The Next Streaming Wars: Local Taxation of Online Streaming Services

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Introduction

Anyone who watches television regularly knows that in recent years, there has been an upheaval in the market for subscription television services. For decades, cable television companies provided most subscription television services in the United States. Not anymore. In 2005, about 65 million U.S. households received television service from a cable provider.[1] By 2023, that number had dropped to 35 million.[2]

What happened?

Consumers, of course, have not stopped watching television. Instead, like so many other aspects of daily life, subscription television services have moved to the internet, and are now provided by companies like Netflix, Hulu, Amazon, and others. Some of these companies offer services with multiple channels of linear video programming, replicating the service offered by cable companies. Some allow users to rent individual videos for a fee. Most give subscribers access to a library of videos that can be viewed on demand.[3] But whatever format they use, these "online streaming services" have exploded in popularity. By 2024, consumers in the United States held more than 500 million active subscriptions to various online streaming services.[4]

The growth of online streaming services at the expense of cable television services has had several downstream effects on cities in

[1] Federal Communications Commission, *FCC Issues 12th Annual Report to Congress on Video Competition*, February 10, 2006, at 3, available at https://docs.fcc.gov/public/attachments/DOC-263763A1.pdf (viewed April 27, 2025).

[2] Federal Communications Commission, *2024 Communications Marketplace Report*, December 31, 2024, at 141 [¶ 204], available at https://docs.fcc.gov/public/attachments/FCC-24-136A1.pdf (last viewed April 27, 2025).

[3] *Id.* at 150-55 [¶¶ 223-33].

[4] *Id.* at 160-62 [¶¶ 243, 248].

California. One of those effects is being acutely felt by cities that rely, in part, on "utility user taxes" as a source of general fund revenue.

A utility user tax is an excise tax on the use of a service, such as electric, gas, or telephone service. It is levied on the service user and calculated as a percentage of the charges that the service user pays to the service supplier. Most cities, rather than collect utility user taxes from service users themselves, require service suppliers to collect the taxes due from their users during the normal billing process and then remit what they collect on a periodic basis – typically, each month.

Close to 100 cities impose utility user taxes on the use of cable television service.[5] Because these taxes are calculated as a percentage of the charges paid by the service user, when users switch from cable television to online streaming services, revenue from the tax will decrease. Ask folks in the finance departments of cities that have such taxes and they will tell you – receipts are already drying up.

To combat this loss of revenue, many cities have expanded their utility user taxes to cover "video services" that are comparable to cable television service. These cities have recently started evaluating whether their expanded "video services" taxes apply to the use of online streaming services. And at least one city – Santa Barbara – has concluded that they do. This conclusion was recently upheld by the Santa Barbara Superior Court and is now being challenged by various online streaming companies in the Second District Court of Appeal: *Disney Platform Distribution Inc. v. City of Santa Barbara* (B342211).

Let's be clear. Online streaming companies do not want to collect local utility user taxes. Any city that hopes to follow in Santa Barbara's footsteps and compel online streaming companies to collect its utility user tax should expect – and be prepared for – a fight. But as Santa Barbara's experience shows, in the right circumstances, cities can win the fight. The purpose of this paper is to show how.

To that end, below, you will find an overview of the following topics:

1. **an explanation of how to determine if a utility user tax applies to the use of online streaming services;**

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[5] CaliforniaCityFinance.com, *The California Local Government Finance Almanac, Utility User Tax Facts*, January 2021, available at https://californiacityfinance.com/UUTfacts21.pdf (last viewed April 27, 2025).

2. **a list of arguments that online streaming companies have made in their efforts to avoid collecting utility user taxes, and an evaluation of those arguments; and**

3. **a brief outline of the enforcement mechanisms that cities can use to compel online streaming companies to comply with their tax collection obligations.**

Part 1: Application

Before any city attempts to compel online streaming companies to collect its utility user tax, it must first determine whether its utility user tax actually applies to the use of online streaming services.

