



## MEMORANDUM

To: Finance and Administration Committee

From: Tim Sexton, Director of Finance

Date: May 22, 2020

Subject: 5% Amusement Tax on Streaming Services

Back in 2016, the Finance Committee made a recommendation to the Village Board on a Long-Range Financial Plan, which the Village Board adopted. One of the central premises of that plan was that future budget changes would be balanced with a 50/50 split between expenditure reductions and revenue increases. When working on the 2020 budget, departments significantly exceeded the target for expenditure reductions. Therefore, currently expenditure reductions have exceeded revenue increases by \$488,300 in 2020, in relation to the 50/50 target.

As staff has been looking at options for dealing with the current budget situation, the Illinois Municipal League (IML) recently provided information to all municipalities on options for new revenues. One of those options is for an amusement tax on streaming services. The Village has had a 5% amusement tax for 15 years, but it has only applied to traditional amusement activity, such as movie theaters and entertainment locations, like Enchanted Castle, as well as physical movie rentals, like Redbox. Below is the information provided by the IML regarding the ability to adopt the type of tax that Chicago has.

The City of Chicago ordinance imposing a "streaming tax" exercises its home rule authority and authority under the Illinois Municipal Code to tax amusements. (65 ILCS 5/11-42-5) The Chicago tax is imposed on the individual receiving electronically delivered video streaming, audio streaming and online games to their mobile device at the rate of 9% (nine percent) of the charges for the privilege to participate in such amusement. The rate of taxation will need to be determined by the municipality and expressed as a percentage in the ordinance. The authority to levy an amusement tax is available to both home rule and non-home rule municipalities, so the option to impose this tax may be appealing to communities of all sizes and types.

The constitutionality of Chicago's streaming tax ordinance was challenged and upheld in *Labell, et al. v. City of Chicago*, 2019 IL App (1<sup>st</sup>) 181379 (September 30, 2019). The Appellate Court affirmed the award of summary judgment to the City of Chicago, holding that the imposition of the streaming services tax was within its authority, did not violate the Uniformity Clause of the Illinois Constitution and did not violate the Internet Tax Freedom Act.

Staff has had discussions with the Village Attorney on this potential revenue source, and he believes that the Village can apply its amusement tax to streaming services given the recent Appellate Court decision in the Chicago case, along with the ability for all municipalities, including non-home rule municipalities, to have an amusement tax. Streaming services would include video streaming, audio streaming, gaming and other digital entertainment. Examples of the types of content that would be subject to the tax include:

- Streaming video such as Netflix, Disney +, HBO Max, Hulu
- Cable TV replacement options such as YouTube TV, Sling, Fubo TV, AT&T TV, Vidgo, Hulu Live TV and Philo
- Audio options such as Spotify, Apple Radio, Pandora and Sirius XM
- Gaming options such as Xbox Live and PlayStation Now

This is by no means constitutes a comprehensive list of all services that would be subject to the tax, just examples in each category.

Attached to this memo is a spreadsheet that calculates estimates on the potential revenue that would be generated by this tax at the Village's current amusement tax rate of 5%. As there are currently no known cities in Illinois other than Chicago that have adopted this tax, it is difficult to estimate the potential revenue. Therefore, we have provided 3 different scenarios on the potential amount, based on the total services that each average household in Lombard would have. These three scenarios estimate the revenue at anywhere between \$200,000 and \$625,0000 on an annual basis.

This is a revenue source that likely will see significant growth in coming years, as more households cancel traditional cable TV services for these various streaming services. It is important to note that we currently receive a 5% franchise fee for traditional cable TV services. This fee reached its peak in 2017 at \$790,000. However, due to people moving away from cable TV, this revenue has started to decline and was down 6.4% in 2019 from the peak in 2017. We anticipate this decline to accelerate in coming years. Given this, the amusement tax on streaming services may offset the decline in the cable TV franchise fee in coming years.

If the Finance Committee has questions, or would like additional information on this topic, staff can prepare that information for the next Committee meeting. If the Committee would like to make a recommendation on this revenue source to the Village Board, staff would request the following recommendation.

### **Formal Action Needed**

If the Committee wants to recommend this tax, staff requests that the Finance Committee make the following recommendation to the Village Board:

Motion to recommend that staff work with the Village Attorney to draft an ordinance to apply the Village's 5% amusement tax to streaming services, and that this ordinance be presented to the Village Board for consideration with the Finance Committee's recommendation that this tax be adopted.

Estimates of Streaming Tax - 3 Scenarios

	<u>\$20 per house</u>	<u>\$40 per house</u>	<u>\$60 per house</u>
Households in Lombard	17,405	17,405	17,405
Estimated Average Streaming Spend per Household	20	40	60
Monthly Spend on Streaming	348,100	696,200	1,044,300
Tax Rate	5%	5%	5%
Estimated Monthly Revenue	17,405	34,810	52,215
Months	12	12	12
Estimated Annual Revenue	208,860	417,720	626,580

Examples:

- Netflix
- Disney +
- HBO Max
- Hulu

Cable TV replacement options such as:

- Youtube TV
- Sling
- Fubo TV
- AT&T TV
- Vidgo
- Hulu Live TV
- Philo

Streaming Audio options such as:

- Spotify
- Apple Radio
- Pandora
- Sirius XM

Gaming Options:

- XBOX Live
- Other Gaming subscriptions