

OKLAHOMA TAX COMMISSION

TAX POLICY AND RESEARCH DIVISION
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October 1, 2002

Re: Our file Number LR-01-151C; Sales tax on the provision of "Personal Television Service"

Dear Taxpayer:

This is in response to the inquiry of _____ concerning the subject referenced above and is being forwarded to him. Below I have set out the "Statement of Facts" he presented and the "Issues" that he raised. Each "Issue" is followed by our response.

THE STATEMENT OF FACTS

Overview

Our clients are planning to offer personal television services to subscribers located in your state. Our client's personal television service will allow viewers to do the following:

1. Automatically record television shows and watch them at a later time.
2. Pause or record live television broadcasts.
3. Create personalized programming based upon the viewer's previous viewing patterns.
4. Receive special data and video content.

In order for a subscriber to obtain our client's personal television service, a subscriber must purchase or have access to the following:

1. A Personal Video Recorder ("PVR") or Direct-to-Home Satellite Television Combo Box ("DSCB"), purchased from an unrelated third party retailer.
2. Television service via cable, satellite, or antennae.
3. A telephone line connected to the PVR's built-in modem or DSCB modem.
4. A current paid subscription to our client's personal television service.

Operational Aspects

In order for a subscriber to subscribe to our client's personal television service, the subscriber must first purchase a PVR or DSCB. PVRs and DSCBs are available for purchase through unrelated third party retailers and consist of a set-top unit and remote control. It is our understanding that sales tax on the units is collected by retailers at the point of sale, where

applicable. The manufacture and sale of PVRs and DSCBs have been licensed to independent third-party consumer electronics manufacturers. Please note, Direct-to-Home Satellite Combo Boxes have the same capabilities as PVRs, but are integrated to allow the viewer to use our client's personal television service as well as receive direct-to-home satellite television programming. In all other aspects, PVRs and DSCBs are generally the same. Henceforth, both types of units will be referred to as PVRs.

PVRs come equipped with certain basic "out-of-the-box" features. The basic features of PVRs are similar to video cassette recorders ("VCRs") in nature except that they permit VCR-like recording capabilities onto a built-in hard drive as opposed to recording onto videocassettes. PVRs also provide viewers with several basic capabilities including: pause, rewind and fast forward navigation of live or recorded television and the ability to record selected programs by manually programming the PVR. PVRs have the capability to receive cable, satellite, and off-air television programming. **These capabilities exist independently of the personal television service provided by our client.**

As noted above, our client will offer enhancements to the inherent PVR capabilities to customers interested in subscribing to our client's personal television service. However, customers purchasing PVR hardware are not obligated to subscribe to our client's service. Essentially, a customer could purchase PVR hardware and connect it to their television source without activating our client's programming and still receive a basic form of functionality from the PVR hardware. In order for a subscriber to receive our client's services, the subscriber must pay a subscription fee directly to our client. The subscription fee is separate and distinct from the original purchase of the PVR from the unrelated third party retailer and is separately billed and collected by our client. This fee is distinct from any fee paid for cable or direct-to-home satellite television programming services.

Subscribers may subscribe to our client's personal television service in one of three subscription methods: (1) lifetime subscriptions (i.e. a one-time payment);

(2) annual subscriptions (i.e. an annual payment); or (3) monthly subscriptions (i.e. a monthly payment).

In consideration of the subscription fees, our client will provide the following services:

1. Electronic Program Guides - The Electronic Programming Guides are delivered electronically on a nightly basis and stored on the hard drive of the subscriber's PVR. The Electronic Programming Guide contains approximately two weeks of television programming schedules and allows the customer to identify and schedule future recordings. The Electronic Programming Guide also contains program information that allows the subscriber to rate programs (using a "thumbs up" or "thumbs down" feature on the remote control), thus identifying a subscriber's preference for specific programming. From these ratings, our client's personal television service will suggest similar television programming that the subscriber may enjoy.
2. Specialized Electronic Television Viewing Guides - The Specialized Electronic Television Viewing Guides differ from the Electronic Programming Guide in that they offer enhanced graphics and formats. The subscriber can access the downloaded programming guides via their PVR and browse them for upcoming television programs. Once the

subscriber identifies an upcoming program that he/she wishes to view, the subscriber can record the selected program for later viewing. The specialized viewing guides are also delivered electronically on a nightly basis and stored on the hard drive of the subscriber's PVR.

