEOUS REMEDIES SECTION

TAX AND MISCELLANEOUS REMEDIES SECTION		N O
MICHAEL LABELL, JARED LABELL, et al.	) PEPPE	ن ن
Plaintiffs,	) No. 2015 CH 13399	30
v.	) (Transferred to Law)	
CITY OF CHICAGO DEPARTMENT OF FINANCE, et al.	) Judge Walker )	
Defendants.	)	

# DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT

Defendants City of Chicago ("City") and its Comptroller submit this memorandum in opposition to plaintiffs' motion for summary judgment ("Motion") and in support of their crossmotion for summary judgment.

#### Introduction

Plaintiffs are Chicago residents who subscribe to three "streaming services" for which they pay the City's amusement tax: Netflix, Hulu and Spotify (the "Products"). Netflix and Hulu offer monthly subscriptions to watch movies and television shows. Spotify offers monthly subscriptions to listen to music. In their Motion, plaintiffs argue that the City's amusement tax may not be applied to the Products for a number of reasons, all of which are addressed in this memorandum. Plaintiffs do not specify whether their challenge is facial or as-applied. Either way, based on the undisputed facts, defendants are entitled to summary judgment.

<sup>&</sup>lt;sup>1</sup> Some of the plaintiffs also subscribe to Amazon Prime, but they do not pay any amusement tax on their subscription fees, which are annual membership dues that pay for a number of benefits, such as expedited shipping and discounts on purchases. See Motion at  $6 \, \P \, 25$ .

#### Statement of Facts

- 1. The City took the depositions of plaintiffs Bryant Jackson-Green and Zachary Urevig. Prior to entering into an agreed briefing schedule on the instant motions, the parties stipulated that the remaining plaintiffs would have testified consistently with the two deponents.
- 2. Mr. Jackson-Green lives in Chicago and subscribes to Netflix, Hulu, Spotify, and Amazon Prime. Jackson-Green Dep. (Exhibit A) at 4, 8. He began subscribing to Netflix by signing up on his laptop, while in Chicago. *Id.* at 11. When he signed up, he provided his credit card information, as well as his Chicago address. *Id.* at 11-12. Netflix automatically bills the credit card account provided by the subscriber. *Id.* at 12. Netflix bills its customers one month in advance to obtain the ability to use the service for the next month. *Id.* at 14. Netflix offers a wide variety of movies and shows, including its own original programs. *Id.* at 15. Subscribers can watch movies or shows as many times as they want, and the subscriber gets charged the same amount regardless of use. *Id.* at 14, 18. Netflix does not offer pay-per-view for special events, nor could Mr. Jackson-Green attest that Netflix streams any live events. *Id.* at 18-19.
- 3. Mr. Jackson-Green watches Netflix through his television, cell phone and iPad. *Id.* at 19. Seventy-five percent of his Netflix use is on his home television. *Id.* at 19-20. Outside of his home, he has watched Netflix on his laptop or cell phone while at cafés in Chicago. *Id.* at 21. Most of his Netflix use occurs in Chicago. *Id.* He could not recall a month when he did not use his Netflix account at all. *Id.* at 22. There was never a month when his use of Netflix was entirely or primarily outside of Chicago. *Id.* at 23. Approximately three to four times per year, he uses Netflix when he travels for periods of not longer than a week. *Id.* at 20, 36.
- 4. Mr. Jackson-Green also subscribes to Hulu. Like Netflix, Hulu streams video content. He subscribes to Hulu because it offers different movies and shows than Netflix,

including its own original programming. *Id.* at 23-24. Hulu's sign-up and billing procedures are identical to those of Netflix. *Id.* at 25. Hulu does not stream live events. *Id.* His answers about how he uses Netflix are consistent with how he uses Hulu. *Id.* at 26.

- 5. Mr. Jackson-Green also subscribes to Spotify. He first subscribed to Spotify while living in Chicago. *Id.* at 27. The sign-up procedure is similar to that of the other streaming services. *Id.* He uses Spotify predominantly on his cell phone. *Id.* at 28. He was not aware of any streaming of live events by Spotify. *Id.* at 29-30. He uses Spotify while commuting, at home and anywhere he has his cell phone. *Id.* at 30-31. He could not recall any months when his use of Spotify was either entirely or primarily outside of Chicago. *Id.* at 31.
- 6. Mr. Jackson-Green was not familiar with what an automatic amusement device is, but he has occasionally used a jukebox at a bar. *Id.* 39-40. He attends concerts one to two times per year, most recently in 2015. *Id.* at 44. He agreed that the cost to attend a concert would generally be somewhere between 80 and 100 dollars. *Id.* at 46.
- 7. Mr. Jackson-Green also subscribes to Amazon Prime. He could not recall whether he ever paid amusement tax on his subscription, but billing statements later produced confirm that no amusement tax has been charged. See Exhibit C.
- 8. Mr. Urevig lives in Chicago and subscribes to Netflix, Spotify, and Amazon Prime. Urevig Dep. (Exhibit B) at 4, 7. His testimony was essentially the same as that of Mr. Jackson-Green on all of the topics discussed above. He said he uses Netflix and Spotify more than 90% of the time in Chicago. *Id.* at 17.
- 9. Attached are copies of (a) an informational bulletin issued in March 2009 (Exhibit E) and (b) printed pages from the websites of the providers of various products discussed in this

memorandum (Exhibits F through S), describing features and pricing, along with terms and conditions. See affidavit of Marques Berrington.

#### Discussion

In their Motion, plaintiffs frequently reference Amusement Tax Ruling #5 ("Ruling"), which the City's Department of Finance ("Department") issued in June 2015. The amusement tax ordinance ("Ordinance") was amended in November 2015 to incorporate the key terms of the Ruling. Specifically, the Ordinance was amended to add the following provision:

In the case of amusements that are delivered electronically to mobile devices, as in the case of video streaming, audio streaming and on-line 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. If those rules indicate that the tax applies, it shall be presumed that the tax does apply unless the contrary is established by books, records or other documentary evidence.

See Section 4-156-020(G.1) of the Municipal Code of Chicago ("Code"). In light of this amendment, the Court dismissed Counts I through III of the complaint, which alleged that the Ruling improperly exceeded the scope of the Ordinance. This case, therefore, is really a challenge to the Ordinance, rather than the Ruling.

"[L]egislative enactments are presumed to be constitutional" and "reasonable doubts concerning the validity of a statute must be resolved in its favor." See O'Connor v. A & P Enterprises, 81 Ill. 2d 260, 266 (1980). This rule applies equally to ordinances adopted by the City of Chicago. See National Pride of Chicago, Inc. v. City of Chicago, 206 Ill. App. 3d 1090, 1101 (1st Dist. 1990). A plaintiff who challenges a home rule ordinance has a "particularly heavy" burden: See Chicago Park District v. City of Chicago, 111 Ill. 2d 7, 14 (1986) (quoting Walter Pecket Co. v. Regional Transportation Authority, 81 Ill. 2d 221, 224 (1980)). As we

explain below, plaintiffs have not met their burden of showing that the Ordinance is facially invalid or invalid as applied to them.

- I. <u>Defendants are entitled to summary judgment on plaintiffs' claims regarding the City's authority to tax streaming services.</u>
  - A. The undisputed facts do not support a facial challenge to the Ordinance.

In the case of a facial challenge, the plaintiff must establish that there are "no circumstances" under which the law would be valid. Carter v. City of Alton, 2015 IL App. (5th) 130544 ¶20; Lamar Whiteco Outdoor Corp. v. City of West Chicago, 355 Ill. App. 3d 352, 365 (2d Dist. 2005). A central premise of plaintiffs' case is that the City may not tax the Products because the Products can be used on mobile devices and therefore can be used outside the City. Plaintiffs' premise is refuted by Rozner v. Korshak, 55 Ill. 2d 430, 433 (1973), in which the Illinois Supreme Court upheld Chicago's home rule authority to impose its annual "wheel tax" (a/k/a "City sticker tax") on Chicago residents who use their vehicles in Chicago, even though the vehicles are also used in other places.

Plaintiffs do not (and cannot) deny that the City has both statutory and home rule authority to tax amusements that take place within Chicago. 65 ILCS 5/11-42-5; Kerasotes Rialto Theater Corp. v. City of Peoria, 77 Ill. 2d 491 (1979); Mr. B's, Inc. v. City of Chicago, 302 Ill. App. 3d 930 (1st Dist. 1998). Plaintiffs also do not (and cannot) deny that some (if not all) Chicago residents use the Products either exclusively or primarily within Chicago – whether on a stationary device at home, a mobile device at home, or a mobile device elsewhere within the City. Indeed, plaintiffs admit that nearly all of their own use of the Products takes place in Chicago, with most of it occurring at home. See Statement of Facts ¶¶ 3-5, 8. Plaintiffs therefore do not (and cannot) meet their burden of establishing that there are "no circumstances" under which the Ordinance could validly apply to streaming services.

#### B. The undisputed facts do not support an as-applied challenge to the Ordinance.

If plaintiffs instead are asserting an as-applied challenge, they must establish facts that entitle them to relief. Plaintiffs cannot do that, because they have testified that they almost always use the Products either at home or elsewhere in the City. See Statement of Facts ¶¶ 3-5, 8. The mere fact that they occasionally use the Products outside the City does not mean that the City may not tax their entire monthly subscription charge. See Rozner v. Korshak, supra (upholding annual wheel tax on Chicago residents, in a flat amount). Netflix, Hulu and Spotify all charge their customers a flat amount that does not vary based on usage. By paying that flat amount, plaintiffs obtain the privilege of using the Products in Chicago, and they have testified that they do not recall any months in which they have not taken advantage of that privilege. See Statement of Facts ¶¶ 3-5, 8.

In In re M.I., 2013 IL 113776 ¶ 32, the Illinois Supreme Court stated:

The general rule is that courts will not consider the validity of a statutory provision unless the person challenging the provision is directly affected by it or the unconstitutional feature is so pervasive as to render the entire statute invalid. [citations omitted] Generally, if there is no constitutional defect in the application of the statute to a litigant, that person does not have standing to argue that it would be unconstitutional if applied to third parties in hypothetical situations. [citation omitted] In the absence of facts demonstrating an unconstitutional application of the statute, a person may not challenge the statute on the ground that it might conceivably be applied unconstitutionally in some hypothetical case.

See also Wells Fargo Bank, N.A. v. Bednarz, 2016 IL App (1st) 152738 ¶ 10.

Plaintiffs cannot prevail in an as-applied challenge based on the mere possibility that they or some other Chicago resident might at some point pay tax on charges for a subscription that is used exclusively outside Chicago. Nor would plaintiffs be entitled to bring such a challenge without first exhausting their administrative remedies by filing a refund claim with the Department. See Tri-State Coach Lines, Inc. v. Metropolitan Pier and Exposition Authority,

315 Ill. App. 3d 179 (1st Dist. 2000) (explaining that an as-applied challenge is subject to the exhaustion requirement).<sup>2</sup>

C. <u>Defendants have express statutory authority to apply the Mobile Sourcing Act to streaming services provided by telecommunications companies.</u>

The Mobile Telecommunications Sourcing Conformity Act ("Mobile Sourcing Act" or "Act"), 35 ILCS 638, states that all charges for mobile telecommunications services "are authorized to be subjected to tax ... by the taxing jurisdictions whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through ..." 35 ILCS 638/20. The Act defines "place of primary use" to mean "the residential street address or the primary business street address of the customer ... within the licensed service area of the home service provider." 35 ILCS 638/10. The term "home service provider" means "the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services." *Id*.

The Act implements the terms of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. §§ 116 - 126. See 35 ILCS 638/5, 15(a). Congress intended the federal legislation to apply to a wide variety of state and <u>local</u> taxes involving the issue of how to source mobile devices - "regardless of the terminology used to describe the tax." See 4 U.S.C. § 116(a).<sup>3</sup>

<sup>&</sup>lt;sup>2</sup> Moreover, plaintiffs seek declaratory and injunctive relief that could not extend to other people in any event. See Morr-Fitz, Inc. v. Blagojevich, 231 Ill.2d 474, 498 (2008) (a plaintiff that prevails on an as-applied claim may enjoin the objectionable enforcement of the statute only against itself); City of Chicago v. Alexander, 2015 IL App (1st) 1222858-B at ¶25 (same).

In some jurisdictions, amusements are taxed as part of the state sales taxes. See, e.g., Ala. Code Sec.40-23-2(2); Fla. Stat. 212.02(1), 212.04; Ga. Code Ann. Sec. 8-2-(31) (C); Mo. Rev. Stat. sec. 144.020.1(2); Vt. Stat. Ann., tit. 23, sec. 9771(4). Likewise, in some jurisdictions, telecommunications are taxed as part of the state sales taxes. See, e.g., Mass. Gen. Laws ch. 64H, § 1; N.Y. Tax Law § 1105; Tenn. Code Ann. § 67-6-221; Tex. Tax Code § 150.0101.

When it enacted the Mobile Sourcing Act, the General Assembly specifically stated that it intended "to inform State and <u>local</u> government officials of its provisions as it applies to the <u>taxes</u> of this State." <u>Id.</u> (emphasis added). The "taxes of this State" include amusement taxes imposed by local governments. <u>See e.g.</u>, <u>Kerasotes</u>, <u>supra</u>; 65 ILCS 5/11-42-5. The amusement tax is "levied by ... a taxing jurisdiction within this State ... measured by gross amounts charged to customers for mobile telecommunications services ..." 35 ILCS 638/15(a). The charges taxed are for "mobile telecommunications services," because they are "<u>charges for</u>, or associated with, the provision of commercial mobile radio service" and/or "<u>charges for</u>, or associated with, a <u>service provided as an adjunct</u> to a commercial mobile radio service." 35 ILCS 638/10 (emphasis added).

As noted, the Act applies to charges "which are billed by or for the customer's home service provider," which means "the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services." 35 ILCS 638/20; 35 ILCS 638/10. While some providers of streaming services may not be "home service providers," others definitely are. For example, AT&T and Comcast are facilities-based carriers, T-Mobile is a reseller, and they all offer streaming services. See Exhibits P, Q and R. In March 2009, the Department issued an information bulletin informing telecommunications companies who offer pay television on mobile devices that they should collect amusement tax on their charges for that

<sup>&</sup>lt;sup>4</sup> Section 20.3 of Title 47 of the Code of Federal Regulations, as in effect on June 1, 1999 (35 ILCS 638/10), defined commercial mobile radio service as "[a] mobile service that is: (a) (1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional equivalent of such a mobile service described in paragraph (a) of this section." 47 C.F.R. § 20.3. The term "mobile service" was defined as "[a] radio communication service carried on between mobile stations or receivers and land stations ..." 47 C.F.R. Section 20.3.

service, using the Mobile Sourcing Act. <u>See</u> Exhibit E. This was consistent with the approach later codified in the Ordinance. At a minimum, the Mobile Sourcing Act applies to streaming services provided by telecommunications companies. Thus, at a minimum, the Ordinance is valid as to them, so plaintiffs again cannot show that there are "no circumstances" under which the Ordinance can be validly applied to streaming services.

### D. <u>Defendants have implied authority to apply the Mobile Sourcing Act to all streaming services.</u>

Defendants have implied authority to apply the Mobile Sourcing Act to all streaming services, as the Act is a reasonable means of dealing with the issue of how to source charges related to the use of mobile devices. See 65 ILCS 5/8-3-15 ("The corporate authorities of each municipality shall have all powers necessary to enforce the collection of any tax imposed and collected by such municipality, whether such tax was imposed pursuant to its home rule powers or statutory authorization ..."). See also Virgin Mobile USA, SP v. Arizona Department of Revenue, 230 Ariz. 261 (2012) (upholding application of the Act to 911 tax on prepaid phone service, even though the Act excludes prepaid phone service); T-Mobile South, LLC v. Bonet, 85 So. 3d 963 (Ala. 2011) (same). Since the Act clearly applies to streaming services provided by telecommunications companies, it is reasonable for the City to apply it to the same services when they are provided by other businesses.

#### E. The holding and rationale of the Hertz decision do not apply to this case.

Plaintiffs cite <u>Hertz Corp. v. City of Chicago</u>, 2017 IL 119945 ("<u>Hertz</u>"), for the proposition that Chicago is acting in an extraterritorial manner by imposing the amusement tax on Chicago residents who <u>might</u> use the Products on mobile devices while outside of Chicago. Motion at 9-11. As we discuss below, <u>Hertz</u> involved a very different situation and is not controlling in this case.

Hertz was a challenge to a ruling that the Department issued concerning collection of the personal property lease tax, Code Chapter 3-32, for short-term car rentals from locations in the Chicago suburbs. The ruling stated that companies at those locations were required to ask Chicago residents who rented from them whether they planned to use the car primarily in the City during the rental term. If the customers said yes, then the companies were required to collect the City's lease tax from them and remit it to the Department. If the customers said no, then the companies were required to keep a record of that response to support not having collected the tax. If the companies did not keep such a record, the Department would presume, in the event of an audit, that the Chicago customers had used their rental cars primarily in the City, and the Department would assess the companies for tax, interest and penalties.

As noted, <u>Hertz</u> involved the City's personal property lease tax. The lease tax is "imposed upon: (1) the lease or rental in the city of personal property, or (2) the privilege of using in the city personal property that is leased or rented outside the city." Code Section 3-32-030(A). The first "prong" of the tax did not apply ("the lease or rental in the city of personal property"), because the customers were renting from suburban locations. <u>Hertz</u> at ¶ 27. This meant that Chicago had no grounds for applying the tax unless the <u>second</u> "prong" applied, which required evidence of "actual use" in the City. *Id.* at ¶¶ 27, 29.

The court held that there was no evidence of "actual use," and it rejected the ruling's "conclusive presumption of use based on Chicago residency." *Id.* at ¶ 30. It concluded that the ruling amounted to "a tax on transactions that take place wholly outside Chicago's borders." *Id.* (emphasis added). On a more general policy note, the court expressed a concern that the ruling "would result in greatly expanded obligations on vehicle lessees to estimate the percentage of use

they intend to make in each taxing jurisdiction and on motor vehicle rental companies to collect and remit taxes to multiple jurisdictions." *Id*.

This case is very different from Hertz. To begin with, this case concerns the amusement tax, which does not require "actual use" in the City. The amusement tax applies to charges paid for the privilege of viewing amusements in Chicago, whether or not the customer actually takes advantage of (and therefore "uses") the privilege. See Code Section 4-156-020 (stating that the tax applies to the "charges paid for the privilege to enter, to witness, to view or to participate in" an amusement). Thus, for example, if a customer buys a ticket to watch the Cubs play at Wrigley Field, the tax applies to the ticket price, even if the customer ends up not going to the game. Similarly, if a Chicago resident pays Netflix a subscription charge of \$8 a month, payment of the charge provides that person with the privilege of watching Netflix videos in Chicago, and the amusement tax applies to that charge regardless of whether the person chooses to watch the videos exclusively in Chicago, partly in Chicago, or not at all.<sup>5</sup>

Second, Netflix, Hulu and Spotify offer their Products on a subscription basis, and plaintiffs accept those offers each month when they make their payments using credit cards with a Chicago billing address. See, e.g., Exhibit D. This case, therefore, is more like a car rental from a Chicago location (which would be taxable under the first "prong" of the lease tax) than the suburban car rentals at issue in Hertz (which concerned the second "prong" and required proof of "actual use" in Chicago). See Stahl v. Village of Hoffman Estates, 296 Ill. App. 3d 550, 554 (1st Dist. 1998) (home rule municipalities have authority to tax events occurring within their territorial limits); National Realty & Investment Co. v. Illinois Dept. of Revenue, 144 Ill. App.

<sup>&</sup>lt;sup>5</sup> The full \$8 subscription charge applies as well – Netflix does not give a refund because the customer decides not to use the Product that month, nor does it apportion the charge based on the amount of usage.

3d 541, 547 (2d Dist. 1986) (receipt of installment payment as taxable event). It is also analogous to the City's wheel tax, by which Chicago residents pay a flat annual sum for each vehicle registered in the City, regardless of how much the vehicle is used outside the City. See Rozner v. Korshak, supra, 55 Ill. 2d 430, 433 (1973). Unlike the situation in Hertz, this is not "a tax on transactions that take place wholly outside Chicago's borders." Hertz at ¶ 30.

Third, the court in Hertz clearly believed that the City had no basis for assuming that a Chicago resident renting a car from a suburban location would actually use the car in Chicago. See Hertz at ¶ 27 ("At most, there is only a tenuous connection between the City and the taxed transaction."). By contrast, in the case of a monthly subscription for Netflix, Hulu or Spotify, it is entirely reasonable to assume that a Chicago resident will in fact use the Product in Chicago during that month. That assumption is supported by the evidence in this case, where plaintiffs have testified that they almost always use the Products either at home or elsewhere in the City. See Statement of Facts ¶¶ 3-5, 8. It is further supported by the Mobile Sourcing Act, which assumes that a customer's residence will be his or her "place of primary use" of a mobile device. 35 ILCS 638/10. See Friends of the Parks v. Chicago Park Dist., 203 Ill. 2d 312 (2003) (legislative findings are entitled to deference). Even assuming that the Act applies only to streaming services provided by telecommunications carriers, there is no reason to believe that the presumption of primary use would be any less accurate for streaming services provided by other businesses, as they involve the same services, received on the same mobile devices. Indeed, it would be illogical to assume that the uses would be any different, just because the providers are different.

Fourth, unlike in <u>Hertz</u>, there is no "conclusive presumption" contained in the Ordinance.

To the contrary, the Ordinance simply states that the rules set forth in the Mobile Sourcing Act

"may be utilized" by providers who collect the tax, and it specifically states that the presumption that the tax is owed by Chicago residents is rebuttable. Code Section 4-156-020(G.1). It has been over two years since the Ruling was issued and almost two years since the Ordinance was amended. In that time, if any problems have occurred at all, they are certainly nothing "so pervasive as to render the entire statute invalid." In re M.I., 2013 IL 113776 ¶ 32.

Fifth, unlike in <u>Hertz</u>, Chicago is not requiring businesses such as Netflix, Hulu and Spotify to ask questions about where their customers intend to use their Products, nor is it requiring the customers to answer such questions. The Ordinance simply states that providers, as tax collectors, "may utilize" the sourcing rules set forth in the Mobile Sourcing Act - just as telecommunications providers utilize those same rules for cellular telephone service. If any problems do arise in individual cases, they can and should be dealt with on an as-applied basis. For all these reasons, the holding and rationale of the <u>Hertz</u> decision do not apply to this case.

#### II. Defendants are entitled to summary judgment on plaintiffs' claims regarding uniformity.

#### A. <u>Uniformity standards</u>

The Uniformity Clause provides that "[i]n any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly." Ill. Const. 1970, Art. IX, § 2. Under the Uniformity Clause, a classification must be based on a real and substantial difference between the people taxed and not taxed, and there must be some reasonable relationship to the object of the legislation or to public policy. Geja's Café v. Metropolitan Pier and Exposition Authority, 153 Ill. 2d 239, 247 (1992). Statutes are presumed constitutional and, therefore, broad latitude is afforded to legislative classifications for taxing purposes. *Id.* at 248. The Uniformity Clause

enforces a minimum standard of reasonableness and fairness as between groups of taxpayers; it does not require perfect rationality as to each and every taxpayer. *Id.* at 247, 252.

In response to a Uniformity Clause challenge, a taxing body need only produce a justification for its classifications. *Id.* at 248. The plaintiff then has the burden of "clearly establishing" that the classification is arbitrary or unreasonable; if any state of facts can be reasonably conceived that would sustain it, the classification must be upheld. See Empress Casino Joliet Corp. v. Giannoulias, 231 Ill. 2d 62, 69 (2008), citing Allegro Services, Ltd. v. Metropolitan Pier & Exhibition Authority, 172 Ill. 2d 243, 250-251 (1996); Geja's, supra, at 248, citing Illinois Gasoline Dealers Association v. City of Chicago, 119 Ill. 2d 391, 403 (1988).

The plaintiff in a uniformity case may not rely upon hypothetical situations, <u>Citizens</u> <u>Utilities Company of Illinois v. Illinois Pollution Control Board</u>, 133 Ill. App. 3d 406, 410 (3<sup>rd</sup> Dist. 1996), infrequent situations, <u>Fiorito v. Jones</u>, 48 Ill. 2d 566, 572 (1971), <u>Marcus Corp. v. Village of South Holland</u>, 120 Ill. App. 3d 300, 304 (1st Dist. 1983), or scenarios that do not affect it, <u>Jacobs v. City of Chicago</u>, 53 Ill. 2d 421, 426-27 (1973). In a Uniformity Clause challenge the court is not required to have proof of perfect rationality as to each and every taxpayer. <u>Geja's</u>, *supra*, at 252. The Uniformity Clause was not designed as a straitjacket for the legislature. *Id.* Rather, it was designed to enforce minimum standards of reasonableness and fairness as between groups of taxpayers. *Id.* 

#### B. Non-residents

Plaintiffs argue that the Ordinance violates the Uniformity Clause because it does not tax non-residents who use Products in the City. Motion at 14. The fact that the City does not tax non-residents does not mean the City may not tax residents. There are real and substantial differences between non-residents and residents. Among other things:

- The City provides protection and other benefits to its residents and their property on a regular and ongoing basis, whereas non-residents are here only on occasion as visitors.
- Consistent with the Mobile Sourcing Act, along with the evidence in this case, it is reasonable to assume that residents use the Products here on a regular basis, whereas it is reasonable to assume that non-residents will use them here only occasionally.

In addition, attempting to tax non-residents for their occasional use of the Products in the City would not be practical (or even feasible), and the Illinois courts have long recognized that administrative convenience is a legitimate uniformity justification. See, e.g., Williams v. The City of Chicago, 66 Ill. 2d 423, 432 (1977).

#### C. AADs

Plaintiffs argue that the Ordinance violates the Uniformity Clause because it imposes a flat tax of \$150 per year on an automatic amusement device ("AAD"), whereas the amusement tax applies to the Products at a 9% rate.<sup>6</sup> This argument fails for a number of reasons.