It would be nice if utility user tax ordinances contained language that directly targets online streaming services – language, for instance, that taxes the use of "video services" and defines "video services" to include "online streaming services," the "provision of video programming to subscribers over the internet," or something along those lines. But things are not that simple. Utility user tax ordinances adopted before the recent explosion of online streaming services – as most ordinances were – tend not to reference internet-based video services explicitly.

Nevertheless, taxing the use of online streaming services is permissible, if a utility user tax ordinance contains language that can reasonably be construed to apply to internet-based video services.

What does this language look like?

To state the obvious, language applying a utility user tax to the use of cable television service is not sufficient. Although there are similarities between cable television services and online streaming services, particularly from the user's perspective, the two are generally understood by the public to be different, and courts are unlikely to allow cities to treat the latter as if they were, in essence, the former.

> ~~There is imposed a tax upon every person in the City using cable television service.~~[6]

However, cities can reasonably rely on language that taxes the use of a broader category of "video services," irrespective of the technology they

[6] See Santa Barbara Municipal Code § 4.24.070.

employ – and, in particular, language that defines “video services” to include the provision of video programming “using internet protocol.”

> There is hereby imposed a tax upon every person in the City using video services.[7]
>
> “Video Services.” Video programming and any and all services related to the providing, recording, delivering, use or enjoyment of “video programming” (including origination programming and programming using Internet Protocol, e.g., IP-TV and IP-Video) using one or more channels by a “video service supplier,” regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed ....[8]

Online streaming services fit comfortably within this definition, because: (i) they provide video programming delivered to subscribers over networks that use internet protocol; and (ii) tax applies to the use of any service providing video programming, regardless of the technology used to deliver that video programming.[9]

Online streaming companies have contested this straightforward conclusion, asserting that utility user taxes only apply to “facilities-based” video services – services where the company offering video programming also operates the transmission facilities that are used to deliver videos. Online streaming services are generally not considered facility-based services, because their videos are delivered over networks operated by third-party internet service providers.

Every utility user ordinance, of course, is different, so a careful review of the text and history of the ordinance at issue is necessary to rule out this argument. But the definition of “video services” referenced above undermines the position taken by the online streaming companies.

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[7] *Id.* § 4.26.050(A).

[8] *Id.* § 4.26.020.

[9] Internet protocol is a technology that facilitates the transmission of data over packet-switched networks and interconnected systems of packet-switched networks, including the internet. (*In the Matter of IP-Enabled Services* (2004) 19 FCC Rcd. 4863, 4869-70 & n.23 [describing packet-switched networks].)

> "Video Services." Video programming and any and all services related to the providing, recording, delivering, use or enjoyment of "video programming" ....

The use of the word "or" indicates that a service related to any one of the listed functions – providing video programming, recording video programming, delivering video programming, using video programming, or enjoying video programming – qualifies as a "video service."[10] So, services that relate to "providing" (supplying) video programming are taxable, even if services that relate to "delivering" that video programming are provided, in part, by a different company.

Many utility user ordinances also define the types of service suppliers whose video services are taxed, using a definition like the following:

> "Video Service Suppler." Any person, company, or service which provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the City, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming ....[11]

To operate a facilities-based video service, a video provider typically must have some transmission facilities located within public rights-of-way. And even when that isn't the case, this definition of "video service supplier" covers companies that supply (i.e., "provide[] or sell[]") video programming and companies that deliver (i.e., "provide[] or sell[] the capability to receive") video programming, and it states – again, by using the word "or" – that a company need not do both.

[10] See, e.g., *In re E.A.* (2018) 24 Cal.App.5th 648, 661; *Dow v. Honey Lake Valley Resource Conservation District* (2021) 63 Cal.App.5th 901, 913-14.

[11] Santa Barbara Municipal Code § 4.26.020.

