

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #97-36**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Application of sales tax to the retail sale of satellite programming services in Tennessee.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and

(E) The taxpayer directly involved must have acted in good faith in relying upon the ruling and a retroactive revocation of the ruling must inure to his detriment.

### **FACTS**

The only facts provided by the dealer is that it retails satellite programming services to customers in [AREA] Tennessee. These satellite broadcasts are purchased by the dealer from a wholesaler in [STATE A - NOT TENNESSEE].

### **ISSUE**

Whether the retail sale of satellite programming services is subject to sales tax?

### **RULING**

Satellite programming services are subject to the state sales tax, but a provider of direct-to-home satellite service is exempt from the requirement to collect or remit the local sales tax.

### **ANALYSIS**

Satellite programming fits within the definition of telecommunications in the statute because the programming is transmitted through microwave signals. *See* T.C.A. § 67-6-102(29)(B). The sale of such services is not exempt as being the sale of telecommunications which are “broadcast over the airways for public consumption,” pursuant to T.C.A. § 67-6-102(29)(D), since only specific persons paying for the services and not the public at large may receive the broadcast.

It is helpful, although not necessarily dispositive, to look at the definition of broadcasting contained in the Federal Communications Act of 1934 (47 U.S.C. § 153(o)) and the FCC policies adopted pursuant to that act. Under the act, the term “broadcasting” is essentially defined by making inquiry as to what is intended to be received by specific recipients. In making this distinction, the most recent FCC policy has been to measure the intent of the purveyor by looking at the methods used to supply the communications. The Commission has determined that the fact that communications are scrambled so that they cannot be understood without a decoder is evidence to conclude that the intended recipient of the communication is not the indeterminate public. Also, a private contractual relationship which is enforced by the need for special equipment or decoders is further evidence that the communication is not intended to be received by the public.

*See National Ass'n. for Better Broadcasting v. Federal Communication Commission*, 849 F.2d 665 (D.C. Cir. 1988).

It is apparent that the retail sale of satellite programming services is subject to sales tax in this state as a telecommunications service pursuant to T.C.A. § § 67-6-102(29)(A) & (B), 67-6-201, 67-6-205 and 67-6-221. It is also clear that the sale of such services are not exempt from tax pursuant to T.C.A. § 67-6-102(29)(D) or any other provision of state law. However, federal law prevents the state from requiring a direct-to-home satellite service provider to collect or remit the local sales tax. *See* Pub. L. 104-104, Title VI, § 602, Feb. 8, 1996, 110 Stat. 144.

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APPROVED: \_\_\_\_\_  
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