First, plaintiffs are comparing apples to oranges, as there are real and substantial differences between AADs and the Products. To give just a few examples:

- An AAD is owned by a business such as a bar or arcade (which pays the \$150 tax), whereas the Products are used on devices owned by the customers themselves.
- An AAD is a stationary device that the customer may not take away from the establishment, whereas the Products can be used on a mobile device, at any location that the customer may choose.
- An AAD is shared among all of the establishment's customers, whereas the Products can be used exclusively by the customer.
- Many AADs are operated with coins on a per-use basis, whereas the Products are generally paid for by credit card on a subscription basis, including unlimited use.

<sup>&</sup>lt;sup>6</sup> An "automatic amusement device" means "any machine, which, upon the insertion of a coin, slug, token, card or similar object, or upon any other payment method, may be operated by the public generally for use as a game, entertainment or amusement ... and includes but is not limited to such devices as jukeboxes, marble machines, pinball machines, movie and video booths or stands ..." Code Section 4-156-150.

• Most AADs offer a limited selection of amusements, whereas the Products offer an extremely wide selection of amusements. See Exhibits F, H, J, M, S.

Second, even if AADs were otherwise similar to the Products, the City Council could have reasonably determined that imposing a flat annual tax on each AAD was administratively convenient. See DeWoskin, supra (rejecting challenge to County amusement tax based in part on administrative convenience). Specifically, the City Council could have determined that requiring owners of bars, restaurants and arcades to collect a percentage-based tax from patrons who pay small amounts of money to play individual songs or games, often using coins, would be administratively inconvenient for the businesses, their customers, and the Department.

Third, plaintiffs assume that a 9% tax on a Product would always be higher than a flat tax of \$150 per year on an AAD. In fact, that might or might not be the case, depending on the price and amount of usage for the AAD. See In re M.I., supra ("In the absence of facts demonstrating an unconstitutional application of the statute, a person 'may not challenge the statute on the ground that it might conceivably be applied unconstitutionally in some hypothetical case."").

Fourth, none of the plaintiffs subscribe to Xbox Live Gold or any other online gaming products. Therefore, plaintiffs do not have standing to bring a claim concerning those products. See Wells Fargo, supra ("a challenger lacks standing where ... he argues only that the statute would be unconstitutional if applied 'to third parties in hypothetical situations' ... or 'in other situations not before the Court.").

Plaintiffs rely on National Pride of Chicago, Inc. v. City of Chicago, 206 Ill. App. 3d 1090 (1st Dist. 1990). Motion at 17. There, the court held that there was no real and substantial difference between the plaintiff's self-service car wash facilities (which were taxed) and

<sup>&</sup>lt;sup>7</sup> In order to generate \$150 in tax at a rate of 9 percent, an AAD would have to yield \$1,667 in revenues over the course of a year.

automatic and tunnel car washes (which were exempted). The fact that the self-service facilities provided the customer with hands-on control of the wand that directed water to the vehicle was viewed by the court as a distinction that did not justify taxing them and not their competitors. 206 Ill. App. 3d at 1102. Here, the Products and AADs are both taxed, but in different ways. And, as discussed above, there are real and substantial differences between the Products and AADs which clearly justify this approach.

This case is more like <u>Peoples Gas Light and Coke Company v. City of Chicago</u>, 9 III. 2d 348 (1956), where the court held that taxing sellers of natural gas differently from sellers of electricity was permissible. Specifically, the City taxed Peoples Gas at a rate of 5% of gross receipts under one ordinance, whereas it taxed Commonwealth Edison at a net rate of 1% of gross receipts under another ordinance, because it gave Commonwealth Edison a credit for franchise fees paid. 9 III. 2d at 351. In upholding this arrangement against a uniformity challenge, the court stated that although "both electricity and gas are forms of energy which can be used for the same ultimate purpose ... there are basic differences in the means by which the two products are produced, distributed and used; and so many variable factors are involved in determining their respective market positions as to negate the absolute necessity for a single classification." 9 III. 2d at 334. Likewise, it is true that the Products and AADs can be used for the same ultimate purpose (for example, listening to a song), but there are basic differences that more than justify taxing them in different ways.

#### D. Live Cultural Performances

Plaintiffs' arguments concerning live cultural performances are similarly flawed.<sup>8</sup> Here again, plaintiffs are comparing apples to oranges, as there are real and substantial differences between live cultural performances and the Products.

Plaintiffs correctly note that the Ordinance exempts live cultural performances at small venues and provides for a lower rate at larger venues. Code Section 4-156-020(D)(1), (E). In 1998, when the City Council passed these provisions, it made the following findings:

WHEREAS, The City Council wishes to foster the production of live performances that offer theatrical, musical or cultural enrichment to the city's residents and visitors; and

WHEREAS, Small theaters and other small venues often promote the local production of new and creative live cultural performances, and often have the most difficulty absorbing or passing on any additional costs; and

WHEREAS, Costs faced by those who produce live theatrical, musical, or other culturally enriching performances at smaller venues are substantial, and such performances often require governmental support since they could not otherwise flourish. See Exhibit T.

In <u>Pooh-Bah Enterprises</u>, Inc. v. County of Cook, 232 Ill. 2d 463 (2009), the Illinois Supreme Court approved the favoring of "live fine arts performances" over other forms of amusement. In doing so, the court noted that the goal of the exemption "is to encourage live fine arts performances in small venues" and that this goal would not be advanced by "movies, television, promotional shows, [or] performances at adult entertainment cabarets …" *Id.* at 496. Illinois courts have upheld classifications wherein the differentiated objects of the legislation were substantially more similar than live cultural performances are to streamed movies and

<sup>&</sup>lt;sup>8</sup> The Ordinance defines a "live theatrical, live musical or other live cultural performance" as "a live performance in any of the disciplines which are commonly regarded as part of the fine arts, such as live theater, music, opera, drama, comedy, ballet, modern or traditional dance, and book or poetry readings." Code Section 4-156-010.

music. See, e.g., Empress Casino, 231 III. 2d at 80 (upholding classification of river boat casinos with annual gross revenues over and under \$200 million); Geja's, 153 III. 2d at 249 (upholding a tax on carry-out food purchased at restaurants and full service bars but not at other establishments); Peoples Gas, supra.

Plaintiffs argue that viewing a performance in person versus streamed is a difference in form and not substance. Motion at 18. Plaintiffs' contention is without merit, as anyone who has attended a live cultural event knows. There are real and substantial differences between an amusement that is viewed in person and one delivered electronically for viewing on a television or other device. It is why people pay to attend events that they could have viewed for free, or for a much lower price, on a television or other device. Consider the following examples:

- The movie version of a play is a very different product from a live performance at the theater. A streamed version of the movie might be available on Netflix with a subscription for \$8 a month. By contrast, a ticket to attend the play in person might cost \$100 or more, and many people would be willing to pay for such a ticket even if they owned a DVD of the movie. Why? Because it is a very different product from the movie. See Exhibits F, H and N for examples.
- The streamed version of a live concert is a very different product from a ticket to attend the concert in person. A subscriber to Netflix or pay television might theoretically be able to watch the streamed version of a live concert, on a television, computer, tablet or cell phone, at a "pay-per-view" price of \$20. By contrast, a ticket to attend the concert in person might cost \$100 or more, and many people would be willing to pay for such a ticket instead of watching the streamed version from a remote location. See Exhibits J and O for examples. Indeed, if a customer paid for a ticket to attend the concert in person, that customer would undoubtedly be upset if the venue wound up saying that it had over-sold the event and the customer instead had to watch the concert from a remote location. In that case, the customer would have paid for one product but received another.

Plaintiffs suggest that watching a Chicago performance on a device could be beneficial to the venue and enriching to the persons viewing it, and thus that the City Council should have provided a lower rate or exemption for performances viewed on devices, as well as performances viewed in person. Motion at 18. Plaintiffs' suggestion lacks merit, as it ignores the many other reasons for encouraging attendance at live cultural events. For example, live cultural performances attract tourists from out of town and increase business at hotels, restaurants and stores - unlike the Products, which people can use without ever leaving their homes.

In addition, even if plaintiffs' suggestion did have merit, the fact that a law could conceivably have been drafted differently does not make it unlawful. Geja's, supra, 153 III. 2d at 252 (rejecting plaintiffs' arguments as "boiling down to mere assertions that they can draw better taxing lines than the General Assembly"). Moreover, plaintiffs do not cite a single example of a live cultural event streamed from a venue in Chicago, so plaintiffs' assertions on this issue are entirely hypothetical. See Citizens Utilities, supra, 133 III. App. 3d at 410 (uniformity claims may not be based upon hypothetical situations). In fact, Netflix, Hulu and Spotify do not even offer real-time transmissions of live cultural performances. See Statement of Facts ¶¶ 2, 4-5.

#### III. Defendants are entitled to summary judgment on plaintiffs' claims under the ITFA.

Plaintiffs argue that the amusement tax violates the Internet Tax Freedom Act ("ITFA") by discriminating against electronic commerce. A tax is "discriminatory" under the ITFA if it treats electronic commerce less favorably than "transactions involving similar property, goods, services, or information accomplished through other means." 47 U.S.C. § 1105(2)(A) (emphasis added). Thus, for example, because a shirt is the same product whether bought on-line or at a store, the ITFA would prohibit applying a higher sales tax rate to the on-line transaction.

The ITFA provides no definition of the term "similar." However, because federal preemption of state and local taxes is disfavored, the term must be construed narrowly. See, e.g., Department of Revenue of Oregon v. ACF Industries, Inc., 510 U.S. 332, 345 (1994) (federal statutes should be interpreted to preempt traditional state powers only if that result is "the clear and manifest purpose of Congress."); BFP v. Resolution Trust Corporation, 511 U.S. 531, 544

(1994); <u>Cipollone v. Liggett Group, Inc.</u>, 505 U.S. 504, 533 (1992). Certainly, if there is a real and substantial difference between two products for uniformity purposes, then the two products should not be treated as "similar" under the ITFA.

As discussed in Sections II(C) and (D) above, there are real and substantial differences among the Products, AADs and live performances. While it is true that a given recording of a song available on Spotify may also be available on a juke box, that is not the issue. The issue is whether Spotify is so "similar" to a jukebox that it must be taxed the same, and the answer is that it is not. Likewise, while a video available on Netflix may be the movie version of a play that is showing at a local theater, that is not the issue. The issue is whether Netflix is so "similar" to a live cultural performance that it must be taxed the same, and the answer again is that it is not. Moreover, plaintiffs have admitted that Netflix, Hulu and Spotify do not even offer real-time transmissions of live performances, so there are no similar "electronic commerce" versions of those products for the Ordinance to discriminate against. See Statement of Facts ¶ 2, 4-5.

- IV. <u>Defendants are entitled to summary judgment on plaintiffs' claims under the Commerce Clause</u>.
  - A. <u>As resident consumers, plaintiffs do not have standing to bring a challenge under the Commerce Clause, and defendants are entitled to summary judgment on that basis alone, without reaching the merits.</u>

"[T]he Commerce Clause prohibits economic protectionism – that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." Geja's, supra, 153 Ill. 2d at 256, quoting New Energy Co. v. Limbach, 486 U.S. 269, 273 – 4 (1988). "It is not a purpose of the Commerce Clause to protect state residents from their own state taxes." Id., quoting Goldberg v. Sweet, 488 U.S. 252, 266 (1989). "Thus, the class protected by the commerce clause is competitors, not consumers ..." Id. (emphasis in original). See also Terry v. Metropolitan Pier and Exposition Authority, 271 Ill. App. 3d 446, 455 (1995) (affirming

dismissal of Commerce Clause challenge to the MPEA airport departure tax and noting that the plaintiffs had not pled how they were part of interstate commerce). Here, Plaintiffs are all resident consumers – not non-resident businesses. For this reason alone, defendants are entitled to summary judgment on plaintiffs' claims under the Commerce Clause, without even reaching the merits.

## B. The undisputed facts do not support a facial or as-applied challenge to the Ordinance under the Commerce Clause.

Plaintiffs' key arguments concering the Commerce Clause are similar to their arguments about the City's authority to tax the Products under Illinois law – specifically, that they may not be taxed because they can be used outside the City. For the reasons discussed in Sections I(A) and (B) above, the undisputed facts do not support plaintiffs' arguments, either as a facial or an as-applied challenge to the Ordinance.

#### C. Congress has authorized use of the Mobile Sourcing Act.

Plaintiffs' Commerce Clause claims also fail as a matter of law because Congress has authorized use of the Mobile Sourcing Act, at least for telecommunications providers. "When Congress so chooses, state actions which it plainly authorizes are invulnerable to constitutional attack under the Commerce Clause." Northwest Bancorp, Inc. v. Board of Governors of the Federal Reserve System, 472 U.S. 159, 174 (1985). Because there is no question that using the Mobile Sourcing Act for streaming services provided by telecommunications companies does not violate the Commerce Clause, there can be no possible basis for concluding that using it for streaming services provided by other businesses does violate the Clause.

#### D. The Ordinance complies with the Commerce Clause.

In Quill Corp. v. North Dakota, 504 U.S. 298, 311 (1992), the court held that a tax survives a Commerce Clause challenge so long as the tax "(1) is applied to an activity with a

substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State." The Ordinance complies with all of these requirements: (1) it taxes an activity with a substantial nexus with the State, as it taxes Chicago residents who pay for and receive the privilege of viewing or listening to amusements in Chicago; (2) it is fairly apportioned, as discussed in detail below; (3) it does not discriminate against interstate commerce, as it applies only to Chicago residents; and (4) it is fairly related to services provided, as the Chicago residents who pay the tax receive many services from Chicago.

In <u>Goldberg v. Sweet</u>, 488 U.S. 252 (1989), the court upheld the Illinois telecommunications tax against a Commerce Clause challenge. In doing so, it made the following comments about the apportionment requirement:

[T]he central purpose behind the apportionment requirement is to ensure that each State taxes only its fair share of an interstate transaction. ... [W]e determine whether a tax is fairly apportioned by examining whether it is internally and externally consistent. ... To be internally consistent, a tax must be structured so that if every State were to impose an identical tax, no multiple taxation would result. ... The external consistency test asks whether the State has taxed only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed. ... We recognize that, if the service address and billing location of a taxpayer are in different States, some interstate telephone calls could be subject to multiple taxation. This limited possibility of multiple taxation, however, is not sufficient to invalidate the Illinois statutory scheme. ... It should not be overlooked ... that the external consistency test is essentially a practical inquiry. ... An apportionment formula based on mileage or some other geographic division of individual telephone calls would produce insurmountable administrative and technological barriers. ... 488 U.S. at 260 - 265 (emphasis added).

As in <u>Goldberg</u>, the Ordinance is internally consistent, because if every jurisdiction were to impose an identical tax, no multiple taxation would result. Using the Mobile Sourcing Act rules for mobile devices, the Chicago amusement tax applies only to Chicago residents. If every

jurisdiction imposed an identical tax, no multiple taxation would result, because the other jurisdictions would tax only their <u>own</u> residents.

Also as in <u>Goldberg</u>, the Ordinance is externally consistent. A premise of the Mobile Sourcing Act is that taxing the full amount charged to a resident (for example, \$8 per month charged for a Netflix subscription) "reasonably reflects the in-state component of the activity being taxed" (<u>Goldberg</u>, 488 U.S. at 262), because (as evidenced by plaintiffs) it is a reasonable assumption that the taxpayer's residence will be his or her place of primary use. <u>See</u> 4 U.S.C. 124; 35 ILCS 38/10. Although the assumption may not <u>always</u> be true, the external consistency test "is essentially a practical inquiry," and the alternative of apportionment based on the location of each individual use "would produce insurmountable administrative and technological barriers." <u>Goldberg</u>, 488 U.S. at 264 - 265.

Plaintiffs' argument concerning the <u>possibility</u> of multiple taxation is, at best, hypothetical. Plaintiffs do not claim that it has happened to them, nor do they explain how it could happen to anyone else. The occasional use of a mobile device in another jurisdiction, by a Chicago resident, would not provide a sufficient basis for that jurisdiction to tax the Chicago resident. See Goldberg, 488 U.S. at 263 ("We doubt that States through which the telephone call's electronic signals merely pass have a sufficient nexus to tax that call."). Plaintiffs also do not explain how a jurisdiction could possibly identify, bill and collect tax from a Chicago resident who used a Product on a mobile device within its boundaries. In any event, even assuming that it <u>could</u> happen, "[t]his limited possibility ... is not sufficient to invalidate" the Ordinance. Goldberg, 488 U.S. at 264. See also Irwin Industrial Tool v. Illinois Department of Revenue, 238 Ill. 2d 332 (2010) (holding that the application of the State's use tax to the full

price paid for an airplane was permissible, even though the airplane was used in many places other than Illinois, where it was registered).

#### Conclusion

The amusement tax is one of the least regressive taxes by which the City can raise needed revenues, because amusements are not necessities. All of the plaintiffs are Chicago residents who regularly benefit from the protection and services that the City provides. People who subscribe to cable TV pay the amusement tax, and cable TV is certainly "similar" to Netflix and Hulu. Likewise, people who subscribe to streaming services through telecommunications companies pay the amusement tax, and those streaming services are "similar" - and in some cases identical - to those provided by Netflix, Hulu and Spotify. By contrast, there are real and substantial differences among the Products, AADs and live cultural performances. undisputed facts do not support a facial or an as-applied challenge, and defendants are entitled to summary judgment.

Dated: November 15, 2017

Revenue Litigation Division

(312) 744-9077/7803/6995

Steven. Tomiello@cityofchicago.org

Weston Hanscom Steven Tomiello Marques Berrington

Chicago, IL 60602

Attorney No. 90909

City of Chicago, Department of Law 30 North LaSalle Street, Suite 1020

Respectfully submitted,

25

### CERTIFICATE OF SERVICE

I, Steven Tomiello, certify that today, November 15, 2017, I caused Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of their Cross-Motion for Summary Judgment to be served on the individuals listed on the Service List below by United States Mail (First Class, postage paid) and email before 5:00 p.m.

Steven Tomiello

### SERVICE LIST

Jacob H. Huebert -- jhuebert@libertyjusticecenter.org Jeffrey Schwab -- jschwab@libertyjusticecenter.org Liberty Justice Center 190 S. LaSalle St., Suite 1500 Chicago, IL 60603

ELECTRONICALLY FILED 12/20/2017 4:54 PM 2015-CH-13399 CALENDAR: 04 PAGE 1 of 31 CIRCUIT COURT OF

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS CHANCERY DIVISION COUNTY DEPARTMENT, LAW DIVISION CLERK DOROTHY BROWN TAX AND MISCELLANEOUS REMEDIES SECTION

MICHAEL LABELL, et al.	)
Plaintiffs,	) Case No. 2015 CH 13399
v.	) (Transferred to Law)
THE CITY OF CHICAGO, et al.	)
Defendants.	)

## PLAINTIFFS' COMBINED RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Jeffrey M. Schwab (#6290710) Jacob H. Huebert (#6305339) Liberty Justice Center (#49098) 190 S. LaSalle Street, Suite 1500 Chicago, Illinois 60603 Telephone (312) 263-7668 Facsimile (312) 263-7702 jschwab@libertyjusticecenter.org jhuebert@libertyjusticecenter.org

Attorneys for Plaintiffs

### TABLE OF CONTENTS

Tabl	e of Co	ontents	ii
Tabl	le of Au	ıthorities	iv
Intro	oductio	n	1
State	ement o	of Facts	1
Argu	ıment .		1
I.	with	City's application of the amusement tax to customers of streaming services Chicago billing addresses exceeds its authority under Article VII, § 6(a) e Illinois Constitution on its face and as applied to Plaintiffs.	1
	A.	Plaintiffs have proved their facial challenge.	3
	B.	Plaintiffs have proved their as-applied challenge.	6
	C.	The Mobile Sourcing Act does not give the City the authority to tax customers of streaming services based on their billing addresses	8
II.	it ap	amusement tax applies to streaming services differently than plies to in-person amusements in violation of the Uniformity Clause e Illinois Constitution.	11
	A.	The amusement tax violates the Uniformity Clause because it applies to streaming services differently than it applies other amusements.	11
	B.	The amusement tax violates the Uniformity Clause because it subjects streaming services to greater taxation than automatic amusement devices that deliver the same types of entertainment.	14
	C.	The amusement tax violates the Uniformity Clause because it taxes certain performances delivered through streaming services at a higher rate than it taxes certain in-person live performances.	17
III.		amusement tax discriminates against electronic commerce in violation of the net Tax Freedom Act.	20
IV.		amusement tax's application to streaming services used outside Chicago ates the Commerce Clause of the United States Constitution.	21

A.	Plaintiffs have standing to bring a Commerce Clause claim	21
B.	Plaintiffs have proved their facial and as-applied challenges under the Commerce Clause.	22
C.	The Mobile Sourcing Act does not authorize the City to tax streaming services used outside of its boundaries.	23
D.	The City's application of the amusement tax on customers of streaming services with Chicago billing addresses violates the requirements of the Commerce Clause.	24
Conclusion		25

## ELECTRONICALLY FILED 12/20/2017 4:54 PM 2015-CH-13399 PAGE 4 of 31

### TABLE OF AUTHORITIES

### Cases

Allied-Signal, Inc. v. Dir., Div. of Taxation, 504 U.S. 768 (1992)	24
Ball v. Vill. of Streamwood, 281 Ill. App. 3d 679 (1st Dist. 1996)	21
C&A Carbone, Inc. v. Clarkstown, 511 U.S. 383 (1994)	22
Camps Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564 (1997)	22
Carter v. City of Alton, 2015 IL App. (5th) 130544	3
City of L.A. v. Patel, 135 S. Ct. 2443 (2015)	3, 22
Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981)	25
Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977)	24
DeWoskin v. Lowe's Chi. Cinema, 306 Ill. App. 3d 504 (1st Dist. 1999)	16
Edgar v. MITE Corp., 457 U.S. 624 (1982)	23
Empress Casino Joliet Corp. v. Giannoulias, 231 Ill. 2d 62 (2008)	19
Geja's Cafe v. Metro. Pier & Exposition Auth., 153 Ill. 2d 239 (1992)	11, 14, 18, 21
Granholm v, Heald, 544 U.S. 460 (2005)	22
Hertz Corp. v. City of Chi., 2017 IL 119945	2, 4, 5, 6
Irwin Indus. Tool Co. v. Ill. Dep't of Revenue, 238 Ill. 2d 332 (2010)	25
Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue and Fin., 505 U.S. 71 (1992)	22
New Energy Co. v. Limbach, 486 U.S. 269 (1988)	22, 23
People v. Burns, 2015 IL 117387	3, 22
People v. One 1998 GMC, 2011 IL 110236	2
People v. Wiggins, 2016 IL App (1st) 153163	2
Performance Mktg. Ass'n v. Hamer, 2013 IL 114496	21

Pooh-Bah Enters. v. County of Cook, 232 Ill. 2d 463 (2009)	19			
Quill Corp. v. North Dakota, 504 U.S. 298 (1992)	23, 24			
Rozner v. Korshak, 55 III. 2d 430 (1973)	7			
Searle Pharmaceuticals, Inc. v. Dep't of Revenue, 117 III. 2d 454 (1987)	11, 13, 16			
Seigles, Inc. v. City of St. Charles, 365 Ill. App. 3d 431 (2d Dist. 2006)	8			
Terry v. Metro. Pier & Exposition Auth., 271 Ill. App. 3d 446 (1995)	21			
Tri-State Coach Lines, Inc. v. Metro. Pier & Exposition Auth., 315 Ill. App. 3d 179 (2000)	7, 8			
U.S.G. Italian Marketcaffe v. City of Chi., 332 Ill. App. 3d 1008 (1st Dist. 2002)	13			
United States v. Salerno, 481 U.S. 739 (1987)	22			
Valstad v. Cipriano, 357 Ill. App. 3d 905 (4th Dist. 2005)	16			
Federal Authorities				
Internet Tax Freedom Act, 47 U.S.C. § 151, note	20, 21			
Mobile Telecommunications Sourcing Act, 4 U.S.C. § 116 et seq	9			
47 C.F.R. § 20.3	10			
State and Local Authorities				
ILL. CONST. art. VII, § 6				
Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq	, 11, 12, 23, 24			
Chi. Mun. Code § 4-156-010, et seq	passim			
Chi. Dep't Finance Amusement Tax Ruling #5	passim			

#### Introduction

The issue before the Court is whether the City of Chicago is entitled to impose its amusement tax – a 9% tax on charges paid for the privilege to enter, witness, view, or participate in amusements that take place *within Chicago* – on Internet-based streaming video, audio, and gaming services ("streaming services") by taxing only customers of such streaming services who provide Chicago billing addresses. Defendants fail to provide any sufficient basis for the City's authority to tax only customers of streaming services with Chicago billing addresses. Therefore, the Court should grant Plaintiffs' motion for summary judgment and deny Defendants' motion.

#### **Statement of Facts**

There are no material facts in dispute; the parties have admitted to each other's respective statements of fact, therefore, both Plaintiffs' and Defendants' facts are taken as true.

#### **Argument**

I. The City's application of the amusement tax to customers of streaming services with Chicago billing addresses exceeds its authority under Article VII, § 6(a) of the Illinois Constitution on its face and as applied to Plaintiffs.

Amusement Tax Ruling #5 (the "Ruling")<sup>1</sup> extended the City's amusement tax to any customer of a streaming service who provides a Chicago billing address to the service provider. (Pls.' SOF 12.) This method for determining who must pay the tax has a fatal flaw: It will inevitably impose the tax on people whose use of streaming services occurs entirely outside Chicago, whom the City has no authority to tax.

<sup>&</sup>lt;sup>1</sup> Defendants claim that Plaintiffs' challenge is really a challenge to § 4-156-020(G)(1) of the Municipal Code of Chicago ("Code"), rather than to the Ruling because the City amended the Code in November 2015 "to incorporate the key terms of the Ruling." (Defs.' Mem. at 4). But this distinction does not affect the merits of Plaintiffs' claims. Thus, Plaintiffs cite to either the Ruling or the Code when referring to the City's attempt to impose the amusement tax on customers of streaming services with a Chicago billing address.

