

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

RASIER, LLC and UBER TECHNOLOGIES, INC.,)	
)	
)	
Plaintiffs,)	
)	
v.)	Case No. _____
)	
VILLAGE OF SKOKIE, an Illinois Municipality,)	In Chancery
)	Injunction/Declaratory Judgment
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs RASIER, LLC and UBER TECHNOLOGIES, INC. (hereinafter together “Uber”), by their attorneys, JENNER & BLOCK and MASSEY & GAIL, complain of Defendant VILLAGE OF SKOKIE (“Skokie”), as follows:

INTRODUCTION

Uber’s technology provides socially valuable and on-demand solutions at a fair price to both drivers and riders throughout Illinois, including in Skokie. Through its mobile app, Uber has enabled increased transportation options, competitive prices, and sought-after convenience. Uber’s success is directly tied to the social and economic benefits enjoyed by the public, riders and drivers alike, through the use of Uber’s app.

The majority of states across the Nation—including Michigan, Ohio, and Wisconsin—preempt local governments from imposing their own regulations and taxes on Uber and similar

business (which Skokie has legislatively grouped under the label “Transportation Network Companies”). *See, e.g.*, Mich. Comp. Laws § 257.2115; Ohio Rev. Code § 4925.09; Wis. Stat. § 440.465. And almost every state that does tax Transportation Network Companies has concluded that the only sensible, practical way to tax such companies is to impose a uniform tax across the entire state. *See, e.g.*, Ala. Code § 32-7C-36; Mass. Gen. Laws ch. 25, § 23. Uber has never contested the legal validity of such a tax and has operated successfully in each of these other states. Nor does Uber object to a rational taxing regimes that pass constitutional muster.

Illinois has not followed the approach of the vast majority of states. The result has been an emerging patchwork of local government taxes in Illinois that illustrates what the Illinois Supreme Court has long recognized: “[c]onsidering the number of local governmental units in this State, particularly in and around the Chicago area, which possess or could elect to possess home rule powers, it is apparent that unrestrained extraterritorial exercise of those powers in zoning, taxation and other areas could create serious problems.” *Commercial Nat. Bank of Chicago v. City of Chicago*, 89 Ill. 2d 45, 78-79 (1982).

Skokie has never disputed the social and economic benefits its residents enjoy through use of Uber’s mobile app (and those of other similar businesses Skokie groups under the label “Transportation Network Companies”). But Skokie is now insisting it must extract significant new tax revenue from these companies, purportedly because the driver-partners of Transportation Network Companies are increasing the burden on local infrastructure. Skokie has never supported its assertions about increased impact on its infrastructure with any concrete analysis of who uses Skokie roads, when they use the roads, and why they do so. And Skokie’s rationalization for imposing its new tax is directly undermined by the arbitrary manner in which

it has constructed the tax—an undifferentiated, flat tax for each trip that either begins or ends in Skokie, without regard for whether the trip takes place mostly outside of Skokie, covers only one block in Skokie, or covers every inch of the entire Skokie road system.

Skokie’s proposed new tax cannot withstand constitutional scrutiny. It is a bedrock principle of Illinois constitutional law that home rule municipalities, like Skokie, may not legally impose occupational, extraterritorial, or arbitrary taxes. Skokie nonetheless seeks to impose a tax that has all of those characteristics:

- The tax applies to Uber because Uber is a Transportation Network Company. That makes it an occupation tax.
- The tax applies in its entirety to trips that *either* begin or end in Skokie, meaning that the tax applies to trips that occur at least in part outside of Skokie. That makes it an extraterritorial tax.
- The reputed basis for imposing the tax is a purported need to obtain revenue to offset the cost of increased use of Skokie roads, even though there is no data to support any such increased use of the roads, let alone that the alleged increase is attributable to Uber and other Transportation Network Companies. That makes it a form of arbitrary taxation.

Because the Illinois Constitution thus forbids in multiple ways the manner in which Skokie’s proposed tax has been crafted, this Court should declare the tax ordinance unconstitutional and enjoin Skokie from enforcing it.