Online streaming companies also claim that the phrase "channels of video programming" refers to the transmission paths over which videos delivered to subscribers, and thus, that a company must operate the transmission path used to deliver videos to qualify as a video service supplier.[12] This is a stretch. The ordinary meaning of "channel," in the context of video programming, is a collection of video content offered on a continuous basis by a "provider[] like NBC, CBS, or ESPN" – or today, Netflix, Hulu, etc.[13] And the word's ordinary meaning is typically the meaning that controls. Indeed, many online streaming companies market their video programming collections as "channels."

One last point. Many cities impose utility user taxes on the use of "telecommunications services," with the term "telecommunications services" defined as "[t]he transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, whatever the technology used."[14] Although some online streaming companies do utilize their own telecommunications facilities to push videos to the internet in a way that speeds up the delivery of those videos to subscribers, the primary service they offer is the provision of video programming – which does not, itself, qualify as a "telecommunications service." Accordingly, taxes on the use of telecommunications services offer a relatively weak basis for taxing the use of online streaming services.

Part 2: Enforceability

Once a city has determined that its utility user tax applies to the use of online streaming services, it must still evaluate whether there is some other law that prevents it from enforcing that tax. If one were to believe the online streaming companies, there are many such laws. In the main, the companies are incorrect; the laws they invoke do not categorically prevent cities from taxing the use of online streaming services. But a few of those laws do impose modest limits on when, and against which companies, utility user taxes may be enforced.

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[12] Cities that tax the use of video services without referencing "channels of video programming" need not worry about this argument. See, e.g., Sebastopol Mun. Code §§ 3.10.020 - Video Services, Video Service Supplier, 3.10.050.

[13] *Massachusetts Department of Telecommunications and Cable v. Federal Communications Commission* (1st Cir. 2020) 983 F.3d 28, 33, 37-38.

[14] See, e.g., Santa Barbara Municipal Code §§ 4.26.020, 4.26.040.

≥ **The Bradley-Burns Act**

Some online streaming companies take the position that the State of California's Bradley-Burns Uniform Local Sales and Use Tax Law ("**Bradley-Burns Act**") prevents cities from taxing the use of online streaming services.[15] The Bradley-Burns Act does not have this effect.

The State imposes a sales tax on retailers "[f]or the privilege of selling tangible personal property at retail ...."[16] It also, in lieu of taxing the retailer, sometimes imposes a use tax on a purchaser of tangible personal property for storing, using, or consuming that property.[17] The Bradley-Burns Act allows cities to impose their own sales and use taxes, to be administered by the California Department of Tax and Fee Administration, but these taxes must contain provisions that are identical to the provisions that govern the State's sales and use taxes.[18] And cities may not impose sales and use taxes that diverge in any way from the requirements of the Bradley-Burns Act.[19]

The Bradley-Burns Act, however, does not limit the ability of cities to impose "any other substantially different tax ...."[20] And taxes that do not apply to the sale or use of tangible personal property are "substantially different" from Bradley-Burns taxes.[21] Because online streaming services are services, not tangible personal property, the Bradley-Burns Act does prevent cities from taxing their use.[22]

> ***Practice Tip***: Although the Bradley-Burns Act *might* limit the application of a utility user tax to charges for equipment used to deliver videos, online streaming services generally do not impose equipment charges. Instead, they provide free software (apps and websites)

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[15] Rev. & Tax. Code § 7200 *et seq.*

[16] *Id.* §§ 6051-55.

[17] *Id.* §§ 6201-07, 6401; 18 Cal. Code Regs. § 1660(c)(1).

[18] Rev. & Tax. Code § 7202(h); Gov. Code §§ 15570.22, 15570.24(a).

[19] Rev. & Tax. Code § 7203.5; Stats. 1968, Ch. 1265, § 2.

[20] Rev. & Tax. Code § 7203.5.

[21] *Rivera v. City of Fresno* (1971) 6 Cal.3d 132, 135-39.