Home rule units may not extend their home rule powers, including their taxing power, to activity beyond their borders except where the General Assembly has expressly authorized them to do so. *Hertz Corp. v. City of Chi.*, 2017 IL 119945, ¶ 14. And the General Assembly has not expressly granted the City the authority to tax amusements beyond its borders. *See* Section I.C below). Therefore, the City's application of the amusement tax to customers of streaming services with Chicago billing addresses – irrespective of whether they use the services within Chicago – exceeds the City's authority under Article VII, § 6(a) of the Illinois Constitution.

Plaintiffs challenge the Ruling's application of the amusement tax to customers of streaming

services with Chicago billing addresses on this basis both on its face and as applied to Plaintiffs. "A party challenging a statute's facial constitutionality bears the burden of showing that the statute is unconstitutional in all of its applications." *People v. Wiggins*, 2016 IL App (1st) 153163, ¶ 75. "By contrast, an 'as applied' constitutional challenge requires a defendant to show that the statute violates the constitution as it applies to him." *Id.* The distinction between facial and as applied challenges is relevant because it goes to the breadth of the remedy employed by the court, not what must be pleaded in a complaint. *People v. One 1998 GMC*, 2011 IL 110236, ¶ 62. Plaintiffs seek injunctive relief to prevent the City from imposing the amusement tax on *any* customers of streaming services, which necessitates a facial challenge. Plaintiffs also seek damages in the form of the return of the taxes Plaintiffs have already paid for streaming services, which necessitates an as applied challenge. Under either type of challenge, Plaintiffs' argument is the same: applying the amusement tax to customers of streaming services with Chicago billing addresses exceeds the City's constitutional authority.

### A. Plaintiffs have proved their facial challenge.

Defendants assert that Plaintiffs can only succeed on their facial challenge if they establish that there are "no circumstances" under which the ordinance would be valid. (Defs.' Mem. at 5 (citing *Carter v. City of Alton*, 2015 IL App. (5th) 130544 ¶ 20).) And Defendants argue that Plaintiffs cannot succeed on their facial challenge because, Defendants say, some Chicago residents use streaming services exclusively or primarily within Chicago. *Id*.

But recent Illinois Supreme Court precedent belies Defendants' reliance on the "no circumstances" formulation. In *People v. Burns*, 2015 IL 117387, the Court specifically rejected the proposition that a statute is facially unconstitutional only if no set of circumstances exists under which the statute would be valid. *Id.* at ¶¶ 26-27. Instead, the Court held that in a facial challenge a plaintiff must establish that a law is unconstitutional in all of its applications, but when assessing whether a statute meets this standard, a court must consider only applications of the statute in which it actually authorizes or prohibits conduct. *Id.* at ¶ 27 (citing *City of L.A. v. Patel*, 135 S. Ct. 2443, 2451 (2015)).

Under either formulation – the "no circumstances" formulation or the "all applications" formulation" – Plaintiffs have proved a valid facial claim. The City's *method* of taxing streaming services exceeds its authority under the Article VII, § 6(a) of the Illinois Constitution under all circumstances and in all of its applications because that method imposes the tax based on a customer's billing address, not on whether a customer actually uses streaming services in Chicago. Defendants argue that this method should survive a facial challenge because there may be some customers with Chicago billing addresses who only use those services within the City. But under the City's application of the "no circumstances" formulation, a facial challenge to a City tax on *all* customers of streaming services *wherever they lived* would fail because some

customers of streaming services may use those services only in Chicago. The City's application of the "no circumstances" formulation cannot be correct because it would shield governments from any number of blatantly unconstitutional laws. But the City's *method* of taxing streaming services is unconstitutional in all circumstances. The City's method of taxing streaming services *always* involves taxing amusements that take place outside of its boundaries because customers of streaming services can use those services anywhere and the City has no way to ensure or know that it only taxes amusements that take place in Chicago. Thus, the City's method of taxing customers of streaming services based on whether those customers have a Chicago billing address rather than where they use those amusements is unconstitutional because in every circumstance, and in all applications of that method, the City is taxing amusements outside of Chicago.

imposed a lease tax on all Chicago residents who leased vehicles from rental agencies located within three miles of Chicago's borders – based on the assumption that all Chicago residents would use the rental vehicles primarily in the City – in the absence of written proof that a Chicago resident customer would use the vehicle primarily outside of Chicago. 2017 IL 119945 at ¶ 5. The Court found that the ordinance was an improper extension of the City's home rule power to tax beyond its borders because it imposed the lease tax "not on actual use within the City's borders but on the lessee's stated intent to use the property in Chicago or, failing any statement of intent, on presumed use based upon the lessee's residence address." *Id.* at ¶ 29. If the Court had adopted Defendants' application of the "no circumstances" formulation, it would have rejected the facial challenge because one could have come up with a circumstance where the imposition of the tax on Chicago residents leasing vehicles from rental agencies outside the

In Hertz, the Illinois Supreme Court struck down a Chicago ordinance on its face that

City might be valid: where the customer did, in fact, drive the leased vehicle exclusively in Chicago. But the Court did not evaluate the Chicago ordinance in *Hertz* in that manner, and this Court should not do so either.

Defendants attempt to distinguish *Hertz* by asserting that the amusement tax, unlike the lease tax struck down in *Hertz*, does not require "actual use" in the City because it applies to charges paid for the privilege of viewing amusements in Chicago. (Defs.' Mem. at 11.) But the City does *not* apply the amusement tax to charges paid for the privilege of viewing streaming services in Chicago: It applies to customers of streaming services with Chicago billing addresses and does not apply to customers who do not have Chicago billing addresses, even though *all* streaming service customers have the same privilege to use them in Chicago.

Defendants further argue that "the court in *Hertz* clearly believed that the City had no basis

for assuming that a Chicago resident renting a car from a suburban location would actually use the car in Chicago," but here the City can safely assume that customers of streaming services with Chicago billing addresses will use such services in Chicago. (Defs.' Mem. at 12.) But the City argued in *Hertz* that it *did* have a basis for assuming that a Chicago resident renting a car from a suburban location would use the car in Chicago. And the City provides no reason why the Court should credit its assumption in this case even though the Court refused to accept the same assumption in *Hertz*. Indeed, *Hertz* criticized the City for citing "no authority for the proposition that mere residence in a taxing jurisdiction gives that jurisdiction the ability to impose taxes on the resident regardless of whether the taxed property or activity is connected to the taxing entity." *Hertz*, 2017 IL at ¶ 25. Here again, the City provides no authority for the proposition that a person's mere residence in Chicago (let alone the mere use of a Chicago billing address) gives the City the authority to tax that person's use of streaming services entirely outside of Chicago.

Defendants also attempt to distinguish this case from *Hertz* by asserting that there is no "conclusive presumption" of use based on Chicago residency. (Defs.' Mem. at 12.) But just as the lease tax conclusively presumed that any Chicago resident who leased a car within three miles of Chicago would use the car in Chicago, the Ruling conclusively presumes that a customer of streaming services with a Chicago billing address will use the services in Chicago.

Finally, Defendants assert that this case is unlike *Hertz* because the City is not requiring providers of streaming services to ask customers where they intend to use streaming services. (Defs.' Mem. at 13.) But the City does require providers of streaming services to ask customers for a billing address, which the City uses as the sole basis of determining whether a customer uses streaming services in Chicago. If anything, that makes the amusement tax's application to streaming services *worse* than the lease tax in *Hertz*: The presumption in *Hertz* was rebuttable, but here any customer of streaming services with a Chicago billing address will always pay the amusement tax regardless of whether he or she uses those services in Chicago.

### B. Plaintiffs have proved their as-applied challenge.

Defendants assert that Plaintiffs' as-applied challenge cannot succeed because Plaintiffs "have testified that they almost always use [streaming services] either at home or elsewhere in the City." (Defs.' Mem. at 6.) But Plaintiffs have testified that they have used, and do use, streaming services outside Chicago. (Defs.' SOF 3, 8.) And that is exactly the harm that Plaintiffs complain about: They are taxed based on their Chicago billing addresses regardless of where they consume the services.

Defendants claim that taxing customers based on their Chicago billing addresses is a charge for the "privilege of viewing amusements in Chicago" and that a customer's choice "to watch the videos exclusively in Chicago, partly in Chicago, or not at all" is irrelevant. (Defs.' Mem. at 11.)

But the City does not actually tax the privilege of using streaming services in Chicago because it does not apply the tax to people who use streaming services in Chicago but do not have billing addresses in Chicago. And if the City could tax customers of streaming services for the privilege of using those services in Chicago, regardless of whether they take advantage of that privilege, as the City claims, then the City could tax every customer of streaming services wherever they live because they all have the ability to use those services in Chicago. Because the City may not tax activity that takes place outside of Chicago, and the method it uses for taxing streaming services applies to Plaintiffs' activity outside of Chicago, the Ruling is unconstitutional.

Defendants receive no help from *Rozner v. Korshak*, 55 Ill. 2d 430, 433 (1973), in which the Illinois Supreme Court "upheld Chicago's home rule authority to impose its annual 'wheel tax' (a/k/a 'City sticker tax') on Chicago residents who use their vehicles in Chicago, even though the vehicles are also used in other places." (Defs.' Mem. at 5.) *Rozner* did not address the method by which the City applied the wheel tax – *i.e.*, it did not concern whether the City could impose its wheel tax on cars driven outside of Chicago. Rather, *Rozner* addressed whether an ordinance raising the price of city stickers and increasing the number of classes of vehicles was invalid because the General Assembly had not approved the change. 55 Ill. 2d at 433-34. Here, in contrast, Plaintiffs do challenge the method by which the City taxes streaming services. *Rozner* is simply inapposite.

Defendants' assertion that Plaintiffs may not bring their as-applied challenge "without first exhausting their administrative remedies by filing a refund claim with the Department" has no

<sup>&</sup>lt;sup>2</sup> Besides, the wheel tax is easily distinguished from the amusement tax on streaming services. No one would have any reason to pay for a city sticker for a car that would never be physically present in Chicago. But someone with a Chicago billing address could pay the amusement tax for streaming services that would be consumed exclusively outside Chicago.

merit. (Defs.' Mem. at 6.) The only case Defendants cite in support of this argument, *Tri-State Coach Lines, Inc. v. Metro. Pier & Exposition Auth.*, 315 Ill. App. 3d 179 (2000), provides at least two reasons why Plaintiffs are not required to exhaust administrative remedies in this case. First, plaintiffs need not exhaust their administrative remedies before seeking judicial relief if their complaint – like Plaintiffs' complaint here – attacks the constitutionality of an ordinance on its face. *Id.* at 186. Second, plaintiffs need not exhaust their administrative remedies where – as here – no issues of fact are presented or agency experience involved. *Id.* at 187. There are no disputes of fact in this case; it presents a "pure issue of law" that "does not require fact finding by the administrative agency or an application of its particular expertise." *Id.* at 188.

C. The Mobile Sourcing Act does not give the City the authority to tax customers of streaming services based on their billing addresses.

There is no merit in Defendants' argument that the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq. ("Mobile Sourcing Act"), gives the City express and implied authority to tax streaming services based on customers' Chicago billing addresses alone. (Defs.' Mem. at 7.) As an initial matter, a statutory authorization for a municipality's extraterritorial exercise of power cannot be implied; it must be express. *Seigles, Inc. v. City of St. Charles*, 365 Ill. App. 3d 431, 435 (2d Dist. 2006). And the Mobile Sourcing Act does not expressly authorize the City to tax customers of streaming services with Chicago billing addresses when they use those services outside of Chicago.

Defendants assert that the Mobile Sourcing Act authorizes the City's method of taxing streaming services because the Act expressly approves that method for taxation of "mobile telecommunications services." (Defs.' Mem. at 8.) Defendants argue that the statute's definition of "mobile telecommunications services" encompasses streaming services because they are "charges for, or associated with, the provision of commercial mobile radio service" and/or

"charges for, or associated with, a service provided as an adjunct to a commercial mobile radio service." (*Id.*) And, according to Defendants, because some mobile service providers, such as AT&T, provide streaming services, "[a]t a minimum, the Mobile Sourcing Act applies to streaming services provided by telecommunications companies. (Defs.' Mem. at 9.) But the Mobile Sourcing Act is about allowing municipalities to tax "mobile telecommunications services" – basically cell phone services – and cannot be stretched so broadly. The Mobile Sourcing Act does not expressly authorize the City to impose a tax on streaming services based on a customer's billing address.

The Mobile Sourcing Act exists as a result of the federal Mobile Telecommunications

Sourcing Act, 4 U.S.C. § 116 et seq., which Congress passed to establish sourcing requirements

for state and local taxation of mobile telecommunication services. To implement the federal

statute, Illinois adopted its own Mobile Sourcing Act, which authorizes a local jurisdiction to tax

a customer's purchases of mobile communications services only if the jurisdiction is the

"customer's place of primary use, regardless of where the mobile telecommunications services

originate, terminate, or pass through." 35 ILCS 638/20(b). In essence, this allows a municipality

to tax a cell phone customer if his or her residential street address or primary business street

address and the cell phone service provider's licensed service area are in the municipality's

boundaries. 35 ILCS 638/10.

The "mobile telecommunications services" that the Mobile Sourcing Act authorizes local jurisdictions to tax do not include the streaming services at issue in this case. The Mobile Sourcing Act defines "mobile telecommunications service" to include:

any charge for, or associated with, the provision of *commercial mobile radio service*, as defined in Section 20.3 of Title 47 of the Code of Federal Regulations . . . , or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the

customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

35 ILCS 638/10 (emphasis added).

The Code of Federal Regulations, in turn, defines "commercial mobile radio service" as:

A *mobile service* that is: (a) (1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional equivalent of such a mobile service described in paragraph (a) of this section.

47 C.F.R. § 20.3 (emphasis added). And the Code of Federal Regulations defines "mobile service" as:

A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, [including]:

- (a) Both one-way and two-way radio communications services;
- (b) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and
- (c) Any service for which a license is required in a personal communications service under part 24 of this chapter.

47 C.F.R. § 20.3 (emphasis added).

The federal regulation's definition of "mobile services" does not encompass streaming services, which means that the regulation's definition of "commercial mobile radio services" likewise does not encompass streaming services. Therefore, streaming services also are not "mobile telecommunications services" – the only things the Mobile Sourcing Act authorizes municipalities to tax. Streaming services also are not services "associated with" or "adjunct to" commercial mobile radio services. Such "associated" and "adjunct" services include a mobile

telecommunications service provider's charges for wireless data access or charges for the transmission or receipt of text or picture messages; they do not include any charge for any transaction conducted over the Internet.

Further, providers of streaming services are not "home service providers," which the Mobile Sourcing Act defines as a facilities-based carriers or resellers with a customer contract for the provision of mobile telecommunications services, 35 ILCS 638/10 – in other words, cellular service providers like Verizon and Sprint. And although a company that is a "home service providers" could additionally provide streaming services, that does not authorize the City to tax customers of *all* streaming services – regardless of whether they are from a provider that is also a home service provider – based on their Chicago billing addresses.

Thus, the application of the amusement tax to streaming services exceeds the City's constitutional authority, and this Court should declare it invalid and enjoin its enforcement.

II. The amusement tax applies to streaming services differently than it applies to in-person amusements in violation of the Uniformity Clause of the Illinois Constitution.

The Court should strike down the amusement tax for the additional reason that it violates the Illinois Constitution's Uniformity Clause, under which "a non-property tax must be based on a real and substantial difference between the people taxed and not taxed, and must bear some reasonable relationship to the object of the legislation or to public policy." *Geja's Cafe v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 247 (1992) (citing *Searle Pharmaceuticals, Inc. v. Dep't of Revenue*, 117 Ill. 2d 454, 468 (1987)).

A. The amusement tax violates the Uniformity Clause because it applies to streaming services differently than it applies to other amusements.

The amusement tax, by its terms, applies to amusements "within the City of Chicago." Chi. Mun. Code 4-156-020. But the City imposes the amusement tax on customers of streaming

services with Chicago billing addresses regardless of whether they use those services in Chicago, and it *never* applies the tax to customers of streaming services who do not have Chicago billing addresses, even if they use those services in Chicago. Defendants provide two justifications for these different classifications. Neither is sufficient.

First, Defendants assert that the "City provides protection and other benefits to its residents and their property on a regular and ongoing basis, whereas non-residents are here only on occasion as visitors." (Defs.' Mem. at 15.) But residents and non-residents who use streaming services in Chicago both receive the same protection and benefits from the City. When the City applies the amusement tax to customers of other amusements, like sporting events, theatrical performances, and concerts, it taxes both resident and non-resident customers of such amusements that take place in Chicago. This is presumably because both categories of customers receive protection and benefits from the City while they are engaged in those amusements in Chicago. But when the City applies the amusement tax to streaming services, it only applies to customers with billing addresses in Chicago – not necessarily Chicago residents – while not taxing non-resident customers of streaming services who do use streaming services in Chicago. So the City has failed to provide any real or substantial difference between residents and non-residents as it relates to their use of streaming services in Chicago.

Second, Defendants attempt to justify the City's method of taxation by arguing that, "[c]onsistent with the Mobile Sourcing Act, along with the evidence in this case, it is reasonable to assume that residents use the [streaming services] here on a regular basis . . . [and] non-residents will use them here only occasionally." (Defs.' Mem. at 15.) As explained in Section I.C above, the City cannot rely on the Mobile Sourcing Act for applying the amusement tax to customers of streaming services; just as an act of the General Assembly was necessary for local

jurisdictions to tax cellular-service customers based on their billing addresses, an act of the General Assembly is necessary for local jurisdictions to tax streaming services on that basis. In the absence of such legislation, the City only has the authority to tax amusements that take place within Chicago, and it cannot provide any basis to tax amusements based on customers' billing addresses alone.

Defendants claim it would not be practical or feasible to tax non-residents who use streaming services in Chicago and that "administrative convenience is a legitimate uniformity justification." (Defs.' Mem. at 15.) But the Illinois Supreme Court does not accept administrative convenience as a legitimate uniformity justification where the government achieves its "convenience" arbitrarily. Searle Pharm., Inc., 117 Ill. 2d at 474 (finding a Uniformity Clause violation where a statute prevented certain corporations that elected to file a federal consolidated return from carrying back their losses to reduce state income taxes but allowed certain corporations that did not elect to file a consolidated federal return to do so); see also, U.S.G. Italian Marketcaffe v. City of Chi., 332 Ill. App. 3d 1008, 1017 (1st Dist. 2002) (rejecting City's administrative convenience argument where City imposed a litter tax on food sold for onpremises consumption but not carry-out-only businesses). And here the City attempts to achieve its administrative convenience objective arbitrarily: There is no real and substantial difference between customers of streaming services with Chicago billing addresses and those with no Chicago billing address that is related to the objective of taxing the use of streaming services in Chicago. See Searle Pharm., Inc., 117 Ill. 2d at 474. Indeed, customers with Chicago billing addresses are not even necessarily Chicago residents and many Chicago residents provide a non-Chicago billing address to their streaming services providers. (See, e.g., Pls.' Exs. M, N) (explaining that Plaintiffs Emily Rose and Natalie Bezek continued to pay the amusement tax

even after they were no longer Chicago residents.) The City's objective in determining when a customer uses streaming services in Chicago could be achieved in any other number of arbitrary ways, including by requiring customers of streaming services that work in Chicago or those who use CTA pay the amusement tax.

B. The amusement tax violates the Uniformity Clause because it subjects streaming services to greater taxation than automatic amusement devices that deliver the same types of entertainment.

The amusement tax violates the Uniformity Clause for a second reason: because the City does not impose it on customers of "automatic amusement devices" – devices that provide video, music, and gaming entertainment, such as video machines, jukeboxes, and pinball machines (Pls.' SOF 5) – but does impose the tax on customers of streaming services – which provide similar video, music, and gaming entertainment over the Internet – with Chicago billing addresses. None of Defendants' alleged differences between customers of automatic amusement devices and customers of streaming services is a "real and substantial" difference that could justify treating customers of streaming services with Chicago billing addresses worse than customers of automatic amusement devices even though those services – video, audio, and gaming entertainment – are the same. *See Geja's Cafe*, 153 Ill. 2d at 247.

First, Defendants assert that automatic amusement devices are owned by a business whereas streaming services are used on devices owned by the customers themselves. (Defs.' Mem. at 15.) But, even if that is true,<sup>3</sup> it does not explain why this is a "real and substantial" difference that could justify treating customers of automatic amusement devices differently from streaming-service customers.

<sup>&</sup>lt;sup>3</sup> It is not always true. Indeed, as Plaintiffs' counsel writes this, he is listening to Spotify on a device owned by his employer.

Second, the City says that customers cannot take automatic amusement devices away from the establishments where they use them, while customers of streaming services can access such services anywhere. (Defs.' Mem. at 15.) Again, Defendants fail to explain how this a real and substantial difference that could justify a difference in taxation between automatic amusement devices and streaming services.

Third, Defendants assert that an automatic amusement device is shared among all of an establishment's customers, whereas streaming services can be used exclusively by one customer. (Defs.' Mem. at 15.) Again, Defendants fail to explain how this purported difference relates to the differences in taxation.

Fourth, Defendants claim that automatic amusement devices are "operated with coins on a per-use basis, whereas streaming services are generally paid for by credit card on a subscription basis, including unlimited use." (Defs.' Mem. at 15.) But nothing in the amusement tax requires the streaming services that are taxed be paid by customers on a subscription basis, rather than a per use basis. And presumably the City believes that a customer who pays to view a video on the Internet on a per use basis is subject to the amusement tax. And, again, in any event, it is not apparent how this supposed difference justifies a difference in taxation.

Finally, the City says that automatic amusement devices generally provide a more limited selection of amusements than streaming services. (Defs.' Mem. at 16.) Again, Defendants provide no argument as to why this alleged difference justifies taxing devices and streaming services differently.

Defendants also argue that, even if automatic amusement devices and streaming services are similar, the City can tax them differently for administrative convenience. (Defs.' Mem. at 16.)

Defendants state that requiring owners of automatic amusement devices to collect a 9% tax from

would be difficult to collect a 9% tax on the small amount of money that patrons of automatic amusement devices pay. (Id.) But collecting the tax from owners of automatic amusement devices based on use would not cause the City any administrative inconvenience; as with all amusements, including streaming services, the City would require owners of automatic amusement devices to collect the tax and remit it to the City on a monthly basis. The City argues that it would be inconvenient for the owners or customers of automatic amusement devices to pay the amusement tax; but the "administrative convenience" justification that the courts have recognized applies to governmental entities' administrative and collection capacities, not the convenience to customers or providers of amusements. See, e.g., Searle Pharm., Inc., 117 Ill. 2d at 474 (administrative convenience to state of processing tax returns); Valstad v. Cipriano, 357 Ill. App. 3d 905, 917 (4th Dist. 2005) (administrative convenience to Illinois EPA of identifying and imposing a fee); DeWoskin v. Lowe's Chi. Cinema, 306 Ill. App. 3d 504, 521 (1st Dist. 1999) (administrative convenience to County of collecting a tax). Besides, collecting the amusement tax is more inconvenient for providers of streaming services than it is for owners of automatic amusement devices: The owner of an automatic amusement device in Chicago would simply have to remit a percentage of all money collected from a given device, but a streamingservice provider that serves customers around the world must make special arrangements to collect and remit taxes only from those customers who have Chicago billing addresses. Accordingly, Defendants provide no reason that justifies treating customers of streaming services differently than customers of automatic amusement devices.

patrons who pay money to use those devices would be administratively inconvenient because it

Defendants assert that a 9% tax on streaming services might not always be higher than a flat tax of \$150 per year on automatic amusements devices. (Defs.' Mem. at 16.) But the 9% tax

applies to customers of streaming services, and the \$150 tax on automatic amusement devices applies to owners of such devices, not to the customers who use them – so customers of streaming services *always* pay more tax than customers of automatic amusement devices.

Contrary to Defendants' argument, the fact that Plaintiffs do not subscribe to Xbox Live Gold or other online gaming products has no bearing on their standing to bring their Uniformity Clause claim. (*See* Defs.' Mem. at 16.) Plaintiffs bring both facial and as-applied challenges to the differential treatment in taxation between themselves, as customers of streaming services, and customers of automatic amusement devices. And Defendants concede that Plaintiffs are customers of streaming services that provide video and audio amusements, and that automatic amusement devices provide video and audio amusements. So if the City's application of the amusement tax to customers of streaming services, but not automatic amusement devices, violates the Uniformity Clause on its face, the Court must strike down the application of the amusement tax to customers of streaming services entirely. And if the discriminatory taxation violates the Uniformity Clause as applied to Plaintiffs, the Court must enter an order preventing the City from applying the amusement tax to Plaintiffs.

C. The amusement tax violates the Uniformity Clause because it taxes certain performances delivered through streaming services at a higher rate than it taxes certain in-person live performances.

The Ruling also violates the Uniformity Clause for the additional reason that it taxes certain performances delivered through streaming services at a higher rate than it would tax those same performances presented in person. The Code exempts from the amusement tax "admission fees to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons," and taxes such performances in a

space with a capacity of greater than 750 persons at a reduced rate of 5%. (Pls.' SOF 6.)

Defendants assert that the purpose of the exemption is to "foster the production of live performances that offer theatrical, musical or cultural enrichment to the city's residents and visitors." (Defs.' Mem. at 18.)

But Defendants identify no real and substantial differences between performances delivered live and performances delivered through streaming services that bears a reasonable relationship to the City's purpose of fostering the production of live performances. *See Geja's Cafe*, 153 Ill. 2d at 247. Defendants never actually identify what the real and substantial differences between an amusement that is viewed in person and one delivered through streaming services actually are. Rather, Defendants assert that there must be real and substantial differences because "people pay to attend events that they could have viewed for free, or for a much lower price, on a television or other device." (Defs.' Mem. at 19.)