THE PARTIES AND JURISDICTION

1. Uber Technologies, Inc. is, and at all relevant times was, a Delaware company with its principal place of business in San Francisco, California.
2. Rasier, LLC is, and at all relevant times was, a wholly-owned subsidiary of Uber Technologies, Inc. that has been registered with other state and local licensing authorities to pay taxes assessed against Transportation Network Companies.

3. At all times material to this action, Uber has transacted business in the State of Illinois, and in Cook County, Illinois, by making its app available to riders and its driver-partners within those jurisdictions.
4. Skokie is, and at all relevant times was, a municipal corporation and home rule unit of local government organized and existing under the laws of the State of Illinois and located in Cook County, Illinois.
5. This Court has jurisdiction over this action pursuant to 735 ILCS 5/2-209(b)(3) because it arises within the State of Illinois against a municipal corporation (Skokie) organized under the laws of the State.
6. The Court also has jurisdiction pursuant to 735 ILCS 5/2-701 because this action presents an actual controversy and claims arising under Illinois law as to which Uber is entitled to a declaration of its rights.
7. Venue is proper in Cook County, Illinois pursuant to 735 ILCS 5/2-103 because the Defendant's principal office is in Cook County.

FACTUAL ALLEGATIONS

8. Uber is an innovative technology company that licenses software that enables independent third-party transportation providers to receive and respond to requests for prearranged transportation from interested riders who also use software designed by Uber. The Uber app also provides optional driver navigation for direct, efficient trips and cashless transactions for enhanced convenience, speed, and safety. By using the app, riders seeking trips can tap a button on their phones and make arrangements to, among other things, get to work, shop for groceries, and get home safely at night.

9. Uber’s technology is particularly useful for individuals who lack reliable access to traditional transportation options. Pickups and drop-offs of persons using the Uber app often occur in neighborhoods where car ownership is low. Persons with visual, hearing, and mobility challenges also use the Uber app to request rides that meet their transportation needs.

10. Driver-partners rely on the Uber app for easy, flexible access to earning opportunities. This includes more than 1,500 driver-partners who have informed Uber that they have a Skokie-based home address and have conducted trips facilitated by Uber’s mobile app in 2019.

11. Uber POOL, a carpooling option available on the app, reduces congestion and emissions by encouraging friends and co-workers (including Skokie residents) to share trips.

The Ordinance

12. On May 20, 2019, Skokie enacted Village Ordinance No. 19-5-C-4462 (the “Ordinance”). The Ordinance is attached hereto as Exhibit A.

13. The Ordinance itself highlights the “growing popularity and advent of ride-hailing businesses such as Uber and Lyft.” Ex. A at 1. Moreover, in requesting adoption of the Ordinance, Skokie’s Finance Director acknowledged that these businesses have “improved transportation options for the public in general.” Finance Dep’t Mem., May 15, 2019, attached as Ex. B, at 1.

14. In nonetheless advocating for the Ordinance, the Skokie Finance Director reported that “[a] rough comparison of average data from Uber and Lyft utilization in

major cities points to as many as 750 possible daily rides initiating or terminating in the Village on an average day” and claimed this “is a significant number that merits local oversight to ensure public safety for residents and to compensate for the impact the increased traffic has on public roads and infrastructure.” Ex. B at 1. The Skokie Finance Director did not disclose the data that formed the basis of this “rough comparison” or disclose how that “rough comparison” was calculated. The Skokie Finance Director also did not report that these “750 possible daily rides” represented an overall increase in total vehicles that used Skokie roadways. Nor did the Skokie Finance Director reference any other potential sources of increased roadway usage in Skokie, such as from the increased presence of package couriers due to the rise of e-commerce. *See generally* Matthew Haag & Winnie Hu, *1.5 Million Packages a Day: The Internet Brings Chaos to N.Y. Streets*, N.Y. Times (Oct. 27, 2019), <http://www.nytimes.com/2019/10/27/nyregion/nyc-amazon-delivery.html>.