As part of the personal television service, our client will provide two types of specialized electronic television viewing guides:

- An electronic magazine that organizes upcoming television and programming by topic (e.g. comedy, sports, drama and special events).
 - Network Showcases organized by topic and sorted by separate networks (e.g. NBC, CBS, HBO).
3. Programming Content Specifically Created By Our Client - As part of the subscription to the personal television service, our client will provide several television programs including a weekly half hour preview show.

The preview show will offer commentary and viewing suggestions of selected upcoming programming. This service is delivered via broadcast networks during off-peak hours and is recorded on the hard drive of the subscriber's PVR. The subscriber can view or delete this programming from his/her PVR at any time.

Delivery of the of the Electronic Programming and Specialized Electronic Television Viewing Guides is accomplished via telephone modem connection originated by the subscriber's PVR to our client's Operation Facility located outside of your state. The Operation Facility consists of a series of computer servers that store and transmit our client's information and services to subscribers. The electronic transmissions are also delivered without the transfer of any tangible personal property.

Once our client's Operation Facility verifies that the customer is a valid subscriber, the Electronic Program Guide, Electronic Content and Viewing Guides are electronically downloaded onto the hard drive of the subscriber's PVR. In some instances, updates to the PVR's operating system will also be downloaded during this time. In addition to the electronic transmissions, the Electronic Program Guide, Electronic Content and Viewing Guides may also be transmitted to the subscriber's PVR via direct-to-home satellite transmission or other electronic media. It is important to note that in all instances the Electronic Program Guide, Electronic Content and Viewing Guides are delivered electronically and not by the use of diskettes, CD-Rom or other tangible mediums.

Future Services and Revenue

In the future, our client may provide enhanced services via modem, digital subscriber line (DSL), satellite or other high-speed connection.

In addition, our client may receive additional revenues from the following:

1. Targeted advertising
2. Promotional content programming.
3. Select and purchase products promoted in specialized programming.

4. Delivery of premium programming such as music, games, and motion pictures ordered by a subscriber and delivered and stored on the hard drive of subscriber's PVR. A separately stated fee may be charged for the premium programming.
5. The sale of audience research and measurement.

Billing Procedures

Subscriber's can subscribe to our client's personal television service in the following ways:

1. Customers may contact our client via a toll free number or may subscribe to the service via the World Wide Web.
2. If the subscriber purchases a DSCB, the subscriber can sign up for service by contacting his/her direct-to-home satellite provider using a toll free number or via the World Wide Web. The subscription fee for the personal television service fee may be separately stated on the subscriber's invoice, or included as a component of a premium suite of services.

THE ISSUES

1. What is your state's sales & use, telecommunications, and/or other gross receipts tax treatment of our client's sale of personal television services to customers located in your state as described in the statement of facts as presented?

Response: The provision of the sale of the "personal television services" is not subject to sales or use tax in Oklahoma.

2. In some instances our client may offer personal television services in conjunction with other taxable and non-taxable services. Specifically, our client may advertise a suite of services at one price point (i.e. PVR Service and Direct-to-Home Satellite Service), and using their billing system, separately calculate and apply the taxability to each unique component of the suite of services. Billing to the customer may be presented in one line item in the finished invoice. In some instances, customers may only have access to an electronic invoice via the internet. Will this billing approach make any difference to the taxability of our client's service?

Response: If they are not offering telecommunications services, the billing approach set out in this issue will not make any difference in the taxability of the service being provided. If a group of services is offered and that group includes telecommunications services, and the charges for the telecommunications service are not separately stated, the entire charge is subject to sales tax.

3. When personal television services are provided by a direct-to-home satellite provider, are the fees collected from subscribers exempt from local taxation under section 602 of the Federal Telecommunications Act?

Response: While any sale, with the exception of sales of natural gas or electricity for residential purposes, that is exempt from state sales or use tax is also

exempt from any local sales or use taxes, and while I am not aware of any local taxes on the provision of "direct to home satellite" services, answering this question is outside of the scope of the responsibility of the Oklahoma Tax Commission.

4. Will any of the future services, as noted above, change the taxability of our client's personal television service?

Response: No future sales of the services that are noted above, if provided in the manner set out, will change the sales or use taxability of the provision of the "personal television service". Future sales of tangible personal property will be required to be reported via your Oklahoma Use Tax Permit

5. Are there any other state and or local taxes which may apply to our client's services?

Response: There are no other state or local taxes that are administered by the Oklahoma Tax Commission that would apply to the charges for the provision of the "personal television services".

This response applies only to the circumstances set out in your request of September 18, 2001. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

If I can be of further assistance, please feel free to contact me.

Sincerely,
OKLAHOMA TAX COMMISSION



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