

## “NETFLIX TAX

Following efforts to raise the income tax and impose taxes on payroll, services, sugary drinks and more, some Illinois state senators now want to tax internet streaming.

An amendment filed March 2 would apply a 6.25 percent sales tax to cable and satellite TV, as well as internet streaming services such as Netflix, Spotify and Xbox Live. For Chicagoans, this means an additional tax on top of a 9 percent citywide “amusement tax” they’re already paying for those services.

State Sen. Toi Hutchinson, D-Chicago Heights, filed the amendment to Senate Bill 9, part of the package of bills that make up the Senate’s “grand bargain. In addition to TV and streaming services, SB 9 would expand the 6.25 percent statewide sales tax to an array of other services, including repairs, landscaping, laundry, tattoos, body piercings, tanning and much more.

In 2015, Chicago’s Finance Department expanded the city’s 9 percent amusement tax to cover online streaming media services such as Netflix, Spotify and Xbox Live, among others. The Liberty Justice Center filed a lawsuit on behalf of customers against the city, arguing that the tax is illegal and unconstitutional under state and federal law. A Cook County Circuit Court judge denied the city’s request to dismiss the lawsuit in July 2016, allowing it to proceed.

The city issued notice in November 2016 that it was again expanding its 9 percent amusement tax, this time to businesses subscribing to paid programming – a creative way to skirt federal law prohibiting taxing satellite providers the same as cable providers, the latter of which the city already taxes. By directly taxing businesses – such as restaurants or bars that subscribe to satellite TV for sports packages – the tax is imposed directly on the consumer rather than the satellite provider. This means each business that buys an annual premium sports subscription, which can cost \$5,000-\$10,000, could be paying more than \$400 in new taxes every year under that tax. And these same businesses would be hit again if the state implements the proposed sales tax on cable and satellite TV.

The Senate’s tax would be imposed on “the privilege of using [the taxable service] in this State,” according to the proposed legislation. That language makes the application and collection of a tax on streaming services ambiguous and potentially illegal. First, what does using a streaming service in Illinois mean? Does it apply to a person with a layover at O’Hare International Airport who is passing the time watching Netflix on her tablet? Or does it apply to any resident of Illinois regardless of whether she is within state lines when she uses Spotify or Netflix? The bill doesn’t say.

Second, this bill would require any company in the world that offers streaming services on the internet to become a tax collector for the state of Illinois simply by having one customer who lives (or uses) its streaming service in Illinois. That requirement is likely illegal. In 2013, the Illinois Supreme Court ruled unconstitutional the state’s “Amazon tax,” which forced online retailers to pay Illinois taxes regardless of whether they had a storefront or other physical presence in the state. In its ruling, the Illinois Supreme Court said the tax conflicted with the Internet Tax Freedom Act – a federal law enacted in 2000 – which prohibits states from imposing discriminatory taxes on electronic commerce.