But the price that people are willing to pay for an amusement does not provide a relevant distinction between live performances and streaming services of those performances that relates to the City's state purpose of fostering the production of live performances. And the City does not explain why the difference in price that people are willing to pay for live performances versus viewing streaming services of those performances necessitates that the City tax streaming services but not live performances in order to foster the production of live performances.

The City's purpose to foster the production of live performances can be fulfilled by customers watching such performances via streaming services since City residents who view such performances on the Internet can be just as enriched as persons who view them in person, and those who produce such performances can profit from having them sold through streaming services. (Pls.' Mem. at 18.) Defendants assert that this ignores the many other reasons for

increasing business at hotels, restaurants, and stores. (Defs.' Mem. at 19-20.) But that switches the City's stated purpose from fostering the production of live performances for the purpose of enrichment to attracting tourists and increasing business at hotels, restaurants, and stores – a purpose the City has not asserted as a basis for fully or partially exempting live performances from the amusement tax. And if the City's real justification is attracting tourists and increasing business, then the City has no basis for exempting only theatrical, musical, or cultural performances in certain small venues. Live performances that are not theatrical, musical or cultural (such as sporting events) certainly attract tourists and increase business. And if this is the City's actual justification, then it does not make sense for the City to fully exempt performances in auditoriums that hold not more than 750 people, when while charging a 5% amusement tax on customers of live performances in auditoriums that hold more than 750 people. Presumably, the live performance in a larger auditorium would attract more tourists, shoppers, and diners.

encouraging attendance at live cultural events such as attracting tourists from out of town and

Defendants assert that the Illinois Supreme Court sanctioned the favoring of "live fine arts performances" over other forms of amusement in *Pooh-Bah Enters. v. County of Cook*, 232 Ill. 2d 463 (2009). (Defs.' Mem. at 18.) But *Pooh-Bah* did not address the Uniformity Clause; rather, it upheld dismissal of a First Amendment challenge to the Amusement Tax's exemption of "live fine arts performances" but not "adult entertainment cabarets." 232 Ill. 2d at 496.

Defendants' reliance on *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62 (2008) is also misplaced. In *Empress Casino*, plaintiffs challenged a 3% surcharge that applied only to riverboat casinos in Illinois that had adjusted gross receipts over \$200 million in a calendar year 2004 as a violation of the Uniformity Clause. *Id.* at 65. There, the Court found that subclassifications and exclusions were sufficient to satisfy Uniformity Clause scrutiny as long as

they are reasonable and that quantitative differences in adjusted gross receipts may be sufficient to justify a classification. *Id.* at 80. But Plaintiffs do not challenge a classification based on adjusted gross receipts, and the Code exempting live performances does not make classifications on this basis. Rather, the Code distinguishes between certain live performances – that are exempt from the amusement tax – and the same live performances viewed on streaming services – which are subject to the amusement tax. The City has failed to justify this discrimination.

### III. The amusement tax discriminates against electronic commerce in violation of the Internet Tax Freedom Act.

The Internet Tax Freedom Act ("ITFA"), which is set forth in a note to 47 U.S.C. § 151, provides that no state or political subdivision of a state may impose multiple or discriminatory taxes on electronic commerce. ITFA § 1101(a). In this case, the amusement tax imposes an unlawful discriminatory tax on electronic commerce by taxing streaming services but not similar amusements that take place in Chicago in two ways. First, the Code requires customers of streaming services to pay the amusement tax, even as the Code entirely exempts users of "automatic amusement devices" from taxation. Second, the Code fully or partially exempts live theatrical, musical, and cultural performances at theaters and other venues from the amusement tax while taxing streaming services that provide access to similar or identical theatrical, musical, or cultural performances over the Internet.

To defend against Plaintiffs' ITFA claim, Defendants argue that streaming services are different from live performances – and therefore can be taxed differently under the ITFA – because one type of service is delivered on the Internet and the other is not. (Defs.' Mem. at 19.) Defendants also attempt to distinguish streaming services from automatic amusement devices based in part on the fact that streaming services are delivered on the Internet, while the video, audio, and games provided on automatic amusement devices are not. (Defs.' Mem. at 15-16

(e.g., "An [automatic amusement device] is a stationary device that the customer may not take away from the establishment, whereas [streaming services] can be used on a mobile device, at any location that the customer may choose").) These arguments fail because the ITFA specifically prohibits the City from taxing goods or services differently based on whether they are provided through the Internet. *See Performance Mktg. Ass'n v. Hamer*, 2013 IL 114496, ¶ 23.

Otherwise, Defendants attack Plaintiffs' ITFA claim with the same arguments they make against Plaintiffs' Uniformity Clause claim. Those arguments fail under the ITFA for the same reason they fail under the Uniformity Clause, which Plaintiffs addressed above in Section II.

### IV. The amusement tax's application to streaming services used outside Chicago violates the Commerce Clause of the United States Constitution.

The City's application of the amusement tax to customers who use streaming services outside Chicago also violates the Commerce Clause of the United States Constitution.

### A. Plaintiffs have standing to bring a Commerce Clause claim.

Defendants assert that Plaintiffs lack standing to bring a Commerce Clause claim because the purpose of the Commerce Clause is to protect citizens from discrimination by the governments of other states, not to protect people from taxes imposed by their own states, and because the class protected by the Commerce Clause is competitors, not consumers. (Defs.' Mem. at 21.) But Defendants argument receive no support from the cases Defendants cite to support it, *Geja's Cafe*, 153 Ill. at 256, and *Terry v. Metro. Pier & Exposition Auth.*, 271 Ill. App. 3d 446, 455 (1995). Neither of those cases address the dismissal of a plaintiff for lack of standing under the Commerce Clause, and the portions of the decisions that Defendant quote concern the merits of the plaintiffs' claims, not standing. Plaintiffs can find no case where a court found that a plaintiff who was subject to a discriminatory tax, as plaintiffs are here, lacked standing to challenge it under the Commerce Clause. In Illinois, the general rule of standing is that a plaintiff who

attacks the constitutionality of a statute must be within the class of those directly affected by it. *Ball v. Vill. of Streamwood*, 281 Ill. App. 3d 679, 687 (1st Dist. 1996). Since Plaintiffs are subject to the tax on streaming services, they have standing to challenge it as a violation of the Commerce Clause.

### B. Plaintiffs have proved their facial and as-applied challenges under the Commerce Clause.

To address Plaintiffs' Commerce Clause claim, Defendants rely on the same arguments they made against Plaintiffs' claim that taxing streaming-service customers based on their billing addresses violates the Illinois Constitution – that Plaintiffs have failed to raise proper facial and as applied claims. Those arguments fail with respect to the Commerce Clause for the same reasons they fail under Plaintiffs' other claims. *See* Section I, above.

Again, the Illinois Supreme Court has specifically rejected the "no set of circumstances" formulation when evaluating a facial constitutional challenge that Defendants rely on. *Burns*, 2015 IL at ¶¶ 26-27. And the United States Supreme Court's decision in *Patel*, 135 S. Ct. at 2451, applied the "in all applications" formulation rather than the "no set of circumstances" formulation.

Indeed, since it decided *United States v. Salerno*, 481 U.S. 739 (1987), the United States Supreme Court has *never* applied the "no set of circumstances" formulation to a facial challenge to a statute under the dormant Commerce Clause. *See, e.g. Granholm v, Heald*, 544 U.S. 460, 476 (2005); *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 575-82 (1997); *C&A Carbone, Inc. v. Clarkstown*, 511 U.S. 383, 389-94 (1994); *New Energy Co. v. Limbach*, 486 U.S. 269, 274-80 (1988). The Court notably did not apply *Salerno* to a challenge brought to a state income tax statute under the foreign commerce prong of the Commerce Clause.

See Kraft Gen. Foods, Inc. v. Iowa Dep't of Revenue and Fin., 505 U.S. 71, 82-83 (1992) (Rehnquist, J. dissenting) (arguing that the Court should have applied *Salerno*).

The Supreme Court has made clear that a statute that, by its terms, impermissibly regulates, discriminates against, or burdens interstate commerce is invalid in its entirety, regardless of whether the law might be permissibly applied in some circumstances. *See, e.g., Quill Corp. v.*North Dakota, 504 U.S. 298, 313 n. 6 (1992) (noting that a law imposing a tax collection obligation on every vendor advertising in the state three times a year would, on its face, unduly burden interstate commerce due to the risk that thousands of jurisdictions might impose the same requirement); *Limbach*, 486 U.S. at 276 (law that discriminated against only some, but not all, out-of-state companies nevertheless *per se* invalid); *Edgar v. MITE Corp.*, 457 U.S. 624, 642-43 (1982) (Illinois law that applied to tender offers with sufficient connection to Illinois as well as tender offers that would not include a single Illinois shareholder struck down in its entirety).

Thus, the "no set of circumstances" rule does not apply to a facial challenge under the Commerce Clause and does not warrant dismissing Plaintiffs' Commerce Clause claim.

## C. The Mobile Sourcing Act does not authorize the City to tax streaming services used outside of its boundaries.

Defendants assert that the Commerce Clause claims also fail as a matter of law because Congress has authorized use of the Mobile Sourcing Act, at least for telecommunications providers. That argument lacks merit because, as explained in Section I.C above, the Mobile Sourcing Act only applies to "mobile telecommunications services," which do not include streaming services. Nothing in the Mobile Sourcing Act indicates that Congress or the General Assembly intended to allow municipalities to tax streaming services in the same manner that the Mobile Sourcing Act allows them to tax mobile telecommunications services.

# D. The City's application of the amusement tax on customers of streaming services with Chicago billing addresses violates the requirements of the Commerce Clause.

A local tax satisfies the Commerce Clause only if it "(1) is applied to an activity with a substantial nexus with the taxing state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977); *Quill Corp.*, 504 U.S. at 311. The application of the amusement tax to streaming services violates requirements (1), (2) and (4).

First, Defendants assert that the Ruling taxes an activity with a substantial nexus with the State, as it taxes Chicago residents who pay for and receive the privilege of viewing or listening to amusements in Chicago. (Defs.' Mem. at 23.) But for an activity to have a substantial nexus with a particular jurisdiction, there must be a connection between the jurisdiction and the activity itself – not just a connection between the jurisdiction and the actor the government seeks to tax. *Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768, 778 (1992). The Ruling's use of billing addresses as a proxy for use of streaming services within Chicago does not ensure a substantial nexus between the City and activities it is taxing. At most, it ensures only that the City has a connection with the *actor* who pays the tax – which, again, is not enough.

Defendants next assert that the tax on customers of streaming services with Chicago billing addresses is fairly apportioned. (Defs.' Mem. at 23.) Defendants assert that the tax is externally consistent because, under the Mobile Sourcing Act, it is reasonable to assume that the taxpayer's resident will be his or her place of primary use. (Defs.' Mem. at 24.) Again, the Mobile Sourcing Act is irrelevant because it does not pertain to taxation of streaming services. Putting that aside, the tax is *not* externally consistent. To be externally consistent, a tax must apply only to that portion of the revenues from the interstate activity that reasonably reflects the in-state component

of the activity being taxed. *Irwin Indus. Tool Co. v. Ill. Dep't of Revenue*, 238 Ill. 2d 332, 345-46 (2010). The tax on customers of streaming services with Chicago billing addresses does not apply only to that portion of the revenues from the interstate activity that reasonably reflects the in-state component of the activity being taxed. The City just assumes that customers of streaming services with Chicago billing addresses do not use such services outside of Chicago at all.

Finally, Defendants assert that taxing customers of streaming services with Chicago billing addresses is fairly related to services provided because the Chicago residents who pay the tax receive many services from Chicago. (Defs.' Mem. at 23.) But Chicago residents who pay the tax when they use streaming services outside of Chicago receive no benefits from the City related to their use of streaming services outside of Chicago. *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 626 (1981) ("the measure of the tax must be reasonably related to the extent of the contact"). And customers of streaming services who do not have a Chicago billing address but use streaming services in Chicago receive the same benefits related to the use of streaming services in Chicago but are not required to pay the tax.

#### Conclusion

For the reasons stated above and in Plaintiffs' motion for summary judgment, the Court should deny Defendants' motion for summary judgment and grant Plaintiffs' motion.

Dated: December 20, 2017

Respectfully submitted,

One of their attorneys

Jeffrey M. Schwab (#6290710) Jacob H. Huebert (#6305339) Liberty Justice Center (#49098) 190 S. LaSalle Street, Suite 1500 Chicago, Illinois 60603 Telephone (312) 263-7668 Facsimile (312) 263-7702 jschwab@libertyjusticecenter.org jhuebert@libertyjusticecenter.org

#### **CERTIFICATE OF SERVICE**

I, Jeffrey Schwab, an attorney, hereby certify that on December 20, 2017, I served the foregoing Plaintiffs' Combined Response in Opposition to Defendants' Motion For Summary Judgment and Reply in Support of Their Motion for Summary Judgment on Defendants' counsel of record by the Court's Electronic Filing System and electronic mail to Steve Tomiello (Steven.Tomiello@cityofchicago.org).

Jeffrey M. Schwab

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION TAX AND MISCELLANEOUS REMEDIES SECTION

MICHAEL LABELL, JARED LABELL, et al.	)		
Plaintiffs,	) No. 2015 CH 13399	2018 J	-
v.	) (Transferred to Law)	112	
CITY OF CHICAGO DEPARTMENT OF FINANCE, et al.	) Judge Walker	M 9	0
Defendants.	)	: 57	1\)

## DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT

Defendants City of Chicago ("City") and its Comptroller submit this reply memorandum in support of their cross-motion for summary judgment.

### Introduction

As we explained in our initial memorandum ("Memorandum"), this case is a challenge to the Amusement Tax Ordinance, which incorporated the key terms of the ruling that plaintiffs originally challenged ("Ruling #5" or "the Ruling"). Memorandum at 4. As we also explained, the Ordinance is presumed to be constitutional, and plaintiffs have the burden of proving otherwise. Memorandum at 4-5. Despite the arguments in their response brief ("Response"), plaintiffs have not met their burden of proving that the Ordinance is invalid, either facially or as applied.

The undisputed facts include the following:

- Plaintiffs are all Chicago residents.
- Plaintiffs all subscribe to Netflix, Hulu and/or Spotify (the "Products").

- Plaintiffs all pay a fixed monthly subscription fee that does not vary based on the level or location of their use of the Products.
- The vast majority of plaintiffs' use of the Products takes place in Chicago.
- There are obvious and significant differences among the Products, automatic amusement devices ("AADs") and live cultural events that justify treating them differently, for purposes of both the Uniformity Clause and the Internet Tax Freedom Act ("ITFA").

As explained in our initial brief, and as further explained below, based on the undisputed facts, the City's cross motion for summary judgment should be granted.

### Statement of Additional Facts

- 1. In their Response, plaintiffs state that "Plaintiffs Emily Rose and Natalie Bezek continued to pay the amusement tax even after they were no longer Chicago residents." Response at 13 14. Defendants deposed Ms. Rose and Ms. Bezek concerning this issue.
- 2. Ms. Rose testified that in September 2016 she moved from Chicago to Oak Ridge, Tennessee. Rose Dep. (Exhibit A) 4-5. In December 2016, she noticed that she was still being charged the amusement tax on her Netflix subscription. <u>Id</u>. at 7. She testified that this occurred because she failed to change her address in her Netflix account. <u>Id</u>. She did not contact Netflix or take any action. <u>Id</u>. She cancelled her account in December 2016 and never re-subscribed. <u>Id</u>.
- 3. Ms. Bezek testified that in September 2016 she moved from Chicago to Washington DC. Bezek Dep. (Exhibit B) 5-6. She testified that she was charged the amusement tax after moving because she failed to update the zip code in her Spotify account. <u>Id.</u> at 7-8, 12. She did not recall when she first noticed that she was being charged the tax. <u>Id.</u> at 8. To date, she has never contacted Spotify or updated the zip code in her account. <u>Id.</u> In December 2016,

she deactivated her Spotify account. <u>Id</u>. at 12. In March 2017, she reactivated her account but still did not change her zip code from Chicago to Washington DC. <u>Id</u>. at 9, 11-12. In October 2017, she moved back to Chicago. <u>Id</u>. at 4-5.

### Discussion

- I. <u>Defendants are entitled to summary judgment on plaintiffs' claims regarding the City's authority to tax streaming services.</u>
  - A. The undisputed facts do not support a facial challenge to the Ordinance.

In their Response, plaintiffs assert that in a facial challenge a plaintiff must establish that a law is unconstitutional "in all of its applications," as opposed to the standard that we cited in our initial brief, by which a plaintiff must establish that there are "no circumstances" under which the law would be valid. See Response at 3, citing People v. Burns, 2015 IL 117387 at ¶ 27: Memorandum at 5. In light of later cases that continue to cite the "no circumstances" standard, plaintiffs' assertion is questionable. See Kakos v. Butler, 2016 IL 120377, ¶9 ("When asserting legislation is facially unconstitutional, the challenger must establish that no set of circumstances exist under which the Act would be valid."); City of Chicago v. Alexander, 2017 IL 120350, ¶27 ("Unlike a facial challenge, which requires a showing that the ordinance is unconstitutional under any set of facts, an as-applied challenge requires a showing that the ordinance violates the constitution as it applies to the facts and circumstances of a challenging party."); People v. Rizzo, 2016 IL 118599, ¶24 ("So long as there exists a situation in which the state could be validly applied, a facial challenge must fail."). However, even assuming that plaintiffs are correct, in this case the result is the same, as plaintiffs also have not satisfied the standard that they propose.

The law that plaintiffs challenge is Code Section 4-156-020(G.1) ("Section G.1"), which reads as follows:

In the case of amusements that are delivered electronically to mobile devices, as in the case of video streaming, audio streaming and on-line 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. If those rules indicate that the tax applies, it shall be presumed that the tax does apply unless the contrary is established by books, records or other documentary evidence.

Section G.1 does two basic things: (1) it confirms that the amusement tax applies to video streaming, audio streaming and on-line games; and (2) it allows providers to utilize the rules set forth in the Mobile Sourcing Act. As a result of Section G.1, providers such as Netflix, Hulu and Spotify collect the tax from Chicago residents, and they do not collect the tax from non-residents. As we discuss below, there is nothing unconstitutional about this.

In their Response, plaintiffs make a number of misstatements about Section G.1:

- 1. Plaintiffs continually refer to Section G.1 as a method of imposing the amusement tax. Response at 3 4. In fact, Section G.1 does not impose the tax. The tax is imposed by Code Section 4-156-020(A), which states that "an amusement tax is imposed upon the patrons of every amusement within the City." Section G.1 merely provides businesses with a method of collecting the tax, as a result of which businesses collect the tax from Chicago residents and not from non-residents.
- 2. Plaintiffs continually state that Section G.1 imposes the City's amusement tax based on a customer's billing address. Response at 3-6. In fact, neither Section G.1 nor the Mobile Sourcing Act (35 ILCS 638) uses the term "billing address." Section G.1 simply says that the rules set forth in the Act may be used.

- 3. Plaintiffs state that "the Ruling conclusively presumes that a customer ... with a Chicago billing address will use the services in Chicago." Response at 6. In fact, the Ruling does not include a conclusive presumption, and in any event the Ruling has been superseded by Section G.1, which specifically states that any presumption of taxability is rebuttable.
- 4. Plaintiffs claim that the City requires providers of streaming services to ask customers for a billing address. Response at 6. Plaintiffs cite no support for this assertion. In fact, plaintiffs' assertion is refuted by their testimony that they gave their addresses as part of their providers' standard sign-up process, which occurred before the City even issued Ruling #5.

  See Memorandum, Statement of Facts ¶ 2 3.

Using the standard set forth in <u>People v. Burns</u>, plaintiffs must establish that Section G.1 is unconstitutional "in all of its applications." To see that this standard has not been met, one need look no further than to plaintiffs themselves. Plaintiffs pay a set amount per month for their streaming subscriptions, and the vast majority of their use takes place in Chicago. Memorandum, Statement of Facts ¶¶ 1 - 8. Based on these undisputed facts, it is clear that plaintiffs' primary purpose in paying their monthly subscription fees is to have the privilege of using their streaming services in Chicago.

Under well-settled Illinois law, the entire subscription fee is taxable, and this would be true with or without Section G.1. See Communications & Cable of Chicago, Inc. v. City of

As we noted in our initial brief, the City took the depositions of Bryant Jackson-Green and Zachary Urevig, and the parties stipulated that the remaining plaintiffs would have testified consistently with them. Mr. Jackson-Green said that about 75% of his Netflix use takes place on his television at home. Memorandum, Statement of Facts ¶¶ 2 - 3. The rest takes place on a mobile device, but almost all of that takes place either at home or elsewhere in Chicago. *Id.* Mr. Urevig's testimony was essentially the same as that of Mr. Jackson-Green, and he said he uses Netflix more than 90% of the time in Chicago. Memorandum, Statement of Facts ¶ 8.

Chicago, 282 III. App. 3d 1038 (1<sup>st</sup> Dist. 1996) (cable television subscriptions were subject to the amusement tax); Chicago Bears Football Club v. The Cook County Department of Revenue, 2014 IL App (1st) 122892 (entire ticket price was taxable because bundled charge for admission to stadium and club was primarily for the taxable amusement of watching a football game); Stasko v. City of Chicago, 2013 IL App (1<sup>st</sup>) 120265 (charge for personal seat license was taxable because its primary purpose was for the privilege of obtaining season tickets to watch football games). See also Rozner v. Korshak, 55 III. 2d 430, 433 (1973) (upholding annual wheel tax on Chicago residents, in a flat amount).<sup>2</sup>

In <u>Communications and Cable</u>, the issue was whether the City could apply its amusement tax to the subscription fees that customers pay for cable television. One argument made by the plaintiffs was that "because they provide informational, educational and other non-amusement programming, their services are not predominately 'amusement' and cannot be taxed as such." 282 Ill. App. 3d at 1047. Because the City has authority to tax amusements but not service occupations (unless authorized by statute), the plaintiffs argued that it was unconstitutional for the City to tax their subscription fees. The Circuit Court denied their motion for a preliminary injunction, and the Appellate Court affirmed. In doing so, it stated:

In the present case, the single activity of watching television is at issue. Even though the entertainment or amusement quality of the programming may well vary from channel to channel, we cannot say that the trial court abused its discretion in finding that the activity of viewing cable television is subject to taxation as an amusement. We decline to adopt plaintiffs' proposed approach of analyzing the content of the programming provided by their service. The application of such a standard would prove immensely burdensome and problematic as it would not only require an examination and analysis of the

<sup>&</sup>lt;sup>2</sup> Plaintiffs point out that in <u>Rozner</u> the plaintiff did not specifically raise the issue of extraterritoriality. Response at 7. This is true, but the Court nevertheless upheld the City's home rule authority to impose the wheel tax on Chicago residents in a flat annual amount, despite the obvious fact that residents can and do use their vehicles both inside and outside the City.

entertainment or amusement value of each program viewed by cable subscribers, but also the content of every entertainment performance viewed by those subject to the amusement tax. Accordingly, the tax imposed upon the plaintiffs' services in this case does not constitute an unauthorized occupational tax. *Id.* at 1039.

Like the Court in <u>Communications & Cable</u>, this Court should decline to adopt plaintiffs' proposed approach of analyzing the use that each customer makes of his or her subscription, which will vary from person to person, and from month to month.<sup>3</sup> As demonstrated by the undisputed facts, plaintiffs pay their monthly subscription fees primarily for the purpose of obtaining the privilege of using the Products in Chicago, and their entire subscription fees are therefore taxable. Consistent with Section G.1, providers <u>collect</u> the tax from plaintiffs, but the tax would be <u>owed</u> even without Section G.1. Section G.1 is not unconstitutional in its application to plaintiffs, and it therefore is not unconstitutional "in all its applications."<sup>4</sup>

## B. The undisputed facts do not support an as-applied challenge to the Ordinance.

Plaintiffs acknowledge that an as-applied challenge "requires a defendant to show that the statute violates the constitution as it applies to him." Response at 2, citing <u>People v. Wiggins</u>, 2016 IL App (1<sup>st</sup>) 153163 ¶ 75. As discussed above, Section G.1 clearly does not violate the

In <u>Communications & Cable</u>, the plaintiffs' proposed approach would have involved identifying, quantifying and separating out charges for educational programming. In this case, plaintiffs' proposed approach would involve identifying, quantifying and separating out charges for use outside the City. In either case, the concept is the same, and the holding should be the same.

The fact that Ms. Rose and Ms. Bezek failed to notify their providers of their change of address when they moved does not make Section G.1 unconstitutional in its application to them. Any tax that is collected by a business can be misapplied if the customer fails to provide accurate information in a timely manner. For example, states and local governments may not tax foreign diplomats, but if a diplomat fails to inform a business that he or she is a diplomat, then the business will follow its normal procedures and collect tax from the diplomat. This does not make the tax unconstitutional. Tax laws routinely call for the use of exemption certificates. See, e.g., the Illinois Retailers' Occupation Tax Act, 35 ILCS 120, Sections 1(g), 1(i), 1(k), 1(o), 1(q), and 1(r).

constitution as it applies to plaintiffs, because with or without Section G.1, they would be liable for tax on their full subscription fees. Plaintiffs say the "harm that [they] complain about" is that "[t]hey are taxed based on their Chicago billing addresses regardless of where they consume the services." Response at 6. In fact, Section G.1 does not harm plaintiffs at all, because with or without it they would owe the same amount of  $\tan - i.e.$ ,  $\tan$  on their full subscription fees. Plaintiffs have not shown that the Ordinance violates the constitution as it applies to them, and they therefore have not met their burden of proving an as-applied challenge.