15. The Ordinance treated the Skokie Finance Director’s “rough comparison” as a conclusive finding, reporting definitively that “calculations and projections concerning the growing use of [Transportation Network Company] services in the Village demonstrate 750 rides initiating or terminating in the Village on an average day” and cited these “750 rides” as “additional impact on our roadways” necessitating additional revenue. Ex. A at 1.

16. The Ordinance thus imposes a tax on “all [Transportation Network Companies] operating [Transportation Network Company Services] performed by [Transportation Network Company Drivers].” Ex. A, § 98-351.

17. “[T]he obligation to pay the tax [is] imposed upon the [Transport Network Company] operating services for any Accepted Ride.” Ex. A, § 98-351.
18. An “Accepted Ride” is any trip that “originates, terminates or both in the Village of Skokie.” Ex. A, § 98-350.
19. The Ordinance defines “Transportation Network Company” as an “entity operating in the State of Illinois that uses a digital network or software application to connect passengers to transportation network company services provided by transportation network company drivers,” but does not include “a taxicab association or for hire vehicle owner.” Ex. A, § 98-350.
20. Under the Ordinance, a Transportation Network Company must pay Skokie \$0.35 for every individual trip and \$0.15 for every shared trip that commences or ends in Skokie. Ex. A, § 98-351.
21. The Ordinance also requires Transportation Network Companies to register with the Village on or before the effective date of the Ordinance. Ex. A, § 98-352.
22. The tax is levied “in addition to any and all other taxes imposed.” Ex. A, § 98-351.
23. The penalties for nonpayment of the tax are significant. Any Transportation Network Company that fails to pay on a timely basis is subject to a penalty of three (3) percent for every 30-day period of delinquency and may be subject to revocation of its registration. Ex. A, § 98-356(b). In addition, any Transportation Network Company that violates the Ordinance is subject to the penalties outlined in the Skokie Village Code,

which imposes a penalty of \$750.00 per offense, with each day of violation a separate offense. Ex. A, § 98-358; *see* Skokie Village Code, § 1-6(a).

24. Skokie initially directed that the Ordinance would go into effect on August 1, 2019. However, Skokie has delayed implementation of the Ordinance, which is now set to begin on October 30, 2019. *See* Ex. C.

25. Only a small percentage of trips facilitated by Uber occur solely within Skokie. From January 1 through September 30, 2019, only 14 percent of Uber trips in Skokie originated and terminated entirely within Skokie's municipal limits. These trips typically were short, averaging just two miles per trip.

26. In contrast, from January 1 through September 30, 2019, 86 percent of trips that either began or ended in Skokie were interjurisdictional; that is, those that originated in Skokie, but terminated outside Skokie, and those that terminated in Skokie, but originated outside Skokie. The average distance of these trips was more than three times longer than those that began and ended in Skokie.

27. Illinois is among the few States in the Nation that does not entirely preempt local taxation of Transportation Network Companies. *See, e.g.*, Mich. Comp. Laws § 257.2115; Ohio Rev. Code § 4925.09; Wis. Stat. § 440.465. Permitting a patchwork of local taxes on Transportation Network Companies burdens Uber. For each such tax, Uber must make changes to its app in order to properly administer and collect that tax. Where a tax applies to conduct occurring beyond a jurisdiction's borders, as Skokie's does, the resulting patchwork of taxes creates a complicated system of overlapping assessments for the same trip.

28. Uber has a “clear and ascertainable right” not to comply with a requirement to pay the tax contained in the Ordinance, which imposes an unauthorized occupation tax that has an impermissible extraterritorial reach and that is both arbitrary and contrary to fundamental principles of uniformity, all in violation of the Illinois Constitution.

29. As a result of the Ordinance, Uber will suffer ongoing irreparable harm for which there is no adequate remedy at law. To administer Skokie’s tax, Uber will be required to undertake significant, unrecoverable efforts to modify its app. Further, if Uber pays the unconstitutional tax, it will suffer diminished competitiveness with other transportation options. And if Uber instead fails to pay the unconstitutional tax, it faces stiff financial penalties and a potential loss of business should Skokie ever seek to revoke Uber’s registration. Uber also faces potential reputational damage and loss of goodwill both among its driver-partners and among riders for any collection efforts related to the unconstitutional tax.