[22] California Department of Tax and Fee Administration, Sales and Use Tax Annotation 540.0332, available at https://www.cdtfa.ca.gov/lawguides/annotations/540-0332.pdf (last viewed April 17, 2025); Rev. & Tax. Code § 6016.

that can be installed on equipment that users purchase from a third party (such as set-top boxes, smart TVs, etc.).

≥ Proposition 218

As most people know, Proposition 218 requires that all general taxes be approved by a majority vote of the local electorate before they are imposed.[23] Most utility user taxes are "general taxes" whose revenue may be used for general governmental purposes.[24] So, even if a utility user tax applies to the use of online streaming services, that tax should not be enforced unless the relevant portion of the utility user tax ordinance was approved by local voters or adopted prior to January 1, 1995 (for charter cities) or August 1, 1985 (for general law cities).[25]

Some online streaming companies claim that even when a utility user tax applies to the use of online streaming services and has been approved by local voters, cities must obtain additional voter approval to enforce the tax if there has been a delay between the adoption of the utility user tax and the enforcement action. This is incorrect. Enforcement actions do not trigger Proposition 218. Once voters have approved a tax, no new vote is needed so long as "the methodology for the maximum recovery of local taxes ... remain[s] constant ...."[26]

> ***Practice Tip***: Even if city officials have previously issued formal guidance stating that the use of online streaming services is not taxable, many modern utility user tax ordinances include language that preserves the ability to alter formal guidance without voter approval.[27]

≥ Public Utilities Code Section 799

Many online streaming companies take the position that they cannot be compelled to collect utility user taxes for a city unless the city

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[23] Cal. Const. art. XIIIC, § 2(b).

[24] *The California Local Government Finance Almanac, Utility User Tax Facts*, see *supra*, n.5; Cal. Const. art. XIIIC, § 1(a) [defining "general tax"].

[25] Cal. Const. art. XIIIC, § 2(c); Gov. Code § 53727(b).

[26] *AB Cellular LA, LLC v. City of Los Angeles* (2007) 150 Cal.App.4th 747, 763-64. Some utility user tax ordinances also state explicitly that enforcing a utility user tax after a period of non-enforcement does not require voter approval.

[27] See, e.g., Santa Barbara Municipal Code § 4.26.130(B) ["[T]he City does not waive or abrogate its ability to impose the ... video users tax in full as a result of promulgating administrative rulings or entering into agreements."].

imposing the tax has provided them with notices required by section 799 of the Public Utilities Code. Such notices are sometimes necessary. But only in specific, and relatively narrow, circumstances.

When cities enact a new utility user tax or amend an existing utility user tax, they must send notices to companies that will be required to collect the tax and give those companies time – either 90 days, for new taxes, or 60 days, for amended taxes – to implement or adjust their billing systems as needed.[28] Notices need only be sent to companies that have established procedures for the delivery of notices.[29] Moreover, although the issue has not been settled, there is good reason to believe that the notice requirement is not perpetual. Cities must send notices to existing companies when they enact a change to a utility user tax ordinance, but notice is not required for companies that start doing business after the new or amended ordinance is in effect.[30]

> ***Practice Tip***: The notice requirements of section 799 have not been interpreted in a published appellate opinion, so it is important to confer with legal counsel before initiating enforcement actions against online streaming companies. This is particularly true when the company that is the subject of the enforcement action was already providing a taxable video service when a city last updated its utility user tax ordinance.

≥ The Internet Tax Freedom Act

Some online streaming companies claim that the federal Internet Tax Freedom Act prevents cities from taxing the use of online streaming services unless the tax applies at the same rate to rentals of physical

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[28] Pub. Util. Code § 799(a)(5), (a)(6).