# C. <u>Defendants have express statutory authority to apply the Mobile Sourcing Act to streaming services provided by telecommunications companies.</u>

We agree that the Mobile Sourcing Act was adopted with cell phone service in mind. As discussed in our initial brief, however, the language is broad enough to include streaming services provided by telecommunications companies such as AT&T, Comcast and T-Mobile. Memorandum at 7 – 9. In their Response, plaintiffs gloss over some of the more expansive language in the Act, such as the terms "associated with," "adjunct" and "functional equivalent." Response at 9 – 11. They argue that "associated" and "adjunct" services are limited to services such as "data access" and "text or picture messages," but they do not provide any authority for that reading. Response at 10 – 11. They do acknowledge that "cellular service providers like Verizon and Sprint" could be covered by the Act, and they also acknowledge that such providers "could additionally provide streaming services," but they argue that "that does not authorize the City to tax customers of *all* streaming services..." Response at 11 (emphasis in original). This ignores our principal point on this subject, which is that because the Act applies to streaming services provided by telecommunications companies, plaintiffs cannot meet their burden of establishing that the Ordinance is unconstitutional in all of its applications.

# D. <u>Defendants have implied authority to apply the Mobile Sourcing Act to all streaming services.</u>

Plaintiffs' main argument against implied authority is that "authorization for a municipality's extraterritorial exercise of power cannot be implied; it must be express." Response at 8. This argument assumes that the City is engaging in an extraterritorial exercise of its power, when in fact it is not. As we have explained above, the City is taxing the subscription fees of Chicago residents such as plaintiffs, who pay those fees primarily for the privilege of using their subscriptions in the City. Section G.1 allows providers to use the rules set forth in the Mobile Sourcing Act, which include the assumption that customers use mobile devices primarily at their place of residence. That assumption is correct for plaintiffs, and plaintiffs offer no proof that it is not also correct for the vast majority of Chicago residents. The City has both statutory and home rule authority to take reasonable measures to enforce its taxes, and allowing use of the rules set forth in the Mobile Sourcing Act is within that authority. See Memorandum at 9. Plaintiffs' position is that the City may not tax streaming services at all, simply because they are sometimes used on mobile devices, which are sometimes used outside of Chicago. Plaintiffs' position is unreasonable and should be rejected.

# E. The holding and rationale of the Hertz decision do not apply to this case.

In our initial brief, we discussed a number of significant ways in which Hertz Corp. v. City of Chicago, 2017 IL 119945 ("Hertz") differs from this case. Among other things, we pointed out: (i) that the court in Hertz found no basis for assuming that cars rented from suburban locations would be used in Chicago; (ii) that the ruling at issue included a conclusive presumption of use in Chicago; and (iii) that the ruling required businesses and their customers to ask and answer questions about their intended use. Memorandum at 11 - 13. As to the first point, plaintiffs argue that "the City provides no reason why the Court should credit its

assumption in this case even though the Court refused to accept the same assumption in *Hertz*." Response at 5. In fact, the City <u>has</u> provided a number of reasons, as set forth in our initial brief (at 13):

By contrast [with a short-term car rental], in the case of a monthly subscription for Netflix, Hulu or Spotify, it is entirely reasonable to assume that a Chicago resident will in fact use the Product in Chicago during that month. That assumption is supported by the evidence in this case, where plaintiffs have testified that they almost always use the Products either at home or elsewhere in the City. See Statement of Facts ¶¶ 3-5, 8. It is further supported by the Mobile Sourcing Act, which assumes that a customer's residence will be his or her "place of primary use" of a mobile device. 35 ILCS 638/10.

Plaintiffs fail to refute or even acknowledge these points. Moreover, as explained above, taxation here is based on the fact that plaintiffs pay their monthly subscription fees for the primary purpose of obtaining the <u>privilege</u> of using the Products in Chicago, whereas taxation in <u>Hertz</u> depended on actual <u>use</u>.<sup>5</sup>

As to the second and third points, we have already explained that the Ordinance does <u>not</u> include a conclusive presumption and does <u>not</u> require providers or customers to ask or answer the types of questions at issue in <u>Hertz</u>.

Hertz involved the issue of whether the City could require the plaintiff business to collect tax from Chicago residents who rented cars from its suburban locations, even though there was no proof that they actually used the cars in Chicago. By contrast, this case is brought by Chicago residents who claim they should not have to pay the City's amusement tax, even though they pay their subscription fees primarily for the privilege of using the Products in Chicago. For these

Plaintiffs argue that under this analysis "the City could tax every customer of streaming services wherever they live because they all have the ability to use those services in Chicago." Response at 7 (emphasis in original). But non-residents do not pay their subscription fees primarily for the privilege of using their services in Chicago, whereas residents of Chicago (such as plaintiffs) clearly do.

reasons, and the additional reasons discussed in our initial brief, the holding and rationale of the <a href="Hertz">Hertz</a> decision do not apply here.

#### II. Defendants are entitled to summary judgment on plaintiffs' claims regarding uniformity.

### A. Uniformity standards

In their Response (at 11), plaintiffs recite the basic requirements of the Uniformity Clause, but they fail to acknowledge the rules that we summarized in our initial brief. These include the rules that:

- broad latitude is afforded to legislative classifications;
- the court is not required to have proof of perfect rationality as to each and every taxpayer;
- the plaintiff may not rely upon hypothetical situations;
- the plaintiff may not rely upon infrequent situations;
- the plaintiff may not rely upon scenarios that do not affect him or her; and
- the Uniformity Clause was not designed as a straitjacket for the legislature.

See Memorandum at 13 - 14 and cases cited therein.

#### B. Non-residents

In our initial brief, we explained that there are real and substantial differences between residents and non-residents which justify allowing providers to use the rules set forth in the Mobile Sourcing Act when billing their customers, the result of which is that providers collect the tax from residents but not non-residents. In their Response, plaintiffs argue that "residents and non-residents who use streaming services in Chicago both receive the same protection and benefits from the City." Response at 12. This argument fails to recognize that residents receive protection and benefits on a regular and ongoing basis, whereas non-residents are here only on occasion as visitors. Thus, even if some of the protections and benefits are the same, the

magnitude is not. See Williams v. City of Chicago, 66 Ill. 2d 423, 435 (1977) (upholding a lower tax rate for nonresidents because "it could reflect a determination by the city council that nonresidents make less use of city services than do residents ...").<sup>6</sup>

Plaintiffs point out that when venues sell tickets to non-residents for Chicago events such as sports, theater and concerts, they collect the amusement tax from those non-residents. Response at 12. This is possible because the venues know that the events will take place at a fixed location in Chicago, and they know that the non-residents' primary purpose in buying the tickets is to obtain the privilege of attending those events at those locations. The fact that non-residents pay tax for such stationary amusements does not mean that the City must – or should require providers of streaming services to collect tax from non-residents who only sometimes use those services in Chicago while visiting. Unlike Chicago residents, non-residents do not pay their subscription fees primarily for the privilege of using their services in Chicago.

Plaintiffs argue that "the City cannot rely on the Mobile Sourcing Act" as a basis for assuming that residents will use their streaming services in Chicago more frequently than non-residents (Response at 12), but that is not the case. As stated in our initial brief (at 13):

Even assuming that the Act applies only to streaming services provided by telecommunications carriers, there is no reason to believe that the presumption of primary use would be any less accurate for streaming services provided by other businesses, as they involve the same services, received on the same mobile devices. Indeed, it would be illogical to assume that the uses would be any different, just because the providers are different.

Plaintiffs also argue that the justification of administrative convenience may not be used where it is achieved "arbitrarily." Response at 13. Here there is nothing arbitrary about the City's approach. All that Section G.1 does is allow providers to use the rules set forth in the

<sup>&</sup>lt;sup>6</sup> In addition, residents receive many benefits that non-residents do not receive, such as the right to vote in local elections and the right to use the public schools.

Mobile Sourcing Act when billing their customers, and those rules correctly assume that customers use their mobile devices primarily in their place of residence. This is consistent with plaintiffs' own testimony, and plaintiffs have provided no evidence that it is not also consistent with the facts for the vast majority of Chicago residents. Moreover, Section G.1 expressly states that any presumption of taxability is rebuttable, which allows flexibility for any rare exceptions that may occur.

#### C. AADs

In our initial brief, we described a number of real and substantial differences between the Products and AADs. Memorandum at 15-16. In their Response, plaintiffs do not dispute those differences. Instead, they question whether the differences justify the City imposing a tax of \$150 per year on each AAD, rather than a 9% amusement tax based on the amounts that customers pay to use the AADs. Response at 14-15. As we explained in our initial brief, requiring owners of bars, restaurants and arcades to collect a percentage-based tax from patrons who pay small amounts of money to play individual songs or games, often using coins, would be administratively inconvenient for the businesses, their customers, and the Department of Finance ("Department"). Memorandum at 16.

Plaintiffs argue that there would be no inconvenience to the City (Response at 16), but they provide no support for that statement, and it is clearly incorrect. The current system is simple: once a year, a licensing official counts the number of AADs in an establishment, charges the establishment \$150 per AAD, and puts compliance stickers on each AAD. Under plaintiffs' proposal, the Department would have to process returns, its employees would have to audit each establishment for compliance with a 9% tax on receipts, and non-compliance would be difficult to detect because much of the revenue from AADs is received in the form of cash. See Paper

Supply Co. v. City of Chicago, 57 Ill. 2d 553, 574 (1974) ("Administrative convenience and expense in the collection or measurement of the tax are alone a sufficient justification ..."); DeWoskin v. Loew's Chicago Cinema, Inc., 306 Ill. App. 3d 504, 521 (1st Dist. 1999).

Plaintiffs also argue that administrative convenience must be to the governmental entity, as opposed to businesses or customers. Response at 16. First, as noted, the system for taxing AADs is administratively convenient for the City. Second, while the cases cited by plaintiffs did involve administrative convenience to a governmental entity, they do not say that administrative convenience to businesses or customers cannot also be a legitimate justification. Indeed, such a limitation would be inconsistent with case law concerning the Uniformity Clause, which requires only a reasonable relationship to the object of the legislation or to public policy, Geja's Café v. Metropolitan Pier and Exposition Authority, 153 Ill. 2d 239, 247 (1992). Certainly, convenience to businesses and customers is a legitimate public policy concern.

Plaintiffs also argue that "customers of streaming services *always* pay more tax than customers of automatic amusement devices." Response at 17 (emphasis in original). This assumes that customers of AADs do not pay any pass-on of the \$150 tax paid by AAD owners, as a part of the prices that owners charge for the use of their AADs. It also assumes that owners would always charge their customers 9% more in total if the 9% tax applied, rather than absorb the tax themselves. In fact, there is no reason to believe that either assumption is correct, nor is there any reason to believe that a given owner would behave differently in response to one tax versus the other. In short, our initial point remains valid – plaintiffs have no basis for assuming that a 9% tax would always be higher than a flat tax of \$150 per year. See Memorandum at 16.

As we stated in our initial brief, this case is similar to <u>Peoples Gas Light and Coke</u> <u>Company v. City of Chicago</u>, 9 III. 2d 348 (1956), where the court held that taxing sellers of natural gas differently from sellers of electricity was permissible. Memorandum at 17. Plaintiffs do not address <u>Peoples Gas</u> or explain why the same rationale should not apply to their arguments about AADs.

#### D. Live Cultural Performances

In our initial brief, we described a number of real and substantial differences between the Products and live cultural performances. Memorandum at 19 - 20. In their Response, plaintiffs do not dispute those differences. Instead, they question whether the differences justify an exemption or lower rate for certain live cultural performances.<sup>7</sup>

Plaintiffs argue that "[t]he City's purpose to foster the production of live performances can be fulfilled by customers watching such performances via streaming services since City residents who view such performances on the Internet can be just as enriched as persons who view them in person, and those who produce such performances can profit from having them sold through streaming services." Response at 18. Not only is this argument incorrect, it is based on a non-existent scenario, as it ignores plaintiffs' own testimony that the Products do not stream live cultural performances. See Memorandum Statement of Facts ¶¶ 2, 4-5.

Indeed, plaintiffs have not identified a single live cultural performance that was offered through one of the Products, let alone a charge for such a performance, separate and apart from the fixed monthly subscription fees. By arguing that the City should exempt charges for live cultural performances that are streamed, plaintiffs are relying on a purely <a href="https://www.hypothetical">hypothetical</a> (and in fact imaginary) situation. Moreover, the Illinois Supreme Court has already recognized that the goal of fostering the production of live performances would not be advanced by "movies,

<sup>&</sup>lt;sup>7</sup> Effective January 1, 2018, there no longer is a lower rate for live cultural performances; however, certain live cultural performances (at venues of 1500 an under) are still exempt.

television, promotional shows, [or] performances at adult entertainment cabarets ..." <u>Pooh-Bah</u> <u>Enterprises, Inc. v. County of Cook</u>, 232 Ill. 2d 463, 496 (2009). In this context, a service such as Netflix is no different from movies or television.

Plaintiffs argue that the City "switches" its justification when it notes that live cultural performances attract tourists and increase business at hotels, restaurants and stores. Response at 19. This is incorrect. When it passed the ordinance exempting live performances at certain small venues, the City Council referenced the purpose of fostering "the production of live performances that offer theatrical, musical or cultural enrichment to the city's residents and visitors." See Memorandum at 18. There is nothing inconsistent between that purpose and the fact that live performances attract tourists and increase business. We noted the latter point in our initial brief because plaintiffs have argued that streaming must be treated the same as live performances. The issue of streaming was not before the City Council when it passed the exemption. In any event, the law is clear that "[t]he reasons justifying the classification ... need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it." Empress Casino Joliet Corp. v. Giannoulias, 231 III. 2d 62, 76 (2008) (emphasis added).

Plaintiffs further argue that "if the City's real justification is attracting tourists and increasing business," then it has "no basis for exempting only ... cultural performances" and not other live events such as sports, which likewise attract tourists and increase business. Response at 19. This ignores the City Council's findings that small venues presenting live cultural performances "often have the most difficulty absorbing or passing on any additional costs," and that "[c]osts faced by those ... venues are substantial, and such performances often require governmental support since they could not otherwise flourish." See Memorandum at 19. The

same findings do not apply to professional sports, and plaintiffs' suggestion that they should be treated the same is unfounded. Moreover, even if plaintiffs' suggestion did have merit, the fact that a law could conceivably have been drafted differently does not make it unlawful. <u>Geja's</u>, supra, 153 Ill. 2d at 252 (rejecting plaintiffs' arguments as "boiling down to mere assertions that they can draw better taxing lines than the General Assembly").

## III. Defendants are entitled to summary judgment on plaintiffs' claims under the ITFA.

Plaintiffs argue that the City's arguments concerning AADs and live cultural performances "fail under the ITFA for the same reason they fail under the Uniformity Clause." Response at 21. In fact, as long as there is a real and substantial difference between a service delivered over the Internet and a service delivered through other means, there is no ITFA violation, because the ITFA requires that the services be "similar." In response to our uniformity arguments, plaintiffs have questioned whether the differences among the Products, AADs and live cultural performances justify differing treatment under the Uniformity Clause, but they have not disputed that the differences exist. Thus, under the undisputed facts, plaintiffs have not met their burden of proving a violation of the ITFA.

<sup>&</sup>lt;sup>8</sup> Plaintiffs suggest that the differences cited by defendants are all based on the fact that "one type of service is delivered on the Internet and the other is not." Response at 20. This is incorrect. For example, traditional cable television is not delivered over the Internet, but it differs from AADs and live cultural events in many of the same ways as does Netflix, and it too is taxed differently from AADs and live cultural events.

- IV. <u>Defendants are entitled to summary judgment on plaintiffs' claims under the Commerce Clause.</u>
  - A. As resident consumers, plaintiffs do not have standing to bring a challenge under the Commerce Clause, and defendants are entitled to summary judgment on that basis alone, without reaching the merits.

In our initial brief, we made the following points:

"[T]he Commerce Clause prohibits economic protectionism – that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." Geja's, supra, 153 Ill. 2d at 256, quoting New Energy Co. v. Limbach, 486 U.S. 269, 273 – 4 (1988). "It is not a purpose of the Commerce Clause to protect state residents from their own state taxes." *Id.*, quoting Goldberg v. Sweet, 488 U.S. 252, 266 (1989). "Thus, the class protected by the commerce clause is competitors, not consumers ..." *Id.* (emphasis in original). See also Terry v. Metropolitan Pier and Exposition Authority, 271 Ill. App. 3d 446, 455 (1995) (affirming dismissal of Commerce Clause challenge to the MPEA airport departure tax and noting that the plaintiffs had not pled how they were part of interstate commerce). Here, Plaintiffs are all resident consumers – not non-resident businesses. For this reason alone, defendants are entitled to summary judgment on plaintiffs' claims under the Commerce Clause, without even reaching the merits. Memorandum at 21 – 22.

In response, plaintiffs do not dispute the law that we quote; rather, they argue that the quotes are from "the portions of the decisions that ... concern the merits of the plaintiffs' claims, not standing." Response at 21. Whether it is standing or the merits, the result is the same – plaintiffs cannot successfully assert a Commerce Clause claim based on the fact that the City is taxing them as resident consumers.

Quill Corp. v. North Dakota, 504 U.S. 298 (1992), cited by plaintiffs (Response at 23, 24), was brought by an out-of-state business, alleging that it had insufficient contacts (or "nexus") with North Dakota to justify that state's requirement that it collect the state's use tax from North Dakota consumers to whom it sold goods. Neither Ruling #5 nor Section G.1 addresses the issue of nexus, and that issue has nothing to do with this case.

Plaintiffs argue that they have standing because they pay the amusement tax. Response at 22. That may give them standing to assert their other claims, but it does not give them standing to assert their Commerce Clause claim, because the Commerce Clause is not intended to protect resident consumers.

# B. The undisputed facts do not support a facial or as-applied challenge to the Ordinance under the Commerce Clause.

Plaintiffs' primary argument here is that the correct standard to be applied to a facial challenge is one in which a plaintiff must establish that the law is unconstitutional "in all applications." Response at 22 - 23. For the reasons discussed above, even assuming that is the correct standard, plaintiffs have failed to meet it. Under the undisputed facts, the tax correctly applies to plaintiffs' entire monthly subscription fees, and the fact that they sometimes use the Products outside of Chicago does not make the Ordinance unconstitutional.

# C. <u>Congress has authorized use of the Mobile Sourcing Act.</u>

Plaintiffs repeat their argument that the Mobile Sourcing Act does not apply to streaming services. Response at 23. As noted above, however, plaintiffs acknowledge that "cellular service providers like Verizon and Sprint" could be covered by the Act, and they also acknowledge that such providers "could additionally provide streaming services." Response at 11. Our main point here is that if using the rules set forth in the Mobile Sourcing Act for streaming services does not violate the Commerce Clause when the services are provided by telecommunications companies, there can be no possible basis for concluding that using the same rules for streaming services violates the Commerce Clause when the services are instead provided by companies such as Netflix, Hulu or Spotify. Memorandum at 22.

## D. The Ordinance complies with the Commerce Clause.

In our initial brief, we explained in detail why the Ordinance complies with all four requirements of the Commerce Clause, as interpreted and applied in Goldberg v. Sweet, 488 U.S. 252 (1989). Memorandum at 22 – 25. As to the first requirement, plaintiffs argue that the Ordinance "does not ensure substantial nexus between the City and activities it is taxing." Response at 24. In making this argument, plaintiffs assume (i) that the activity being taxed is use, and (ii) that the requirement is not met unless all of the use is always in the City. For the reasons discussed above, both of these assumptions are incorrect. First, the City is taxing fees paid to obtain a privilege, regardless of actual use. Second, even if the City were taxing use, it is undisputed that the vast majority of plaintiffs' use takes place in Chicago, which certainly qualifies as "substantial nexus."

Plaintiffs argue that "the Mobile Sourcing Act is irrelevant because it does not pertain to taxation of streaming services." Response at 24. As we explain above, the Act applies to streaming services when they are provided by telecommunications companies, and if use of the rules set forth in the Act by those companies is deemed by Congress to satisfy the requirements of the Commerce Clause, there is no reason to conclude that use of the same rules by other providers does not also satisfy those requirements - nor do plaintiffs suggest any such reason.

Plaintiffs argue that "a tax must apply only to that portion of the revenues from the interstate activity that reasonably reflects the in-state component of the activity." Response at 24 – 25. This ignores the undisputed fact that the subscription fees for the Products are set amounts that do not vary based on level or location of use. Thus, there is no "portion of the revenues" that relates to a separate interstate or in-state "component." It also ignores Goldberg v. Sweet, 488 U.S. 252, 264 - 265 (1989), where the Court held that the external consistency test "is

essentially a practical inquiry" and noted that attempting to track the location of each individual use "would produce insurmountable administrative and technological barriers."

Plaintiffs cite <u>Irwin Industrial Tool v. Illinois Department of Revenue</u>, 238 Ill. 2d 332 (2010) (Response at 25), but that case supports defendants. There, the Illinois Supreme Court held that the application of the State's use tax to the full price paid for an airplane was <u>permissible</u>, even though the airplane was used in many places other than Illinois, where it was registered.

Plaintiffs assert that "[t]he City just assumes that customers of streaming services with Chicago billing addresses do not use such services outside of Chicago at all." Response at 25. That is not correct. We know that Chicago residents sometimes use streaming services outside of Chicago. But the undisputed facts show that the overwhelming majority of plaintiffs' use of the Products occurred in Chicago, which supports the conclusion that plaintiffs' primary purpose in paying their fixed monthly subscription fees is to obtain the privilege to use the Products in Chicago. As we explained above, this means that their entire subscription fees are taxable.

Finally, plaintiffs return to their argument that the City may not tax them if it does not also tax non-residents when they use the Products in Chicago. Response at 25. This assumes that non-residents pay their subscription fees primarily for the privilege of using the Products in Chicago, which is not the case. It also assumes that collecting tax from non-residents would be feasible, which again is not the case. See Goldberg, 488 U.S. at 264 – 265 (the external consistency test "is essentially a practical inquiry.").

### Conclusion

For the reasons stated above, and in our initial brief, defendants' cross motion for summary judgment should be granted. Under the undisputed facts, plaintiffs have not met their burden of establishing that the Ordinance is invalid, either facially or as-applied to them.

Dated: January 12, 2018

Weston Hanscom
Steven Tomiello
Marques Berrington
City of Chicago, Department of Law
Revenue Litigation Division
30 North LaSalle Street, Suite 1020
Chicago, IL 60602
(312) 744-9077/7803/6995
Steven.Tomiello@cityofchicago.org
Attorney No. 90909

Respectfully submitted,

By:

```
STATE OF ILLINOIS)
 1
                       ) SS:
    COUNTY OF C O O K)
 2
 3
     IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
            COUNTY DEPARTMENT, LAW DIVISION
 4
 5
    MICHAEL LA BELL, et al.,
                                     CERTIFIED
 6
            Plaintiffs,
                                    TRANSCRIPT
 7
                                    No. 15 CH 13399
        VS.
 8
    THE CITY OF Chicago,
 9
    et al.,
10
            Defendants.
            The deposition of EMILY ROSE, via
11
    Skype, taken before Kathleen P. Lipinski,
12
    Certified Shorthand Reporter and Notary
13
    Public, taken pursuant to the provisions of
14
    the Illinois Code of Civil Procedure and the
15
    Rules of the Illinois Supreme Court thereof
16
    pertaining to the taking of depositions for
17
    the purpose of discovery at 30 North LaSalle
18
    Street, 16th Floor, Chicago, Illinois,
19
    commencing at 1:00 p.m. on the 9th day of
20
21
    November, 2017.
22
23
```

EXHIBIT

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

24

1	APPEARANCES:
2	Mr. Toffwar Cabrah
2	Mr. Jeffrey Schwab (Attorney at Law)
3	190 South LaSalle Street
4	Suite 1500
4	Chicago, Illinois 60603
5	Phone: (312) 263-7668
5	jschwab@libertyjusticecenter.org
6	Jaciiwane in Der cy Jane 1000 com 001 1019
0	On behalf of the Plaintiffs;
7	on bendir of the final and the first of the
8	Mr. Marques Berrington
	Mr. Weston W. Hanscom
9	(Corporation Counsel for the City of
	Chicago, Department of Law, Revenue
10	Litigation Division)
	30 North LaSalle Street
11	Suite 1020
	Chicago, Illinois 60602
12	Phone: (312) 744-6995 Marques.Berrington@cityofchicago.org
17	whanscom@cityofchicago.org
13	whanscomeertyorenreago.org
14	On behalf of the Defendants.
7.4	on behalf of one belefication
15	
10	* * *
16	
10	
17	
_ /	
18	
2.0	
19	
10	
20	
20	
21	
24	
22	
23	
24	

1	INDEX	
2	WITNESS	EXAMINATION
3	EMILY ROSE	
4	By Mr. Berrington	04
5		
6		
7	EXHIBITS	
8	ROSE DEPOSITION EXHIBIT	PAGE
9	Nos. 1 and 2	04
10		
11		
12		
13		
14		
15		
16		•
17		
18		
19		
20		
21		
22		*
23		
24		

(Exhibit Nos. 1-2 marked 1 as requested.) 2 (Witness sworn.) 3 4 WHEREUPON: EMILY ROSE, 5 called as a witness herein, having been first duly sworn, was examined and testified as follows: 9 EXAMINATION BY MR. BERRINGTON: 10 Please state your name for the 11 0 12 record. Emily Rose. A 13 Ms. Rose, I'll just ask that all of 14 your answers today be an audible answer so 15 the court reporter can take down your 16 17 answers. Where do you live? 18 I live in Oak Ridge, Tennessee. 19 How long have you approximately 20 Q lived in Oak Ridge, Tennessee? 21 Approximately 13 months. 22 A Where did you live before Oak 23 Q

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

24

Ridge, Tennessee?