30. Uber has demonstrated a sufficient probability of success on the merits, because the Ordinance is in direct violation of multiple provisions in the Illinois Constitution, as set forth above and below.

COUNT I

The Ordinance Violates Article VII, § 6(e) Of The Illinois Constitution Because It Is An Unauthorized Occupation Tax

31. Uber realleges, as if fully set forth here, the allegations set forth in paragraphs 1-30 of this Complaint.

32. Under Article VII, Section 6(e) of the Illinois Constitution, “[a] home rule unit shall have only the power that the General Assembly may provide by law . . . to . . . impose taxes . . . upon occupations.”

33. Skokie, as a home rule municipality, is constitutionally barred from imposing an occupation tax without the express authorization of the General Assembly. *See Commercial Nat. Bank*, 89 Ill. 2d at 51 (“[A]rticle VII, section 6(e) . . . requires authorization by the General Assembly before a home rule unit can impose a tax upon occupations.”).

34. “An ‘occupational tax’ is one that in practical effect imposes a tax upon a given occupation or the provider of particular services.” *Commc ’ns & Cable of Chicago, Inc. v. City of Chicago*, 282 Ill. App. 3d 1038, 1044 (1996) (citing *Kerasotes Rialto Theater Corp. v. Peoria*, 77 Ill. 2d 491, 500 (1979)).

35. The framers of this limitation intended for it “to prevent a proliferation of taxes on various businesses and occupations at local levels which could impair the efficient operation of business within the State[.]” *Commercial Nat. Bank*, 89 Ill. 2d at 52.

36. The tax imposed by the Ordinance is an occupation tax because, by its very terms, it taxes the business of operating a Transportation Network Company. The language of the Ordinance states that the “tax is *imposed and levied on all [Transportation Network Companies].*” Ex. A, § 98-351 (emphasis added); *see also* Ex. B at 1.

37. The General Assembly has passed comprehensive state-wide legislation related to the regulation and safety of Transportation Network Companies. *See* “Transportation Network Providers Act,” codified at 625 ILCS 57. This statute mandates, among other

things, insurance coverage, driver and safety requirements, as well as operational requirements for Transportation Network Companies. *Id.* at §§ 57/10; 57/15; 57/25; 57/30. Significantly, however, the General Assembly has not authorized home rule municipalities like Skokie to impose occupational taxes on Transportation Network Companies.

38. The Ordinance therefore imposes an unauthorized occupation tax without express authorization from the General Assembly. As such, the Ordinance exceeds Skokie’s constitutional authority under any set of facts. The Ordinance is unconstitutional under Article VII, Section 6(e) of the Illinois Constitution on its face.

COUNT II

The Ordinance Violates Article VII, § 6(a) Of The Illinois Constitution Because It Has An Impermissible Extraterritorial Reach

39. Uber realleges, as if fully set forth here, the allegations set forth in paragraphs 1 to 38 of this Complaint.

40. Article VII, Section 6(a) of the Illinois Constitution provides that “a home rule unit may exercise any power and perform any function pertaining to its government and affairs.”

41. Under Illinois law, a home rule unit’s authority to exercise power over its own government and affairs does not extend to include the authority to tax transactions and activities occurring outside that home rule unit’s corporate limits, unless expressly authorized by the General Assembly. *Hertz Corp. v. City of Chicago*, 2017 IL 119945 ¶¶ 14 (2017); *Commercial Nat. Bank*, 89 Ill. 2d at 77; *City of Carbondale v. Van Natta*, 61 Ill. 2d 483, 485 (1975).

42. The Ordinance levies a tax on Transportation Network Companies for “any ride . . . which originates, terminates or both in the Village of Skokie.” Ex. A, § 98-350; *see also id.* § 98-351.