[29] Cities must provide notices under section 799 "in accordance with the procedures established by" the company that is required to collect the tax. *Ibid.*

[30] This reading is supported by section 799's text in two ways. First, notice is triggered by changes to a city's tax ordinance, not by a company's entrance into the market. Second, section 799 gives companies 90 days after receiving a notice to implement a new tax but only 60 days after receiving a notice to implement an amended tax. These different time frames make sense if section 799's purpose is to provide notice to companies that are already doing business in a city; the Legislature could reasonably assume that it will take more time for companies to implement a new tax than it will take them to implement an adjustment to an existing tax. But when a company starts doing business in a city, from its perspective, there is only an existing ordinance to follow, and the different time frames set forth in section 799 serve no purpose.

media (such as DVDs).[31] This question has never been addressed by the courts, so some caution is warranted. But there are good reasons to believe that the online streaming companies are wrong.

The Internet Tax Freedom Act provides that "[n]o State or political subdivision thereof may impose ... discriminatory taxes on electronic commerce."[32] The term "electronic commerce" means "any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information" – a definition that plainly encompasses online streaming services.[33] A tax is "discriminatory" if it is imposed "on electronic commerce" and "is not generally imposed and legally collectible" at all, or at the same rate, "on transactions involving similar property, goods, services, or information accomplished through other means ...."[34]

Most courts have required a strict "similarity" between online and offline services to trigger this prohibition on discriminatory taxes. Two services will be found similar if "the only difference" between them is that one is sold over the internet, and the other is not.[35] If this is the appropriate rule, utility user tax ordinances will generally comply with it. Online streaming services offer television over the internet; subscribers receive access to on-demand video collections, live sports, first-run television series and movies, and sometimes even traditional TV channels like ABC, NBC, and CNN. This is a much different type of transaction than renting a DVD from a local video store.

> ***Practice Tip***: A reasonable argument can be made that the Internet Tax Freedom Act requires cities to tax the use of other types of subscription television services in the same manner that they tax the use of online streaming services. Although most broadly applicable utility user taxes on the use of video services treat all video services

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[31] Utility user taxes do not apply to rentals of physical media like DVDs. Instead, physical media rentals are subject to state and local taxes on the use of tangible personal property, discussed above. See *supra,* at 7; Rev. & Tax. Code §§ 6009, 6010(e)(7), 6201-07, 7202(h), 7262; 18 Cal. Code Regs. § 1660(c), (d)(2).

[32] Internet Tax Freedom Act, § 1101(a)(2). The Internet Tax Freedom Act is codified as a note to 47 U.S.C. § 151. See https://uscode.house.gov/view.xhtml?req=(title:47%20section:151%20edition:prelim) (last viewed April 27, 2025).

[33] Internet Tax Freedom Act, § 1105(3).

[34] *Id.* § 1105(2)(A)(i)-(ii).

[35] *Labell v. City of Chicago* (Ill. App. 2019) 147 N.E.3d 732, 749; *ADP, LLC v. Arizona Department of Revenue* (Ariz. App. 2023) 524 P.3d 278, 286-87.

in the same manner, cities should be careful to not apply a lower tax rate to the use of cable television services or direct broadcast satellite television services.[36]

≥ **The Commerce Clause**

Some online streaming companies claim that applying utility user taxes to the use of online streaming services violates the Commerce Clause of the United States Constitution. It is possible for cities to run afoul of the Commerce Clause when enforcing their utility user taxes against online streaming services. But it is also easy to avoid doing so.

The Commerce Clause prohibits certain state and local actions that burden the flow of commerce across state lines. However, a tax will not impose an impermissible burden of interstate commerce so long as it is applied to an activity that has "a substantial nexus with the taxing [jurisdiction], is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the [taxing jurisdiction]."[37] Taxing the use of online streaming services implicates these rules in two possible ways.

First, online streaming companies contend that utility user taxes are not "fairly apportioned" because subscribers may watch videos on portable devices outside of a taxing city's borders. Precedent does not support this contention. Instead, taxes levied on purchasers of services may be applied to the entire purchase price of the service if there is "partial performance" of the service within the taxing city.[38] If a city only collects its utility user tax from users of online streaming services that have a billing or service address within the city, this requirement will be satisfied in all but the most unusual of cases.