- 1 A Chicago, Illinois.
- Q What was the approximate time
- 3 period in which you lived in Chicago,
- 4 Illinois?
- 5 A September 2014 through
- 6 September 2016.
- 7 Q So I'm going to refer to what's
- 8 been marked as Deposition Exhibit Number 1.
- 9 I believe your attorney has seen it, so that
- 10 would be the document, the declaration, that
- 11 has the earlier date for your reference; and
- 12 the one later, Number 2, would be the one
- 13 with the later date.
- 14 So do you recognize this
- 15 document?
- 16 A Yes.
- 17 Q And when I say "this document," I
- 18 mean Deposition Exhibit Number 1?
- 19 A Yes.
- 20 O What is this document?
- 21 A This is my deposition.
- 22 Q Do you mean declaration?
- 23 A My declaration.
- 24 Q And on page number 2 of Exhibit

- 1 Number 1, is that your signature?
- 2 A Yes.
- Q I'm going to show what's been
- 4 marked as Exhibit Number 2 to your attorney.
- 5 This would be the second document. Do you
- 6 recognize this?
- 7 A Yes.
- 8 Q What is it?
- 9 A It's my declaration.
- 10 Q On the second page of Deposition
- 11 Exhibit Number 2, is that your signature?
- 12 A Yes.
- 13 Q Can you tell me what is the
- 14 difference between Deposition Exhibit
- 15 Number 1 and Deposition Exhibit Number 2?
- 16 A Exhibit Number 2 includes
- 17 additional months that I paid the Netflix --
- 18 the amusement tax on Netflix.
- 19 Q Are there any other differences?
- 20 A Not that I'm aware of.
- 21 Q So as you know, this lawsuit is
- 22 about the city of Chicago amusement tax, and
- 23 both of -- your prior declaration as well as
- 24 your updated declaration makes statements

- 1 regarding the fact that you paid amusement
- 2 tax for months in which you were no longer a
- 3 resident of Chicago, correct?
- 4 A Yes.
- 5 Q What is your understanding of how
- 6 you were charged the amusement tax despite
- 7 the fact that you were no longer a resident
- 8 of the city?
- 9 A The address in my Netflix account
- 10 was still my Chicago address.
- 11 Q When did you first notice that you
- 12 were being charged the tax despite no longer
- 13 being a resident of the city?
- 14 A I noticed it when I actually went
- 15 to cancel my account in December 2016.
- 16 Q When you noticed the charge, did
- 17 you take any action?
- 18 A I did not.
- 19 Q So you never contacted Netflix?
- 20 A No.
- 21 Q Have you ever re-subscribed to
- 22 Netflix after cancelling your account in
- 23 December of 2016?
- 24 A No.

- 1 Q So December of 2016 was the last
- 2 time that you were charged for the use of a
- 3 Netflix account?
- 4 A Yes.
- 5 Q When you moved from Chicago to
- 6 Tennessee, did you notify your credit card
- 7 companies of a change of address?
- 8 A Yes.
- 9 Q When did you notify them?
- 10 A The best that I can recall, it was
- 11 in November 2016.
- 12 Q How did you notify them?
- 13 A I updated -- Well, one credit card
- 14 I updated it in the online portal, and then
- 15 my other -- my debit card with my bank, I
- 16 notified my bank. I e-mailed them to notify
- 17 them.
- 18 Q Do you own a cellphone?
- 19 A Yes.
- 20 Q When you moved from Chicago to
- 21 Tennessee, did you notify your cellphone
- 22 company of a change of address?
- 23 A No.
- 24 Q Or did you otherwise update your

- 1 information with the cellphone company with
- 2 respect to a change of address?
- No. I'm on a family plan, so no.
- 4 Q When you say you are on a family
- 5 plan, do you mean that someone else is the
- 6 account holder?
- 7 A Yes.
- 8 O So you've never personally paid any
- 9 cellphone bill?
- 10 A No.
- 11 Q I just ask because sometimes
- 12 there's secondary account holders.
- 13 A Oh, no.
- MR. BERRINGTON: We're just going
- 15 to take a minute and go off the record. I'm
- 16 going to have a short discussion with my
- 17 deputy, and then we might have some
- 18 follow-up questions. We might not.
- off the record for a moment.
- 20 (Discussion had off the
- 21 record.)
- MR. SCHWAB: Okay, back on the
- 23 record.
- MR. BERRINGTON: We don't have any

1	follow-up questions.
2	MR. SCHWAB: And I don't have any
3	questions either.
4	MR. BERRINGTON: Thank you.
5	MR. SCHWAB: We'll also waive
6	signature on this one.
7	(Witness excused.)
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	

24

- 1 STATE OF ILLINOIS )
  ) SS:
- 2 COUNTY OF C O O K )
- I, KATHLEEN P. LIPINSKI, a Notary
- 4 Public within and for the County of Cook,
- 5 State of Illinois, and a Certified Shorthand
- 6 Reporter of said state do hereby certify:
- 7 That previous to the commencement of
- 8 the examination of the witness, the witness
- 9 was duly sworn to testify the whole truth
- 10 concerning the matters herein;
- 11 That the foregoing deposition
- 12 transcript was reported stenographically by
- me, was thereafter reduced to typewriting
- 14 under my personal direction, and constitutes
- 15 a true record of the testimony given and the
- 16 proceedings had;
- 17 That the said deposition was taken
- 18 before me at the time and place specified;
- 19 That the said deposition was adjourned
- 20 as stated herein;
- 21 That I am not a relative or employee
- 22 or attorney or counsel, nor a relative or
- 23 employee of such attorney or counsel for any
- 24 of the parties hereto, nor interested

1	directly or indirectly in the outcome of	
2	this action.	
3	IN WITNESS WHEREOF, I do hereunto se	e t
4	my hand and affix my seal of office at	
5	Chicago, Illinois, this 21st day of	
6	November, 2017.	
7		
8		
9		
10		
11	Have R Lypnski	
12	Tava Japanen	
13	KATHLEEN P. LIPINSKI, CSR	
14		
15		
16		
17		
18		
19		
20	CSR 084-003808	
21		
22		
23		
24		

	0.64245	2.0.7.0.10.21.	11:11	6:21
	8:6,13,15 cellphone (4)	3:8;5:8,18,21; 6:10,14,15;11:11,	11.11	LIPINSKI (2)
$\mathbf{A}$		17,19	G	11:3;12:13
	8:18,21;9:1,9		0	Litigation (1)
account (6)	Certified (1)	deputy (1) 9:17	given (1)	2:10
7:9,15,22;8:3;9:6,	11:5		given (1) 11:15	live (3)
12	certify (1)	despite (2)	11:15	4:18,19,23
ection (2)	11:6	7:6,12	II	lived (2)
7:17;12:2	change (3)	difference (1)	H	4:21;5:3
etually (1)	8:7,22;9:2	6:14		
7:14	charge (1)	differences (1)	hand (1)	long (1)
dditional (1)	7:16	6:19	12:4	4:20
6:17	charged (3)	direction (1)	Hanscom (1)	longer (3)
ddress (5)	7:6,12;8:2	11:14	2:	7:2,7,12
7:9,10;8:7,22;9:2	Chicago (11)	directly (1)	hereby (1)	78. AF
djourned (1)	2:,,;5:1,3;6:22;	12:1	11:6	M
11:19	7:3,10;8:5,20;12:5	discussion (2)	herein (3)	
	City (4)	9:16,20	4:6;11:10,20	makes (1)
ffix (1)	2:9;6:22;7:8,13	Division (1)	hereto (1)	6:24
12:4	commencement (1)	2:10	11:24	marked (3)
musement (4)	11:7	document (5)	hereunto (1)	4:1;5:8;6:4
6:18,22;7:1,6	companies (1)	5:10,15,17,20;6:5	12:3	Marques (1)
PPEARANCES (1)	8:7	down (1)	holder (1)	2:8
2:1				
pproximate (1)	company (2)	4:16	9:6	MarquesBerrington@cityofchicagoorg 2:
5:2	8:22;9:1	duly (2)	holders (1)	
pproximately (2)	concerning (1)	4:7;11:9	9:12	matters (1)
4:20,22	11:10		_	11:10
attorney (5)	constitutes (1)	E	I	mean (3)
2:3;5:9;6:4;11:22,	11:14			5:18,22;9:5
23	contacted (1)	earlier (1)	Illinois (7)	might (2)
	7:19	5:11	2:,;5:1,4;11:1,5;	9:17,18
udible (1)	Cook (1)	either (1)	12:5	minute (1)
4:15	11:4	10:3	includes (1)	9:15
ware (1)	Corporation (1)	else (1)	6:16	moment (1)
6:20	2:9	9:5	indirectly (1)	9:19
	Counsel (3)	e-mailed (1)	12:1	months (3)
В		8:16	information (1)	4:22;6:17;7:2
	2:9;11:22,23			moved (2)
ack (1)	COUNTY (2)	EMILY (3)	9:1	8:5,20
9:22	11:2,4	3:3;4:5,13	interested (1)	0.5,20
ank (2)	court (1)	employee (2)	11:24	N
8:15,16	4:16	11:21,23	-	N
ehalf (2)	credit (2)	<b>EXAMINATION (3)</b>	J	445
2:,14	8:6,13	3:2;4:9;11:8		name (1)
	CSR (2)	examined (1)	Jeffrey (1)	4:11
Serrington (6)	12:13,20	4:7	2:	Netflix (6)
2:8;3:4;4:10;9:14,		excused (1)	jschwab@libertyjusticecenterorg (1)	6:17,18;7:9,19,
24;10:4	D	10:7	2:	22;8:3
est (1)		EXHIBIT (10)	2.	nor (2)
8:10	data (2)	3:8;4:1;5:8,18,24;	K	11:22,24
ill (1)	date (2)		XX.	North (1)
9:9	5:11,13	6:4,11,14,15,16	TA A COURT TO EASILY (CA)	2:
oth (1)	day (1)	17	KATHLEEN (2)	
6:23	12:5	F	11:3;12:13	Nos (2)
	debit (1)			3:9;4:1
C	8:15	fact (2)	L	Notary (1)
	December (3)	7:1,7		11:3
Hod (i)	7:15,23;8:1 ·	family (2)	LaSalle (2)	notice (1)
alled (1)	declaration (6)	9:3,4	2:,	7:11
4:6	5:10,22,23;6:9,23,	first (2)	last (1)	noticed (2)
an (3)	24	4:7;7:11	8:1	7:14,16
4 1 6 6 10 0 10	Defendants (1)	follows (1)	later (2)	notified (1)
4:16;6:13;8:10	Defenuality (1)		5:12,13	8:16
		1.0	3.17.13	0.10
	2:14	4:8		
ancel (1) 7:15	2:14 Department (1)	follow-up (2)	Law (2)	notify (5)
ancel (1)	2:14			

		· · · · · · · · · · · · · · · · · · ·		1	
0.1	1;12:6	recognize (2)	11:18	2:13	60602 (1)
	ber (10)	5:14;6:6	SS (1)	what's (2)	2:
		,	11:	5:7;6:3	60603 (1)
	3,12,18,24;6:1,	record (6)			2:
4,1	1,15,15,16	4:12;9:15,19,21,	state (4)	WHEREOF (1)	۷.
		23;11:15	4:11;11:1,5,6	12:3	_
	O	reduced (1)	stated (1)	WHEREUPON (1)	7
		11:13	11:20	4:4	
Oak	(3)	refer (1)	statements (1)	whole (1)	744-6995 (1)
		5:7	6:24	11:9	2:12
	9,21,23			within (1)	
off (3		reference (1)	stenographically (1)		70.
9:1	5,19,20	5:11	11:12	11:4	
office	e (1)	regarding (1)	still (1)	WITNESS (7)	
12:	:4	7:1	7:10	3:2;4:3,6;10:7;	
one (		relative (2)	Street (2)	11:8,8;12:3	
	2,12;8:13;10:6	11:21,22	2:,		
	, ,	reported (1)	Suite (2)	0	
onlin					
8:1		11:12	2:4,11	0.4.(0)	
other	wise (1)	reporter (2)	sworn (3)	04 (2)	
8:2	24	4:16;11:6	4:3,7;11:9	3:4,9	
	ome (1)	requested (1)		084-003808 (1)	
12:		4:2	T	12:20	
own (		resident (3)			-
		7:3,7,13	tax (5)	1	
8:1	٥				
	D	respect (1)	6:18,22;7:2,6,12	1 (5)	
	P	9:2	Tennessee (5)	1 (5)	
		re-subscribed (1)	4:19,21,24;8:6,21	3:9;5:8,18;6:1,15	
PAG	E (3)	7:21	testified (1)	1020 (1)	
	;5:24;6:10	Revenue (1)	4:7	2:11	
paid (		2:	testify (1)	1-2 (1)	
	7;7:1;9:8	Ridge (3)	11:9	4:1	
			testimony (1)	13 (1)	
parti		4:19,21,24			
11:		ROSE (5)	11:15	4:22	
perio	d (1)	3:3,8;4:5,13,14	thereafter (1)	1500 (1)	
5:3			11:13	2:4	
nerso	nal (1)	S	today (1)	190 (1)	
11:	. ,		4:15	2:	
	nally (1)	Schwab (4)	transcript (1)		
		2:;9:22;10:2,5	11:12	2	
9:8					
Phon		seal (1)	true (1)	2 (7)	
	,12	12:4	11:15	2 (7)	
place	(1)	second (2)	truth (1)	3:9;5:12,24;6:4,	
11:		6:5,10	11:9	11,15,16	
	tiffs (1)	secondary (1)	typewriting (1)	2014 (1)	
2:		9:12	11:13	5:5	
plan (	(2)	September (2)		2016 (5)	
		5:5,6	U	5:6;7:15,23;8:1,	
9:3				11	
Pleas		set (1)			
4:1		12:3	under (1)	2017 (1)	
porta		short (1)	11:14	12:6	
8:1	4	9:16	update (1)	21st (1)	
	ous (1)	Shorthand (1)	8:24	12:5	
11:		11:5	updated (3)	263-7668 (1)	
prior		show (1)	6:24;8:13,14	2:5	
6:2		6:3	use (1)		
			8:2 ·	. 3	
	eedings (1)	signature (3)	0.2		
11:		6:1,11;10:6	**7	20 (1)	
Publi		someone (1)	W	30 (1)	
11:		9:5		2:	
		sometimes (1)	waive (1)	312 (2)	
	R	9:11	10:5	2:5,12	
		South (1)	Weston (1)		
recall	(1)	2:	2:	6	
ccall		specified (1)			
8:1	Λ.		whanscom@cityofchicagoorg (1)		

```
STATE OF ILLINOIS)
 1
                        SS:
 2
    COUNTY OF C O O K)
 3
     IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
            COUNTY DEPARTMENT, LAW DIVISION
 4
 5
    MICHAEL LA BELL, et al.,
                                     CERTIFIED
 6
            Plaintiffs,
                                    TRANSCRIPT
 7
                                   No. 15 CH 13399
       vs.
 8
    THE CITY OF CHICAGO,
 9
    et al.,
10
            Defendants.
            The deposition of NATALIE BEZEK, taken
11
    before Kathleen P. Lipinski, Certified
12
    Shorthand Reporter and Notary Public, taken
13
    pursuant to the provisions of the Illinois
14
    Code of Civil Procedure and the Rules of the
15
    Illinois Supreme Court thereof pertaining to
16
    the taking of depositions for the purpose of
17
    discovery at 30 North LaSalle Street,
18
    16th Floor, Chicago, Illinois, commencing at
19
    12:39 p.m. on the 9th day of November, 2017.
20
21
22
23
```

EXHIBIT B

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

24

1	APPEARANCES:
2	Mary Tafferson Cabrach
3	Mr. Jeffrey Schwab (Attorney at Law)
5	190 South LaSalle Street
4	Suite 1500
5	Chicago, Illinois 60603 Phone: (312) 263-7668
5	jschwab@libertyjusticecenter.org
6	On behalf of the Plaintiffs;
7	On behalf of the Flaintiffs,
8	Mr. Marques Berrington
	Mr. Weston W. Hanscom
9	(Corporation Counsel for the City of Chicago, Department of Law, Revenue
10	Litigation Division)
	30 North LaSalle Street
11	Suite 1020
	Chicago, Illinois 60602
12	Phone: (312) 744-6995
	Marques.Berrington@cityofchicago.org
13	whanscom@cityofchicago.org
14	On behalf of the Defendants.
15	
	* * *
16	
17	
18	
19	
2.0	
40	
21	
22	
	± .
23	

24

1	II	NDEX	
2	WITNESS		EXAMINATION
3	NATALIE BEZEK	\$0.	(90)
4	By Mr. Berrington	a	04
5			
6			
7			
8		IBITS	
9	BEZEK DEPOSITION EX	KHIBIT	PAGE
10	Nos. 1 and 2		04
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			· .
23			
24			

- 1 (Exhibit Nos. 1-2 marked
- as requested.)
- 3 (Witness sworn.)
- 4 WHEREUPON:
- 5 NATALIE BEZEK,
- 6 called as a witness herein, having been
- 7 first duly sworn, was examined and testified
- 8 as follows:
- 9 EXAMINATION
- 10 BY MR. BERRINGTON:
- 11 O Please state your name for the
- 12 record.
- 13 A Natalie Bezek.
- 14 O And, Ms. Bezek, I'll just ask today
- 15 that any answers you give be yes or no for
- 16 the benefit of the court reporter.
- 17 Where do you live?
- 18 A That's not a yes-or-no question,
- 19 right?
- 20 Q I mean yes or no in the sense that
- 21 there is an audible answer.
- 22 A Oh, okay, got it. I thought it was
- 23 a trick question.
- 24 1641 North Bell Avenue,

- 1 Chicago, Illinois.
- 2 Q How long have you lived at that
- 3 address?
- 4 A Three or four weeks.
- 5 Q Where did you live before that?
- 6 A Washington DC.
- 7 Q What were the approximate dates
- 8 that you lived in Washington DC?
- 9 A September 2016 to October 2017.
- 10 Q Do you remember the approximate
- 11 date that you moved to Washington DC?
- 12 A I'm not sure.
- 13 O Do you know whether or not you
- 14 started a lease in the beginning of the
- 15 month or towards the end of the month?
- 16 A I did not begin a lease until the
- 17 end of the year even though I was living in
- 18 DC.
- 19 Q Where did you live before you lived
- 20 in Washington DC?
- 21 A Chicago, Illinois.
- Q What were the approximate -- What
- 23 was the approximate time period that you
- 24 lived in Chicago?

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

- 1 A I believe it was April or March of
- 2 2014 to September 2016.
- 3 Q When you moved from Chicago to
- 4 Washington DC, do you recall whether or not
- 5 you moved closer towards the end of the
- 6 month or the beginning of the month of
- 7 September 2016?
- 8 A I believe it was mid month so,
- 9 yeah.
- 10 Q More or less around the 15th?
- 11 A Sure.
- 12 Q I'm giving you what's been marked
- 13 as Exhibit Number 1, and I'll show it to
- 14 your attorney. Do you recognize this
- 15 document?
- 16 A Yes.
- 17 Q What is it?
- 18 A A declaration.
- 19 Q Did you sign that document?
- 20 A Yes.
- 21 Q On page 2 of the declaration, is
- 22 that your signature?
- 23 A Yes.
- Q I'm going to hand your attorney

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

- 1 what's been marked as Exhibit Number 2. Do
- 2 you recognize this document?
- 3 A Yes.
- 4 Q And on the second page, is that
- 5 your signature?
- 6 A Yes.
- 7 Q What is the difference between
- 8 Exhibit Number 1 and Exhibit Number 2?
- 9 A It appears that it clarifies that I
- 10 moved back to Chicago.
- 11 Q Is there anything else different?
- 12 A It also looks like it clarifies the
- 13 specific dates when I did subscribe to
- 14 Spotify.
- 15 Q So, as you know, this lawsuit
- 16 concerns the city of Chicago's amusement
- 17 tax, and your declaration addresses the
- 18 issue of being charged the tax when you were
- 19 not living in the city of Chicago, correct?
- 20 A Correct.
- 21 Q What is your understanding of how
- 22 you were charged the tax when you were not a
- 23 resident of the City of Chicago?
- 24 A My understanding is that I was

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

- 1 charged the tax based on the zip code that
- 2 was in my Spotify account.
- 3 Q When did you first notice that you
- 4 were being charged the tax for your Spotify
- 5 account even though you moved out of
- 6 Chicago?
- 7 A I don't remember.
- 8 Q Do you remember anything else that
- 9 you did after you would have noticed that
- 10 you were being charged the tax still?
- 11 A No.
- 12 Q Did you ever contact Spotify to
- 13 notify them that you were being charged the
- 14 tax?
- 15 A No.
- 16 Q Did you ever update your address in
- 17 your Spotify account?
- 18 A No.
- 19 Q And when I say "address," did you
- 20 ever update your zip code in your Spotify
- 21 account?
- 22 A No.
- 23 Q You stated earlier that you moved
- 24 back to Chicago about three or four weeks

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

- 1 ago, correct?
- 2 A Yes.
- 3 Q Are you still a Spotify subscriber?
- 4 A Yes.
- 5 Q Are you still being charged the
- 6 tax?
- 7 A I have not looked recently.
- Q Do you recall the billing date on
- 9 your Spotify account?
- 10 A No.
- 11 Q When you moved from Chicago to
- 12 Washington DC, did you notify the credit
- 13 card companies of a change of address?
- 14 A Yes.
- 15 Q How did you notify them?
- 16 A I likely just updated through the
- 17 website.
- 18 Q Do you own a cellphone?
- 19 A Yes.
- 20 Q Do you pay telecom tax on your
- 21 cellphone bill?
- 22 A I do not know because I never
- 23 looked.
- Q Did you notify your cellphone

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

- 1 provider of a change of address when you
- 2 moved from Chicago to Washington DC?
- 3 A I should clarify that my dad pays
- 4 for my cellphone bill, so I don't -- the
- 5 account is in his name and address.
- 6 Q So you never told him to notify the
- 7 provider of the change of address?
- 8 A Well, since the account is in his
- 9 name and his address, there -- I wasn't
- 10 aware of a need to.
- 11 Q I see. So there is not a separate,
- 12 you know, secondary account holder
- 13 information where it would have your
- 14 specific address?
- 15 A Not that I know of.
- 16 Q Did you notify any other businesses
- 17 of a change of address when you moved?
- 18 A My dentist.
- 19 Q Any other businesses?
- 20 A Not that I can think of.
- 21 Q So is it your understanding that
- 22 you were charged the tax because you didn't
- 23 change your billing zip code in your Spotify
- 24 account?

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

- 1 A Yes.
- MR. BERRINGTON: If we could just
- 3 take one minute, and there may or not may be
  - 4 a couple more additional questions. There
  - 5 may not be any.
  - 6 (WHEREUPON, a short break
- 7 was taken.)
- MR. BERRINGTON: Okay, if we could
- 9 just go back on the record.
- 10 BY MR. BERRINGTON:
- 11 O Throughout the entire period that
- 12 you have been a Spotify subscriber, did you
- 13 ever change your zip code?
- 14 A I'm not sure.
- 15 Q If you look at your Deposition
- 16 Exhibit Number 2, it states that you were
- 17 charged the tax for December of 2016 as well
- 18 as March of 2017 through September 2017,
- 19 correct?
- 20 A Yes.
- 21 Q For those months in which you state
- 22 that you weren't a resident of Chicago, were
- 23 those the only months that you were a
- 24 subscriber to Spotify?