43. The Ordinance covers trips that originate or terminate, and substantially occur outside of Skokie’s corporate limits. For example, over 85 percent of Uber trips originating or terminating in Skokie also go outside of Skokie’s jurisdictional limits. But the Ordinance taxes 100 percent of any trip originating or terminating in Skokie. By definition, it taxes events occurring outside of the taxing entity’s jurisdiction.

44. As a result, the Ordinance has a significant extraterritorial effect and is therefore an improper exercise of Skokie’s home rule powers. Indeed, the predominant effect of the Ordinance is to tax activity occurring outside of the municipal boundaries of Skokie. And by taxing trips that take place largely outside their municipal borders, the Ordinance imposes an unconstitutional extraterritorial tax.

45. Accordingly, Uber requests the Court declare that application of the Ordinance to any portion of an Uber trip that does not occur in Skokie to violate Article VII, Section 6(a) of the Illinois Constitution.

COUNT III

The Ordinance Violates Article I, Section 2 Of The Illinois Constitution Because It Taxes In An Arbitrary And Discriminatory Manner

46. Uber realleges, as if fully set forth here, the allegations set forth in paragraphs 1 to 45 of this Complaint.

47. Under Illinois law, the power of a municipality to tax may not be exercised arbitrarily and the classification of those taxed must be reasonable. *Croker v. Finley*, 99

Ill. 2d 444, 456 (1984). In other words, the tax must bear a reasonable relationship to the public interest sought to be protected, and the tax must be a reasonable method of accomplishing the chosen objective. A tax is unreasonable or arbitrary, and violates due process, when it places a burden on those taxed not shared by others. *Id.* at 457.

48. Although Skokie purports to remedy the impact of increased traffic on public roads and infrastructure, there is no evidence that Transportation Network Companies have increased the burden on Skokie's public infrastructure. At best, Skokie has used an unexplained method to develop a "rough comparison" to an undisclosed data set to conclude there are "as many as 750 possible daily rides initiating or terminating in the Village on an average day," without examining whether there has been a net increase in the use of Skokie's infrastructure. Ex. B at 1.

49. Nor does the Ordinance bear any relation to any impact on traffic or infrastructure that either Transportation Network Companies generally or particular trips may have. By taxing every trip that originates or terminates in Skokie a flat amount, the Ordinance imposes the same fee regardless of the trip's impact on Skokie traffic or infrastructure. For example, a 5-mile trip that occurs entirely within Skokie is taxed at the same rate as one that begins in Skokie's city limit and occurs almost entirely outside of Skokie. Although those two trips obviously impact Skokie traffic and infrastructure differently, they are taxed at the same rate.

50. Likewise, the tax on Uber bears no relation to the proportion of roads and infrastructure that Uber riders and driver-partners use relative to the multitude of other

entities that use Skokie's roads. It is arbitrary and discriminatory toward Transportation Network Companies.

51. Accordingly, Uber requests the Court declare the Ordinance unconstitutional on its face as a violation of Article I, Section 2 of the Illinois Constitution.

COUNT IV

The Ordinance Violates Article IX, Section 2 Of The Illinois Constitution Because It Does Not Bear A Reasonable Relationship To The Stated Purpose Of The Ordinance

52. Uber realleges, as if fully set forth here, the allegations set forth in paragraphs 1 to 51 of this Complaint.

53. The Uniformity Clause of the Illinois Constitution 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. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.” Ill. Const. art. IX, § 2.

54. A tax or fee complies with the Uniformity Clause only if it satisfies two requirements: (1) it must be “based on a real and substantial difference between those persons assessed and those who are not,” and (2) it must “bear[] some reasonable relationship to the object of the legislation or to public policy.” *U.S.G. Italian Marketcaffe, L.L.C. v. City of Chicago*, 332 Ill. App. 3d 1008, 1014 (2002) (internal citations and quotations omitted). An ordinance must meet both prongs of the uniformity test to pass muster. *Id.* at 1015.

