



At the time of this statement, it is premature to have public discussion about a proposed Ruling pertaining to over the top TV (OTT). MuniServices client cities are currently going through an interactive process with representatives of the OTT industry to better understand that technology, its products, and certain legal considerations, so that an appropriate interpretation or “administrative ruling” can be rendered to provide much needed clarity to the OTT industry. Consequently, there is no proposed Ruling, at this time, to discuss.

It is also worth remembering that each city will have to render its own interpretation of its voter-approved UUT ordinance, and in a manner that is consistent with Proposition 218. Although MuniServices assists its UUT client cities in developing consensus approaches on many UUT matters, MuniServices does not do the “interpreting” of the ordinances. Rather, MuniServices has a limited advisory role in this process. MuniServices’ 30-year-old UUT Program is designed to give technical assistance to its client cities on new developments in the various utility categories that are subject to the UUT, and to identify potential “taxable services” regardless of technology used to provide those services. With this information, each client city can then perform its role in interpreting and enforcing its voter-approved local tax in a manner that assures taxpayer fairness and competitive fairness within each utility category, and is consistent with Proposition 218. MuniServices intends to continue to perform this limited role as a technical advisor to its client cities, and properly leave the decision-making to them.

Background

Approximately two-thirds of the 150 California’s local agencies with utility users’ tax ordinance have voter-approved ordinances with technology-neutral definitions. Many of these successful local ballot measures included provisions to a) lower the UUT rate and b) expand the base by “modernizing” the UUT to align with technology. MuniServices currently partners with and advises approximately 60 jurisdictions in the State. Please see www.uutinfo.org.

Existing UUT Services Regardless of Technology

The “modern” UUT ordinances apply to “video programming” *regardless of the technology used to deliver such programming*. Traditionally, “video services” were only provided by cable TV companies. During the last decade, “video programming” similar to those programs provided over cable TV have been provided by a variety of companies using new technologies, including over satellite and broadband. Under federal law, “satellite TV” is exempted from local taxes.

Two of the largest providers of broadband networks, Verizon and AT&T began offering cable-like services several years ago over their broadband networks (FIOS TV and U-verse). These two companies were successful in getting state legislation that provided for state video franchises in lieu of a local franchise (The Digital Infrastructure and Video Competition Act of 2006; Public Utilities Code, Sec. 440 et seq).

More recently, a variety of companies are now offering video programming services over the internet, called “over the top tv” or OTT. Many of the OTT services are similar to the video programming provided by CATV, satellite, and Verizon and AT&T.

When cities seek local-voter approval of an updated UUT ordinances, the ballot measures specifically indicate that the new definitions of taxable services would be technology-neutral so that users of such utility services would be treated the same, regardless of technology. In fact, many cities lower the percentage rates for their video UUT in anticipation of a more inclusive technology-neutral definition of “video programming”.

**Administrative Rulings and Protecting Proposition 218 are Outlined in Voter-Approved Ordinances**

Under the voter-approved ballot measure, a “tax administrator” (which is typically a Finance Director or equivalent) has the responsibility to administer the UUT ordinance, and is authorized by ordinance to issue “administrative rulings” to provide guidance to the tax collecting utilities of their responsibility to collect the City’s UUT on their “video services” from the end-users. The City Attorney may assist the tax administrator in that process. MuniServices also provides technical assistance to the tax administrator in better understanding the nature of new technologies providing “utility services” covered by the UUT ordinance.

Local Governments’ Continue to Evaluate the Issue

To-date, there has been no action by a California city to adopted an “administrative ruling.” During the past several months, in response to questions from providers of OTT, a number of MuniServices’ UUT client cities with similar modern UUT ordinances that apply to “video services” have discussed the need to issue an administrative ruling to providers of OTT, clarifying the application of the City’s UUT to “video programming services” (e.g., Sling TV, DirecTV Now, Xfinity Stream, Hulu, Netflix). Those cities are currently having discussions with representatives of the OTT industry and other stakeholders to develop an appropriate ruling that assures taxpayer fairness and competitive fairness within the industry. The administrative ruling is designed to interpret the existing language of the UUT ordinance, and to apply it prospectively to OTT sometime in 2017. Importantly, the action of the local tax administrator of applying and interpreting the existing local law to a particular service, must be done in a manner that is consistent with the requirements of Proposition 218. Administrative rulings (for MuniServices clients) would then be placed on www.uutinfo.org, and also mailed to the OTT providers.

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