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

12

When I did not live in Chicago 1 A 2 after --Correct. 0 3 I believe so, after looking at my 4 Spotify receipts. 5 So would -- the break in time 0 6 between December 2016 and March of 2017, how 8 would you explain that gap? I was not using the service, so I 9 did not want to pay for the service. 10 Q So you de-activated and then 11 reactivated it? 12 Yes. 13 A MR. BERRINGTON: I think that's 14 all. 15 MR. SCHWAB: I don't have anything. 16 THE COURT REPORTER: Signature? 17 MR. SCHWAB: We'll waive. 18 (Witness excused.) 19 20 21 22

23

24

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

- 1 STATE OF ILLINOIS )
  ) SS:
- 2 COUNTY OF C O O K )
- 3 I, KATHLEEN P. LIPINSKI, a Notary
- 4 Public within and for the County of Cook,
- 5 State of Illinois, and a Certified Shorthand
- 6 Reporter of said state do hereby certify:
- 7 That previous to the commencement of
- 8 the examination of the witness, the witness
- 9 was duly sworn to testify the whole truth
- 10 concerning the matters herein;
- 11 That the foregoing deposition
- 12 transcript was reported stenographically by
- 13 me, was thereafter reduced to typewriting
- 14 under my personal direction, and constitutes
- 15 a true record of the testimony given and the
- 16 proceedings had;
- 17 That the said deposition was taken
- 18 before me at the time and place specified;
- 19 That the said deposition was adjourned
- 20 as stated herein;
- That I am not a relative or employee
- 22 or attorney or counsel, nor a relative or
- 23 employee of such attorney or counsel for any
- 24 of the parties hereto, nor interested

Victoria Legal + Corporate Services 800.827.7708 www.victorialcs.com

1	directly or indirectly in the outcome of
2	this action.
3	IN WITNESS WHEREOF, I do hereunto set
4	my hand and affix my seal of office at
5	Chicago, Illinois, this 21st day of
6	November, 2017.
7	
8	
9	
10	2 - 0
11	Kawa R. Lapinski
12	Cijans Greek
13	KATHLEEN P. LIPINSKI, CSR
14	
15	
16	
17	
18	
19	
20	CSR 084-003808
21	
22	
23	
2.4	

	3:,3;4:5,13,14	2:9	employee (2)	14:1
		Counsel (3)	13:21,23	information (1)
$\mathbf{A}$	bill (2)		end (3)	10:13
	9:21;10:4	2:9;13:22,23		interested (1)
account (9)	billing (2)	COUNTY (2)	5:15,17;6:5	
8:2,5,17,21;9:9;	9:8;10:23	13:2,4	entire (1)	13:24
	break (2)	couple (1)	11:11	issue (1)
10:5,8,12,24	11:6;12:6	11:4	even (2)	7:18
action (1)	businesses (2)	court (2)	5:17;8:5	
14:2		4:16;12:17	<b>EXAMINATION (3)</b>	J
additional (1)	10:16,19			9
11:4		credit (1)	3:2;4:9;13:8	T. 66 (1)
address (10)	C	9:12	examined (1)	Jeffrey (1)
5:3;8:16,19;9:13;		CSR (2)	4:7	2:
	called (1)	14:13,20	excused (1)	jschwab@libertyjusticecenterorg (
10:1,5,7,9,14,17	4:6		12:19	2:
addresses (1)	can (1)	D	EXHIBIT (7)	
7:17		2	3:;4:1;6:13;7:1,8,	K
adjourned (1)	10:20	1 1(1)	8;11:16	**
13:19	card (1)	dad (1)		Y A TOUT E TON (2)
affix (1)	9:13	10:3	explain (1)	KATHLEEN (2)
14:4	cellphone (4)	date (2)	12:8	13:3;14:13
	9:18,21,24;10:4	5:11;9:8		
ago (1)	Certified (1)	dates (2)	$\mathbf{F}$	L
9:1	13:5	5:7;7:13		
amusement (1)			finat (2)	LaSalle (2)
7:16	certify (1)	day (1)	first (2)	
APPEARANCES (1)	13:6	14:5	4:7;8:3	2:,
2:1	change (6)	DC (8)	follows (1)	Law (2)
	9:13;10:1,7,17,	5:6,8,11,18,20;	4:8	2:,3
appears (1)	23;11:13	6:4;9:12;10:2	foregoing (1)	lawsuit (1)
7:9	charged (9)	de-activated (1)	13:11	7:15
approximate (4)		12:11	four (2)	lease (2)
5:7,10,22,23	7:18,22;8:1,4,10,		5:4;8:24	5:14,16
April (1)	13;9:5;10:22;11:17	December (2)	3:4,8:24	
6:1	Chicago (17)	11:17;12:7		less (1)
around (1)	2:,,;5:1,21,24;6:3;	declaration (3)	G	6:10
6:10	7:10,19,23;8:6,24;	6:18,21;7:17		likely (1)
	9:11;10:2;11:22;	Defendants (1)	gap (1)	9:16
Attorney (5)	12:1;14:5	2:14	12:8	LIPINSKI (2)
2:3;6:14,24;	Chicago's (1)	dentist (1)	given (1)	13:3;14:13
13:22,23		10:18	13:15	Litigation (1)
audible (1)	7:16		1	2:10
4:21	City (4)	Department (1)	giving (1)	
Avenue (1)	2:9;7:16,19,23	2:	6:12	live (4)
4:24	clarifies (2)	<b>DEPOSITION (5)</b>		4:17;5:5,19;12:1
	7:9,12	3:;11:15;13:11,	Н	lived (4)
aware (1)	clarify (1)	17,19		5:2,8,19,24
10:10	10:3	difference (1)	hand (2)	living (2)
			6:24;14:4	5:17;7:19
В	closer (1)	7:7		
	6:5	different (1)	Hanscom (1)	long (1)
back (3)	code (4)	7:11	2:	5:2
	8:1,20;10:23;	direction (1)	hereby (1)	look (1)
7:10;8:24;11:9	11:13	13:14	13:6	11:15
based (1)	commencement (1)	directly (1)	herein (3)	looked (2)
8:1		14:1	4:6;13:10,20	9:7,23
begin (1)	13:7			
5:16	companies (1)	Division (1)	hereto (1)	looking (1)
beginning (2)	9:13	2:10	13:24	12:4
	concerning (1)	document (3)	hereunto (1)	looks (1)
5:14;6:6	13:10	6:15,19;7:2	14:3	7:12
behalf (2)	concerns (1)	duly (2).	holder (1)	
2:,14		4.7.13.0	10:12	M
Bell (1)	7:16	4:7;13:9	10.12	TAT
4:24	constitutes (1)	_	*	N. 1 (2)
	13:14	E	I	March (3)
benefit (1)	contact (1)			6:1;11:18;12:7
4:16	8:12	earlier (1)	Illinois (7)	marked (3)
Berrington (7)		8:23	2:,;5:1,21;13:1,5;	4:1;6:12;7:1
2:8;3:4;4:10;11:2,	Cook (1)			Marques (1)
	13:4	else (2)	14:5	1
8,10;12:14	Corporation (1)	7:11;8:8	indirectly (1)	2:8

	outcome (1)	7.22.11.22	subscribe (1)	
MarquesBerrington@cityofchicagoorg (1)	outcome (1)	7:23;11:22	7:13	**7
2:	14:1	Revenue (1)		W
natters (1)	own (1)	2:	subscriber (3)	
13:10	9:18	right (1)	9:3;11:12,24	waive (1)
nay (3)		4:19	Suite (2)	12:18
11:3,3,5	P		2:4,11	
	<u> </u>	S	sure (3)	Washington (7)
nean (1)		В		5:6,8,11,20;6:4;
4:20	PAGE (3)		5:12;6:11;11:14	9:12;10:2
nid (1)	3:;6:21;7:4	Schwab (3)	sworn (3)	website (1)
6:8	parties (1)	2:;12:16,18	4:3,7;13:9	9:17
	13:24	seal (1)		weeks (2)
ninute (1)			T	
11:3	pay (2)	14:4	1	5:4;8:24
nonth (5)	9:20;12:10	second (1)		weren't (1)
5:15,15;6:6,6,8	pays (1)	7:4	tax (11)	11:22
nonths (2)	10:3	secondary (1)	7:17,18,22;8:1,4,	Weston (1)
		10:12	10,14;9:6,20;10:22;	2:
11:21,23	period (2)		11:17	2:
More (2)	5:23;11:11	sense (1)		whanscom@cityofchicagoorg (1
6:10;11:4	personal (1)	4:20	telecom (1)	2:13
noved (9)	13:14	separate (1)	9:20	what's (2)
5:11;6:3,5;7:10;	Phone (2)	10:11	testified (1)	6:12;7:1
			4:7	
8:5,23;9:11;10:2,17	2:5,12	September (4)		WHEREOF (1)
	place (1)	5:9;6:2,7;11:18	testify (1)	14:3
N	13:18	service (2)	13:9	WHEREUPON (2)
	Plaintiffs (1)	12:9,10	testimony (1)	4:4;11:6
name (3)	2:	set (1)	13:15	whole (1)
			thereafter (1)	
4:11;10:5,9	Please (1)	14:3		13:9
NATALIE (3)	4:11	short (1)	13:13	within (1)
3:3;4:5,13	previous (1)	11:6	though (2)	13:4
reed (1)	13:7	Shorthand (1)	5:17;8:5	WITNESS (7)
		13:5	thought (1)	
10:10	proceedings (1)		4:22	3:2;4:3,6;12:19;
or (2)	13:16	show (1)		13:8,8;14:3
13:22,24	provider (2)	6:13	Three (2)	
North (2)	10:1,7	sign (1)	5:4;8:24	Y
2:;4:24	Public (1)	6:19	Throughout (1)	
		signature (3)	11:11	(1)
Nos (2)	13:4			year (1)
3:;4:1	_	6:22;7:5;12:17	today (1)	5:17
Notary (1)	R	South (1)	4:14	yes-or-no (1)
13:3		2:	told (1)	4:18
otice (1)	reactivated (1)	specific (2)	10:6	
		7:13;10:14	towards (2)	7
8:3	12:12			Z
oticed (1)	recall (2)	specified (1)	5:15;6:5	
8:9	6:4;9:8	13:18	transcript (1)	zip (4)
otify (6)	receipts (1)	Spotify (12)	13:12	8:1,20;10:23;
8:13;9:12,15,24;	12:5	7:14;8:2,4,12,17,	trick (1)	11:13
			4:23	11.13
10:6,16	recently (1)	20;9:3,9;10:23;	1	
lovember (1)	9:7	11:12,24;12:5	true (1)	0
14:6	recognize (2)	SS (1)	13:15	
Number (5)	6:14;7:2	13:	truth (1)	04 (2)
		started (1)	13:9	
6:13;7:1,8,8;	record (3)			3:,4
11:16	4:12;11:9;13:15	5:14	typewriting (1)	084-003808 (1)
	reduced (1)	state (5)	13:13	14:20
O	13:13	4:11;11:21;13:1,		
	relative (2)	5,6	U	1
				1
October (1)	13:21,22	stated (2)	7 745	
5:9	remember (3)	8:23;13:20	under (1) · ·	1 (3)
office (1)	5:10;8:7,8	states (1)	13:14	3:;6:13;7:8
	reported (1)	11:16	update (2)	
14:4				1020 (1)
ne (1)	13:12	stenographically (1)	8:16,20	2:11
11:3	reporter (3)	13:12	updated (1)	1-2 (1)
nly (1)	4:16;12:17;13:6	still (3)	9:16	4:1
11:23	requested (1)	8:10;9:3,5	using (1)	
			12:9	1500 (1)
	4:2	Street (2)	14.7	2:4
out (1) 8:5	resident (2)	2:,		15th (1)

			 nber 9, 2017
6:10 1641 (1) 4:24 190 (1) 2:			
2			
2 (5) 3:;6:21;7:1,8; 11:16 2014 (1) 6:2 2016 (5) 5:9;6:2,7;11:17; 12:7		1/27	
2017 (5) 5:9;11:18,18; 12:7;14:6 21st (1) 14:5 263-7668 (1) 2:5			
3			
30 (1) 2: 312 (2) 2:5,12			
6			
60602 (1)			
2: 60603 (1) 2:			
7			
<b>744-6995 (1)</b> 2:12			
18		**	(4 40

## CERTIFICATE OF SERVICE

I, Marques Berrington, certify that today, January 12, 2018, I caused the foregoing **Reply Memorandum in Support of Defendants' Cross-Motion for Summary Judgment** to be served on the Plaintiffs by e-mailing it to the Plaintiffs' attorney at the email address set forth below before 5:00 p.m.

By: Marques A. Berrington

Assistant Corporation Counsel

Marques A. Berrington City of Chicago, Department of Law Revenue Litigation Division 30 N. LaSalle, Suite 1020 Chicago, Illinois 60602 (312) 744-6995 Marques.Berrington@cityofchicago.org

# SERVICE LIST

Jeffrey M. Schwab
Jacob H. Huebert
Liberty Justice Center
190 S. LaSalle Street, Suite 1500
Chicago, IL 60603
jschwab@libertyjusticecenter.org
jhuebert@libertyjusticecenter.org



# **E-Notice**

2015-CH-13399

CALENDAR: 1

To: Jeffrey Michael Schwab jschwab@libertyjusticecenter.org

# NOTICE OF ELECTRONIC FILING

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS LABELL MICHAEL vs. WIDAWSKY DAN

The transmission was received on 06/21/2018 at 2:53 PM and was ACCEPTED with the Clerk of the Circuit Court of Cook County on 06/21/2018 at 3:01 PM.

### **NOTICE OF APPEAL**

Filer's Email: jschwab@libertyjusticecenter.org

Filer's Fax: (312) 263-7702

Notice Date: 6/21/2018 3:01:31 PM

Total Pages: 15

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT

COOK COUNTY RICHARD J. DALEY CENTER, ROOM 1001 CHICAGO, IL 60602

(312) 603-5031 courtclerk@cookcountycourt.com

ELECTRONICALLY FILED
6/21/2018 2:53 PM
2015-CH-13399
CALENDAR: 1
PAGE 1 of 15
CIRCUIT COURT OF

CLERK DOROTHY BROWN

# APPEAL TO THE APPELLATE COURT OF ILLINO FIRST JUDICIAL DISTRICT

# FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION TAX AND MISCELLANEOUS REMEDIES SECTION

MICHAEL LABELL, JARED LABELL,	)	
FOREST JEHLIK, NATALIE BEZEK,	)	
EMILY ROSE, ZACHARY UREVIG, and	)	Case No. 2015 CH 13399
BRYANT JACKSON-GREEN	)	
	)	(Transferred to Law)
Plaintiffs-Appellants,	)	
	)	The Honorable
v.	)	CARL ANTHONY WALKER
	)	Presiding Judge
THE CITY OF CHICAGO, and ERIN	)	
KEANE, in her official capacity as	)	
Comptroller of the City of Chicago,	)	
	)	
Defendants-Appellees.		

#### **NOTICE OF APPEAL**

Plaintiffs-Appellants Michael Labell, Jared Labell, Forrest Jehlik, Natalie Bezek, Emily Rose, Zachary Urevig, and Bryant Jackson-Green, appeal to the Illinois Appellate Court, First Judicial District, from the final and appealable opinion and order by the Honorable Carl Anthony Walker, Judge of the Circuit Court of Cook County, on May 24, 2018 entering judgment in favor of Defendants-Appellees. In that order, the Court granted Defendants-Appellees' Motion for Summary Judgment and denied Plaintiffs-Appellants' Motion for Summary Judgment seeking to enjoin the Defendants-Appellees' application of the amusement tax ordinance to Internet-based streaming services. A true and correct copy of that order is attached hereto.

By this appeal, Plaintiffs-Appellants ask that the appellate court reverse the circuit court's order and grant any other appropriate relief.

Respectfully submitted,

Jeffrey M. Schwab (#6290710) Jacob H. Huebert (#6305339) Liberty Justice Center (#49098) 190 S. LaSalle Street, Suite 1500 Chicago, Illinois 60603 Telephone (312) 263-7668 Facsimile (312) 263-7702 jschwab@libertyjusticecenter.org jhuebert@libertyjusticecenter.org

Attorneys for Plaintiffs-Appellants

#### CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

I, Jeffrey Schwab, an attorney, certify that on June 21, 2018, I served copies of the Notice of Appeal on Defendants' counsel of record by the Court's Electronic Filing System and electronic mail to Steve Tomiello (Steven.Tomiello@cityofchicago.org).

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION TAX AND MISCELLANEOUS REMEDIES SECTION

MICHAEL LABELL, ET AL.,

Plaintiffs,

v.

THE CITY OF CHICAGO, ET AL.,

Defendants.

Case No. 15 CH 13399

Honorable Carl Anthony Walker Calendar 1

# **OPINION AND ORDER**

## I. OPINION

This matter comes before the Court on Plaintiffs', Michael Labell, et al. ("Plaintiffs") and Defendants', The City of Chicago, et al. ("Defendants"), Cross Motions for Summary Judgment. Plaintiffs seek to enjoin the ruling extending Chicago's 9% "amusement tax" to cover Internet-based streaming services: (1) as a violation of the federal Internet Tax Freedom Act; (2) as a violation of the United States Commerce Clause; (3) as a violation of the uniformity clause of the Illinois Constitution; and (4) as an extraterritorial application of Defendants' taxing power. For the reasons below, Plaintiffs' Motion for Summary Judgment is denied, and Defendants' Motion for Summary Judgment is granted.

### BACKGROUND

The City of Chicago imposes a 9% tax on admission fees or other charges paid for the privilege to enter, witness, view, or participate in some activities within the City of Chicago that the Chicago Municipal Code ("Code") defines as "amusements" (the "amusement tax"). Chi. Mun. Code 4-156-020. On June 9, 2015, the City of Chicago, through its Comptroller, issued Amusement Tax Ruling #5 ("Ruling"), which declares the term "amusement" as defined by Chi. Mun. Code 4-156-010, to include "charges paid for the privilege to witness, view or participate in amusements that are delivered electronically." Ruling ¶ 8. According to the Ruling, charges paid for the privilege of "watching electronically delivered television shows, movies or videos, . . . listening to electronically delivered music, . . . and participating in games, on-line or otherwise" are subject to the amusement tax if they are "delivered to a patron (i.e., customer) in the City." Ruling ¶ 8.

The Ruling requires providers of Internet services to collect the amusement tax from their customers and remit the proceeds to the City. The Ruling adopts the sourcing rules from the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638/1 et seq. ("Mobile Sourcing Act").

It imposes the amusement tax on individuals "whose residential street address or primary business street address is in Chicago, as reflected by their credit card billing address, zip code or other reliable information." Ruling ¶ 13. The Ruling further indicates the amusement tax is imposed on the patron and applies only to the activity that takes place within the borders of Chicago. Ruling ¶ 14.

On December 17, 2015, Plaintiffs—customers of Internet services—filed their six count First Amended Complaint. On January 19, 2016, Defendants moved to dismiss the Amended Complaint. On July 21, 2016, this Court granted Defendants' 2-615 Motion to Dismiss on Counts I, II, and III, and denied Defendants' 2-615 Motion to Dismiss on Counts IV, V, and VI. On October 12, 2016, Plaintiffs filed their Second Amended Complaint. Both parties filed Cross Motions for Summary Judgment.

#### LEGAL STANDARD

Summary judgment should be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact" and the "moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2018). The interpretation of a statute is a matter of law and is thus appropriate for summary judgment. Village of Chatham v. County of Sangamon, 216 III. 2d 402, 433 (2005). When parties file cross motions for summary judgment, they agree no factual issues exist and the disposition of the case turns on the court's resolution of purely legal issues. Maryland Casualty Co. v. Dough Management Co., 2015 IL App (1st) 141520, ¶ 45.

### **DISCUSSION**

As a preliminary matter, the amusement tax is imposed by Section 4-156-020(A) of the Municipal Code of Chicago, which states, "an amusement tax is imposed upon the patrons of every amusement within the City." Section 4-156-020(G.1)<sup>1</sup> provides businesses with a method of collecting the amusement tax.

#### A. Internet Tax Freedom Act

Plaintiffs allege the amusement tax is unfairly applied, and it imposes a discriminatory tax on users of streaming services. Plaintiffs contend the amusement tax on streaming services violates the Internet Tax Freedom Act ("ITFA"). Plaintiffs also argue the City requires customers to pay the amusement tax on streaming services but not an equal tax on similar services, such as automatic amusement machines. Automatic amusement machines are machines operated with a coin, slug, token, card or similar object, or upon any other payment method, generally for use as a game, entertainment, or amusement. See Chicago Municipal Code § 4-156-150 (2016).

In addition, Plaintiffs maintain that the City taxes live performances at a lower rate than it taxes streaming services. Defendants contend the amusement tax does not violate the ITFA

<sup>&</sup>lt;sup>1</sup> In the case of amusements that are delivered electronically to mobile devices, as in the case of video streaming, audio streaming and on-line 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. If those rules indicate that the tax applies, it shall be presumed that the tax does apply unless the contrary is established by books, records or other documentary evidence.

because the activities are much different. The City asserts there is a real and substantial difference between streaming and live performances. Therefore, they are not "similar" under the ITFA.

The ITFA prohibits a state or political subdivision of a state, from imposing discriminatory taxes on electronic commerce that:

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

(ii) is not generally imposed and legally collectible at the same rate by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period; [or]

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or

information accomplished through other means.

(iv) establishes a classification of Internet access service providers or online service providers for purpose of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means.

ITFA §1105(2)(A). In this instance, Plaintiffs cannot equate live performances to movies and music streamed on-line because they are different amusements. On-line streaming services allow users to stream several movies and shows in any location during any time, while a live performance is enjoyed at a venue in the moment.

For example, the Illinois Supreme Court approved the favoring of "live fine arts performances" over other forms of amusement. Pooh-Bah Enterprises, Inc. v. County of Cook, 232 Ill. 2d 463, 496 (2009). The court noted that the goal of the exemption "is to encourage live fine arts performances in small venues" and that this goal would not be advanced by "movies, television, promotional shows, [or] performances at adult entertainment cabarets ...." Id. This Court finds live performances are not sufficiently similar to performances or movies delivered through on-line streaming services. There is a legitimate justification for the exemption for live performances in small venues because live performances foster tourism and business (hotels, restaurants, and gift shops). As stated during oral arguments, if an individual paid hundreds of dollars for a live performance and arrived at the theatre to learn that the performance must be viewed on a television monitor, the individual would find this not acceptable. This is because watching a performance on a television monitor is not in any way similar to watching a live performance. Thus, the conformity difference does not create a violation of the ITFA.

In addition, the automatic amusement machines cannot be equated to movies and music streamed on-line because there are real and substantial differences. The automatic amusement machines are stationary devices owned by businesses. The customers may not take the devices away from the establishment, the devices are shared among all of the establishment's customers, and they are operated with coins on a per-use basis. However, the on-line streaming products are used on devices owned by a consumer, and the streaming products can be used on a mobile device

at any location the customer chooses. The customer is generally the exclusive user of the on-line streaming product, and rather than paid for on a per use basis, the streaming products are paid for by credit or debit card on a monthly basis pursuant to a subscription.

This Court finds these are real and substantial differences. Plaintiffs do not dispute the differences, but instead Plaintiffs question whether the differences justify the City imposing a tax of \$150 per year on each automatic amusement device versus a 9% amusement tax based on the amount a customer pays to use the device. Defendants counter stating that a 9% tax for each use would be administratively inconvenient. This Court agrees. Requiring owners of bars, restaurants and arcades to collect a percentage-based tax from patrons who pay a small amount of money to play individual songs or games with coins would be administratively inconvenient for the businesses, customers, and the City of Chicago. Administrative convenience and expense in the collection or measurement of the tax alone are a sufficient justification for the difference between the treatments in taxes. See Paper Supply Co. v. City of Chicago, 57 Ill. 2d 553, 574 (1974). Therefore, there is no violation of the ITFA.

# B. The United States Commerce Clause

Plaintiffs argue the amusement tax imposed on streaming services used outside Chicago violates the Commerce Clause. Plaintiffs specifically allege there is no substantial nexus between Chicago and streaming services, and the substantial nexus rule requires the City to have a connection with the activity it is taxing and not just the actor who pays the tax. In addition, Plaintiffs assert the tax is not fairly apportioned because it is not externally consistent.

Defendants contend Plaintiffs lack standing to bring an action under the Commerce Clause because the Commerce Clause intended to protect competitors and not consumers, and as such Plaintiffs are the wrong party to bring this action. In addition, Defendants assert the amusement tax has a substantial nexus with the taxing city since it taxes Chicago residents who pay for and receive the privilege of viewing and listening to amusement in Chicago, and the tax is fairly related to services provided since Chicago residents who pay the tax receive the services within Chicago.

# i. Standing

As a threshold matter, this Court will address the standing issue. To prove standing the Plaintiffs must show: (1) Plaintiffs suffered an injury in fact, (2) have a causal nexus between that injury and the conduct complained of, and (3) it must be likely the injury will be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Here, Plaintiffs have shown an interest because they are the individuals taxed for their streaming activities, and they will suffer an injury if the tax is levied on the streaming services. Plaintiffs thus have standing to bring this action.

# ii. Commerce Clause Concerns

The Commerce Clause provides that "Congress shall have the power . . . to regulate commerce . . . among the several States." U.S. Const., Art. I § 8, cl.3. "Even where Congress has not acted affirmatively to protect interstate commerce, the Clause prevents States from discriminating against that commerce." D.H. Holmes Co. v. McNamara, 486 U.S. 24, 29 (1998).

A local tax satisfies the Commerce Clause if it: "(1) is applied to the activity with a substantial nexus with the taxing state; (2) is fairly apportioned; (3) does not discriminate against interstate commerce; and (4) is fairly related to the services provided by the state." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

Under the first prong of the *Complete Auto* test, to find whether a substantial nexus exists, courts examine the level of a taxpayer's "presence" within the taxing state or city. *In re Wash Mutual, Inc.*, 485 B.R. 510, 517 (Bankr. D. Del. 2012). Here, the tax is applied to customers who receive the services in Chicago, and it is a fair assumption that the taxpayers' residence will be their primary places of streaming. Thus, the tax does have a substantial nexus with the City of Chicago because it is fairly related to the services provided by the City to its residents.

The second prong of the *Complete Auto* test requires a local tax to be fairly apportioned. The U.S. Constitution "imposes no single apportionment formula on the States." *Container Corp. of America v. Franchise Tax Bd.* 463 U.S. 159, 164 (1983). The central purpose behind the apportionment requirement is to ensure that each state or city taxes only its fair share of an interstate transaction. *Id.* 

Pursuant to Goldberg v. Sweet, the test to determine whether a tax is fairly apportioned requires an examination of whether the tax is internally and externally consistent. 488 U.S. 252, 261 (1989). To be internally consistent, the tax must be structured so that if every state were to impose an identical tax no multiple taxation would result. Id. On the other hand, external consistency requires the state to tax only the portion of revenues from interstate activity, which reasonably reflects an in-state component of activity. Id. Plaintiffs acknowledge the tax is internally consistent. However, Plaintiffs argue the tax is not externally consistent because the City is taxing the use that occurs outside of the City of Chicago.

The external consistency test asks whether the State or City has taxed that portion of the revenues from the interstate activity which reasonably reflects the in-state or in-city component of the activity being taxed. The Court finds the amusement tax has many of the characteristics of a sales tax. The tax is assessed on individual consumers, collected by the retailer, and accompanies the retail purchase of streaming services. It may not be purely local, but it reasonably reflects the way consumers purchase the new technology (streaming services). See McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33, 58 (1940).

The external consistency test is a practical inquiry. The U.S. Supreme Court has endorsed apportionment formulas based upon the miles a bus, train, or truck traveled within a taxing jurisdiction. See Central Greyhound Lines, Inc. v. Mealey, 334 U.S. 653, 663 (1948). Those cases involved the movement of large physical objects over identifiable routes upon which it was possible to keep track of the travel within each state. This case, on the other hand, deals with intangible movement of electronic streaming services. Therefore, an apportionment formula based on some division of use "would produce insurmountable administrative and technological barriers." Goldberg 488 U.S. at 264. Apportionment does not require the City of Chicago to adopt a tax that poses true administrative burdens. See American Trucking Ass'ns v. Scheiner, 483 U.S. 266, 296 (1987).

Defendants' amusement tax only applies to consumers whose billing address is in the City of Chicago. If another jurisdiction attempted to tax consumers based on usage outside of the City of Chicago, some streaming use could be subject to multiple taxation. However, this limited possibility of multiple taxation is not sufficient to invalidate the ordinance based on external consistency. *Id* at 264. Defendants' method of taxation is a practical solution to the technology of the 21st century. The tax on streaming activity is based on the customer's billing address, which reflects that the in-city activity and the primary use of the streaming services will take place at their residences. Thus, the tax meets the fairly apportioned prong of the *Complete Auto* inquiry.

Under the third prong of the *Complete Auto* test, the taxing jurisdiction is prohibited from imposing a discriminatory tax on interstate commerce. *Goldberg*, 488 U.S. at 265. A tax discriminates against interstate commerce when it imposes a disproportionate share of the tax burden to interstate transactions. *Id.* Plaintiffs agree that the third prong of the *Complete Auto* test is satisfied.