55. The purpose of the Uniformity Clause is “to [e]nsure that taxpayers . . . receive *added protection* in the state constitution based on standards of reasonableness which are

more rigorous than those developed under the [equal protection provisions of the] federal constitution.” *Arangold Corp. v. Zehnder*, 329 Ill. App. 3d 781, 796 (2002) (emphasis added).

56. Skokie has seized upon the real and substantial difference between Transportation Network Companies and all other commercial entities that are making use of the Skokie public roadways in ever greater numbers, such as package couriers (*e.g.*, Amazon, FedEx, UPS), to impose a new tax uniquely on Transportation Network Companies. It has done so, according to the Ordinance itself, to “compensate for the impact such increased traffic [from Transportation Network Companies] has on roads and infrastructure.” Ex. A at 1.

57. The Ordinance violates the Uniformity Clause because imposing an occupation tax uniquely on Transportation Network Companies, based on the use of the road by the driver-partners and riders who use their apps, does not bear a reasonable relationship to the Ordinance’s ostensible purpose. In addition to using a “rough” and non-specific basis to support assertions that Transportation Network Companies have caused increased infrastructure utilization in Skokie, *see* Ex. B at 1, Skokie’s selective taxation ignores the impact myriad other services could be having on its roads and infrastructure, to say nothing of the fact that Transportation Network Companies—unlike those other services—may, in fact, reduce the overall use of roads and infrastructure, reduce emissions, and reduce local parking congestion in Skokie. *See U.S.G. Italian Marketcaffe*, 332 Ill. App. 3d at 1017 (holding tax passed to reduce litter violated second prong of uniformity test because it taxed items not likely to cause litter while not taxing items very likely to cause litter).

58. Because imposing this tax only upon Transportation Network Companies bears no relation to the stated goal of compensating Skokie for an overall increase in traffic, the Ordinance fails the second prong of the test under the Illinois Constitution's Uniformity Clause. Accordingly, Uber requests the Court declare the Ordinance unconstitutional on its face as a violation of Article IX, Section 2 of the Illinois Constitution.

PRAYER FOR RELIEF

For the foregoing reasons, Uber respectfully requests that the Court:

1. Declare that the Ordinance imposes an unauthorized occupation tax in violation of Article VII, Section 6(e) of the 1970 Illinois Constitution;
2. Declare that the Ordinance, to the extent it applies to Uber trips outside of Skokie, violates Article VII, § 6(a) of the 1970 Illinois Constitution;
3. Declare that the Ordinance imposes an unauthorized arbitrary tax that does not bear a reasonable relationship to the professed goal of accounting for increased traffic and infrastructure burden attributable to Uber, in violation of Article I, Section 2 of the 1970 Illinois Constitution;
4. Declare that by taxing only Transportation Network Companies in order to obtain revenue to offset the increased use of local infrastructure, the Ordinance violates the requirement of uniformity in taxation required by Article IX, Section 2 of the 1970 Illinois Constitution;
5. Enter an injunction prohibiting Skokie from (1) collecting any tax imposed by the unconstitutional Ordinance; (2) imposing any penalties, fees, or interest on Uber arising from any refusal by Uber to pay taxes imposed by the Ordinance; and (3) imposing any other

punitive measures on Uber as a result of noncompliance with the taxes imposed by the Ordinance, such as a revocation of any license to operate in Skokie; and

6. Award such other relief as the Court deems just and proper.

Dated: October 30, 2019

Respectfully submitted,

RASIER, LLC
UBER TECHNOLOGIES, INC.

By: _____

One of their Attorneys

Cook County Firm No. 05003
Ross B. Bricker
John F. Ward, Jr.
Clifford W. Berlow
Jenner & Block LLP
353 N. Clark Street
Chicago, Illinois
Phone: (312) 222-9350
Email: rbricker@jenner.com

Cook County Firm No. 56232
Leonard A. Gail
Massey & Gail LLP
50 E. Washington Street
Suite 400
Chicago, Illinois 60602
Phone: (312) 283-1590
Email: lgail@masseygail.com