Practice Tip: In the unlikely event that a subscriber to an online streaming service has a billing or service

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[36] In 1996, Congress enacted a statute exempting providers of direct broadcast television service from any obligation to collect local taxes on the use of their services. 47 U.S.C. § 152 (note); Pub. L. 104-104, Title VI, § 602. However, so long as a utility user tax applies to the use of direct broadcast satellite television services and is "legally collectible" from users, it should not run afoul Internet Tax Freedom Act – even if one mechanism for collecting the tax is foreclosed by federal law. Internet Tax Freedom Act, § 1105(2)(A)(i)-(ii).

[37] *Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274, 279; *Oklahoma Tax Commission v. Jefferson Lines, Inc.* (1995) 514 U.S. 175, 183.

[38] *Oklahoma Tax Commission*, *supra*, 514 U.S. at 188-89.

> address in a city but never uses the service in that city, it may be appropriate to refund the tax that the subscriber has paid. Most utility user tax ordinances allow refunds in such situations.[39] But the possibility that a few users might be entitled to refunds is not an excuse for online streaming companies to refuse to collect a utility user tax.

Second, the "substantial nexus" requirement of the Commerce Clause will prevent a city from compelling an online streaming company to collect its utility user tax when the company has no physical presence within the city and does only a *de minimis* amount of business in the city. What amount of business qualifies as *de minimis* is not entirely clear, but it is safe to say that if an online streaming company completes more than 200 transactions in a city each year or receives more than $100,000 in annual revenue from transactions within the city, it can be compelled to collect that city's utility user tax.[40]

> ***Practice Tip***: Most online streaming companies will easily pass these thresholds. However, it is possible that some companies may not pass the thresholds in smaller cities. To avoid this issue, smaller cities that wish to enforce their utility user taxes against online streaming companies should focus their efforts on larger companies.

≥ The First Amendment

Some online streaming companies insist that the use of online streaming services cannot be taxed because online streaming services involve speech that is protected by the First Amendment to the United States Constitution. The First Amendment, however, does not prevent the government from taxing speech. It prevents the government from taxing speech in a manner that is "directed at, or presents the danger of suppressing, particular ideas."[41] If a tax is "content neutral" and part of a broader tax scheme that does not target a small number of speakers, it should easily pass muster under the First Amendment.[42]

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[39] See, e.g., Santa Barbara Municipal Code § 4.26.150.

[40] *South Dakota v. Wayfair, Inc.* (2018) 585 U.S. 162, 188.

[41] *Leathers v. Medlock* (1991) 499 U.S. 439, 453.

[42] *Id.* at 444-49. If a tax applies to a particular medium of speech, like video, some courts will ask whether the tax has a rational basis, to ensure that it is not targeting speech for legally impermissible reasons. *Sacramento Cable Television v. City of Sacramento* (1991) 234 Cal.App.3d 232, 237-43.

Most taxes on the use of online streaming services are part of an overall utility user tax scheme that applies a variety of other services. And many utility user tax ordinances explicitly state that the use of "video services" is taxable, regardless of the content of the video programming offered.[43] Because a tax is "content based" only if it subjects speakers to differential taxation based on "'the topic discussed or the idea or message expressed[,]" most generally applicable utility user taxes on video services – or even some subset of video services – will not run afoul of the First Amendment.[44]

> ***Practice Tip***: Even content neutral taxes can be enforced in content-based ways. It should go without saying that enforcement efforts should not be focused on online streaming companies that engage in "disfavored" speech.

Part 3: Collection

After a city has run the gauntlet described above – after it has determined that its utility user tax applies to the use of online streaming services and is enforceable – it still must decide what actions it wants to take to ensure that the tax is properly collected.