The forth prong of the Complete Auto test examines whether the tax is fairly related to the presence and activities of the taxpayer within the jurisdiction. The purpose of this test is to ensure that a jurisdiction's tax burden is not placed upon persons who do not benefit from services provided by that jurisdiction. See Commonwealth Edison v. Montana, 453 U.S. 609, 627 (1981). The analysis focuses on the wide range of benefits provided to the taxpayer. Goldberg, 488 U.S. at 267. For example, a taxpayer's police and fire protection and the use of public roads and mass transit are benefits provided by the City of Chicago, and those benefits satisfy the requirement that the tax is fairly related to benefits the City provides to the taxpayer. Therefore, the forth prong of the Complete Auto test is satisfied.

For the reasons stated above, this Court finds the amusement tax the City of Chicago imposes is consistent with the Commerce Clause of the U.S. Constitution. The amusement tax is applied to an activity with a substantial nexus with the City; it is fairly apportioned; it does not discriminate against interstate commerce; and it is fairly related to services which the City of Chicago provides to the taxpayers.

# C. Uniformity Clause

In addition to their federal constitutional claims, Plaintiffs contend the amusement tax violates the uniformity clause because it applies to streaming services differently than it applies to other amusements in the city.

Article IX, § 2 of the Illinois Constitution, otherwise known as the uniformity clause, provides: "[i]n any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. 1970, art. IX § 2.

The uniformity clause of the Illinois Constitution was intended to be a broader limitation on legislative power than the limitation of the Equal Protection Clause of the federal constitution. *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 153 (2003): *Searle Pharms., Inc. v. Dep't of Revenue*, 117 Ill. 2d 454, 469 (1987); *Milwaukee Safeguard Ins. Co. v. Selcke*, 179 Ill. 2d 94, 102 (1997).

Although the uniformity clause imposes a more stringent standard than the Equal Protection Clause, the scope of a court's inquiry under the uniformity clause remains relatively narrow. *Allegro Services, Ltd v. Metro. Pier & Exposition Auth*, 172 Ill. 2d 243, 250 (1996). Statutes bear a presumption of constitutionality, and broad latitude is afforded to legislative classifications for taxing purposes. *Id.* 

The uniformity clause was "designed to enforce minimum standards of reasonableness and fairness as between groups of taxpayers." *Id.*; *Geja's Café v. Metro. Pier & Exposition Auth*, 153 Ill. 2d 239, 252 (1992). To survive scrutiny under the uniformity clause, a non-property tax classification must: (1) be based on a real and substantial difference between the people taxed and those not taxed, and (2) bear some reasonable relationship to the object of the legislation or to public policy. *Arangold*, 204 Ill. 2d at 153. These two requirements should be considered and treated separately. *Casey's Mktg. Co. v. Hamer*, 2016 IL App (1st) 143485, ¶ 22.

First, Plaintiffs argue the tax imposed on streaming services treats consumers of streaming services differently based on billing addresses, not based on where the streaming services are used. Yet in other instances, the amusement tax applies only to consumers who incur charges for amusements that take place in the city.

Second, Plaintiffs argue the amusement tax subjects streaming services to greater taxation than automatic amusement machines that deliver the same types of entertainment and thus violates the uniformity clause. Third, Plaintiffs assert the tax violates the uniformity clause because it taxes some performances at a higher rate than in-person performances.

Defendants respond there are real and substantial differences between residents of Chicago and non-residents. For example, the City of Chicago provides protection and other benefits to its residents and their property. Defendants argue there are real and substantial differences between an automatic amusement device and streaming products. Defendants assert: (1) an automatic amusement device is owned by a business such as a bar or arcade, and (2) an automatic amusement device is a stationary device that a consumer may not take away from an establishment, while a streaming product can be used on a mobile device at any location the consumer may choose. Finally, Defendants argue there are real and substantial differences between an amusement that is viewed in-person and one delivered electronically for viewing on a television or other device.

# i. Real and Substantial Difference

When Plaintiffs challenge a legislative classification, they have the burden of showing the classification is arbitrary or unreasonable. *Geja's Café*, 153 Ill. 2d at 248. If a set of facts can reasonably be conceived that would sustain the legislative classification, the classification must be upheld. *Id.* In a uniformity clause challenge, Plaintiffs are not required to negate every conceivable basis that might support the tax classification. *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 72 (2008). Rather, once Plaintiffs have established a good-faith uniformity clause challenge, the burden shifts to the taxing body to produce a justification for the tax classification. *Id.* If the taxing body does so, the burden shifts back to Plaintiffs to persuade the court that the justification is insufficient, either as a matter of law or as unsupported by the facts. *Id.* If the plaintiff fails to meet that burden, judgment is proper for the taxing body as a matter of law.

Here, the ordinance grants many exemptions. The Illinois Supreme Court has "upheld tax exemptions based upon the character of an entity other than that upon which the incidence of a tax has been placed." *DeWoskin v. Lowe's Chicago Cinema*, 306 Ill. App. 3d 504, 520 (1st Dist. 1999). There is a real and substantial difference between the people taxed and those not taxed. As to streaming service, the people taxed have a Chicago billing address, and at least one of the Plaintiffs testified that he watches Netflix about 75% of the time on his home television. The other deposed Plaintiff stated that he uses Netflix and Spotify about 90% of the time in the City of Chicago. The City does not attempt to tax anyone without a Chicago billing address.

In addition, there are real and substantial differences between an automatic amusement device and streaming products. Specifically, the automatic amusement devices are tangible and stationary that cannot be removed, while, streaming products can be accessed from anywhere within the city of Chicago.

Moreover, there are real and substantial differences from streaming products and live performances of professional theater companies. Courts have found that live performances of professional theater companies advance the cultural interest in the community. See Kerasotes Rialto Theater Corp. v. Peoria, 77 Ill. 2d 491, 498 (1979) (noting that live performances of professional theater companies supply a reasonable justification for exempting patrons of live performances of professional theater companies in auditoriums or theaters that have a maximum seating capacity of not more than 750 from the tax imposed under the ordinance). As demonstrated, reasonably conceived facts exist to justify each exemption addressed in Plaintiffs' Motion for Summary Judgment. DeWoskin, 306 Ill. App 3d at 522.

# ii. Reasonable Relationship

The next step in the uniformity clause analysis is to determine whether the tax classification bears some reasonable relationship to the object of the legislation or to public policy. The first task is to identify the purpose of the tax. See Grand Chapter, Order of the Eastern Star v. Topinka, 2015 IL 117083, ¶ 12.

Here, the Defendants show there is an administrative convenience for the City, businesses, and customers. The administrative convenience is a reasonable relationship for Defendants to impose a flat annual tax on each automatic amusement. See Paper Supply Co. v. Chicago, 57 Ill. 2d 553, 574-75 (1974) (holding that administrative convenience was a sufficient justification and reasonable in the collection of the tax). As noted, there are sufficient justifications for streaming products to be classified differently than live performances. Kerasotes, 77 Ill. 2d at 498. In any event, Defendants have shown the classification bears some reasonable relationship to the object of the legislation. Thus, Plaintiffs' fail to meet their burden. See Arangold, 204 Ill. 2d at 156 (noting that once the taxing body has offered a justification for the classification, "[t]he plaintiff then has the burden to persuade the court that defendant's explanation is insufficient as a matter of law, or unsupported by the facts" (internal quotation marks omitted)). Thus, this Court finds Defendants have offered a justification for the classification of streaming services, automatic amusement device and live performances.

# D. Home Rule Authority

Plaintiffs also contend the amusement tax on streaming services applies beyond Chicago corporate limits, and the Illinois General Assembly has not expressly authorized the City of Chicago to tax streaming services beyond the borders of the city. Next, Plaintiffs assert the Mobile Telecommunications Sourcing Conformation Act, 35 ILCS 638/1 et seq. ("Mobile Sourcing Act") does not justify the taxation of extraterritorial activities because the Act does not expressly authorize the amusement tax on consumers that stream services outside Chicago.

Defendants counter the home rule authority applies because the City of Chicago is taxing amusements within the City. Defendants contend the streaming services are used by Chicago residents either exclusively or primarily within Chicago. Next, Defendants argue the Act provides express statutory authority to tax streaming services provided by telecommunications companies. Moreover, Defendants have implied authority to apply the Mobile Sourcing Act to all streaming services because the Act is a reasonable means of dealing with the issue of how to source charges related to the use of mobile devices.

"Home rule is based on the assumption that municipalities should be allowed to address problems with solutions tailored to their local needs." *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 29. Thus, article VII, section 6(a) of the Illinois Constitution provides:

[e]xcept as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare; to license; to tax; and to incur debt.

III. Const. 1970. art. VII, § 6(a).

"Section 6(a) was written with the intention to give home rule units the broadest powers possible." Palm, 2013 IL 110505, ¶ 30 (citing Scandron v. City of Des Plaines, 153 Ill. 2d 164, 185-86 (1996)). The constitution expressly provides the "[p]owers and functions of home rule units shall be construed liberally." Ill. Const. 1970. art. VII, § 6(m); Nat'l Waste and Recycling Ass'n v. Cnty. of Cook, 2016 IL App (1st) 143694, ¶ 27. The Illinois Constitution, however, limits a home rule unit to legislation "pertaining to its government and affairs." City of Chicago v. Village of Elk Grove Village, 354 Ill. App. 3d 423, 426 (2004) (quoting Ill. Const. 1970. art. VII, § 6(a)). Furthermore, under article VII, section 6(h), the General Assembly "may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit" (Ill. Const. 1970. art. VII, § 6(h)), but if the legislature intends to limit or deny the exercise of home rule powers, the statute must contain an express statement to that effect. Palm, 2013 IL 110505, ¶ 31. Thus, "[i]f a subject pertains to local government and affairs, and the legislature has not expressly preempted home rule, municipalities may exercise their power." Id. ¶ 36 (quoting City of Chicago v. StubHub, Inc., 2011 IL 111127, ¶ 22 n.2).

Plaintiffs assert the Mobile Sourcing Act does not justify the Chicago taxation of extraterritorial activities because the Act does not expressly authorize the amusement tax on consumers that stream services outside Chicago. In 2002, the United States Congress passed the

Mobile Telecommunications Sourcing Act, 4 U.S.C. §116 et seq. (MTSA). The MTSA enabled state and local governments to tax mobile telecommunications services.

Under the MTSA, a customer's mobile telephone service could be taxed "by the taxing jurisdiction whose territorial limits encompass the customer's place of primary use. Regardless of where the mobile telecommunication service originate, terminate, or pass through." 4 U.S.C. §117 (b). The MTSA provides that "the term 'place of primary use' means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs." 4 U.S.C §124(8).

The Illinois State Legislature has adopted the Mobile Sourcing Act., 35 ILCS 638, and it codifies the Mobile Telecommunications Sourcing Act. 35 ILCS 638/5. The Mobile Sourcing Act defines "place of primary use" as the "street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be: (i) the residential street address or the primary business street address of the customer; and (ii) within the licensed service area of the home service provider." The Act applies to charges "which are billed by or for the customer's home service provider," which means "the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications service." 35 ILCS 638/20; 35 ILCS 638/10. The Act provides that mobile services are primarily used in the place where the customer lives.

It is a fundamental principle that when courts construe the meaning of a statute, the primary objective is to ascertain and give effect to the intention of the legislature, and all other rules of statutory construction are subordinated to this cardinal principle. *Metzger v. DaRosa*, 209 Ill. 2d 30, 34 (2004). The plain language of the statute is the best indicator of the legislature's intent. *Id.* at 34-35. When the statute's language is clear, it will be given effect without resort to other aids of statutory construction. *Id.* at 35.

The Mobile Sourcing Act applies to charges "which are billed by or for the customer's home service provider," which means "the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services." 35 ILCS 638/20; 35ILCS 638/10. Many "home service providers" offer streaming services. For example, AT&T and Comcast are facilities based carriers, and they offer streaming services. As previously indicated, "[t]he plain language of the statute is the best indicator of the legislature's intent." Metzger v. DaRosa, at 34-35. Thus, the City has express authority to apply the Mobile Sourcing Act to streaming services provided by telecommunication companies.

However, even if the Defendants do not have express authority, Defendants have implied authority. See 65 ILCS 5/8-3-15 ("The corporate authorities of each municipality shall have all powers necessary to enforce the collection of any tax imposed and collected by such municipality, whether such tax was imposed pursuant to its home rule powers or statutory authority..."). The Mobile Sourcing Act is a reasonable means of addressing the concern of how to source charges related to the use of mobile devices. Other jurisdictions have analyzed the implied authority with respect to the Mobile Sourcing Act. See e.g., Virgin Mobile USA, SP v. Arizona Department of Revenue, 230 Ariz. 261 (2012) (stating nothing in the MTSA prohibits a state [or municipality]

from establishing itself as a tax situs for mobile service); *T-Mobile South, LLC v. Bonet*, 85 So. 3d 963 (Ala. 2011).

When the Mobile Sourcing Act is silent with respect to streaming services, the City of Chicago can still tax these services if there is a nexus to the City of Chicago and if the Tax does not conflict with the Commerce Clause. See Virgin Mobile USA, SP, 230 Ariz. 261, ¶ 20; Goldberg 488 U.S. at 259. In this case, the Mobile Sourcing Act applies to streaming services provided by telecommunications companies, and it is reasonable for Defendants to apply the Mobile Sourcing Act to the same streaming services when other businesses offer those streaming services.

A municipal ordinance is presumed constitutional, and the challenging party has the burden of rebutting that presumption. *Pooh Bah Enterprises, Inc.* 224 Ill.2d 390 at 406. Plaintiffs may make a constitutional challenge to the ordinance in two ways. First, a challenge can be "as applied," in which Plaintiffs argue that the statute is unconstitutional under circumstances specific to that plaintiff. In that situation, the facts surrounding the plaintiff's particular circumstances become relevant. Alternatively, a plaintiff can raise a "facial challenge", which is a significantly more difficult route. Unlike an as-applied challenge, the ordinance is invalid on its face only if no set of circumstances exists under which it would be valid. The plaintiff's individual circumstances are irrelevant in the context of a facial challenge. *Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 26.

# i. Facial Challenge

Plaintiffs present a facial challenge to the validity of Section 4-156-020(G.1). Defendants maintain that Section G.1. does two things: "(1) it confirms that the amusement tax applies to video streaming, audio streaming and on-line games; and (2) it allows providers to utilize the rules set forth in the Mobile Sourcing Act." This framework allows for providers such as Hulu, Spotify, and Netflix to collect the amusement tax from Chicago residents, while overlooking non-residents.

"A facial challenge requires a showing that the statute is unconstitutional under any set of facts, i.e., the specific facts related to the challenging party are irrelevant." *People v. Thompson*, 2015 IL 118151, ¶ 36. The burden on the challenger is particularly heavy when a facial constitutional challenge is presented. *People v. Rizzo*, 2016 IL 118599, ¶ 24.

Although Plaintiffs rely on *Hertz Corp v. City of Chicago* for their argument that the tax is extraterritorial, this Court finds the case distinguishable. 2017 IL 119945. In *Hertz*, the tax at issue ("Ruling 11"), applied to vehicle rental companies doing business in the City of Chicago. Ruling 11 advised suburban vehicle rental companies within three miles of Chicago's borders to implement a specific system when renting to customers intending to use vehicles in Chicago. *Id.* Specifically, the companies were required to maintain written records of any vehicle driven in Chicago. *Id.* In the event of an audit, the written records would support any claim of exemption from the tax. *Id.* If a rental company within the three-mile radius failed to maintain proper records, then all rental customers with a Chicago address on their drivers' license are presumed to have used the rental vehicle primarily in Chicago. All rental customers without a Chicago address were presumed to have not used the rental vehicle in Chicago. *Id.* Plaintiffs alleged the tax ordinance was unconstitutional because it was an extraterritorial tax. ¶ 13. The Illinois Supreme Court held

that Ruling 11 violated the home rule authority of the Illinois Constitution because it had an extraterritorial effect, and thus was an improper exercise of Chicago's home rule powers. ¶¶ 33, 35.

Unlike *Hertz*, the customers here are residents of Chicago who pay their monthly subscription fees primarily for obtaining the privilege of using the streaming services in Chicago. The tax on streaming services applies to Chicago residents with billing addresses located within the City of Chicago. While the tax in *Hertz* was based on nothing more than a lessee's stated intention or a conclusive presumption of use in Chicago.

Here, the tax applies to the streaming services that occur within Chicago. The City of Chicago may collect taxes from entities that do business within the City limits. See S. Bloom, Inc. v. Korshak, 52 Ill. 2d 56 (1972) (finding that out-of-county tobacco wholesalers are required to collect sales tax from retailers who sell cigarettes to customers in Chicago); American Beverage Ass'n v. City of Chicago, 404 Ill. App. 3d 682 (2010) (holding that wholesalers and retailers were required to collect sales tax on sales of bottled water). The businesses that stream services to the billing addresses of Chicago residents are within the taxing jurisdiction of the City of Chicago. Thus, Section 4-156-020(G.1) of the amusement tax is not an extraterritorial tax that violates the City of Chicago's home rule authority. The city is simply taxing an event that occurs within its boundaries and in an area for which it provides services. Thus, Plaintiffs fail to meet their burden that the amusement tax is facially unconstitutional.

# ii. As-Applied Challenge

Next, Plaintiffs present an as-applied challenge to the amusement tax. The Illinois Supreme Court has noted that facial and as-applied challenges are not interchangeable, and there are fundamental distinctions between them. *Thompson*, 2015 IL 118151, ¶ 36. "An as-applied challenge requires a showing the statute violates the constitution as it applies to the facts and circumstances of the challenging party." *Id*.

Here, the streaming services are used by Chicago residents either exclusively or primarily within Chicago. The streaming services are billed to the address of the Chicago residents. Indeed, some Chicago residents may use their streaming services elsewhere, for example, while on vacation outside Chicago. Even so, their main use of the services is primarily within the City limits, and the residents are being billed at the address provided to the streaming services companies. The tax here is akin to the Chicago vehicle city sticker tax based on a Chicago billing address. See Rozner v. Korshak, 55 Ill. 2d 430 (1973). The vehicle may rarely be driven in Chicago, but the Chicago resident must buy the city sticker. This Court therefore finds Plaintiffs fail to meet their burden that the amusement tax is unconstitutional as-applied to Plaintiffs.

For all these reasons, Defendants' Motion for Summary Judgment is granted and Plaintiffs' Motion for Summary Judgment is denied.

### II. ORDER

This matter having been fully briefed and the Court being fully apprised of the facts, law and premises contained herein, it is ordered as follows:

- A. Defendants' Motion for Summary Judgment is Granted.
- B. Plaintiffs' Motion for Summary Judgment is Denied.
- C. Plaintiffs' request to enjoin Defendants is Denied.
- D. This Order is final and appealable.

ENTERED:

Judge Carl Anthony Walker

ENTERED
JUDGE CARL ANTHONY WALKER-1913

MAY 24 2018

DOROTHY BROWN CLERK OF THE CIRCUIT COURT OF COOK COUNTY, IL DEPUTY CLERK

Judge Carl Anthony Walker State of Illinois Circuit Court of Cook County Law Division - Tax and Miscellaneous Section 50 West Washington, Room 2505 Chicago, Illinois 60602

# **Law DIVISION**

# Litigant List

Printed on 06/21/2018

Case Number: 2015-CH-13399 Page 1 of 1

# **Plaintiffs**

Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
LABELL MICHAEL			0000	
BEZEK NATALIE			0000	
JACKSON GREEN BRYANT			0000	
LABELL JARED			0000	
PEPPLE SILAS			0000	
ROSE EMILY			0000	

Total Plaintiffs: 6

# **Defendants**

Defendant Name	Defendant Address	State	Unit #	Service By
WIDAWSKY DAN		0000	)	
CITY CHICAGO		0000	)	

Total Defendants: 2

## APPEAL TO THE APPELLATE COURT OF ILLINOIS

#### FIRST JUDICIAL DISTRICT

# FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT COOK COUNTY, ILLINOIS

### MICHAEL LABELL

Plaintiff/Petitioner Reviewing Court No: 1-18-1379

Circuit Court No: 2015CH013399

Trial Judge: <u>CARL ANTHONY WALKER</u>

v.

#### THE CITY OF CHICAGO, ERIN KEANE

Defendant/Respondent

### COMMON LAW RECORD - TABLE OF CONTENTS

Page  $\underline{1}$  of  $\underline{3}$ 

Date Filed	Title/Description	Page No.
09/09/2015	DOCKET	C 5-C 11
09/09/2015	DOCKET 2	C 12-C 21
09/09/2015	COMPLAINT	C 22-C 38
09/09/2015	EXHIBITS	C 39-C 43
09/09/2015	SUMMONS	C 44-C 45
09/16/2015	AFFIDAVIT OF SERVICE	C 46
10/02/2015	MOTION TO DISMISS	C 47-C 49
10/06/2015	SUMMONS	C 50-C 94
10/19/2015	ORDER	C 95
10/19/2015	ORDER 2	C 96
10/19/2015	ORDER 3	C 97
10/19/2015	ORDER 4	C 98
11/30/2015	MOTION TO TRANSFER CASE	C 99-C 103
12/04/2015	ENOTICE	C 104
12/08/2015	ORDER	C 105
12/09/2015	AMENDED COMPLAINT	C 106-C 129
12/09/2015	NOTICE OF MOTION	C 130-C 131
12/09/2015	MOTION FOR LEAVE	C 132-C 134
12/15/2015	ORDER	C 135
12/17/2015	AMENDED COMPLAINT	C 136-C 159
12/17/2015	<u>EXHIBITS</u>	C 160-C 164
12/17/2015	NOTICE OF FILING	C 165-C 166

This document is generated by eappeal.net

## COMMON LAW RECORD - TABLE OF CONTENTS

Page  $\underline{2}$  of  $\underline{3}$ 

Date Filed	Title/Description	Page No.
01/19/2016	MOTION TO DISMISS AMENDED COMPLAINT	C 167-C 221
02/10/2016	NOTICE OF MOTION	C 222-C 223
02/10/2016	MOTION FOR EXTENSION	C 224-C 226
02/11/2016	ORDER	C 227-C 228
03/08/2016	ORDER	C 229-C 230
03/09/2016	NOTICE OF MOTION	C 231-C 232
03/09/2016	MOTION FOR LEAVE	C 233-C 234
03/17/2016	ORDER	C 235
03/22/2016	ANSWER TO MOTION TO DISMISS	C 236-C 262
04/11/2016	ORDER	C 263
04/26/2016	RESPONSE MEMORANDUM	C 264-C 280
05/03/2016	ORDER	C 281
06/21/2016	ORDER	C 282
07/21/2016	ORDER	C 283-C 288
08/08/2016	ANSWER TO AMENDED COMPLAINT	C 289-C 305
08/09/2016	AMENDED ANSWER TO COMPLAINT	C 306-C 323
08/30/2016	ORDER	C 324
10/12/2016	AMENDED COMPLAINT	C 325-C 356
10/12/2016	NOTICE OF MOTION	C 357-C 358
10/12/2016	MOTION FOR LEAVE TO FILE COMPLAINT	C 359-C 362
10/12/2016	ORDER	C 363
11/17/2016	ANSWER TO AMENDED COMPLAINT	C 364-C 384
01/12/2017	ORDER	C 385
03/29/2017	<u>ORDER</u>	C 386
06/28/2017	<u>ORDER</u>	C 387
08/01/2017	<u>ORDER</u>	C 388
09/27/2017	MOTION FOR SUMMARY JUDGEMENT	C 389-C 420
09/27/2017	EXHIBIT A	C 421-C 436
09/27/2017	EXHIBIT B	C 437-C 441
09/27/2017	EXHIBIT C	C 442-C 445
09/27/2017	EXHIBIT D	C 446-C 517
09/27/2017	EXHIBIT E	C 518-C 529
09/27/2017	EXHIBIT F	C 530-C 567
09/27/2017	EXHIBIT G	C 568-C 571
09/27/2017	EXHIBIT H	C 572-C 586

## COMMON LAW RECORD - TABLE OF CONTENTS

Page  $\underline{3}$  of  $\underline{3}$ 

Date Filed	Title/Description	Page No.
09/27/2017	EXHIBIT I	C 587-C 609
09/27/2017	EXHIBIT J	C 610-C 646
09/27/2017	EXHIBIT K	C 647-C 675
09/27/2017	EXHIBIT L	C 676-C 693
09/27/2017	EXHIBIT M	C 694-C 706
09/27/2017	EXHIBIT N	C 707-C 735
09/27/2017	EXHIBIT O	C 736-C 746
11/14/2017	MEMORANDUM	C 747-C 1000
12/20/2017	RESPONSE IN OPPOSITION TO MOTION	C 1001-C 1031
01/12/2018	RESPONSE MEMORANDUM	C 1032-C 1085
01/18/2018	ORDER	C 1086
01/25/2018	ORDER	C 1087
03/22/2018	ORDER	C 1088
04/26/2018	ORDER	C 1089
05/24/2018	ORDER	C 1093 V2-C 1105 V2
06/21/2018	NOTICE OF APPEAL	C 1106 V2-C 1120 V2
06/27/2018	REQUEST FOR PREPARATION	C 1121 V2-C 1122 V2

### APPEAL TO THE APPELLATE COURT OF ILLINOIS

#### FIRST JUDICIAL DISTRICT

FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT

COOK COUNTY, ILLINOIS

MICHAEL LABELL

Plaintiff/Petitioner Reviewing Court No: 1-18-1379

Circuit Court No: 2015CH013399

Trial Judge: <u>CARL ANTHONY WAL</u>KER

v.

THE CITY OF CHICAGO, ERIN KEANE

Defendant/Respondent

#### REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page  $\underline{1}$  of  $\underline{1}$ 

Date of

 Proceeding
 Title/Description
 Page No.

 06/21/2016
 HEARING
 R 2-R 18

 01/25/2018
 HEARING
 R 19-R 104

E-FILED Transaction ID: 1-18-1379 File Date: 8/23/2018 4:32 PM Thomas D. Palella Clerk of the Appellate Court APPELLATE COURT 1ST DISTRICT