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## ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 95-002

**This document may not be used or cited as precedent. Ala.  
Code §40-2A-5(a) (1993 Replacement Volume).**

TO: TV

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: March 17, 1995

RE: Alabama sales and use tax treatment of companies' sales of direct to home satellite services to customers located in Alabama.

### ISSUES AND FACTS

The facts as represented by Requestor are as follows:

TV, Inc. ("TV") and Satellite Broadcasting, Inc. ("SB"), are planning to offer Direct To Home ("DTH") satellite television services to consumers located in Alabama. DTH services will provide the consumer with up to 150 channels of programming. The services will include basic networks channels, premium channels, pay per view movies, concerts, and sporting events, as well as other commercially supported programming.

Satellites located above the continental United States will receive signals and then broadcast the signals to the consumers throughout the continental United States. The transmissions to the satellites will originate from earth stations located in jurisdictions other than the State of Alabama. In some instances, such as live sporting events or concerts, TV and SB or a third party may initiate programming from a location within or outside Alabama, transmit it to a primary earth station, format it and transmit it to satellites for broadcast to the customers. The consumer will receive the DTH Service through a receiver/decoder system. This system consists of a satellite dish antenna, a set top receiver/decoder unit and a remote control, which are purchased from retailers. Included with the set top receiver/decoder is a removable "access card" encoded with the information necessary to descramble the programming which the consumer purchases or subscribes. Neither TV nor SB will own or lease the satellite dish antenna, set top receiver/decoder unit or the "access card". The equipment will

be the property of the consumer. The access card will remain the property of an unrelated third party.

Independent parties have been given the license to manufacture the satellite receiver/decoder system and it will bear the manufacturer's name. The manufacturer and TV or SB will jointly market the service. TV and SB will have independent representatives marketing and soliciting on their behalf. Also, they may from time to time have employees marketing this satellite receiver/decoder system in Alabama.

The programming will consist of basic and premium network channels, pay-per-view, etc., and in some locations network programming. The consumer may elect to purchase pay-per-view programs (movies, sports, concerts, etc.), a package of scheduled programming (i.e. basic and premium network channels) or a combination thereof. The consumer may order pay-for-view programming utilizing a remote control, or contract with TV or SB for each program purchased.

The consumer will be billed on a monthly basis. The access card, on an embedded chip, will contain consumer information and may include certain services purchased during the billing cycle. The receiver/decoder will in most cases be connected to a telephone line. In those cases, at a prescribed time and date, the access card will call the information center at the expense of TV and SB. The information concerning the services purchased during the billing cycle will then be extracted from the access card. An unrelated third party has been engaged to generate and send invoices to all subscribers.

The issues are as follows:

1. What is the State of Alabama's sales and use tax treatment of TV's and SB's sales of direct to home programming to customers located in Alabama as described in Requestor's statement of facts?
2. Are there any other state taxes applicable to TV and SB?

#### LAW AND ANALYSIS

Alabama Sales and Use Tax is a privilege or license tax levied on the gross proceeds or gross receipts from the business of selling at retail or renting tangible personal property, or conducting or operating places of amusement or entertainment where an admission fee is charged. Ala. Code §§40-23-2(1), 40-23-2(2), 40-12-222.

Ala. Code §40-12-220(8) (1993 Replacement Volume) defines tangible personal property as follows:

Personal property which may be seen, weighed, measured, felt or touched, or in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance, other contracts, or securities.

Because satellite transmitted signals cannot be "seen, weighed, measured, felt or touched", they are intangible and there is no sales, use or rental tax applicable.

**HOLDING**

Based upon the particular facts of this case, the proposed satellite services by TV and SB will not constitute a sale of tangible personal property subject to Alabama sales tax. The satellite signal is intangible and there is no sales, use, or rental tax applicable.

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RALPH P. EAGERTON, JR.

RPE:MJM:pj49a