Remember that a utility user tax is imposed on the service user, not the supplier of the service. Because it would be practically impossible for cities to directly collect the tax from every service user, most utility user tax ordinances require service suppliers to collect the tax from their customers. Tax collection requirements of this type are ubiquitous and have been considered lawful for close to a century.[45]

Many online streaming companies, intentionally or inadvertently, are not collecting utility user taxes imposed on the use of their services, even when they are required to do so. What should cities do when they encounter one of these companies? There are two principal options:

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[43] See Santa Barbara Municipal Code § 4.26.020 - Video Programming.

[44] *City of Austin, Texas v. Reagan National Advertising of Austin, LLC* (2022) 596 U.S. 61, 69, citations omitted; compare *Arkansas Writers' Project, Inc. v. Ragland* (1987) 481 U.S. 221, 224, 226-31 [tax on magazine sales was content based because it exempted religious, trade, professional, and sports magazines]; *Leathers*, *supra*, 499 U.S. at 449, 453 [tax applicable to cable television but not to newspapers, magazines, and satellite television was not content based].

[45] *Ainsworth v. Bryant* (1949) 34 Cal.2d 465, 477; *City and County of San Francisco v. Regents of the University of California* (2019) 7 Cal.5th 536, 551-52.

1. **bring litigation against the company and request a court order that compels it to collect the tax;**

2. **hold the company liable for the uncollected amounts (and, if appropriate, interest and penalties).**

The first option is rarely utilized, in part because it is focused only on prospective relief, with no recovery available for past uncollected amounts, and in part because it raises complex questions about what judicial remedies are available to redress statutory violations committed by private parties. The second option is more common.

Cities are generally understood to have the power to impose liability on companies that fail to collect taxes they are legally required to collect.[46] It is a power they share with the State of California, which has, since the 1930s, required retailers to collect use taxes from purchasers of tangible personal property and held them liable when they fail to collect the full amount due.[47] Liability is not for the uncollected taxes, per se. Instead, companies may be found to owe a debt, or damages, in "an amount equivalent to" the tax they failed to collect.[48]

Most modern utility user tax ordinances establish some kind of administrative process for holding service suppliers liable when they fail to comply with their tax collection obligations.[49] However, a few older utility user tax ordinances may not. If a city does not have an applicable administrative process, seeking prospective relief from a service supplier in court may be the only enforcement option available.

The process of issuing assessments can be expensive and time-consuming, so a careful evaluation of a city's case is warranted.

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[46] *City of Glendale v. Crescenta Mutual Water Company* (1955) 135 Cal.App.2d 784, 796; cf. *City of Vacaville v. Pitamber* (2004) 124 Cal.App.4th 739, 747 [rejecting due process challenge to city's effort to hold hotel operator liable for "transient occupancy" taxes that it failed to collect from its guests].)

[47] Rev. & Tax. Code § 6204; *Bank of America National Trust and Savings Association v. State Board of Equalization* (1962) 209 Cal.App.2d 780, 792-93.

[48] *First American Title Insurance Company v. California Department of Tax and Fee Administration* (2021) 71 Cal.App.5th 603, 613; *Bank of America National Trust and Savings Association*, *supra*, 209 Cal.App.2d at 799-800, emphasis omitted [explaining that even when the seller is held liable for amounts that it failed to collect, the underlying tax liability remains with purchaser and can be recouped from the purchaser by the seller].

[49] See, e.g., Santa Barbara Municipal Code §§ 4.26.110, 4.26.170.

Depending on the circumstances, it may sometimes make sense to attempt informal negotiations with noncompliant companies, offering some relief from liability for prior uncollected amounts in exchange for an agreement that the company will collect the tax moving forward.

Conclusion

The discussion above provides a basic overview of the major issues that cities may face if they seek to enforce their utility users taxes against online streaming companies. The task may seem daunting, and navigating the enforcement process can be complicated. But several years of personal experience have led the author to conclude that online streaming companies' challenges to the enforceability of properly worded utility user tax ordinances are unconvincing.
For those cities whose utility user taxes apply to the use of online streaming services, enforcement is likely to be successful in most cases.

I hope that the following information will prove helpful. If you have questions about anything, please do not hesitate to contact me directly.